

**INDEPENDENT COMMISSION ON UK  
PUBLIC HEALTH EMERGENCY POWERS  
CALL FOR EVIDENCE**

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**NOTE OF EVIDENCE  
EQUALITY AND HUMAN RIGHTS COMMISSION**

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**A Introduction**

1. This note of evidence is submitted on behalf of the Equality and Human Rights Commission ('EHRC'; formally the Commission for Equality and Human Rights), in response to the call for evidence issued by the Independent Commission on UK Public Health Emergency Powers ('the Independent Commission'). References in this note to "we" and "our" refer to the EHRC collectively.

**B Content of this note**

2. The Independent Commission has requested that the EHRC contribute to its call for evidence as a result of the experience and expertise of the EHRC. The Independent Commission focusses on providing a legal and constitutional analysis of emergency public health laws in the UK; parliamentary oversight of emergency public health powers; and the ways in which emergency laws and public health guidance were made, scrutinised, utilised and disseminated during the Covid-19 pandemic ('the pandemic').
3. The EHRC's work relating to Covid-19 was reactive in response to developments as the pandemic unfolded, and so the information held by the EHRC that might inform lessons for future pandemic planning derives from our work undertaken during the pandemic.
4. This note focusses on areas within the EHRC's existing expertise and is divided into the following sections:

- 4.1. The EHRC (paragraphs 5 to 13)
- 4.2. Advice to government regarding Coronavirus legislation (paragraphs 14 to 28)
- 4.3. Advice to government regarding accessibility of legislation and guidance (paragraphs 29 to 33)
- 4.4. Measures to be taken to ensure urgent legislation and guidance comply with rules of accountability, international legal obligations and the Rule of Law (paragraphs 34 to 45)

## **C The EHRC**

5. The EHRC is Britain's national equality and human rights body. It is a statutory body established under the Equality Act 2006 ('EA 2006'). It operates independently of the UK, Scottish and Welsh Governments to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It enforces the Equality Act 2010 ('EA 2010') and encourages compliance with the Human Rights Act 1998 ('the HRA'). It is accredited at UN level as an 'A status' National Human Rights Institution ('NHRI') in recognition of its independence, powers and performance.
6. We have unique duties and powers which are set out in Part 1 of the EA 2006. Pursuant to section 3 of the EA 2006, our general duty is to encourage and support the development of a society in which: (a) people's ability to achieve their potential is not limited by prejudice or discrimination; (b) there is respect for and protection of each individual's human rights; (c) there is respect for the dignity and worth of each individual; (d) each individual has an equal opportunity to participate in society; and (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.
7. As an independent and impartial body, the EHRC is not directly involved in any formal advisory groups and does not participate as of right in any government administrative processes, but does so on request. Our role is to promote understanding and engagement with equality and human rights issues, to encourage compliance with the law, and to use our authority and influence to secure improvements in policy, practice and the law where necessary. This involves regulating employers and service providers across Britain, whether private, public or third sector. While we actively participate in debates across equality and human rights issues, and seek to foster good relations with and between stakeholders, it is not our role to be an advocacy or campaigning

organisation. The EHRC's work does not have a specific focus on emergency public health laws, parliamentary oversight of emergency powers or the ways in which emergency laws and guidance were made, scrutinised, utilised and disseminated during the Covid-19 pandemic, but where these matters engage equality and human rights we have powers to provide advice to government and Parliament.

8. We regulate equality across the three nations of Great Britain and we have a human rights mandate in Scotland in relation to matters reserved to the UK Parliament. We take a three nations approach to our work, to ensure that our action to improve equality and human rights is relevant to the devolved contexts of Scotland and Wales, with assistance from our Scotland and Wales statutory Committees, and to devolved decision makers in England. In practice, this means regular discussion and information sharing between staff in our Great Britain, Scotland and Wales teams. During the pandemic, this would have involved discussion and information sharing on the government's response to the pandemic as issues emerged. The Scottish Human Rights Commission has a mandate to promote and protect human rights in Scotland where they fall within the competence of the Scottish Parliament. For clarity, this note relates to our work with the UK and Welsh Governments only.
9. Our funding is provided by the Government Equalities Office ('GEO'), which is part of the Cabinet Office, and we are accountable to Parliament through the Minister for Women and Equalities and the Women and Equalities Committee. We appear before the Women and Equalities Committee to give oral evidence as required and at least annually.
10. Responsibility for the strategic oversight of the EHRC lies with the Board of Commissioners. The Chair and Commissioners are public appointments made by the Minister for Women and Equalities.
11. There are also four committees which help guide our work: two statutory committees, the Scotland Committee and the Wales Committee; and two non-statutory advisory committees, the Audit and Risk Assurance Committee and the People and Workspace Committee. During the pandemic, we also had a Disability Advisory Committee.
12. At the start of the Covid-19 pandemic we employed some 210 staff, and we now employ some 225 staff.
13. Our remit requires us to engage regularly with government at various levels. We have a key role in advising government on equality and human rights issues. We are not

routinely expressly invited by the government to provide guidance, advice or briefings. However we regularly offer advice to government, and during the pandemic we did so in relation to its response to the pandemic, in the manner described below. When providing our advice to government at various levels, we stressed the importance of compliance with the public sector equality duty ('PSED'), which provides a clear legal framework to ensure that equality considerations are taken into account by public decision-makers at all times, including in crises. We made equivalent arguments in relation to human rights standards.

#### **D Advice to government regarding Coronavirus legislation**

14. As with any area of public policy and regulation, equality and human rights should be at the heart of emergency planning and pandemic planning. Emergency legislation, guidance and government policy in response to a pandemic such as Covid-19 – as well as the effects of the pandemic itself – have the potential to exacerbate existing inequalities and particularly affect those with certain protected characteristics or who are in vulnerable situations.
15. Both the pandemic and the response to it had a major impact on our fundamental rights and freedoms, including the right to life, to a private and family life, and to liberty and security. Any future planning must have at its centre consideration of the ways in which interference with human rights can be avoided or minimised, the particular needs of protected groups can be met, and the ways in which an appropriate balance between rights can be found where they overlap.
16. Below please find a description of the work completed by the EHRC in relation to the legislation enacted during the Covid-19 pandemic. The documents referred to are attached as appendices.
17. On 18 March 2020, we gave evidence to the Women and Equalities Committee, on the work of the EHRC. [Annex 1] In the context of the anticipated emergency legislation (the Coronavirus Bill), we emphasised the need to consider how the government's response to the pandemic was implemented for individuals with particular needs, barriers or challenges.
18. On 19 March 2020, the EHRC's then Chair of Commissioners, David Isaac, wrote to the then Prime Minister Boris Johnson MP, highlighting a number of human rights and equality implications likely to arise from emergency coronavirus legislation and other

measures. A copy of that letter was sent to MPs on the same day and a summary was published on our website. [Annex 2]

19. On 23 March 2020, the first national lockdown was announced. On the same day, we briefed the House of Commons and House of Lords on the Coronavirus Bill. [Annex 3] Our briefing highlighted the following aspects of the legislation with equality and human rights implications: measures for detaining people suspected of carrying Covid-19; relaxing safeguards on detention set out in the Mental Health Act; the risks, to disabled people, older people and those living with mental health conditions, presented by the suspension of the Care Act 2014 and redeployment of care professionals to respond to Covid-19; the impact of school closures on families, and the dispensation for councils to reduce support for pupils with special educational needs; access to a fair trial for people who could find it difficult to participate fully in proceedings using courtroom video and audio links; and economic support for gig economy workers and women. The Coronavirus Act 2020 received Royal Assent on 25 March 2020, and the law came into force on 26 March 2020.
20. On 1 May 2020, in our written evidence to the Women and Equalities Committee's inquiry 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics', we raised concerns about the disproportionate impact of the guidance relating to – and the policing of – the restrictions imposed under the emergency legislation, on groups with particular protected characteristics. [Annex 4] We called for the Home Office to work with the National Police Chiefs' Council, College of Policing, Association of Police and Crime Commissioners and police forces in England and Wales to mitigate any disproportionate or discriminatory enforcement of the new restrictions. On 5 May 2020, we wrote to Kit Malthouse MP, Minister of State for Crime and Policing, and Alok Sharma MP, Secretary of State for Business, Energy and Industrial Strategy, drawing their attention to relevant recommendations in our evidence to the Committee. [Annex 5] and [Annex 6]
21. On 20 May 2020, we wrote to Liz Truss MP, Minister for Women and Equalities, asking her, among other things, to publish the equalities assessment prepared to accompany the Coronavirus Act 2020; and to ensure that statutory reports to Parliament required by section 97 of the Coronavirus Act 2020 addressed the impact of the legislation on equality and human rights, and reflected the views and experiences of groups sharing protected characteristics. [Annex 7]

22. We raised concerns about disproportionate enforcement of the emergency legislation on a number of subsequent occasions, including:
23. In our written evidence dated 3 July 2020 to the Home Affairs Committee's inquiry 'The Macpherson Report: twenty-two years on', in which we recommended that the Home Office work with police authorities to avoid the disproportionate policing of restrictions introduced under the legislation for particular groups, including ethnic minority groups; [Annex 8]
24. In our written evidence dated 10 July 2020 to the Women and Equalities Committee's inquiry on 'Unequal Impact? Coronavirus and BAME people'; [Annex 9]
25. On 29 January 2021, in our written evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications of long lockdowns'. [Annex 10]
26. On 24 September 2020, we provided a briefing for the Coronavirus Act 2020 Six Month Review Debate in the House of Commons. [Annex 11] In doing so, we expressed our concern about the significant equality and human rights implications of the measures introduced under the Act, particularly for those who were already disadvantaged. We made a number of recommendations relating to: scrutiny of legislation; changes to adult social care; disabled children in education; challenging mental health detention; and disproportionate impacts on ethnic minorities.
27. On 30 September 2020, we wrote to Caroline Nokes MP, Chair of the Women and Equalities Committee, in response to a query she had raised about the government's Equality Impact Assessment ('EIA') of the Coronavirus Act 2020. [Annex 12] We set out a number of provisional thoughts on the adequacy of the EIA.
28. We advised the Welsh Government on guidance that they were producing during the pandemic. An example of this is the Welsh Government guidance on the use of public spaces, which reflected our advice [Annex 13]. On 2 June 2020, we submitted a response to the Legislation, Justice and Constitution Committee (LJC) on Making Justice Work in Wales. In our response we highlighted the problems affecting the justice system caused by the pandemic including the exacerbation of pre-existing inequalities, overcrowding in prisons, the potential negative impacts on diversity within the legal profession and increased risk to women in particular of domestic violence [Annex 14].

## **E. Advice to Government regarding accessibility of legislation and guidance**

29. On 30 April 2020, we wrote to the Prime Minister Boris Johnson MP expressing concerns about the lack of live BSL interpretation at the daily televised coronavirus briefings. [Annex 15] In response, we received a letter dated 23 June 2020, from Lord Agnew, Minister of State for HM Treasury and the Cabinet Office, indicating that, in accordance with PHE guidelines, a BSL interpreter could not be safely included in the briefing room, and pointing to provisions available on other channels [Annex 16] On or around 23 June 2020, the government announced that the daily press conferences would cease and be replaced by “ad hoc” televised briefings to “coincide with significant announcements”.
30. On 13 July 2020, in our evidence to the Women and Equalities Committee inquiry on ‘Unequal impact? Coronavirus, disability and access to services’, we set out our concerns about inaccessible government communications relating to public health and critical changes in support, including a lack of guidance in ‘Easy-Read’ or alternative formats. [Annex 17] We recommended that the government ensure that all information related to the pandemic, either in printed form or published online, was accessible to disabled people, including by providing BSL interpreters during televised press announcements, publishing materials in alternative formats, and proactively reaching out to people affected – including in respect of all major announcements on the recovery process, and announcements made in preparation for a potential second wave of Covid-19. In the same submission, we highlighted concerns about the accessibility of the government’s test and trace system, and recommended that this was urgently reviewed to ensure it was accessible to disabled people across impairment types.
31. On 14 July 2020, in our written evidence to the Joint Committee on Human Rights’ inquiry on ‘The Government’s response to Covid-19: human rights implications’, in relation to the privacy implications of the NHS test and trace service, we again raised concerns about the accessibility of the test and trace service. [Annex 18]
32. We supported a challenge to the DHSC by Sarah Leadbetter – who is registered blind – in relation to inaccessible shielding letters sent to her during the pandemic. The case settled in March 2021, with the DHSC agreeing to amend its practice and implement a new communication system.
33. The Welsh Government took a different approach to the UK Government by proactively reaching out for engagement with various advisory groups, such as the Covid Moral Ethical Advisory Group, the Disability Equality Forum and the Covid-19 Black, Asian and Ethnic Minority Advisory Group. There may have been areas of policy where our advice

was taken into account, such as signposting to our guidance in Welsh Government guidance, including with regard to employment; schools and examination series; social care easements; and shielding letters. However, we had a common thread of concern regarding Welsh Government's compliance with the PSED, particularly the Welsh Specific Duties under The Equality Act (Statutory Duties) (Wales) Regulations 2011, including the duty to conduct and publish Equality Impact Assessments when taking decisions. Whilst some improvements were made and action was taken by the Welsh Government to improve processes, our concerns in this regard were not fully addressed.

**F Measures to be taken to ensure urgent legislation and guidance comply with rules of accountability, international legal obligations and the Rule of Law**

34. As with any area of public policy and service delivery, equality and human rights should be at the heart of emergency responses. Emergency legislation, guidance and government policy in response to a pandemic such as Covid-19 – as well as the effects of the pandemic itself – have the potential to exacerbate existing inequalities and particularly affect those with certain protected characteristics or who are in vulnerable situations.
35. One of the most significant lessons for all parties is that, in a climate of fast-paced and critical decision-making, the particular needs of individuals and groups with protected characteristics, and those in vulnerable situations, may be less likely to be at the forefront of decision makers' consideration processes. The same is true of human rights.
36. Our advice would be that decision makers must routinely consider the needs of, and impacts of decisions on, everyone who is likely to be affected by a public policy decision, no matter how routine or how time-pressured. This is in fact a legal requirement on all public bodies under the PSED. If this consideration of the needs of people with different protected characteristics is built into all decision-making, it will be less likely that this vital step will be missed when decisions have to be made at pace, and less likely that important public policy decisions affecting people's lives and livelihoods will be ineffective, or less effective, for some groups – often those already experiencing disadvantage.
37. We would also advise that in time- or resource-pressured situations where decision makers do not have time to undertake thorough consultations with representative groups, the EHRC should be a utilised source of expertise and guidance on equality and human rights law which is available to decision makers. We strongly recommend that,



in circumstances where the government is operating under pressure, it should avail itself of our expertise on matters relating to protected characteristic groups and human rights issues to inform its decision-making.

38. During the pandemic, we accepted that it was not necessarily practicable for formal, written equality impact assessments to be undertaken on all decisions. It is important to note, however, that the PSED remained a duty which should have been complied with at all times by decision makers. It is a “due regard” duty, meaning that proper, reasonable consideration must be given to the need to achieve its aims. At times of extreme pressure the regard that is due may be less than under normal circumstances. However, due regard cannot be no regard at all.
39. In relation to whether groups with protected characteristics were adequately considered by decision makers, it is possible that such groups were not considered as part of every decision that was taken. Where the EHRC identified this as an issue, we used our powers to seek to influence government thinking and practice. As explained above, we intend that this should be the starting point for policy makers, and that policy makers ask for our expert assistance at an early stage when making decisions, to ensure the needs and impacts on such groups are routinely considered so that public policy works for everyone.
40. A major theme of all of our engagement with the government was that consideration of the impacts of decisions on all groups should be at the heart of decision making, and that the different needs and circumstances of, and effects on, different groups thus needed to be understood. If decision makers lack capacity to consider those impacts, then the EHRC, as Britain’s statutory equality regulator, stands ready to advise.
41. As well as the consideration of needs for groups with particular protected characteristics, another potential gap that we have identified is routine consideration of policy decisions through a human rights lens. An important theme of many of our parliamentary briefings was to highlight that there is an existing framework which can be used to help balance the needs and rights of different groups and individuals, which is set out in the human rights framework, including the ECHR, as incorporated by the HRA. The importance of the human rights framework in guiding policy responses which strike an appropriate balance between the right to life and, say, the rights to liberty, to private and family life, to a fair trial and freedom of assembly, cannot be over-emphasised in the context of a pandemic.

42. An example of where a human rights lens may have been useful is in relation to the Article 8 right to a family life. During the first lockdown, blanket rules were laid down which considered the Article 8 right to a family life of one group of people, the children of separated parents, but did not consider the Article 8 rights of a different group of people, disabled people living in care homes. In that example, children of separated parents were able to visit the family members who did not live with them, but the disabled person was not allowed family member visitors. If a human rights lens had been applied to those blanket rules, and each group considered accordingly, these issues may have been identified more promptly.
43. We therefore also strongly recommend that, in future situations where decisions must be made quickly on matters that may have human rights implications, policy makers should also seek the advice of the relevant National Human Rights Institutions in the UK, including the EHRC which has responsibility for all human rights monitoring in England and Wales and for reserved matters in Scotland.
44. In relation to the PSED, an important lesson for decision makers is that, when public policy decisions are being made, they must routinely think about the full range of people affected by those decisions, including people with protected characteristics or from particular groups. Doing this will avoid the risk of developing or implementing policies which have negative or unintended consequences for particular groups.
45. We recommend that, in order to comply with the PSED, the government should routinely seek views on the likely different impacts of proposals on different groups, where pressure of time allows, and ensure that impacts are monitored and steps are taken to mitigate any adverse impacts on particular groups. It should also continue to scrutinise decision-making and policy impacts through the lens of the human rights framework. In doing so, it should work with, and seek advice and guidance from, other bodies such as the EHRC, on the impact of its decisions on particular groups or individuals.

## Annexes

Annex	Document	Date
1	Transcript of oral evidence to Women and Equalities Committee	18.03.20
2	Letter EHRC to Boris Johnson MP	19.03.20
3	Briefing on the Coronavirus Bill 2019	23.03.20
4	Written evidence to Women and Equalities Committee	01.05.20
5	Letter EHRC to Kit Malthouse MP	05.05.20
6	Letter EHRC to Alok Sharma MP	05.05.20
7	Letter to Liz Truss MP	20.05.20
8	Written evidence to Home Affairs Committee	03.07.20
9	Written evidence to Women and Equalities Committee	10.07.20
10	Written evidence to Joint Committee on Human Rights	29.01.21
11	Briefing for the Coronavirus Act 2020 Six Month Review Debate	24.09.20
12	Letter EHRC to Caroline Nokes MP	30.09.20
13	Advice on guidance on the use of public spaces	06.20
14	Submission on Making Justice Work in Wales	02.06.20
15	Letter EHRC to Boris Johnson MP	30.04.20
16	Letter Lord Agnew to EHRC	23.06.20
17	Written evidence to Women and Equalities Committee	13.07.20
18	Written evidence to Joint Committee on Human Rights	14.07.20





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# Women and Equalities Committee

Oral evidence: [Work of the Equality and Human Rights Commission](#), HC 199

Wednesday 18 March 2020

Ordered by the House of Commons to be published on 18 March 2020.

[Watch the meeting](#)

Members present: Caroline Nokes (Chair); Nickie Aiken; Sara Britcliffe; Alex Davies-Jones; Peter Gibson; Kim Johnson.

Questions 1–78

Witness

I: Melanie Field, Executive Director, Strategy and Policy and Wales, Equality and Human Rights Commission.



## Examination of witness

Witness: Melanie Field.

Q1 **Chair:** Good morning. Thank you so much for coming. From the outset, can I say how much we appreciate you still coming in in these interesting times?

Today's session is very much about some scene-setting and giving an opportunity for the Committee to get to know a little bit about the work of the commission, and perhaps for you to explain your priorities to us. It really is far from a grilling. I hope today's session will give us an opportunity just to understand a bit better. It is a new Committee. The two returning members of the Committee are not here today, so it is a real chance for some new members to hear from you.

I am just going to kick off with some questions about the commission's current priorities and to try to tease out how those priorities are set and what scope for flexibility there is.

**Melanie Field:** It is important to make you aware that we published a new three-year strategic plan last year, so we are just coming to the end of the first year of that strategic plan. We feel that that was a real step-change in how we approach our work. We put a lot of thought into that strategic plan and were able to develop it in light of the findings of the tailored review that the Government conducted into the commission and also feedback from this Committee.

We wanted a plan that was truly strategic, so we set ourselves three strategic goals, which we see as a strategy for driving forward progress on equality and human rights in Britain. Those goals are ensuring that we have strong foundations on which to build a more equal and rights-respecting society; ensuring that people's life chances are not held back by barriers in their way; and protecting the rights of people in the most vulnerable situations. Those are the three prongs of the strategy.

Within those goals, we identified a number of priorities. In doing that, we referred to our state-of-the-nation report, *Is Britain Fairer? (2018)*, which looks at progress on equality and human rights across Britain. We considered the unique set of powers and levers that Parliament has given us and how those relate to those challenges that were identified in *Is Britain Fairer?* We then did a public consultation, which we got over 1,000 responses to, and did a lot of proactive stakeholder engagement during that consultation process.

That resulted in six key priority aims: a core aim, which is about ensuring that strong equality and human rights laws protect people and that we have the data to understand what is happening in practice; an aim about improving access to justice; an aim about equality and human rights in education, seeing schools as a way of promoting equality and human rights and reducing prejudice; thinking about people in the most vulnerable situations, we have an aim about treatment in institutions and



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entry to institutions; transport is another aim and is about looking particularly at the barriers facing older and disabled people, and thinking about public transport as an enabler for economic and social participation; and the final aim is on work, looking at access to work and treatment in work.

**Q2 Chair:** Thank you for that. You mentioned 1,000 responses to the consultation. Can I just drill down a bit into how widely you consulted and whether you targeted specific groups of people or whether this was much more general and open to the public?

**Melanie Field:** It was a public consultation, so it was available on our website and people could submit online responses. As well as that, we involved our strategic reference group of key stakeholders, which includes equality and human rights interest groups, business, and key public sector organisations and regulators. We also targeted communities of interest in the three nations that we cover. We did targeted consultation and one-to-one engagement, as well as giving the opportunity for anyone to contribute their thinking online. We did an analysis of who responded, and the interest group that responded most was disabled people or organisations representing disabled people.

**Q3 Chair:** Is 1,000 a good number?

**Melanie Field:** It is far more than we have ever had before. On the previous strategic plan, there were about 60 responses, so it was quite significant. We were really delighted with that.

**Q4 Nickie Aiken:** Why do you think that is? Why do you think it went from 60 to 1,000? That is a huge increase. What did you do differently?

**Melanie Field:** It is just indicative of the journey that the commission has been on over the last five to six years. We have become more visible. We are better at stakeholder engagement. We are more proactive in highlighting the work that we do, so we created the conditions where people wanted to engage in what we are going to be doing in the future.

**Q5 Chair:** Is becoming more visible an aim in itself?

**Melanie Field:** That is a difficult one because it is about ensuring that we can do our job properly. In order to exert the influence that we want to be able to over public discourse and values but also in terms of the influence that we can have on policymakers in Government, it is important that we are seen as being expert and authoritative and that we are engaged in the issues that people are interested in. There is a relationship between being visible and being effective.

**Q6 Chair:** Can I just ask a question? Your consultation report that was published explained that some aims were lower-priority than others. I just wanted to specifically ask about new technologies and digital services to promote equality and human rights, which was deemed to be a lower priority. Is that something that you see growing in importance? I am very



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conscious, particularly when it comes to delivering digital services, that sometimes there are all sorts of weird and wonderful algorithms that tend to be designed, if that is the correct term, by white men in their early 20s. Does it worry you that technology sometimes has a prejudice baked into it that does not represent those with protected characteristics?

**Melanie Field:** Yes, and we certainly see technology as an emerging threat and an opportunity. Certainly, it was something that we looked at and is something that we continue to look at. We felt that we were not really the expert body on new technology but that new technology is relevant to some of the aims that we are pursuing.

In our work aim, for example, we are looking at the use of algorithms in recruitment. What we have sought to do is to embed thinking about new technology in the work that we are doing. Similarly, in access to justice, new technology is being used more by people to access the justice system. Again, that offers opportunities, in that people can engage more easily, but it also presents risks for those who may not be digitally competent. What we have sought to do there is to build it into the work that we are doing under the aims that we have identified.

**Q7 Alex Davies-Jones:** In terms of the aims that you have identified and the ones that you are specifically focusing on, what actions have been taken this year to address these? What do you see as your wins, your quick wins and your longer-term aims that are being taken this year?

**Melanie Field:** We have achieved quite a lot in the first year but it is a three-year plan and it is important to remember that one of the aspects of our strategic plan was to focus on what we call “fewer, bigger, better, longer”. It is about developing sustained strategies that will deliver sustainable impact over time using a combination of our powers and levers.

This year, some of the highlights included our inquiry into racial harassment in higher education. We conducted a major inquiry looking at the harassment experienced by both staff and students. That has had impact in terms of really engaging the sector and other regulators in addressing those issues and seeking to address those issues.

We have used litigation to challenge racism in adoption services. We supported quite a high-profile case that resulted in Government writing to all local authorities, reminding them about the need to ensure that adoption was not influenced by racial prejudice. Another case that you may be aware of is that of Bethany Harris, a young woman who was in secure accommodation, and we supported her in terms of getting her into a more appropriate setting. We also took litigation supporting a number of children with special educational needs to ensure that they got the reasonable adjustments that they needed in school. We have also been enforcing the gender pay gap regulations and we secured 100% compliance with those.





In terms of policy-influencing, we built on our own work and the work of this Committee on sexual harassment, and persuaded the UK Government to conduct regular surveys on the scale and prevalence of sexual harassment at work. There is a range of highlights that I would point to.

**Q8 Alex Davies-Jones:** You talked about engagement and how you have had so many people responding to your consultations—1,000 as opposed to 60—and some of the proactive work you have been doing around that. You named some of the groups, but are there any specific stakeholders that you have been targeting, who you are aiming at or going for in terms of gathering all this evidence and data?

**Melanie Field:** We try to take a broad approach. We have a very wide range of stakeholders. Our remit is very wide and is about equality and human rights in all areas of life across England, Scotland and Wales. We seek to have constructive relationships with business and employers, with the public sector, with regulators and inspectors, and with human rights organisations, women's organisations, disability organisations and LGBT organisations.

We have been thinking particularly about engagement with the race-equality sector. It is a sector that we know is facing particular challenges in terms of lack of funding and fragmentation, so we have been trying to reach out to that sector more and think about ways, for them and all our stakeholders, that we can engage that work for them as well as working for us.

**Q9 Alex Davies-Jones:** For me, it is just making sure that the big stakeholders are targeted but also that the little ones at the grassroots level are engaged with as well.

One of the things that I picked up was the work that you have done on the gender pay gap. It is great, but do you think it could go further, in terms of targeting smaller companies and maybe not those big conglomerates that we are all aware of? Companies in small towns and villages are the ones where people work, day in and day out, and those need to be targeted. How do you think you can engage with them and get them onboard to look at some of these issues as well?

**Melanie Field:** There are a number of ways. It is about engaging through their representative bodies like the British Chambers of Commerce, for example, as well as ensuring that we think about that audience when we are producing information and think about the kinds of pressures that small businesses face, the kind of information that they can easily digest and the tools that they can use. Certainly, we are very much aware that they employ the majority of the workforce in Britain, and so anything that we can do to drive better practice in small business is going to benefit more people.

**Q10 Chair:** Is there a danger with stakeholders that it is the loudest voices that drown out the small? I was interested in what you said about



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engaging with stakeholders in the race-equality sector. What specific actions have you taken to reach out to them, and do you think there is more that you could do?

**Melanie Field:** We are organised around our priority aims in terms of the structure of the organisation, but we also have a lead for each protected characteristic. We have a race protected-characteristic lead, and part of their role is to create a community of stakeholders that they regularly engage with, update with our work and seek views from. That is very much a growing part of the way that we do business.

Q11 **Chair:** This might be way too specific a question. If you have a race lead, presumably you have a gender lead, an LGBT lead and a disability lead.

**Melanie Field:** That is right.

Q12 **Chair:** How does the race lead's community of stakeholders compare, both in terms of size and also volume with, for argument's sake, the disability lead's?

**Melanie Field:** I would not be able to give you that level of detail, I am afraid. I will probably need to write to you about that, if that is okay.

Q13 **Kim Johnson:** Can I also ask, in terms of the race lead and the stakeholder group, whether it operates on a national level, or is it also at a regional level?

**Melanie Field:** We have different stakeholder engagement arrangements in England, Scotland and Wales. Those arrangements are mirrored in the devolved nations. In England, we are developing our English regional strategy. We have built up an England network of people in different regions who are interested in our agenda, and we are up to about 1,000 people in that virtual network at the moment. We look at things across GB within England, Scotland and Wales, and then within each country. For example, in Wales, our Wales Committee meets in different parts of Wales each time, and it holds stakeholder engagement events and engages with local decision-makers in each place that it meets.

Q14 **Kim Johnson:** You have a national lead for each of the protected characteristics. Do you also have regional leads, or is it just one lead to cover the whole of the country for each of those protected characteristics?

**Melanie Field:** It is one person per country. That is a strategic lead rather than operational. Through our operational work, we will be engaging with a range of stakeholders as well.

Q15 **Nickie Aiken:** I am just wondering how flexible your priorities are. It is three years and society can change quite rapidly. We have seen a huge increase in the discussions, debates and views on transgender. Particularly over the last 12 months, I would say that it has really come to much more of an understanding that there is probably an ongoing discussion that we have to have as a society. There is debate amongst



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the women's rights community. We had some interesting conversations and debates on International Women's Day, and I just wondered whether the commission has flexibility to look at this area, which is not going to go away, and at how young people are being advised and treated in their gender orientation.

**Melanie Field:** We absolutely need to strike a balance between focusing on sustainable, long-term strategies and being responsive to what is happening. There is no point in us just blindly carrying on and ignoring what is going on around us.

On the specific issue that you mention around the balance between trans rights and women's rights, I gave evidence to this Committee about that on a previous occasion in the context of its inquiry on the Equality Act. We have been working on guidance for schools on how to support trans pupils. We are also looking at providing some guidance for service providers around how the single-sex service provisions in the Equality Act work, to give something more practical for people to use.

Q16 **Alex Davies-Jones:** Looking at the difference between how your achievements are measured at a UK level or in the three countries that you represent, and then at a devolved level, without sounding too parochial, do you see there being a gap anywhere in your stakeholders or those that you are gathering evidence from in any of the devolved nations as opposed to England? You talked about having quite a large bank of those in England whereas, potentially, you do not have those voices shouting loudly in the devolved nations. Do you see it as a gap and as a risk to you in achieving some of these priorities that you have?

**Melanie Field:** I will talk about Wales because I am the senior lead for Wales and I probably know a bit more about that. There are particular challenges in Wales, just because of its geography, its transport links and particular pockets of socioeconomic disadvantage. The race sector in Wales is a particular example of where it is difficult. We are very conscious of that. We have some very good voices for race-equality issues on our Wales Committee and, as I said, we go out into communities and consult people. At the last Wales Committee, we had a really lively discussion about race-equality issues.

It is no good taking a blanket approach and we have to be aware of the context that we are working in. That is why it is great that we have an office in Cardiff, an office in Glasgow, an office in Manchester and one in London, so that we are not so detached from the different areas that we are seeking to serve. The political contexts are different as well in the devolved nations. That means that we face different challenges and opportunities, and we seek to use those to inform our corporate GB approach.

Q17 **Peter Gibson:** Good morning, Melanie. I just want to focus a little on enforcement and litigation. Your policy changed in respect of that in 2019. Has your enforcement activity changed? Is it more beneficial? What



sort of impacts and results are you seeing as a result of that?

**Melanie Field:** Yes, as you say, we published a new litigation and enforcement strategy in November, so it is quite recent, but that was developed in the context of the approach set out in our strategic plan. The key changes are that we articulate much better how we will use our enforcement work to pursue our priority aims. It is one of a range of levers that we might use to complement each other in order to drive progress on an issue. We have broadened our understanding of what strategic litigation is, so we are only able to do litigation that is strategic. We are not funded and not big enough to be able to support every case.

In the past, that was really focused on where we might be able to clarify or change the law. We have broadened that to thinking about how a volume of lower-level litigation can highlight an issue and make it clear that this is a regulated space. For example, on our transport aim, where we are looking at accessibility of public transport for older and disabled people, we are doing what we call a Section 28 project, which is a project where we use our power to fund cases to fund a volume of cases in order to highlight the issues that passengers are facing and to try to drive better practice in the industry.

Another key feature is that, under our core aim, which is about ensuring that the law is the right law and works properly, we have clarified that that means that we will support flagrant breaches of the law. Again, that is about signalling to society that this kind of thing is not acceptable. A slightly older example of that would be a landlord who you may have heard of, Fergus Wilson, who said that he would not have certain tenants in his properties and we pursued a case against him.

Q18 **Nickie Aiken:** What was the outcome?

**Melanie Field:** We secured an injunction preventing him from doing that again.

We will also look at supporting cases that highlight or address systemic issues of discrimination, if we think that there is a broader issue that needs to be addressed. In line with one of our strategic goals, it is about supporting people in the most vulnerable situations, so the most serious breaches of rights. That might be where people are deprived of their liberty, which the Bethany Harris case is a good example of.

Q19 **Peter Gibson:** Just concentrating on the example of the landlord, would you give that as an example of significant impact where your enforcement and litigation has had the impact that you desire? If not, can you give me some other examples of where your enforcement and litigation has had impact?

**Melanie Field:** That kind of case has impact on a number of levels. First of all, it prevents the individual from doing the thing that they should not be doing. There was a lot of media interest in that issue and, therefore, it was an opportunity for us to really send a clear message to the public



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that, when people behave in this way, which is against our values and our laws, we will step in and act. In terms of trying to set the tone of public thinking about the issues that we care about, where there is something that most people would say is just flagrantly wrong, it is really helpful in building public support for equality and human rights.

**Q20 Peter Gibson:** You have a target of reaching 25 transport enforcement cases. Do you think that you are going to achieve that? A supplementary to that would be about whether you have the resources to be able to do that.

**Melanie Field:** At the moment, there are around 18 to 20 transport cases that we have supported.

**Q21 Peter Gibson:** Is that current and ongoing?

**Melanie Field:** I believe that is correct.

**Q22 Peter Gibson:** In what timescale?

**Melanie Field:** We started that project in September 2019.

**Q23 Peter Gibson:** You are going to achieve that target of 25 within the space of a year.

**Melanie Field:** In the year of the project but not in this financial year.

**Q24 Peter Gibson:** Do you have the resources in order to be able to do that?

**Melanie Field:** Yes. That project is underway and running well.

**Q25 Nickie Aiken:** Do you have any frustrations about how your plan is progressing at the moment? Knowing what you know now compared to when you started off on the strategic plan, is there anything that you would change, or are you happy with it?

**Melanie Field:** No, we are confident in the plan that we have set out. We do need to flex, as we talked about before, in line with emerging issues. You will be aware that we are conducting two major investigations at the moment, which have necessitated us reprioritising resources. It might mean that we might need to slow a particular piece of work; for example, we could potentially have started the Section 28 transport legal-support project earlier. In terms of looking at the strategies that we have in place, we are confident that those continue to be relevant and worthwhile.

**Nickie Aiken:** Forgive me, because I do not know much about your organisation as yet.

**Melanie Field:** No. That is why I am here.

**Q26 Nickie Aiken:** I have read your plan and everything. Would you consider the equality of religious freedom and the ability for religions to be treated properly and equally part of the scope of your commission?



**Melanie Field:** Yes.

Q27 **Nickie Aiken:** We have had an awful lot of concern over recent years about antisemitism. There have also been concerns about Islamophobia and we have had some nasty situations where mosques have been targeted. Are you looking at scoping out that type of work as well?

**Melanie Field:** Yes. The right to hold a religious belief and manifest it in a way that does not infringe the rights of others is protected by the convention. The Equality Act covers discrimination because of religion and also, in the context of antisemitism, which is classed as race, race discrimination.

Going back to your earlier point about transgender rights and women's rights, there is something about the nature and tone of political and public discourse and a growing context in which people seem willing to express quite divisive views. That is something that we are concerned about.

There are a number of things that we are doing in that space. First of all, our education work is really important, but it is not a quick win. This is about seeing schools as places that create the citizens of the future with the values that we value as a nation. We want schools to be places where our young people learn to understand and respect other people and their values and lives. It is very much the place where we can start to tackle prejudice.

Q28 **Alex Davies-Jones:** Just on that, and given the issues we have had in the last 12 months around the teaching of the LGBT curriculum in schools and the protests outside, particularly in cities like Birmingham, have you been involved in that? Do you have a place to look at the situation that is going on there?

**Melanie Field:** Yes. A couple of things on that: first of all, in Wales, you will be aware that there is a new curriculum, so we have been influencing that and are really pleased to see equality and human rights featuring in that as a result of our interventions.

Secondly, we wrote to the Minister on the issue around teaching about LGB relationships and trans people in schools. We do feel that leaving it for schools to negotiate with parents on these issues puts schools in a very difficult situation, so we would like to see a clearer steer from Government that schools are expected to teach children that these relationships and people exist and should not be discriminated against.

Q29 **Peter Gibson:** You referred to divisive debate and it is an important issue that you highlight. Do you think that your organisation has a role in helping frame that debate and educating people as to how to have that debate in a more constructive and less divisive way? If so, how would you do that?



**Melanie Field:** Yes, we do see ourselves as having a role in seeking to influence debate and the tone and direction of debate. That would predominantly be through thought pieces but also through interventions on specific issues. Coming back to your question, one of the other things that we are doing, as you will be aware, is looking at the handling of complaints of antisemitism in the Labour Party. We have also been engaged in looking at the law around hate crime, and there is to be a Law Commission consultation on that soon, which I hope we will be responding to.

There are a number of levels on which we can be involved in these issues in terms of how specific organisations or sectors deal with issues. For example, we published some voluntary standards for political parties about the tone of political debate, which we encourage parties to adopt. We are looking at how complaints are handled by political parties. There is a range of levels, including through thought-leadership pieces and blogs.

Q30 **Peter Gibson:** I am grateful for that answer in terms of clarifying that you see that you have a role in that space. Do you see that having an impact on improving that debate?

**Melanie Field:** It is difficult to measure any improvement at this point. There are lots of players who are interested in this with different powers and levers. We have our particular set. I would say that our thought-leadership voice is not our hardest-edged lever. Where we can take enforcement action, it will have much more direct impact.

Q31 **Kim Johnson:** You mentioned earlier that antisemitism was deemed race hate. I just wanted to know whether Islamophobia was deemed the same.

**Melanie Field:** Currently under the law, it is not.

Q32 **Chair:** Going back to where Nickie started, on religion, can I ask you a question about religious-based protests outside abortion clinics? In those circumstances, what involvement do you see the commission can or should have to protect women from that sort of religious-based protest?

**Melanie Field:** That is not an issue that I am aware we have been specifically approached about acting on, and it is not something that we are currently acting on, but it is something that I can certainly take away for us to consider and come back to you.

Q33 **Nickie Aiken:** Just going back to Peter's line of enquiry about you looking into how the complaints of antisemitism have been handled, it came across as very much carrot rather than stick.

I would suggest that, if the commission is going to be taken seriously in dealing with some serious racist issues involved in the antisemitism problems within a particular political party, there surely has to be some sort of enforcement that the commission is going to have to look at



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seriously, if people are going to take it seriously and the Labour Party, in particular, is going to understand that it has been woeful and that it has to really take this issue seriously.

**Melanie Field:** We are undertaking a formal investigation because the threshold was met that we suspected an unlawful act in the context of the handling of antisemitism concerns in the Labour Party. That investigation is ongoing.

Q34 **Nickie Aiken:** Would you see some sort of enforcement?

**Melanie Field:** I would say that that is one of our strongest enforcement powers.

Q35 **Nickie Aiken:** What are the enforcement powers that you would introduce? What would you do? Would you take somebody to court?

**Melanie Field:** When we undertake an investigation, first of all we have to suspect an unlawful act. We will then do an investigation and come to findings and recommendations. The organisation has to have regard to the recommendations and we can issue an unlawful act notice and require action to be taken. If that is not taken, that can be taken to court and enforced by the court. The penalty would be a fine imposed by the court.

Q36 **Nickie Aiken:** Were you surprised to learn about Trevor Phillips and his suspension from the Labour Party after certain comments that he had made compared to how antisemitism complaints have been held?

**Melanie Field:** I cannot comment on the Labour Party's handling of an individual case, given that we are in the middle of an investigation. I am sorry but I cannot comment.

Q37 **Sara Britcliffe:** You mentioned that there was a threshold for the investigation. What is that threshold?

**Melanie Field:** We have to suspect that there has been an unlawful act. That is set out in our legislation.

**Chair:** Are you done, Nickie?

**Nickie Aiken:** I was interested in your personal view.

**Chair:** That is a line of inquiry that we will not pursue. Did you want to ask a question about the BBC?

Q38 **Nickie Aiken:** I did, yes. Where are we with that? You quite rightly opened an investigation into this but it seems to be taking a long time. We have had the court case in recent weeks, in which the journalist was very successful and it was found in her favour. Where does that leave your investigation and why is it taking so long?

**Melanie Field:** Because these are things that are ongoing, I have to be quite careful about what I say. The BBC investigation, as you say, is ongoing. The issues are quite complex. It is a large organisation, and





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equal pay legislation is quite complex. It is an important issue and it is important that we conduct the investigation properly. It has taken some time but we hope to be reporting later this year.

Q39 **Nickie Aiken:** Later this year, so roughly how long will that have taken from start to finish? Was it March? It will be over a year.

**Melanie Field:** Yes. Sorry, we launched the investigation in May.

Q40 **Nickie Aiken:** How helpful and proactive has the BBC been in providing you with data?

**Melanie Field:** I am really sorry but I am not going to be able to give any information about the investigation.

Q41 **Alex Davies-Jones:** Given that it is going to take over a year, and potentially 18 months, to complete the investigation, and that Samira Ahmed was successful—

**Melanie Field:** Sorry, I did not say that. It was launched in May and I said later this year.

**Alex Davies-Jones:** Sometime this year, so it could be a year or over a year. Given that it is taking that long and given that we have had the case of Samira Ahmed, who was extremely successful, and that there could now be potentially hundreds more cases being explored in the courts, do you not think that has undermined the investigation in a way? She has been found successful and it is obviously a systemic problem in the BBC in terms of gender pay. Do you not think your resources would be better served supporting these cases rather than this investigation, given that, by the time it is published, we will already know the outcome anyway?

**Melanie Field:** I can say very little about the investigation and I cannot pre-empt what the findings of that will be.

**Alex Davies-Jones:** I think we all know—

**Melanie Field:** I would make a general point about the difference between the impact of an individual case and the impact of an investigation into an organisational issue and what might result from that. With an individual case, there is a remedy for the individual by the court. What we seek to do with our investigations is to draw wider conclusions and make wider recommendations that will drive systemic change.

Q42 **Alex Davies-Jones:** We all know that these systemic issues are there in the BBC. It has been proved in a court of law that these are there. I feel—and I think the public do as well—that you as a commission would be better placed to support these individuals who are seeking remedies and seeking justice for what they have been through as a result of gender bias, rather than a report that we all know what the outcome of will be.



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**Melanie Field:** Of course, we do that. This is the 50-year anniversary of the Equal Pay Act, and this will be a big feature of our work in the coming year, to look at the barriers that women face in bringing equal-pay claims, and we will be looking at how those women can be supported better, both by us and by other organisations. You will be aware that the Fawcett Society is doing some work in that area, which is really welcome.

We will also be looking at whether there are improvements to the law that can make things easier for women. For example, you may be aware that, when the Equality Act was implemented, there was a statutory procedure whereby women could make inquiries of their employer, if they felt that they were being discriminated against. That was repealed, so we would like to see that kind of process being reintroduced to support women.

Q43 **Chair:** Is there a temptation to go after the high profile? We heard Alex's question earlier about small employers, but is it value for money to have a year-long investigation into the BBC when, as we have heard, we have already had the judgments in the court of law, and perhaps that time, money and effort could be better spent pursuing smaller, less high-profile employers with individual cases supporting women to get the justice and the fairness that they are entitled to?

**Melanie Field:** Those are the kinds of considerations that we have to bring into play when we are considering whether to do this kind of work. We do small investigations too. Our gender pay gap enforcement work is built on small investigations. Another area where we do small investigations is under Section 60 of the Equality Act, which is the provision that says that you are not allowed to ask disability or health-related questions during the recruitment process, in order to prevent disability discrimination.

We do those but there are criteria around where you can send a big message to a sector or employers generally about where they should improve practice. One of the things that we will be thinking about when deciding whether to devote, as you say, a significant level of time and resource to an issue is what we think the impact might be at the end of that process. I am in the difficult position that we have not reached the end of those processes yet.

Q44 **Peter Gibson:** Just as a small follow-up on Alex's questioning, do the decisions of the court in respect of those cases that have already been decided and are continuing form part of the evidence that you use in your investigation?

**Melanie Field:** I am really sorry but I cannot say anything about what we are using in the investigation.

Q45 **Nickie Aiken:** Picking up on what my colleagues have been saying, we know the outcome of the court case, which has been very high-profile, and that the BBC has admitted. It has brought in policies over the last 12



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months reducing men's pay. We have seen some high-profile male BBC employees having their salaries cut and women having theirs increased. Surely that would suggest that there is no real need to carry on with this investigation or to carry on resourcing it, and that it would be more important now to increase the scope of the investigation and make it a general broadcast investigation.

Maybe other large-scale companies are doing the same. I appreciate that the BBC is funded differently than many other broadcasters, but it does not necessarily mean that other private broadcasters are not doing the same. Surely it would be more effective if the commission could use its huge resources to look at the broadcast industry rather than just targeting the BBC, which we have seen has started to improve its practices.

**Melanie Field:** I will go back to what I said before. It is about us deciding what we think is the right lever. Part of your job is to challenge and scrutinise us, which is constructive and welcome. With an individual case, it will always be on its individual facts.

Another issue is that the tribunals are no longer allowed to make recommendations that benefit the wider workforce in some circumstances, so that is something that we would like to see restored. Where they make a finding of a breach of the equal-pay provisions, they are supposed to order an equal-pay audit, but that does not appear to have happened in that particular case, which we are looking into. An individual case will be about an individual and individual facts, whereas our investigation will be looking at broader issues.

Q46 **Nickie Aiken:** The BBC has taken steps because they knew Ahmed's case was coming up and would be very high-profile. There are more in the pipeline. From what we understand, the BBC is taking steps to improve the situation, so are you saying that you are just going to carry on, even though the BBC are doing what they can? Surely, we should be looking at a broader industry issue.

This is not just about the BBC; it is surely about other large broadcasters, and small broadcasters. We now have so many big and small companies that, surely, it should be the industry sector. The BBC seems to have woken up. I am not saying that they are perfect at all, by any stretch of the imagination, but they seem to have started to put policies in place for the staff they have there at the moment. Who knows about when they are recruiting? I do not know. Surely there should be a wider scope now.

**Melanie Field:** The purpose of us doing the investigation is that we are going in as an independent external regulator to come to our own conclusions about what has happened and where the organisation is. We will come to findings and recommendations. As you say, these are not issues that are not necessarily unique to a particular organisation, so the hope is that there will be conclusions, findings and recommendations that can be drawn from this work, which will have wider impact.



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Q47 **Chair:** Can you and do you ever change or extend the scope of an investigation mid-investigation?

**Melanie Field:** It is possible to do so but there are terms of a reference of an investigation. There is a statutory process for consulting the organisation that is subject to the investigation on those. If we change them, we would need to go through a process. It is not impossible.

Q48 **Chair:** You can, but have you?

**Melanie Field:** I cannot comment on any ongoing investigations and I am not aware of any investigations that we have completed in the past where we did that.

Q49 **Sara Britcliffe:** The last Women and Equalities Committee did a lot of work on sexual harassment, and I just want to know your opinion of the influence that that has had.

**Melanie Field:** That was a really good example, just thinking about the relationship of the commission and this Committee, of where we are interested in the same issues and we have different levers that we can pull. This Committee did a number of pieces of work around sexual harassment at work and in public places, the use of non-disclosure agreements and a whole range of things.

We did our own work in terms of doing a survey of women and understanding more about their experiences. We came and gave evidence to this Committee about changes that we felt were needed to law and practice. We have been very pleased with the outcome of that. We have published technical guidance on non-disclosure agreements and on sexual harassment and harassment at work. We are hoping that that will become a statutory code of practice, so that is a matter with Government at the moment.

Q50 **Sara Britcliffe:** When do you expect that to happen?

**Melanie Field:** That is something that Government are looking at, so it is for the Minister to lay that before Parliament.

Q51 **Sara Britcliffe:** From your side, when would that be best to happen?

**Melanie Field:** We would like it to happen as soon as possible.

Q52 **Sara Britcliffe:** With regard to the specific steps that you are pushing the Government to take, what action are you asking Government to take?

**Melanie Field:** One of the things that we asked for was more information about the experiences of women. I mentioned earlier that the Government are going to do a survey of sexual harassment at work. We are also calling for a mandatory duty on employers to protect staff from harassment, and that has been supported by the CBI, so that is something that we are continuing to advocate for. We have also been supporting individual cases of sexual harassment to highlight the issue. As I understand it, Government have agreed that our technical guidance



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should become a code of practice, but we do not know the timing of that, because that is in Government's hands.

Q53 **Sara Britcliffe:** Are you able to just go into a little bit more detail about the survey?

**Melanie Field:** Government have announced that they are going to do a survey, so we welcome that.

Q54 **Sara Britcliffe:** Have you put forward any contributions as to what would be in that survey?

**Melanie Field:** We have been engaging with the Government Equalities Office, which is our sponsor unit in Government, and we have been engaging with them very closely on this area. The Government have, in fact, consulted on a number of the recommendations that we made. Another one is reintroducing protection against harassment by third parties, which was repealed, and we would like to see that reinstated. The Government have consulted on a number of these issues.

Q55 **Sara Britcliffe:** Just on that point, do you feel that we, as a Committee, should be pushing this, and when?

**Melanie Field:** The combination of the work that we did and the Committee did was incredibly influential on Government in focusing their attention on this issue and shifting to a more proactive approach to looking at what more can be done. Absolutely, I would hope that the Committee will continue to be interested.

Q56 **Sara Britcliffe:** In what timescale would you like to see that?

**Melanie Field:** We need to keep the pressure up. This is the sort of thing where it would be good for us to talk to each other about what role we can play and what role the Committee can play in terms of trying to keep the pressure up on those issues.

Q57 **Chair:** You have had engagement with the GEO on this. How much engagement have you had from Ministers?

**Melanie Field:** Our chair and chief executive have regular meetings with our sponsor Ministers.

Q58 **Chair:** When was the last one?

**Melanie Field:** There have been some changes, but I believe our chair met with the current Secretary of State about a month ago.

Q59 **Chair:** What about the Minister for Women?

**Melanie Field:** I would need to check, sorry. Can I write to you?

**Chair:** Could you let us have that information?

**Melanie Field:** Yes.

**Nickie Aiken:** As well as with the disability Minister.



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**Chair:** Specifically around sexual harassment, I was interested whether there had been engagement from the Secretary of State or the Minister for Women, and in what sort of timescale. You are right that there have been ministerial changes, but it would be helpful for this Committee to have an indication as to what level of priority the Ministers might be regarding this as having. Kim.

Q60 **Kim Johnson:** Melanie, the *Is Britain Fairer?* report was published last year. It identified that certain areas have worsened since the 2015 report, particularly in terms of changes to the welfare system and people living in poverty. I wanted to know whether you would be looking at extending protected characteristics to start looking at a socioeconomic element.

**Melanie Field:** We are not advocating for socioeconomic status to become a protected characteristic currently. It is not a current position of the commission but it is something that we continue to look at. We have been advocating and continue to advocate for implementation of Part 1 of the Equality Act, which is the duty on public authorities to take account of the inequalities arising from socioeconomic disadvantage. That duty has already been implemented in Scotland and is due to be implemented in Wales later this year, so we would like to see that duty implemented in England as well.

Q61 **Kim Johnson:** Have there been any discussions at all with Ministers about that happening?

**Melanie Field:** It is one of the things that we usually raise. It is one of our key legislative asks, so it is something that we continue to ask for.

Q62 **Kim Johnson:** How can we on this Committee help to push that forward?

**Melanie Field:** This is quite interesting in terms of the Government's wish to level up, looking at regions where there are particular inequalities. We are doing quite a lot of thinking currently about how our remit relates to that agenda and how bringing a protected-characteristic lens to that agenda might enrich it and help to target interventions that benefit those who are experiencing the biggest gaps. It would be interesting to have some more evidence and views around the relationship between socioeconomic disadvantage, protected characteristics and regional inequalities, in order to inform the Government's emerging approach.

Q63 **Kim Johnson:** Do you have the resources at the moment to be able to undertake that piece of work?

**Melanie Field:** We do look at socioeconomic status when we are doing our analysis for *Is Britain Fairer?* The last report was in 2018 and the next report will be in autumn 2021, so we are just starting to decide how we are going to shape that. We have resource allocated to producing that report, and that will have some element of focus on that. As I say, we are, at the moment, developing our approach. We are conscious that the



spending review is coming up, and this regional levelling-up approach is somewhere we could add more value, if we had additional resource.

Q64 **Kim Johnson:** Given that we are in this current coronavirus crisis, and that those people within the group that we have just mentioned are likely to be most impacted, is there a pressing need to maybe look at doing something sooner rather than later?

**Melanie Field:** Like everybody else, we are thinking about the implications of coronavirus, not only for our teams but also for our agenda. We are expecting the emergency legislation later this week. This is unprecedented and very challenging for everybody, and the Government are trying to strike a very difficult balance between protecting public health and life, protecting the country's economy and thinking about where it is proportionate to restrict people's freedoms. There are clearly human-rights issues embedded in all of that, but it is also important, in looking at the response and thinking about how the response is implemented, to have, at the front of our minds, the people who may have particular needs, barriers or challenges, in order to make sure that those are factored in and do not emerge later as a problem.

Q65 **Kim Johnson:** Would you say that the equality issues identified in *Is Britain Fairer?* are still the most pressing, particularly if you think about some of the emerging issues at the moment? We have talked about transgender and there is a lot of discussion around non-binary and how that fits into the whole equality agenda.

**Melanie Field:** *Is Britain Fairer?* is based on our published measurement framework. Of necessity, the idea is that we track progress over time and, therefore, it needs to be reasonably high-level while enabling us to delve more deeply into current issues.

As I said, we are currently looking at how we are going to use it next time to strike that balance, so that we get that broad picture of where things are getting better or worse, or not moving, as well as richer information on issues that are of particular relevance or interest. The key challenges that we identified last time persist. These are big social changes, so movement is not going to be quick.

Q66 **Kim Johnson:** You also identified that you have experienced some difficulty and that there are some gaps in data, particularly around LGBT. I just want to find out what you intend to do to try to address those difficulties.

**Melanie Field:** We have a data-gap strategy. That is part of our core aim of ensuring that we have the right laws in place and the data to know what is happening. We do a lot of work with ONS about how national data is collected. We have worked very closely with the Race Disparity Unit in the Cabinet Office in terms of seeking to influence how the Race Disparity Audit was framed and conducted, and we continue that relationship.

Q67 **Kim Johnson:** Can I just say something about race disparity? It was



published in 2017. It was a report that was published but, from my point of view, very little happened with it in terms of any particular actions or recommendations. I would be interested in terms of the relationship with the race unit around some of those key issues.

**Melanie Field:** Sure. I will just finish off what I was saying about data and then I will come back to that, because it is related. The Equalities Hub in the Cabinet Office is now aligned with the new Disability Unit and with the Race Disparity Unit, which is a really positive thing. What we really welcome is the Government's commitment for a national disability strategy. Just linking back to the race issue, what we said at the time that the Race Disparity Audit was being conducted was that we really welcomed increased transparency around the level of racial disparities that there are. It does provide a richer dataset in terms of drilling down into regional areas, for example, but we have known about most of these issues for a very long time.

In fact, we published our own report, following *Is Britain Fairer? (2018)*, called *Healing a divided Britain*, which had a particular focus on race equality. What we have called for is a co-ordinated strategy or programme of action to address the policy responses to those disparities, rather than just focusing on providing transparency about them. We are really pleased to see that Government have taken that onboard but there is no set-out strategy that is centrally owned and driven. It seems to be mainly in the hands of individual departments, and a lot of these issues require a more joined-up approach, so we would like to see a Government strategy on race equality.

Q68 **Kim Johnson:** The country has been very polarised since the referendum. You have talked about antisemitism but there are still major issues in terms of Islamophobia; Baroness Warsi has a dossier of incidents. I am just curious in terms of whether the Equality and Human Rights Commission are looking at some of those pressing issues across all parties.

**Melanie Field:** I mentioned before that we are concerned about the tone of political and public discourse on a range of issues where these divisions seem to be heightened or there seems to be more of a feeling of permission to express those views. You will be aware that the Conservative Party has announced that they will be conducting an independent review and we are waiting to see the final terms of reference of that review before commenting further.

Q69 **Kim Johnson:** How long have you been waiting for that?

**Melanie Field:** You will be aware when they announced the review.

Q70 **Kim Johnson:** Are you concerned that some equalities have increased since your 2015 report? You mentioned access to justice and personal security. I am linking that to the David Lammy report in 2017 that talked about over-representation for certain groups. These types of reports are undertaken, and I am just curious in terms of the role that your





organisation has in trying to implement and take action that has been identified in these particular types of report.

**Melanie Field:** As you say, access to justice was a particular area where we were concerned that things were going backwards in *Is Britain Fairer?* (2018). One of the things that we did as a result was an inquiry into legal aid, which looked in particular at the availability of legal aid for discrimination cases. That report was published in June last year.

We made a number of recommendations and have been engaging with the Ministry of Justice since then on ensuring that those are followed through. One of the key things that we were concerned about was the mandatory telephone gateway—if you wanted to get legal aid, you have to go through this telephone gateway—and that that was not appropriate for certain groups of people, particularly disabled people. We are pleased that the Government have committed to removing that.

Q71 **Kim Johnson:** One last question, sorry, Melanie, is around the public sector equality duty that all public organisations need to adhere to. I know, from working in the public sector, that it is often just seen as a bit of a box-ticking exercise, so I just wanted to know how that would be enforced and monitored going forward.

**Melanie Field:** We are doing quite a lot of work on the public sector equality duty at the moment. I gave evidence to the predecessor Committee about that in the context of the Equality Act inquiry. We do feel that the public sector equality duty has not delivered its vision in terms of driving concerted progress in the public sector on tackling big, entrenched inequalities and disadvantage. We have been looking at the scope for changing the specific duties that are set out in secondary legislation. The specific duties are there to support better performance of the general duty.

I do not know how familiar the Committee is with this—you may well be very familiar—but the general duty has three prongs: it is about eliminating unlawful discrimination and harassment; it is about advancing equality of opportunity; and it is about fostering good relations. The specific duties are there to help public bodies do those things better. In England, there are only two really specific duties, apart from the one on gender pay gap reporting, and those are to publish one or more equality objectives and to publish information about how you have performed the general duty.

That makes it quite difficult for us, as the enforcement body, to meaningfully enforce that. It also leaves public bodies slightly uncertain about how they should respond to the duty. There is an opportunity for the specific duties to give public bodies more guidance. There is also an opportunity to make the duty more strategic, building on the information that we know about the big equality challenges facing Britain that we identified in *Is Britain Fairer?* and that the Race Disparity Audit has identified, and requiring specific consideration of that evidence in setting



## HOUSE OF COMMONS

objectives that work across sectors, so that a whole sector will be focusing on these big issues rather than it being entirely a bottom-up approach to objective-setting, although you need both.

We would also like to see more onus on public authorities to use positive action and to use their purchasing power to advance their equality objectives. We would also like to see regulators and inspectors having a duty to look at how progress towards delivering equality outcomes is going when they are looking at the performance of public bodies.

**Q72** **Nickie Aiken:** Because I am very conscious of time, a “yes” or “no” will suffice. From what we have heard today, would you agree that, if the commission is to ensure it keeps to its core values, remains relevant to the public and retains the trust of the public, it would be beneficial for the commission to be as flexible and as agile as possible, particularly with the investigations, where you need to be able to move quickly and maybe change the emphasis of an investigation if more information comes to light?

**Melanie Field:** We do that and we are looking at how to do swifter and more light-touch interventions. It is about tailoring the intervention to the specific issue and making sure that we keep checking that what we are doing is the right lever and that we are using it in the right way.

**Q73** **Alex Davies-Jones:** I am conscious of time but I would like to come back to the coronavirus pandemic and the impact that that is having on everybody. Particularly, it is impacting those with protected characteristics hugely and significantly. We can look at the disabled. Women are more likely to be working in the hospitality sector, more likely to be on zero-hour contracts and more likely to be carers. They are being laid off already.

We have pregnant woman now classed as a vulnerable category for the virus and they are being forced by their employers to take early maternity leave, which is then going to impact them further down the line. I understand and appreciate that this is unprecedented, but we still need to scrutinise the emergency legislation as much as we can, without delaying it, and we need to ensure that those with protected characteristics are not going to fall foul of this legislation and be even more negatively impacted as a result.

I know you have touched on your role in this but what can you do immediately, in the short term, to ensure that that happens, and in the longer term as well, once we see the full impact of this?

**Melanie Field:** One of our roles is to provide expert advice to Government and Parliament.

**Q74** **Alex Davies-Jones:** Have you been asked to do that on this emergency legislation?

**Melanie Field:** We have not been specifically asked to do that, as far as I know, but we are nonetheless considering how we can do that.



Q75 **Chair:** Do you have any concerns, when you look at the war cabinet around this issue and when you look at the expert voices that we get to listen to, that the voices of women have been excluded?

**Melanie Field:** There is always a concern about any decision-making group that it can only represent or take into account the experiences of the people involved in the group, which is why it is important that decision-making groups are as diverse as possible, but also that there are engagement mechanisms, so that people understand the impacts of the decisions that they are taking on people's lives that they may have no experience of.

Q76 **Sara Britcliffe:** You said you have not been consulted. Where, in the commission's opinion, will there be gaps in this legislation?

**Melanie Field:** We have not seen the legislation yet. There will be the legislation, which, I imagine, will be quite high-level and broad-brush, and then there will be the way it is implemented, which is equally important.

Q77 **Chair:** You are not aware of having been consulted. What steps are you taking to make sure that your voice is heard?

**Melanie Field:** We have been giving a lot of thought to what we know and what we are seeing in the media about the kinds of impacts that people are reporting. We had some feedback from the Equality Advisory and Support Service—the helpline for equality and human rights—about the kinds of enquiries that they have been getting, and that is informing our thinking. This is literally a moving feast, so I do not want to commit to anything that my colleagues back at the office are still working on.

Q78 **Chair:** I appreciate that. I just wanted to clarify whether you wait to be asked.

**Melanie Field:** No, we do not wait to be asked.

**Chair:** If there are no further questions, can I just thank you very much for coming in today? It is very much appreciated and it has certainly been helpful for me and, I hope, for other Committee members.

**Melanie Field:** Thank you. It is nice to meet you all.

Rt Hon Boris Johnson MP  
Prime Minister  
10 Downing Street  
London  
SW1A 2AA

Date: Thursday 19<sup>th</sup> March 2020

Dear Prime Minister,

### **Human rights and equality considerations in responding to the coronavirus pandemic**

The Equality and Human Rights Commission recognises and supports the primary role of government in the current context: to keep people safe and protect the future of our nation. This must involve difficult decisions and compromises, far beyond the normal scope of everyday governing. However, such actions will be most effective when public safety and economic interests are balanced with our long-held values of freedom and respect.

COVID-19 does not discriminate, but it does impact people differently. The priority remains those who are directly most seriously affected, more likely to be older people and those with underlying health conditions, and the people who care for them – whether that is their loved ones or our dedicated health and social care professionals.

The restrictions being extended by today's emergency coronavirus legislation are designed to protect those in vulnerable situations and safeguard our future. They have significant implications for all of us, but as they come into effect it will be important to consider carefully the specific impacts they may have on groups who are already disadvantaged in other ways. We must ensure they are not left further behind.

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Human rights provide a clear and practical framework to help our leaders determine what are reasonable restrictions and what are not, ensuring they can navigate the delicate balance between protecting our health and safeguarding our vital freedoms and individual needs.

Protections that complement or enhance our hard-won rights will maximise consent and compliance, and ultimately best safeguard public health. Changes of such magnitude should be proportionate and measured, and rooted in science and the law. They must have clear review and end points, be flexible to specific needs, and remain open to challenge.

Elements of the legislation with particular equality and human rights dimensions include the following:

- When detaining people who are suspected of carrying coronavirus, and relaxing crucial safeguards on detention set out in the Mental Health Act, it is critical that Government ensures that exemptions only extend as far as is absolutely required, both in time and scope, and are regularly monitored and adjusted.
- A recent Commission inquiry into the criminal justice system has shown that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in proceedings using the courtroom video and audio links now being expanded. Appropriate adjustments must be put in place to maintain their ability to access a fair trial.
- We know that during periods of confinement domestic abuse (a crime mostly impacting women and girls) tends to increase, and that the healthcare and educational settings that offer a way of identifying this issue will be under unprecedented pressure.
- Redeployment of other care professionals to respond to coronavirus will help save lives. But it also risks leaving already vulnerable older people and those living with mental health conditions exposed.
- The reduced number of children still able to attend school will only constitute a small proportion of all children with special educational needs, and the dispensation for councils to reduce support to these pupils will have a profound impact on families. Such

decisions should be taken only when ‘strictly necessary’ and for the shortest time possible, as set out in the legislation.

- The workplace has changed since the 2008 economic crisis. Measures to mitigate financial hardship will be essential for gig economy workers – who still have very few protections in employment law, and are more likely to be younger, from an ethnic minority, or have caring commitments – if they must self-isolate.
- Women still bear the majority of caring responsibilities for both children and older relatives. With schools and nurseries now closing, the need for this unpaid work will only increase in the weeks to come. Women, including those who are pregnant and on maternity leave, should not be disadvantaged in their careers by following government advice to stay at home.

Amidst these challenges, it is heartening to see people in communities across the country actively help the people around them who need it most. This can be the moment when we as a country begin to put recent differences behind us and show the world our capacity for compassion and solidarity.

Flexibility and compromise will be essential in responding effectively to this crisis, and there are few easy answers. For many people the restrictions to everyday life will be hugely disruptive, but ultimately manageable. For others, though, the implications could be profound. We believe it is possible to protect rights while saving lives. The Commission stands ready to advise government and Parliament in accordance with our statutory duties.

Yours sincerely,

**David Isaac**

Chair

Equality and Human Rights Commission

# Coronavirus Bill 2019-21

## House of Commons and House of Lords (all stages)

23 March 2020

### Introduction

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The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

The Commission supports the Government's current focus on keeping people safe and protecting the future of our nation. This involves difficult decisions, far beyond the normal scope of everyday governing. However, such actions will be most effective when public safety and economic interests are balanced with our long-held values of freedom and respect.

The restrictions being extended by today's emergency coronavirus legislation will change all of our lives, but it will be important to consider carefully the specific implications they could have on groups who are already disadvantaged and must not be left further behind. Human rights provide a clear and practical framework to help determine how to impose restrictions that are proportionate and effective.

## Commission's recommendations

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Protections that complement or enhance our hard-won rights will maximise consent and compliance, and so ultimately best safeguard public health. The Commission's view is that changes of such magnitude should be proportionate and measured, rooted in science and the law, have clear review and end points, be flexible to specific needs, and remain open to challenge.

We share the view of the Joint Committee on Human Rights (JCHR) and others that this legislation should have a defined 'sunset clause' of no later than one year from now. It should allow for flexibility in how emergency measures are implemented so as to meet the needs of disabled people and some religious beliefs, where possible.

Aspects of the legislation with equality and human rights dimensions include the following:

- When detaining people who are suspected of carrying coronavirus, and relaxing crucial safeguards on detention set out in the Mental Health Act, it is critical that Government ensures that exemptions only extend as far as is absolutely required, both in time and scope, and are regularly monitored and adjusted.
- Suspension of the Care Act 2014 and redeployment of other care professionals to respond to coronavirus risks leaving disabled people, older people and those living with mental health conditions exposed. We urge Government to consider all possible means of maintaining these essential services during the crisis.
- The reduced number of children still able to attend school will constitute only a small proportion of all children with special educational needs, and the dispensation for councils to reduce support to these pupils will have a profound impact on families. We support the Government's position that such decisions should be taken only when 'strictly necessary' and 'for as long as required'.



- Our recent inquiry into the criminal justice system has shown that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in proceedings using the courtroom video and audio links now being expanded. Appropriate adjustments must be put in place to maintain their ability to access a fair trial.
- Gig economy workers have very few protections in employment law, and are more likely to be younger, from an ethnic minority, or have caring commitments. While we welcome the economic support already announced, we believe they must go further in providing some financial security and so ensure that gig economy workers, and women (who still bear the majority of caring responsibilities for both children and older relatives), are not further disadvantaged by following Government advice to stay at home.

We believe it is possible to protect rights while saving lives. The Commission stands ready to advise Government and Parliament in accordance with our statutory role.

## Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the [Equality and Human Rights Commission website](#).

For more information, please contact:

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# **Evidence to the Women and Equalities Committee inquiry on coronavirus (COVID-19) and the impact on people with protected characteristics**

Friday 1 May 2020

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## 1. Executive summary

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The equality and human rights implications of the coronavirus pandemic stretch far and wide. It has precipitated a global public health and economic crisis that is significantly impacting all areas of life for everyone throughout Britain.

Early evidence and information from our stakeholders indicates that coronavirus and responses to it may be directly impacting disproportionately on some groups, and causing indirect impacts by exacerbating existing inequalities across all areas of life.

Before the outbreak of coronavirus, we knew that persistent disadvantages faced by certain groups were leaving too many people behind. Our state of the nation report, 'Is Britain Fairer? 2018', found that progress in some areas was overshadowed by alarming backwards steps in others. Prospects for disabled people, some ethnic minorities and children from poorer backgrounds had worsened in many areas of life. Sexual harassment and domestic violence remained persistent and growing concerns, affecting women and girls disproportionately, and women were more likely than men to be in low-pay occupations. We found poverty to be particularly prevalent among disabled people and some ethnic minorities.

### **The impact of the pandemic on people sharing protected characteristics**

People who share certain protected characteristics are disproportionately adversely impacted by coronavirus and the measures being taken to respond to it, in particular: disabled people, older people, some ethnic minorities and some women. We recognise that Government resources and public services are under exceptional strain, and that responding to the pandemic means responding to a rapidly evolving situation and making tough decisions. However, now, and as we emerge from this crisis, it is crucial that equality and human rights are at the centre of decision-making so that responses to it are effective and no-one is left behind.

#### ***Disabled people and older people***

Disabled people and older people may be particularly at risk from COVID-19 and face life-threatening concerns about access to appropriate medical treatment. We are deeply concerned about reports that Do Not Attempt Resuscitation (DNAR) notices have been applied to advance care plans for older or disabled people in care or residential homes without proper consultation. Some GP surgeries have reportedly sent blanket communications to disabled and older patients asking them to consent to DNAR notices on the basis of pre-existing or non-pertinent health conditions. Easements to the Care Act provided in the Coronavirus Act 2020 are set to have a disproportionate impact on disabled people and older people, who could see vital care support they receive significantly restricted. Disabled and older people are already at heightened risk of food insecurity, with social distancing measures creating new challenges. There have been grave concerns around the lack of virus

testing and personal protective equipment (PPE) for people in care homes and for care workers, putting disabled and older people at heightened risk of exposure to coronavirus, and reports of individuals in care homes being told they cannot go to hospital.

### ***Disabled people***

The rapid expansion of video and telephone hearings across courts and tribunals risks increasing barriers to effective participation for some disabled people and undermining the right to a fair trial if their specific needs are not recognised and met.

The temporary modification of the duty on local authorities to secure the provision set out in Education, Health and Care Plans risks undermining the rights of children with special educational needs and disabilities.

### ***Ethnic minorities***

Emerging evidence indicates that coronavirus and the response to it disproportionately affects ethnic minorities, including healthcare professionals. Ethnic minorities are over-represented in low-paid and gig economy employment, and so will be disproportionately impacted by the lack of financial support packages for workers in this sector. PPE shortages, and concerns about the suitability of the design of standard PPE for health and social care workers, are likely to particularly impact ethnic minorities and women, who are over-represented in this sector. Ethnic minorities are also significantly over-represented in the prison population, giving rise to significant equality concerns around the risk of COVID-19 outbreaks in prisons.

Ethnic minorities may face particular challenges in complying with Government guidelines as they are more likely to live in overcrowded accommodation and may have lower ability to self-isolate. Gypsy, Roma and Traveller communities – who already experience persistent disadvantage – face particular challenges to self-isolation in encampments and traveller sites, exacerbated by limited access to water and sanitation, and the long-standing acute shortage of authorised sites.

### ***Gender equality***

Evidence suggests that domestic abuse is increasing during the crisis, with large rises in calls to helplines and reports that domestic homicides have more than doubled. Women are twice as likely as men to experience domestic abuse, and ethnic minority and disabled women are at greater risk.

This crisis is likely to expose many of the multiple and intersecting forms of discrimination experienced by some groups. We are aware of concerns that pregnant women and those on maternity leave are being forced to take unpaid leave or are being refused furlough. Ethnic minority women are more likely to be in

precarious employment and could therefore feel the brunt of any economic recession caused by the crisis.

### ***Other equality concerns***

Certain groups sharing protected characteristics may experience disproportionate adverse effects from social distancing measures and the diversion of government resources for the coronavirus response. The reprioritisation of health services in response to COVID-19 is impacting many groups including trans people and cancer patients, who have seen appointments and surgeries delayed or cancelled. Restrictions on religious observance such as collective worship, weddings and funerals may impact some groups more than others.

### **Monitoring and mitigating impacts**

The Equality Act 2010, and the Public Sector Equality Duty in particular, provides a clear legal framework for the Government and other public authorities when considering their responses to the pandemic.

This includes ensuring that the potential impacts of policies, practices and guidance on people who share protected characteristics are understood and mitigated, and that affected groups are meaningfully consulted in decision-making.

Effective impact monitoring will require good quality data disaggregated by protected characteristics. It is of great importance that the Government gathers and analyses data by protected characteristics and finds ways to innovate where normal data gathering methods have been disrupted.

### **Challenging and reviewing Government responses**

We recognise that to keep people safe, restrictions on our rights and freedoms may be required. However, any restrictions must be necessary, proportionate, time-bound and receive adequate and regular public and parliamentary scrutiny.

We welcome provisions that facilitate parliamentary scrutiny of the Coronavirus Act 2020 and consider that statutory reports to Parliament must address equality and human rights considerations, reflecting the views and experiences of groups sharing protected characteristics.

### **Our role and submission**

As Britain's national equality body and as a human rights institution, we will play a key role supporting and scrutinising the impact of the Government response. We will work with Government and Parliament, as well as regulators, public bodies, business and non-governmental organisations, to monitor and mitigate direct and indirect equality and human rights impacts.

We will provide advice on the steps we think are needed to protect the most disadvantaged in our society and will use our unique powers to drive appropriate responses to the crisis. We will be closely monitoring and supporting compliance with the Equality Act and will take action quickly, using our enforcement powers where needed, to protect people in the most vulnerable situations.

This submission looks at the equality implications of the pandemic and responses to it across a number of areas of life, including health and social care, work and income, treatment in institutions, access to justice, education, transport, and living standards – including access to food and housing. We make recommendations for measures we think should be taken by the Government in response.<sup>1</sup>

## **Recommendations**

### ***Legal and Policy Context***

1. All public authorities and those carrying out public functions must comply with the Public Sector Equality Duty in developing and implementing responses to the pandemic, ensuring they are informed by evidence and engagement with representative groups, and embed learning from different approaches across the UK.
2. Government should ensure groups likely to experience particular disadvantage arising from social distancing measures receive appropriate and accessible guidance and information, and work with community leaders, networks and civil society organisations to ensure this reaches target audiences.
3. Public authorities should seek to minimise the extent to which socio-economic disadvantage is compounded when developing responses to the pandemic. In the longer term, the UK Government should bring the socio-economic duty into force at the earliest opportunity, and the Welsh Government must meet its commitment to commence the Duty this year, to help ensure that everyone can share equitably in the post-crisis recovery.

### ***Protecting our fundamental rights and freedoms***

4. Government must ensure that any restrictions on people's freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and are properly scrutinised.

### **Data, scrutiny and monitoring**

5. Government and public authorities responsible for data collection should assess, monitor and report on the impact, including the health and other

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<sup>1</sup> References to Government, Departments and Ministers throughout this submission refer to the UK Government, Departments and Ministers except where otherwise specified.

effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.

6. Government should urgently publish the equalities assessment prepared to accompany the Coronavirus Act 2020. Government should also ensure that statutory reports to Parliament required by the Coronavirus Act 2020 address the impact of the legislation on equality and human rights and reflect the views and experiences of groups sharing protected characteristics.

#### Supporting civil society

7. Government must monitor support for civil society organisations and ensure they have the resources necessary to provide specialist services. It must ensure funding reaches smaller organisations on the frontline, especially those representing protected characteristic groups and those providing advice.
8. Government should take steps to increase the involvement of civil society organisations representing protected characteristic groups in policy-making related to the pandemic.

#### Hostile environment

9. Government should implement the recommendations of the Windrush review in full and take immediate steps to ensure that people with insecure immigration status are not prevented from accessing essential services, by ending data-sharing between the Home Office, police, education, and healthcare services for the purposes of immigration enforcement. Government should also consider a public health campaign to reassure migrants that it is safe to access care.

### ***Health and social care***

#### Disproportionate impact of COVID-19 on health outcomes

10. Government should ensure collection and publication of disaggregated data on COVID-19 cases – including by sex, ethnicity, nationality and disability – in order to better understand the differential health impact of the virus, inform decision-making and assist compliance with the PSED.

#### Advance care planning and prioritisation of access to treatment

11. Government should work with the Care Quality Commission (CQC), NHS England, Public Health England, the National Institute for Health and Care Excellence (NICE) and professional bodies to:
  - a. ensure all policy decisions about care and treatment for COVID-19 are made in collaboration and consultation with disabled and older people



and their representative organisations, underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.

- b. agree national clinical and ethical guidance on provision of treatment, to ensure that decision-making is transparent, consistent, and underpinned by equality and human rights principles.

#### Easement of social care duties

12. Government should ensure effective, ongoing scrutiny and oversight of local authorities to ensure they do not introduce easements to social care duties unless strictly necessary and to ensure their decision-making complies with human rights obligations.
13. Local authorities should ensure that decisions on how to allocate resources for social care are compliant with the Equality Act 2010 and human rights obligations.
14. Government should consider all possible means to maintain social care provision at the level available prior to the outbreak of the pandemic.

#### Care Homes

15. Government must work with the CQC to ensure effective and ongoing monitoring and oversight of COVID-19 cases and deaths in care homes, as well as ensuring urgent access to testing and healthcare for care workers and residents.

#### PPE shortages

16. Government must urgently act to protect the rights of health and social care workers at potential risk of contracting COVID-19 by providing adequate PPE, which is appropriate for different groups of workers such as women and ethnic minorities, who are overrepresented within the health and social care workforce.

#### ***Work and income***

##### Pregnancy and maternity

17. The Department for Business, Energy and Industrial Strategy (BEIS) should:
  - a. Introduce the right to request furlough and part-time furlough and take steps to promote this widely to all employers and employees.
  - b. Make clear to employers that if they cannot ensure the health and safety of pregnant employees by making workplace adjustments, pregnant employees should be placed on full paid leave.
  - c. Remind employers of their obligations under equality law in relation to unlawful pregnancy and maternity discrimination.

18. BEIS should implement as a matter of urgency its earlier commitment to extend pregnancy and maternity redundancy protections by a further six months so that women with childcare responsibilities are not placed at a disadvantage.

The impact on gig economy workers, employees in low-paid industries, and the self employed

19. Government should consider taking steps to mitigate the financial hardship faced by gig economy workers by providing the same financial support available to other employees.
20. Government should remove the earning thresholds for Statutory Sick Pay (SSP) and the Coronavirus Job Retention Scheme (CJRS), and increase SSP to National Minimum Wage levels to help reduce the financial disadvantage experienced by pregnant and disabled workers.

Social security

21. We recommend that the Department for Work and Pensions takes all reasonable steps to reduce the five week wait for a first Universal Credit payment, to support the right to an adequate standard of living for claimants who have lost their income during the pandemic.

### ***Treatment in Institutions***

Detention under the Mental Health Act

22. The Department for Health and Social Care should not implement emergency provisions relating to the Mental Health Act unless strictly necessary and only for as long as is essential. Use of these powers must be recorded and monitored to ensure they are proportionate, including the justification for use and data on protected characteristics.
23. The Department for Health and Social Care should monitor the temporary changes to mental health tribunal rules, and ensure tribunals are recording the justification for use and data on location and protected characteristics.

Prisons and youth custody

24. The Ministry of Justice must expedite appropriate releases from prisons and youth custody, prioritising those at heightened risk of harm, including children, older people and women who are pregnant or have new babies. It should publish regular updates on the number and protected characteristics of those released and the number of cases and deaths related to COVID-19 in these settings.

## Immigration detention

25. The Home Office should continue to release people held in immigration removal centres and avoid further detentions wherever possible, particularly for those at heightened risk of harm, including those with underlying health conditions, older people, pregnant women, and people with mental health conditions.

## ***Access to Justice***

### Video and phone hearings

26. The Ministry of Justice, judiciary and other frontline professionals should consider the evidence from our inquiry report on the use of video-links in the criminal justice system as the use of video and telephone hearings expands.
27. Guidance on video and telephone hearings across all courts and tribunals should refer to the need to consider and make adjustments for disabled people and the effect of this guidance should be kept under review.
28. The Ministry of Justice should take urgent steps to capture data on the experiences of court users and outcomes of cases across courts and tribunals, disaggregated by case type and protected characteristic, to inform any required changes to the use of remote hearings.

### Access to legal advice and information, and legal aid

29. The Ministry of Justice should address all outstanding recommendations from our inquiry into legal aid for discrimination cases and consider what further support measures are necessary to ensure the legal aid sector can survive the coronavirus crisis.
30. Government should ensure the impact of Practice Direction 51ZA is kept under review; and judicial guidance should be strengthened to support discretionary decisions to extend time limits beyond the statutory limits.
31. Government should legislate to extend the time limits in Employment Tribunals for bringing claims under the Equality Act 2010 to six months, to help alleviate any barriers to accessing justice and ensure that people who have experienced discrimination can get an effective remedy. In addition, the discretion to extend time limits on a just and equitable basis should be extended to include equal pay claims.

## Violence against women and girls

32. Government should ensure that addressing the rise in violence against women and girls is integral to the response to coronavirus, and that the duty to prevent and protect is built into planning at all levels.

## Domestic abuse support services

33. Government should urgently provide unrestricted and ring-fenced funding to cover the additional costs to domestic abuse charities resulting from coronavirus (both now and to respond to a likely spike in demand when emergency measures are eased), ensuring this funding is available to smaller organisations, including those led 'by and for' ethnic minority, disabled and LGBT women.
34. Government must ensure that migrant survivors of domestic abuse with no recourse to public funds (NRPF) can access equal protection and support (including refuge accommodation). This should include extending the route to secure immigration status to all domestic abuse survivors with NRPF, and prohibiting the sharing of survivors' personal data for the purposes of immigration enforcement if collected when accessing assistance or support for domestic abuse.

## Policing violence against women and girls (VAWG)

35. Government should work with the National Police Chiefs' Council (NPCC) and police forces to ensure that crimes of violence against women and girls continue to be addressed as high priorities. Police and Crime Commissioners and Chief Constables should give public assurances of this at a local level.

## Police enforcement of restrictions

36. Home Office should work with the National Police Chiefs' Council (NPCC), College of Policing, Association of Police and Crime Commissioners and police forces in England and Wales to:
  - a. Ensure that police officers are properly informed about the limits of new powers and restrictions, including the obligation to use or enforce them in a proportionate, non-discriminatory manner;
  - b. Consult with diverse communities to better understand particular needs around police community relations, and ensure that the use and enforcement of new powers does not have a disproportionate impact on particular groups; police forces should record data and report on the number of fines issued by protected characteristic under the Equality Act 2010;
  - c. Establish a mechanism for independent oversight of police use of new emergency powers in England and Wales to monitor compliance with

equality and human rights obligations, similar to that established by Police Scotland.

#### Hate crime

37. The National Police Chiefs' Council, with the support of the Home Office, should make clear that preventing and responding to hate crime remains a priority. The Home Office should ensure that sufficient support is available to victims, including by providing sufficient funding for third-party reporting and other support services.

#### **Education**

##### Disproportionate impact of school closures on children with SEND

38. Part of the Government's pandemic grant to local authorities should be ring-fenced to ensure that children with special educational needs and disabilities (SEND) who stay at home receive the support they need, including specialist equipment, training materials and social care.
39. Government should require local authorities to publish a re-integration policy for any children moved from mainstream education to special schools during the pandemic.
40. Following modification of the duties to secure provision set out in Education, Health and Care Plans (EHCPs), Government must provide effective oversight of the 'reasonable endeavours' adopted by local authorities and health bodies to discharge these duties in order to ensure that decision-making complies with equality and human rights obligations.

##### Risk that the shift to online learning will exacerbate existing inequalities

41. The Department for Education should seek to ensure that the provision of digital devices and internet access is available to children of all ages who do not have adequate access to computers or the internet, including those in primary education.

##### Concerns about discrimination in approaches to grading

42. Government should issue guidance on the approach that teachers should take to predicting grades and ranking pupils to minimise the risk of conscious or unconscious bias. Schools should be required to provide exam boards and Ofqual with data on the socio-economic background and protected characteristics of the assessed pupils, including by ethnic group.
43. Ofqual should require exam boards to use this data to support the statistical standardisation process and should then publish a report evaluating this. It should also investigate any higher than average disparities for pupils sharing particular protected characteristics revealed by the report.

44. Government should ensure that pupils are able to appeal their grades, including on grounds of suspected unlawful discrimination.

#### Increased vulnerability of children eligible for Free School Meals

45. Government should urgently address any remaining administrative difficulties associated with the national voucher scheme and consider introducing an option for families to receive cash payments rather than vouchers.

#### Concerns about the safeguarding gap created by school closures

46. Government should reinstate the legal protections that have been removed for children in care and consider the need to allocate additional, ring-fenced funding to local authorities to ensure increased access to support services for children at risk of harm during the period of school closures.

### ***Transport***

47. Government should advise transport operators to provide accessible information on the operation of services. Where possible, operators should seek to involve disabled passengers in decisions regarding changes to scheduled services during the pandemic.
48. Government should look to support disabled passengers with their essential travel costs during the pandemic where possible. This could include increasing the discount offered by the Disabled Persons Rail Card, or allowing a carer travelling with a disabled person to travel for free.

### ***Living standards***

#### Access to food

49. Government should work with the British Retail Consortium and supermarkets to update and implement guidance on who is considered to be 'high risk'. This should ensure policies related to access to shops are flexible to accommodate the needs of carers or those living in unsafe households and that reasonable adjustments are made to enable disabled and older people access. Government should also clarify the role of GPs in identifying individuals who are at 'high risk' and registering those individuals on the Government's database.

#### Housing

50. Government should direct local authorities and other local partners to facilitate access by Gypsy, Roma and Traveller groups to sanitation facilities and healthcare services, open additional temporary sites where possible, and adopt a presumption against eviction (including by police) unless suitable alternative provision has been secured.

51. Government should tailor current and future guidance on social distancing and self-isolation to different living arrangements and accommodation settings.

## 2. Introduction

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1. The Equality and Human Rights Commission has been given powers by Parliament to advise Government<sup>2</sup> on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.
2. In this submission, we provide views on the equality implications of the coronavirus pandemic and responses to it across a number of areas of life, including health and social care, work and income, treatment in institutions, access to justice, education, transport, and living standards – including access to food and housing. We make recommendations for measures we think should be taken by Government in response.<sup>3</sup>
3. We have a key role supporting and scrutinising the Government response to the pandemic. Our Business Plan for 2020/21 sets out important steps we will take. We will be working with stakeholder groups to update our approach as the impacts on communities, individuals and the economy become clearer. We will use our powers and levers flexibly and strategically to promote compliance with the law and ensure people understand their rights, working closely with regulators, inspectorates and ombudsmen schemes to improve practice. We will take action quickly to defend the rights of people in the most vulnerable situations, through strategic legal action, investigations and other enforcement activities and inquiries.

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<sup>2</sup> References to Government, Departments and Ministers throughout this submission refer to the UK Government, Departments and Ministers except where otherwise specified.

<sup>3</sup> The situation and associated legislative and policy responses are shifting at pace. We will update our advice in consultation with Government and stakeholders as the situation evolves.



### 3. Legal and policy context

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4. The Equality Act 2010 ('the Equality Act') provides a legal framework that protects individuals from discrimination, promoting a fair and more equal society.<sup>4</sup> Continued compliance with the Equality Act, by Governments and other public bodies, is essential in the current crisis, which is likely to hit already disadvantaged people the hardest. Responses will be more effective and sustainable if they consider how to mitigate the disproportionate impact on groups who share different protected characteristics.
5. The Equality Act protects people against discrimination on the basis of nine protected characteristics.<sup>5</sup> The Government should recognise that, although the virus' ability to infect people might not discriminate, some groups are hit harder by the disease and measures developed in response to it. Early available evidence<sup>6</sup> and information from our stakeholders<sup>7</sup> indicates that coronavirus and the response to it are affecting people differently according to protected characteristics. The impact is wide-ranging, from restricting how people can practise their religious beliefs,<sup>8</sup> to significant changes in how we access goods and services.
6. Unless the response is fully informed by equality considerations, these effects will further entrench the worst inequalities in the long-term. The Equality Act contains the Public Sector Equality Duty (PSED), which requires all public authorities to take active steps to consider equality when exercising their functions.<sup>9</sup>
7. **All public authorities and those carrying out public functions must comply with the PSED in developing and implementing responses to the pandemic, ensuring they are informed by evidence and engagement with representative groups, and embed learning from different approaches across the UK.** They should assess the potential impact of policies as they

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<sup>4</sup> An overview of the human rights legal framework in relation to the crisis is contained in the Annex.

<sup>5</sup> Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation (Section 4, Equality Act 2010)

<sup>6</sup> NHS England (2020), [NHS England Covid-19 daily deaths](#) and Intensive Care National Audit and Research Centre (2020), ['ICNARC report on COVID-19 in critical care'](#)

<sup>7</sup> Our response to this inquiry draws on points raised with us by our stakeholders. These have been identified throughout this report.

<sup>8</sup> Restrictions on public gatherings limit opportunities for religious observance and place restrictions on the right to manifest one's religion or belief in community with others. These restrictions have impacted on aspects of religious observance such as attending collective worship, weddings and funerals and may impact on some groups more than others. See, for example, Church of England (24 March 2020), ['Press Release: Church of England to close all church buildings to help prevent spread of virus'](#)

<sup>9</sup> Section 149 of the Equality Act 2010 requires public authorities and those exercising a public function to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those who share protected characteristics and those who do not.

develop, monitor their impact during implementation, and stop or adapt them when evidence shows they can lead to unlawful discrimination or disproportionately adversely affect people with particular protected characteristics.

8. Regulators, Inspectorates and Ombudsmen (RIOs) also play an important role in scrutinising and guiding responses from public authorities to the pandemic, and should ensure that they are embedding equality and human rights considerations as they prioritise their work and perform their functions in the context of coronavirus.
9. Recognising the pressures facing public authorities due to the pandemic, we have reviewed and, where appropriate, postponed our activities to enforce compliance with the reporting requirements in the PSED specific duties.<sup>10</sup> However, we have encouraged listed public authorities to continue to meet these obligations where possible.
10. We refer throughout this document to the impacts of social distancing measures, and associated guidance, on groups sharing different protected characteristics. **Government should ensure groups likely to experience particular disadvantage arising from social distancing measures receive appropriate and accessible guidance and information, and work with community leaders, networks and civil society organisations to ensure this reaches target audiences.** For example, Government may need to provide specific guidance for Gypsy, Roma and Traveller (GRT) communities, to reflect differences in living arrangements, and to engage, support and build trust with organisations that represent them.<sup>11</sup>
11. The Equality Act sets out the requirement for organisations to make reasonable adjustments and take positive steps to remove barriers that disabled people face. The duty is particularly relevant to organisations that communicate and use technology to make their services accessible during the crisis.<sup>12</sup> Governments and other bodies must proactively consider the need for, and make, reasonable adjustments in their pandemic responses. This includes ensuring key information is accessible to all, for example by providing BSL interpreters during public health announcements, publishing materials in alternative formats, and proactively reaching out to people affected.

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<sup>10</sup> Equality and Human Rights Commission (2020), [‘Advice and Guidance on the Public Sector Equality Duty’](#) for more information on our compliance activity

<sup>11</sup> Friends, Families and Travellers (2020), [‘Stay at Home: Guidance for Gypsy, Traveller and Liveaboard Boater Households with Possible Coronavirus \(COVID-19\) Infection’](#)

<sup>12</sup> Section 20 of the Equality Act 2010. See also for example, Office for National Statistics (‘ONS’) (2020), [‘Internet users, UK: 2019’](#) which found that 78 per cent of disabled adults in the UK were recent internet users, compared to 95 per cent of non-disabled adults

12. This submission highlights the differential impact according to people's socio-economic background, which often correlates with their protected characteristics.<sup>13</sup> The crisis is also likely to worsen socio-economic disadvantage, since reduced income or an economic downturn affects people on low incomes or with less accumulated wealth more greatly.<sup>14</sup> The Equality Act provides a framework for public authorities to address these impacts in a proportionate, evidence-based and effective way, by requiring them to have due regard to the desirability of reducing the inequalities of outcome resulting from socio-economic disadvantage when taking strategic decisions on exercising their functions ('the socio-economic duty'). The Scottish Government has brought the duty into force and the Welsh Government planned to do so this year.<sup>15</sup> The duty is not in force in England.<sup>16</sup> **Public authorities should seek to minimise the extent to which socio-economic disadvantage is compounded when developing responses to the pandemic. In the longer term, the UK Government should bring the socio-economic duty into force at the earliest opportunity, and the Welsh Government must meet its commitment to commence the Duty this year, to help ensure that everyone can share equitably in the post-crisis recovery.**

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<sup>13</sup>Inequalities of outcome related to socio-economic disadvantage are closely linked to inequality experienced by people sharing protected characteristics. See, for example, Equality and Human Rights Commission ('EHRC') (2018), [Is Britain Fairer?](#) which found in 2015/16 disabled people (36.8%) were nearly three times as likely to experience severe material deprivation as non-disabled people (13.5%). Pakistani (44.3%), Bangladeshi (48.4%) and Black African (44.9%) adults were over twice as likely as White British people (17.2%) to live in poverty

<sup>14</sup> Emerging evidence already indicates the crisis is having a bigger impact on the most deprived. See, for example, Office for National Statistics (1 May 2020), '[Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020](#)'. In the accompanying press release, Nick Stripe, Head of Health Analysis at the ONS said: "People living in more deprived areas have experienced COVID-19 mortality rates more than double those living in less deprived areas."

<sup>15</sup> The socio-economic duty was due to be commenced in Wales in September 2020. See, however, Welsh Government (2020) '[A More Equal Wales: Preparing for the commencement of the Socio-economic Duty](#)', page 4, 'the Welsh Government has reprioritised its business to reflect the unprecedented nature of the Coronavirus crisis. Therefore further information on [a revised commencement date] will be communicated when known'.

<sup>16</sup> Section 1 of the Equality Act 2010.

## 4. Protecting our fundamental rights and freedoms

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13. The Commission recognises the Government's current priority is keeping people safe and protecting our nation's future. Although emergency measures that restrict our rights and freedoms may be necessary, these must be proportionate and measured, rooted in human rights and equality standards, have clear review and end points, be flexible to specific needs, and be open to scrutiny and challenge.<sup>17</sup> The Government's response will be most effective if it is rooted in values of freedom and respect, using human rights and equality laws as a framework to guide its decision-making. **Government must ensure that any restrictions on people's rights and freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and properly scrutinised.**

### Data, scrutiny and monitoring

14. To ensure effective monitoring of the impacts of coronavirus and the emergency measures – particularly indirect effects – it is essential that good quality data disaggregated by different protected characteristics is available. The pandemic has shown that where there is a lack of protected characteristic data, for example ethnicity in mortality data, this can delay awareness of impacts for different groups.

15. Coronavirus and the associated social distancing measures are limiting many data gathering mechanisms. Face-to-face surveys are restricted and pressures on public bodies may delay publications, potentially limiting the available data on the pandemic in the medium term. There will be greater reliance on administrative data sources, which often do not use Government Statistical Service harmonised categories, or do not cover some protected characteristics. For example, sexual orientation and religion are commonly not included in administrative sources. **Government and public authorities responsible for data collection should assess, monitor and report on the impact, including the health and other effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.**

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<sup>17</sup> See Annex for a summary of the relevant human rights legal framework and how it provides effective and proportionate safeguards in the current crisis.

16. It is vital that Parliament is able to scrutinise the impact of the emergency legislation on equality and human rights.<sup>18</sup> We welcome existing provisions that facilitate this.<sup>19</sup> We agree with the Women and Equalities Committee that **Government should urgently publish the equalities assessment prepared to accompany the Coronavirus Act 2020.**<sup>20</sup> **Government should also ensure that statutory reports to Parliament required by the Coronavirus Act 2020 address the impact of the legislation on equality and human rights and reflect the views and experiences of groups sharing protected characteristics.** These reports should assess the use of emergency legislative powers<sup>21</sup> and monitor the protected characteristics of those affected.

### Supporting civil society

17. The pandemic and responses to it present particular challenges for equality and human rights at a time when many of the organisations which hold the Government to account and help people in vulnerable situations, such as Parliament, civil society, RIOs and the media, have reduced capacity.

18. We welcome the Government's pledge to provide £750m to the charity sector.<sup>22</sup> However, many services for protected characteristic groups are often provided by small organisations, with many facing severe financial difficulties and increased demand due to coronavirus. With the NCVO estimating charities stand to lose £4bn in twelve weeks,<sup>23</sup> we are concerned smaller charities providing vital services, including advice services, are ill-placed to weather the storm.<sup>24</sup>

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<sup>18</sup> EHRC (March 2020). '[Parliamentary Briefing on the Coronavirus Bill 2019-21 House of Commons and House of Lords \(all stages\)](#)' where the Commission raised concern about provision for effective parliamentary scrutiny of the impact of the Coronavirus Act 2020 during its swift passage through Parliament.

<sup>19</sup> Coronavirus Act 2020, Section 97-9, which require Government to report to Parliament every two months on the implementation of non-devolved provisions of the Act, as well as the requirement for a debate in the House of Commons on the continuing need for the legislation at 6-month review points and a "one-year status report" and debate in both houses.

<sup>20</sup> UK Parliament, Women and Equalities Committee (30 April 2020), [Covid-19: Committee calls on Govt to publish Equalities Assessment of Coronavirus Act](#).

<sup>21</sup> These powers, addressed in this submission, include: a) The use of offences under the Coronavirus Act 2020 and powers to direct, remove and detain potentially infectious people (see section 8 on police enforcement of restrictions); The implementation of changes to NHS and Local Authority Care and Support (see section 5 on health and social care); Powers to temporarily remove or relax the duty on local authorities to secure special educational and health provision in accordance with a child's Education and Health Care Plan (EHCP) (see section 9 on education); Changes to the operation of courts and tribunals provided under the Coronavirus Act 2020, including the use of video and audio technology (see section 8 on access to justice); Any changes to decision-making procedures under the Mental Health Act 2014 (see section 7 on treatment in institutions).

<sup>22</sup> UK Government (2020), '[News Story: Chancellor sets out extra £750 million coronavirus funding for frontline charities](#)' announcement published 8 April 2020

<sup>23</sup> National Council for Voluntary Organisations (2020), '[GOVERNMENT SUPPORT FOR CHARITIES – NCVO REACTION](#)' published 8 April 2020.

<sup>24</sup> We set out specific recommendations in this respect of specialist domestic abuse organisations under and on access to advice under section 8.

19. **Government must monitor support for civil society organisations and ensure they have the resources necessary to provide specialist services. It must ensure funding reaches smaller organisations on the frontline, especially those representing protected characteristic groups and those providing advice.**
20. **Government should take steps to increase the involvement of civil society organisations representing protected characteristic groups in policy-making related to the pandemic.**<sup>25</sup>

### Hostile environment

21. Coronavirus and the measures taken in response to it may impact particularly harshly on people from ethnic minority communities<sup>26</sup>, including those with insecure immigration status.<sup>27</sup> The recent Windrush lessons learned review demonstrated the need for public officials to understand the likely impact of immigration policies and practices on the people affected by them.<sup>28</sup> This is particularly important at the current time when reliance on essential public services such as health, social care and welfare support is heightened. The Home Office must pay particular attention to ensuring its response to the pandemic enables and supports people to access the services they need.
22. Fear of data-sharing for immigration enforcement is likely to deter migrants from accessing healthcare<sup>29</sup> and other essential public services, such as the police, posing risks to those individuals and to wider public health.<sup>30</sup> Our research showed that migrants, including those lawfully resident in the UK, were deterred from accessing treatment for communicable diseases and other healthcare services owing to fears that their immigration status would be reported to the

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<sup>25</sup> The active and informed participation of everyone in decisions that affect their lives and rights is consistent with the human rights-based approach in public decision-making processes, and ensures good governance and social accountability. See UN Committee on Rights of Persons with Disabilities (2018), '[General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention](#)'

<sup>26</sup>Zubaida Haque, Runnymede Trust (March 2020), '[Coronavirus will increase race inequalities](#)',

<sup>27</sup> Joint Council for the Welfare of Immigrants, '[Protecting migrants from Covid-19](#)'.

<sup>28</sup> Home Office (March 2020), '[The report of the Windrush lessons learned independent review by Wendy Williams](#)'

<sup>29</sup> Regulations came into force on 29 January 2020 to add Covid-19 to Schedule 1 of the NHS (Charges to Overseas Visitors) Regulations concerning infection diseases. This provides that there can be no charge made to an overseas visitor for the diagnosis, or, if positive, treatment, of Covid-19. Government guidance confirms patients that are known to be undergoing testing and treatment for Covid-19 only are not subject to Home Office status checks. See HM Government, (March 2020), '[NHS visitor and migrant cost recovery programme](#)' [accessed: 30 April 2020]

<sup>30</sup> There is evidence of widespread data-sharing between the Home Office and other agencies as part of compliant or hostile environment controls, including sharing of personal data when people access healthcare and education services, or report a crime to the police. See Liberty (2018), '[Care don't share](#)'

Home Office.<sup>31</sup> The World Health Organization (WHO) warns that such exclusionary policies towards migrants heighten the risk of infection.<sup>32</sup>

**Government should implement the recommendations of the Windrush review in full and take immediate steps to ensure that people with insecure immigration status are not prevented from accessing essential services, by ending data-sharing between the Home Office, police, education and healthcare services for the purposes of immigration enforcement. Government should also consider a public health campaign to reassure migrants that it is safe to access care.**

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<sup>31</sup> Equality and Human Rights Commission (2018), [‘The lived experiences of access to healthcare for people seeking and refused asylum.’](#)

<sup>32</sup> World Health Organization (2020), [‘Preparedness, prevention and control of coronavirus disease \(COVID-19\) for refugees and migrants in non-camp settings’](#), page 1.

## 5. Health and social care

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23. The current crisis is putting unprecedented pressure on the health and social care system. It is nonetheless essential that health and social care is provided in compliance with equality and human rights laws. The Government's obligations to protect the right to life,<sup>33</sup> freedom from inhuman and degrading treatment,<sup>34</sup> the right to physical and psychological integrity<sup>35</sup> and the right to health,<sup>36</sup> without discrimination,<sup>37</sup> are crucial in this context, alongside obligations to ensure the equality impacts of any measures introduced have been considered under the PSED.<sup>38</sup>
24. The current crisis and the Government's emergency response measures may put these rights at risk, including in the context of care planning and the prioritisation of health and social care.
25. Resource constraints, arising from the diversion of staff and funding to address the needs of those critically ill with COVID-19, disproportionately impacts access to healthcare for individuals sharing certain protected characteristics. The cancellation or postponement of routine treatment and procedures particularly affects those with health conditions other than COVID-19.<sup>39</sup> Trans people have seen surgeries and gender identity clinics cancelled,<sup>40</sup> and those already taking hormones may struggle to get prescriptions renewed.<sup>41</sup> Women's organisations

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<sup>33</sup> Article 2 of the European Convention on Human Rights ('ECHR'); Article 6 of the International Covenant on Civil and Political Rights ('ICCPR') and Article 10 of the UN Convention on the Rights of Persons with Disabilities ('CRPD').

<sup>34</sup> Article 3 ECHR; Article 7 ICCPR; Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment ('CAT').

<sup>35</sup> Article 8 ECHR.

<sup>36</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR').

<sup>37</sup> Article 2, 3 and 8 ECHR in conjunction with Article 14; Articles 2(1),6 and 7 ICCPR, and Human Rights Committee, [General Comment No. 36: right to life](#), para 61; Article 2(2) and 12 ICESCR. See also, Article 11 CRPD which makes clear that disabled people have the right to equal treatment in situations of risk.

<sup>38</sup> Section 149 Equality Act 2010. See further discussion of the PSED in section 3.

<sup>39</sup> For example, in conversations with EHRC in April 2020, disabled people's organisations have raised concerns around the cancellation of pain management appointments, which have a substantial impact on quality of life. See also The Independent (April 2020), ['Coronavirus: Cancer treatment cutbacks could lead to 60,000 premature deaths, oncologist warns'](#) which indicates cancer patients have also been impacted by cutbacks in treatment and support centres [accessed:30 April 2020]. See also The Guardian (March 2020), ['As the NHS pivots to coronavirus, what about its other patients?'](#).. See also, NHS England, (April 2020), [COVID-19 prioritisation within community health services](#)

<sup>40</sup> Pink News (March 2020), ['Trans people are seeing surgeries cancelled and healthcare deemed 'non-essential' during coronavirus'](#)

<sup>41</sup> Information received by EHRC from LGBT organisation, March 2020.



are concerned about the impact on women's access to contraception, abortion services, and antenatal,<sup>42</sup> perinatal and maternity services.<sup>43</sup>

26. The crisis is also having a 'profound' effect on mental health,<sup>44</sup> with Mind warning of a potential rise in self-harm and suicide as people struggle to access necessary support.<sup>45</sup> Particular concerns are the impact on children's mental health,<sup>46</sup> and on those who are at increased risk of severe illness from COVID-19 and have therefore been advised to follow more stringent social distancing measures. This includes older people, those with underlying health conditions and pregnant women.<sup>47</sup> Access to, and outcomes from, mental health services are likely to worsen during the crisis,<sup>48</sup> and NHS England is not taking appropriate action to address this.<sup>49</sup> As set out under Section 3, the Government and other public bodies must ensure that they comply with the Public Sector Equality Duty and incorporate human rights considerations into decision-making about health and social care.

### **Disproportionate impact of COVID-19 on health outcomes**

27. We are concerned by the apparent disproportionate impact of COVID-19 on health outcomes for certain groups. Early evidence suggests ethnic minorities,<sup>50</sup> men and older people<sup>51</sup> and those with underlying health conditions are dying at

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<sup>42</sup> In most hospitals and maternity units, there are now restrictions on visitors which might mean that birth partners or other supportive people are not able to attend routine antenatal appointments, or stay with women on antenatal or postnatal wards. See Royal College of Obstetricians & Gynaecologists (April 2020), [Coronavirus infection and pregnancy](#)

<sup>43</sup> Women's Budget Group (April 2020), [Crises Collide: Women and Covid-19](#); Birth Rights (March 2020), [Human Rights Charity Calls For Protection Of UK Women In Childbirth During National Emergency](#)

<sup>44</sup> Holmes, E. and others (April 2020), [Multidisciplinary research priorities for the COVID-19 pandemic: a call for action for mental health science](#), *Lancet Psychiatry*

<sup>45</sup> BBC News (April 2020), [Coronavirus: 'Profound' mental health impact prompts calls for urgent research](#)

<sup>46</sup> Dalton, E. and others (March 2020), [Protecting the psychological health of children through effective communication about COVID-19](#), *Lancet Child & Adolescent Health*.

<sup>47</sup> UK Government (March 2020), [Guidance on social distancing for everyone in the UK](#), updated 30 March 2020. For example, concerns have been raised about restrictions being age-related, rather than risk-related, and the impact on older people's mental health if an extended lockdown is imposed. See *The Guardian* (April 2020), ['Older people could face extended coronavirus lockdown, Lords hears'](#).

<sup>48</sup> Prior to the current crisis, we had already raised serious concerns about the lack of support for mental health. See EHRC (July 2019), [Our advice to parliament: reforming the Mental Health Act](#).

<sup>49</sup> Information received by EHRC, April 2020.

<sup>50</sup> See NHS England (26 April), ['COVID-19 Daily Deaths Publication'](#). Early analysis also points to an overrepresentation of ethnic minority health and care professionals among coronavirus fatalities. See NHS Confederation (April 2020), ['The impact of COVID-19 on BME communities and health and care staff'](#).

<sup>51</sup> ONS statistics from March 2020 show that men died at twice the rate of women in England and Wales and the rate of death due to COVID-19 increased significantly in each age group, with one in

disproportionate rates from COVID-19.<sup>52</sup> Some ethnic minority groups experience worse health outcomes<sup>53</sup> and are at heightened risk of serious symptoms of COVID-19.<sup>54</sup> We welcome the Public Health England review into the disproportionate impact on ethnic minorities.<sup>55</sup> We further recommend **Government should ensure collection and publication of disaggregated data on COVID-19 cases – including by sex, ethnicity, nationality and disability – in order to better understand the differential health impact of the virus, inform decision-making and assist compliance with the PSED.**

### **Advance care planning and prioritisation of access to treatment**

28. When accessing healthcare services, people have the right to be involved in decisions about their care and treatment.<sup>56</sup> Advance care planning enables the care and treatment preferences of an individual to be understood, considered and applied if they lose capacity.<sup>57</sup>
29. During the current crisis, charities and trade unions have reported that Do Not Attempt Resuscitation (DNAR) notices have been applied to the advance care plans of older or disabled people in care or residential homes without proper consultation.<sup>58</sup> Some health and care providers, including GP surgeries, have reportedly sent blanket communications to older and disabled patients asking them to consent to DNAR notices on the basis of pre-existing or non-pertinent health conditions.<sup>59</sup>
30. The Care Quality Commission (CQC), British Medical Association (BMA), Care Provider Alliance and Royal College of General Practitioners have jointly written to adult social care providers and GP practices in England to stress that advance

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five deaths in age group 80 to 84 years. See ONS (April 2020), '[Deaths involving COVID-19, England and Wales: deaths occurring in March 2020](#)'.

<sup>52</sup> Ibid. 91% of the deaths that occurred were individuals with at least one pre-existing condition.

<sup>53</sup> Some ethnic groups experience higher rates of heart disease and hypertension, and are six times more likely to develop diabetes. See Runnymede Trust (March 2020), '[Coronavirus will increase race inequalities](#)'

<sup>54</sup> Ibid. See also Guardian (April 2020), '[Coronavirus exposes how riddled Britain is with racial inequality](#)'.

<sup>55</sup> The Guardian (April 2020), '[Inquiry announced into disproportionate impact of coronavirus on BAME communities](#)'.

<sup>56</sup> Article 8 ECHR and Articles 3(a) and 4(3) CRPD provide a right to participate in decision-making and respect for individual autonomy. See also Department for Health and Social Care (October 2015), '[NHS constitution](#)'

<sup>57</sup> National Institute for Clinical Excellence: (2020), '[Guidance: advance care statements: a quick guide for registered managers of care homes and home care services](#)'

<sup>58</sup> The Guardian (April 2020), '[UK healthcare regulator resuscitation strategy unacceptable](#)'.

<sup>59</sup> BBC News (April 2020), '[Coronavirus: GP surgery apology over 'do not resuscitate' form](#)'; Age UK '[Response to DNR forms during Covid-19 crisis \(April 2020\)](#)' and CQC '[Joint statement on advance care planning \(April 2020\)](#)' [all accessed: 30 April 2020]

care planning should be carried out on an individual basis and should not 'be applied to groups of people of any description'.<sup>60</sup>

31. We understand that, in the event that demand for critical care outstrips supply, doctors will make incredibly difficult decisions about treatment prioritisation, but existing guidance is insufficient to avoid the risk of unlawful discrimination against older and disabled people.
32. Greater clarity is required that blanket policies, where prioritisation decisions are based solely on protected characteristics, such as age or disability, are directly discriminatory and not permitted.<sup>61</sup>
33. How decision-makers should prioritise treatment of patients with non-pertinent health conditions or impairments has caused confusion. Numerous disabled people's organisations have made clear that decisions to refuse access to care on the basis of clinically irrelevant health conditions or impairments are not permitted, nor should assumptions be made about the quality of life of disabled people.<sup>62</sup>
34. Guidance on prioritisation is likely to result in indirect discrimination against older and disabled people. For example, decision-making which is framed around a 'capacity to benefit quickly' assessment indirectly discriminates against disabled people with certain underlying health conditions.<sup>63</sup> UN experts emphasise that everyone has the right to life-saving treatment, and that scarcity of resources should never be used to justify discrimination against certain groups of patients except where all efforts to provide the necessary resources have failed.<sup>64</sup>

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<sup>60</sup> Care Quality Commission (CQC) (April 2020), [Joint statement on advance care planning](#).

<sup>61</sup> British Medical Association's ('BMA') (April 2020) '[Guidance COVID-19 – ethical issues](#)', which states that a 'simple 'cut-off' policy with regard to age or disability would be unlawful as it would constitute direct discrimination'. Civil society organisations working with older people have highlighted the need for individualised decision-making, and cautioned against age being used as a proxy for health status. See Age UK and others (March 2020), [Joint statement on the rights of older people in the UK to treatment during this pandemic](#).

<sup>62</sup> Disability Rights UK and others (April 2020), [Covid 19 and the rights of disabled people – statement supported by disabled people's organisations and allies](#)

<sup>63</sup> British Medical Association's ('BMA') (April 2020) '[Guidance COVID-19 – ethical issues](#)', page 6, which states that 'during the peak of the pandemic, it is possible that doctors will be required to assess a person's eligibility for treatment based on a 'capacity to benefit quickly' basis'. This would disproportionately disadvantage older people and disabled people with certain underlying health conditions, who would have unequal access to critical care, even when they are assessed as likely to respond well to treatment. This requires careful justification, and we are concerned that this may not take place in busy clinical settings. See also EHRC (April 2020), [Coronavirus pandemic: a letter to the British Medical Association](#).

<sup>64</sup> Office of the High Commissioner for Human Rights (March 2020), [No exceptions with COVID-19: "Everyone has the right to life-saving interventions" – UN experts say](#). Under international human rights law, a lack of available resources is not an objective and justifiable reason for differential treatment in the enjoyment of economic and social rights, unless every effort has been made to use

35. This is a fast-changing landscape, and updated guidance has addressed some of these concerns;<sup>65</sup> however, a lack of consistency in the guidance remains.<sup>66</sup> Disability campaigners have sought to take legal action to challenge the Secretary of State and NHS England's failure to publish a national policy and framework for treatment prioritisation.<sup>67</sup>
36. **Government should work with the Care Quality Commission (CQC), NHS England, Public Health England, the National Institute for Health and Care Excellence (NICE) and professional bodies to:**
- a. **ensure all policy decisions about care and treatment for COVID-19 are made in collaboration and consultation with disabled and older people and their representative organisations, underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.**
  - b. **agree national clinical and ethical guidance on provision of treatment, to ensure that decision-making is transparent, consistent, and underpinned by equality and human rights principles.**<sup>68</sup>

#### **Easement of social care duties**

37. Prior to the outbreak of coronavirus, adult social care was already at crisis point across in England due to substantial reductions in Government funding to local

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all resources at the state's disposition to address and eliminate the discrimination. See Committee on Economic, Social and Cultural Rights (2009), [General Comment No. 20: Non-discrimination](#).

<sup>65</sup> See, for example, the National Institute for Health and Care Excellence ('NICE'), '[NICE COVID-19 rapid guideline on critical care](#)' which was amended on 27 March 2020 to address concerns that the guidance put individuals with non-pertinent health conditions or impairments at a disadvantage. The amendments clarified that an individualised assessment of frailty should be conducted for people with learning disabilities, autism and other stable long-term disabilities, instead of applying the Clinical Frailty Scale.

<sup>66</sup> Financial Times report (2020) '[NHS COVID-19 Decision Support Tool](#)', which was recently published. This is inconsistent with the updated NICE guidelines. See, NICE (March 2020), '[NICE COVID-19 rapid guideline on critical care](#)'. See also The Independent (April 2020), '[New Covid-19 'Decision Support Tool' developed to help doctors decide who to send to intensive care](#)'.

<sup>67</sup> Disability campaigners have taken legal action to challenge the Secretary of State and/or NHS England's failure to publish guidance on how doctors will decide which patients receive life-saving treatment during the pandemic, in the event that the number of patients needing treatment outstrips supply. See Rook Irwin Sweeney (April 2020), '[Disability campaigners challenge failure to explain how life-saving treatment for coronavirus \(COVID-19\) will be prioritised](#)'.

<sup>68</sup> In particular, the rights to equality and non-discrimination, including in the enjoyment of the rights to life and health; and the principles of individual autonomy and participation in decision-making (see references above)

authorities since 2010-11, combined with growth in the adult population.<sup>69</sup> Consequently, only those with severe needs were receiving support.<sup>70</sup>

38. The Coronavirus Act 2020 has the potential to worsen this situation by allowing local authorities in England to suspend their duties to meet eligible care and support needs, review care plans, and carry out financial assessments, while also relaxing the requirement to carry out assessments of individuals' needs.<sup>71</sup> By the Government's own reckoning, if triggered, these clauses could result in individuals not receiving support for some needs.<sup>72</sup>

39. Several local authorities in England have already triggered the easements.<sup>73</sup> Since these are required to meet an individual's care needs where a failure to do so would breach their human rights,<sup>74</sup> **Government should ensure effective, ongoing scrutiny and oversight of local authorities to ensure they do not introduce easements to social care duties unless strictly necessary and to ensure their decision-making complies with human rights obligations.**

40. Social care easement is set to disproportionately affect disabled adults, those with long-term health conditions and older people with care needs, who are at risk of having their essential needs neglected, such as access to food and water, medicines, clothing, hygiene and exercise, with immediate and long-term implications for well-being.<sup>75</sup> It is also likely to result in an increase in unpaid, informal care, with the burden of providing such care falling disproportionately on women.<sup>76</sup> **Local authorities should ensure that decisions on how to allocate**

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<sup>69</sup> CQC (2018), [The state of health care and adult social care in England 2017/18](#), pages 20-21; The Health Foundation (2019), [£4.4bn funding gap projected for social care in England as spending per person falls further behind other UK countries](#). See also, Women's Budget Group (April 2020), [Briefing from the UK Women's Budget Group: Social care and Covid-19](#); Carers UK (April 2020), [Carers UK responds to new guidelines on Care Act easements](#).

<sup>70</sup> Age UK (November 2019), [The number of older people with some unmet need for care now stands at 1.5 million](#); The King's Fund (April 2019), [More people asking for social care support but fewer getting it as demand leaves social care system at crisis point](#).

<sup>71</sup> The Coronavirus Act 2020 replace the previous duty on local authorities in England to assess and meet a person's needs for care and support (as provided for by the Care Act 2014) with a power to do so, thereby downgrading the level of care to which an individual is entitled. See [Coronavirus Act 2020](#), Clause 15 and Schedule 12, and [Coronavirus Bill Explanatory Notes](#), paras 232-237.

<sup>72</sup> Department of Health & Social Care (March 2020), [Corona Virus Bill Summary of Impacts](#), para 99.

<sup>73</sup> As at 23 April 2020, it was reported that eight English local authorities had introduced easements to the Care Act 2014. See The Law Society Gazette (April 2020), [Coronavirus Act: Councils move to ditch social care duties](#) [accessed: 23 April 2020].

<sup>74</sup> In England, amendments to the previous duty on local authorities to assess and meet a person's needs for care and support are underpinned by an explicit continued duty to meet needs where failure to do so would result in a breach of the ECHR. See [Coronavirus Act 2020](#), Schedule 12, para 4.

<sup>75</sup> Cumiskey, L. (2020), [Coronavirus Bill: Disabled people in Islington fear they'll be 'thrown under the bus' if Care Act suspended](#); Pring, J. (2020), [Coronavirus: Disabled people say 'shocking' new laws will strip away rights](#), Disability News Service; Jayanetti, C. (2020), [Warning raised over Coronavirus bill impact on elderly and disabled](#); Inclusion London (March 2020), [Coronavirus Bill could leave thousands of Disabled people without support](#) [all accessed: 30 April 2020].

<sup>76</sup> Women's Budget Group (April 2020), [Social care and Covid-19](#).

**resources for social care are compliant with the Equality Act 2010<sup>77</sup> and human rights obligations.<sup>78</sup>**

41. In England, suspension of the duty to assess a child's needs for care and support risks disproportionately affecting disabled young people and those with long-term health conditions.<sup>79</sup> Suspension of the duty to assess carers' needs, including young carers,<sup>80</sup> is also concerning, given the increased strain carers are likely to face. These provisions may not be compatible with the Equality Act or the Government's human rights obligations.<sup>81</sup>
42. Continued underfunding of the social care sector has led the United Kingdom Homecare Association to warn that many UK home care providers might have to shut, due to financial pressures resulting from the coronavirus outbreak, including the growing price of Personal Protection Equipment (PPE). If this happens, disabled people, individuals with long-term health conditions and older people with care needs face their social care being curtailed. **Government should consider all possible means to maintain social care provision at the level available prior to the outbreak of the pandemic.**

### Care homes

43. Significant gaps in the monitoring and oversight of the prevalence of COVID-19 in care homes exist. The CQC did not require home providers to indicate whether a death was COVID-19 related until 9 April 2020 and so the number of deaths in residential and nursing homes may have been significantly understated in national statistics presented by the Government.<sup>82</sup> Based on an independent benchmarking of its members, the National Care Forum has estimated that more than 4,000 people may have died of COVID-19 within UK residential and nursing

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<sup>77</sup> The Government's guidance for local authorities on Care Act easements stipulates that duties imposed under the Equality Act 2010 remain, and that these should underpin any decisions made with regard to care and support someone receives during this period. See Department of Health & Social Care (April 2020), [Care Act easements: guidance for local authorities](#).

<sup>78</sup> Including the right to life (Article 2 ECHR; Article 6 ICCPR); right to family and private life (Article 8, ECHR; Article 17, ICCPR); right to adequate standard of living (Article 11, International Covenant on Economic, Social and Cultural Rights (ICESCR)); right to independent living (Article 19, CRPD); and freedom from inhuman and degrading treatment (Article 3, ECHR; Article 7, ICCPR; Article 16, CAT). In England, the Coronavirus Act 2020 stipulates a continued duty to meet needs where failure to do so would result in a breach of the European Convention on Human Rights. See: Coronavirus Act 2020, Schedule 12.

<sup>79</sup> In England, the Coronavirus Act 2020 suspends the duty to assess a child's needs for care and support when transitioning from child to adult care, or to continue provision of child care support until such an assessment has been completed. See Schedule 12, paras. 2(3)(a) and 15 Coronavirus Act 2020.

<sup>80</sup> Schedule 12, para 2 Coronavirus Act 2020.

<sup>81</sup> Including under Articles 3, 8 and 14 ECHR.

<sup>82</sup> The Guardian (April 2020), [UK care home inspectors did not ask about Covid-19 deaths until April](#)

services prior to 13 April 2020.<sup>83</sup> The latest ONS statistics for the week ending 17 April 2020 show that the number of deaths in care homes was 7,316, almost double the figure from two weeks previously.<sup>84</sup> There are also serious concerns around the lack of virus testing<sup>85</sup> and PPE for care workers (see below), which puts disabled and older people at heightened risk of exposure to COVID-19, and reports of individuals in care homes being told they cannot go to hospital.<sup>86</sup>

44. We welcome the fact that, from 28 April 2020, ONS will publish the number of deaths involving COVID-19 in care homes, based on care home operators' reports to CQC. **Government must work with the CQC to ensure effective and ongoing monitoring and oversight of COVID-19 cases and deaths in care homes, as well as ensuring urgent access to testing and healthcare for care workers and residents.**

### **PPE shortages**

45. The Government has been criticised over PPE shortages for those working in health and social care, and community health services.<sup>87</sup> This puts workers at considerable risk and is inconsistent with the Government's human rights obligations to protect the rights to life<sup>88</sup> and health,<sup>89</sup> and to provide safe and healthy working conditions.<sup>90</sup> It particularly affects women and ethnic minorities, who are disproportionately represented among health and social care workers.<sup>91</sup> One-size-fits-all PPE also puts certain groups, particularly female workers, at

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<sup>83</sup> National Care Forum (April 2020), [Ring of Steel Needed to Support Care Homes as Deaths Double in a Week](#)

<sup>84</sup> The number of overall deaths in care homes for Week 16 was 7,316. This is 2,389 higher than Week 15, almost double the number in Week 14 and almost triple the number in Week 13. See ONS (29 April 2020), [Deaths registered weekly in England and Wales, provisional: week ending 17 April 2020](#)

<sup>85</sup> On 26 April 2020, the BBC reported that out of 210 care providers spoken to by BBC England, 159 stated that none of their workers had been tested for Covid-19. See BBC (April 2020), [Coronavirus: Care home staff struggling to get tests](#). On 28 April, the Government announced that testing for all asymptomatic NHS and social care staff and care home residents would be rolled out. See HM Government (28 April 2020), [Press Release: Further expansion of access to coronavirus testing helps protect the most vulnerable](#)

<sup>86</sup> Alzheimer's Society, Age UK, Care England and Independent Age, Marie Curie (April 2020), [Joint letter to the Secretary of State for Health and Social Care](#); Age UK (April 2020), [Government must act now to avert disaster in our care homes](#)

<sup>87</sup> See, for example: British Medical Association, ['Doctors still without adequate supplies of PPE, major BMA survey finds'](#), 18 April 2020 [accessed: 20 April 2020]; The Guardian, ['Residential homes 'desperate' for PPE, as two care workers die'](#), 6 April 2020 [accessed: 20 April 2020].

<sup>88</sup> Article 2 ECHR; Article 6 ICCPR.

<sup>89</sup> Article 12 ICESCR.

<sup>90</sup> Article 7(b) ICESCR.

<sup>91</sup> According to the Women's Budget Group, 77% of healthcare staff are women; 83% of those working in social care are women, and around 21% are ethnic minorities. See Women's Budget Group (April 2020), [Crises Collide: Women and Covid-19](#)

heightened risk.<sup>92</sup> The lack of PPE for carers also raises concerns that older and disabled people will be at an increased risk of infection.<sup>93</sup> **Government must urgently act to protect the rights of health and social care workers at potential risk of contracting COVID-19 by providing adequate PPE, which is fit for different groups of workers such as women and ethnic minorities, who are over-represented within the health and social care workforce.**

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<sup>92</sup> The Independent (April 2020), [Female NHS staff at risk due to not being able to 'access protective gear correctly sized for women](#). See also British Medical Association (April 2020), [BAME doctors hit worse by lack of PPE](#), which highlights the need to ensure effective PPE to meet different needs, including for Sikh and Muslim doctors who wear beards for religious reasons.

<sup>93</sup> Research Institute for Disabled Consumers (April 2020), [Covid-19: Impact on disabled and older people survey](#); Women's Budget Group (April 2020), [Social care and Covid-19](#).



## 6. Work and income

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46. All workplaces and employees will be affected by coronavirus. However, this crisis is clearly gendered in nature. While noting that men comprise the majority of critical care cases, the Women's Budget Group has highlighted how women are disproportionately affected, for example through comprising the majority of health and care workers and of low paid workers.<sup>94</sup> Younger and older workers, ethnic minority employees, and disabled people, also face disproportionate disadvantage and discrimination due to coronavirus, in terms of their current roles and longer-term participation in the labour market.

47. While Government and employers have taken some positive steps, further immediate and longer-term action is required in order to ensure that the Government upholds its obligations under the Equality Act and international human rights treaties to which it is committed.<sup>95</sup>

### Pregnancy and maternity

48. Pregnant women should not be disadvantaged financially, or in their careers, by following advice to protect the health of themselves and their families. This is particularly important given the Government's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>96</sup> to eliminate discrimination against women in the field of employment.

49. The Government currently advises pregnant employees to practice social distancing in case they are at a particular risk during the coronavirus pandemic.<sup>97</sup> We are aware of concerns relating to pregnant workers and those on maternity leave,<sup>98</sup> which has been compounded by vague or inconsistent advice from Government and certain health sector representative bodies. These include:

- a. Being forced to take unpaid leave, start maternity leave early, or being placed on sick leave, rather than furloughed.

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<sup>94</sup> Women's Budget Group (April 2020), [Crises Collide: Women and Covid-19](#)

<sup>95</sup> We will also be making a submission to the Business, Energy and Industrial Strategy Committee Inquiry into the impact of the coronavirus on businesses and workers, which will provide more detailed analysis on the future challenges facing Britain's labour market. For the purposes of this submission, we focus on the most urgent, immediate threats to equality.

<sup>96</sup> [Article 11 of the Convention on the Elimination of Discrimination against Women \('CEDAW'\)](#) which sets out the State's obligation to eliminate discrimination against women in the field of employment, including their obligation to prevent discrimination against women on the grounds of marriage or maternity.

<sup>97</sup> Public Health England (March 2020), '[Guidance on social distancing for everyone in the UK](#)'

<sup>98</sup> Maternity Action (April 2020), '[Our letter to Dominic Raab MP on the health & safety of pregnant employees and financial support for working parents 21 April 2020](#)'.

- b. Being refused furlough despite male colleagues being placed on the Coronavirus Job Retention Scheme, because they have childcare responsibilities and are not deemed to be working.<sup>99</sup>
- c. Being forced to work without proper health and safety risk assessments.
- d. Facing financial penalties due to salary calculations for furlough support schemes, which are based on an employee's actual salary at 28 February 2020. This disadvantages parents who have just returned from maternity or paternity leave, especially women who may be returning from a period of unpaid maternity leave.

**50. The Department for Business, Energy and Industrial Strategy (BEIS) should:**

- a. **Introduce the right to request furlough and part-time furlough and take steps to promote this widely to all employers and employees.**
- b. **Make clear to employers that if they cannot ensure the health and safety of pregnant employees by making workplace adjustments, pregnant employees should be placed on full paid leave.**
- c. **Remind employers of their obligations under equality law in relation to unlawful pregnancy and maternity discrimination.**

51. There are clear signs that Britain is entering a period of recession. Our analysis of the previous recession showed that women with childcare responsibilities were at a greater disadvantage than either men or other women in continuous employment.<sup>100</sup> The Commission's research into pregnancy and maternity discrimination also found that one in 20 pregnant workers or those on, or recently returning from, maternity leave experienced redundancy.<sup>101</sup> **BEIS should implement as a matter of urgency its earlier commitment to extend pregnancy and maternity redundancy protections by a further six months so that women with childcare responsibilities are not placed at a disadvantage.**

**The impact on gig economy workers, employees in low-paid industries, and the self employed**

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<sup>99</sup> Working Families (2020), [Weathering the storm: the Covid 19 pandemic and working parents](#).

<sup>100</sup> T. Hogarth et al, EHRC (2009), ['The Equality Impacts of the Current Recession'](#).

<sup>101</sup> EHRC and Department for Business, Innovation and Skills (2016), ['Pregnancy and maternity related discrimination: experiences of mothers'](#)

52. We welcome the financial measures the Government has put in place for many employees and employers; however, there has been confusion over eligibility for self-employed<sup>102</sup> and gig economy workers. This unprecedented situation has revealed the lack of basic employment rights such as sick pay that mean many gig economy workers have no choice but to continue working. This type of work is predominantly low-paid and precarious, with an overrepresentation of young workers<sup>103</sup> and ethnic minorities.<sup>104</sup> **Government should consider taking steps to mitigate the financial hardship faced by gig economy workers by providing the same financial support available to other employees.**
53. Concerns have also been raised about the lack of support available to the self-employed, where certain ethnic groups, particularly Pakistani men, and Gypsy, Irish and Traveller groups, are concentrated.<sup>105</sup> Low-paid work also has an overrepresentation of women, and disabled people who often fail to meet the earnings threshold for either Statutory Sick Pay (SSP) or the Coronavirus Job Retention Scheme (CJRS). **Government should remove the earning thresholds for SSP and the CJRS, and increase SSP to National Minimum Wage levels to help to reduce the financial disadvantage experienced by pregnant and disabled workers.**

## Social security

54. We recognise the unprecedented scale of the challenge the Government faces in responding to an influx of new Universal Credit claims.<sup>106</sup> We welcome the additional support and easements that the Government has provided, such as increasing the Universal Credit work allowance by around £1,000 per year from April 2020.<sup>107</sup> However, it is unclear whether the social security safety net is sufficiently supportive, responsive and humane to ensure an adequate standard of living for the large number of people who are now dependent on it. We have long voiced concerns about the disproportionate negative impact on groups that already face higher levels of inequalities, such as disabled people, lone parent families and some ethnic minority groups.<sup>108</sup>

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<sup>102</sup> Self-employed women working full-time earn on average 66% of the annual earnings of self-employed men who do so. See Department for Work and Pensions (2018), '[Family Resources Survey 2017-18](#)'.

<sup>103</sup> Department for Business, Innovation and Skills (2018), '[The characteristics of those in the gig economy](#)'.

<sup>104</sup> Analysis from the Women's Budget Group states that BME women are three times more likely to be in precarious work and are therefore unlikely to qualify for either SSP or furlough. See Women's Budget Group (April 2020), '[Crises Collide: Women and Covid-19](#)'.

<sup>105</sup> Zubaida Haque, Runnymede Trust (March 2020), '[Coronavirus will increase race inequalities](#)'.

<sup>106</sup> Sky News (14 April 2020), '[Coronavirus: Another 200k sign on for Universal Credit - taking total to 1.4 million](#)'.

<sup>107</sup> HM Government (20 March 2020), '[Chancellor announces workers' support package](#)'.

<sup>108</sup> EHRC (2018) '[The cumulative impact of tax and welfare reforms](#)'.

55. We are particularly concerned about new Universal Credit claimants who have to wait five weeks before they receive their first payment, placing many in financial difficulty and having to rely on food banks.<sup>109</sup> The five-week wait has been a longstanding issue of concern, despite the availability of advance payments which are provided as loans, as it has been shown to contribute to child poverty.<sup>110</sup> **We recommend that the Department for Work and Pensions takes all reasonable steps to reduce the five week wait for a first Universal Credit payment, to support the right to an adequate standard of living for claimants who have lost their income during the pandemic.**

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<sup>109</sup> Food bank managers report that administrative delays to benefits lead to food bank use. See Trussell Trust (2016), '[Mapping Hunger: New Technology to Help Tackle UK Poverty](#)'

<sup>110</sup> Child Poverty Action Group (June 2019), '[Universal Credit: what needs to change to reduce child poverty?](#)'

## 7. Treatment in institutions

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### Detention under the Mental Health Act

56. The Coronavirus Act 2020 includes provisions that would relax crucial safeguards under the Mental Health Act in England and Wales.<sup>111</sup> This includes reducing the number of doctors needed to approve detention, extending or removing time limits and reducing oversight for forced treatment.<sup>112</sup>
57. These provisions could exacerbate existing problems in the use of the Mental Health Act (which the Government has previously recognised and committed to reform)<sup>113</sup> and lead to inappropriate and prolonged detentions of disabled people. This could particularly affect Black men, who are already subject to higher rates of detention.<sup>114</sup> Moreover, more people with learning disabilities and/or autism, especially children with special educational needs and disabilities, could be admitted to inpatient units and held in restrictive settings.<sup>115</sup> Reduced independent monitoring<sup>116</sup> and restrictions on family visits heighten these risks.<sup>117</sup>
- 58. The Department for Health and Social Care should not implement emergency provisions relating to the Mental Health Act unless strictly necessary and only for as long as is essential. Use of these powers must be recorded and monitored to ensure they are proportionate, including the justification for use and data on protected characteristics.**
59. Changes to mental health tribunals in response to the pandemic are already in force in England and Wales, and could make it significantly harder for people to challenge their detention and treatment.<sup>118</sup> Fewer tribunal panel members are

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<sup>111</sup> [Coronavirus Act 2020, Schedule 8, Part 2](#).

<sup>112</sup> Rethink (2020), [Coronavirus: temporary changes to the Mental Health Act](#); Royal College of Psychiatrists (2020), [Legal matters - COVID-19 guidance for clinicians](#).

<sup>113</sup> UK Government (2019), [Queen's Speech December 2019: background briefing notes](#).

<sup>114</sup> Department for Health and Social Care (2018), [Modernising the Mental Health Act – final report from the Independent Review](#).

<sup>115</sup> These children are no longer receiving support normally provided in schools or community services. See National Preventive Mechanism (2020), [Letter to UK Secretary of State for Justice Robert Buckland QC MP](#). See also Joint Committee on Human Rights (2019), [The detention of young people with learning disabilities and/or autism](#); and EHRC (2020), [Health Secretary faces legal challenge for failing patients with learning disabilities and autism](#).

<sup>116</sup> The Care Quality Commission in England and the Healthcare Inspectorate Wales paused routine inspections from 16 and 17 March respectively. See Care Quality Commission (2020), [CQC to stop routine inspections to focus on supporting providers to deliver safe care during COVID-19 pandemic](#); Healthcare Inspectorate Wales (2020), [Healthcare Inspectorate Wales statement on Coronavirus \(COVID-19\)](#).

<sup>117</sup> INQUEST (2020), [INQUEST briefing on COVID-19: protecting people in places of custody and detention](#).

<sup>118</sup> Courts and Tribunal Judiciary (2020), [Pilot practice direction: health, education and social care chamber of the first-tier tribunal \(mental health\)](#); [Coronavirus Act 2020 \(Commencement no. 1\)](#)

needed to make a decision,<sup>119</sup> pre-hearing assessments are waived, and decisions can sometimes be made without a hearing.<sup>120</sup> **The Department for Health and Social Care should monitor the temporary changes to mental health tribunal rules, and ensure tribunals are recording the justification for use and data on location and protected characteristics.**

## Prisons and youth custody

60. Prison conditions significantly increase the risks associated with coronavirus, particularly poor sanitation, overcrowding and limited access to healthcare.<sup>121</sup> A quarter of the adult prison population and more than half of all children in prison are from ethnic minorities.<sup>122</sup> This suggests that any outbreak of COVID-19 in prisons could disproportionately affect them, especially if they have potentially worse health outcomes.<sup>123</sup> Some disabled people are also likely to be over-represented in prisons, with evidence of high rates of mental health conditions, neuro-diverse conditions and cognitive impairments.<sup>124</sup>

61. Older people and pregnant women in prisons are also at higher risk of harm from COVID-19. More than 5,000 prisoners are aged 60 or over.<sup>125</sup> 60 women who were pregnant or had young babies were accommodated in mother and baby units in prisons in the year to March 2018.<sup>126</sup> As at 27 April, only 33 people had been released under the Government's early release programs.<sup>127</sup>

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[\(Wales\) Regulations 2020](#); Mental Health Review Tribunal for Wales (2020), [Practice direction COVID-19](#).

<sup>119</sup> A judge acting alone can now make a decision in mental health tribunals in England and Wales. However, in England there is provision for a judge acting alone to receive advice from a doctor or lay member before or during the tribunal. There is no equivalent provision explicitly set out in Wales.

<sup>120</sup> Paper hearings are now allowed in certain contexts in England and Wales. In England, but not in Wales, the consent of all parties is required before a decision can be made in these cases.

<sup>121</sup> National Preventive Mechanism (2020), [Letter to UK Secretary of State for Justice Robert Buckland QC MP](#); WHO Europe (2020). [Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance, 15 March 2020](#). See also Equality and Human Rights Commission (2019), [Torture in the UK: update report](#). At 14 April, cases of Covid-19 have been reported in more than half of prisons in England and Wales, and 13 prisoner deaths are believed to be related to the virus, see BBC (April 2020) [Coronavirus: HMP Wymott prisoners transferred due to outbreak](#).

<sup>122</sup> Ministry of Justice (2019), [Statistics on race and the criminal justice system 2018](#). Two fifths (40 per cent) of prisoners aged under 18 were Black or Mixed ethnicity, despite these ethnic groups accounting for less than one fifth (17 per cent) of the entire prison population.

<sup>123</sup> BBC (2020), [Are ethnic minorities being hit hardest by coronavirus?](#)

<sup>124</sup> Health and Social Care Committee (2018), [Prison health, twelfth report of session 2017-19](#).

<sup>125</sup>

More than 1,800 are aged over 70. The Centre for Crime and Justice Studies (2020), [Coronavirus and the ageing prison population](#). Figures are as at 31 December 2019.

<sup>126</sup> HMPPS (2020), [Annual digest 2018/19](#).

<sup>127</sup> HC Deb 27 April 2020 vol 675 c92.

62. **The Ministry of Justice must expedite appropriate releases from prisons and youth custody, prioritising those at heightened risk of harm, including children, older people and women who are pregnant or have new babies. It should publish regular updates on the number and protected characteristics of those released and the number of cases and deaths related to COVID-19 in these settings.**
63. Restricted regimes may disproportionately affect people with protected characteristics who remain in custody. Many prisoners are reportedly in effective solitary confinement with poor cell sanitation and without activity or other interventions.<sup>128</sup> Visits from family members and solicitors have been suspended, and access to phone calls may be limited.<sup>129</sup> Restricted regimes could negatively affect children's mental health and increase levels of violence and self-harm.<sup>130</sup> The risk of violence, exacerbated by significant staff shortages, may result in increased use of restraint, which disproportionately affects people from ethnic minorities in both the adult and youth estates.<sup>131</sup>
64. Restrictions on movement and fear of transmission may exacerbate existing problems for people released from custody in securing safe and suitable accommodation, and benefits and services for mental health, addiction and domestic abuse. This raises particular concerns for children and young people, as well as women, who are more likely to be released into homelessness.<sup>132</sup>

### **Immigration detention**

65. Our evidence to the Home Affairs Select Committee outlines the significant risks to people held in immigration removal centres, which share many of the features of prisons.<sup>133</sup> Failures to identify vulnerability may lead to continued use of immigration detention for people with certain protected characteristics who are at heightened risk of harm. **The Home Office should continue to release people held in immigration removal centres and avoid further detentions wherever possible, particularly for those at heightened risk of harm, including people with underlying health conditions, older people, pregnant women, and people with mental health conditions.**

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<sup>128</sup> Prison Reform Trust and the Howard League for Penal Reform (2020), [Covid19: the need for immediate further early release of prisoners](#).

<sup>129</sup> Ibid.

<sup>130</sup> Children's Commissioner (March 2020), [Calling on the Lord Chancellor and Secretary of State for Justice to ensure the rights of children in custody are upheld during the coronavirus outbreak](#)

<sup>131</sup> EHRC (2019), [Torture in the UK: update report](#).

<sup>132</sup> HC Deb, 5 June 2019, cW.

<sup>133</sup> EHRC (2020), [Written evidence to the Home Affairs Select Committee on Home's Office preparedness for Covid-19 \(Coronavirus\)](#).

## 8. Access to justice

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66. Police forces and the justice system are facing unprecedented strain, while some crimes that disproportionately impact certain protected characteristic groups (particularly violence in the home) are reportedly increasing.<sup>134</sup>

### Video and phone hearings

67. The use of video and audio hearings across courts and tribunals has rapidly expanded since the outbreak of coronavirus and the passage of the Coronavirus Act 2020.<sup>135</sup> We welcome the Ministry of Justice's efforts to keep the justice system operating and avoid lengthy delays in proceedings. However, we have concerns about the implications of the increasing use of video and telephone hearings for effective participation and equal access to justice, and the lack of effective impact evaluation.

68. Interim findings from our inquiry into access to justice for disabled people in the criminal justice system<sup>136</sup> found that the use of phone and video hearings can significantly impede communication and understanding for disabled people with certain impairments, such as learning disability, autism spectrum disorders and mental health conditions, who are over-represented in the criminal justice system.<sup>137</sup> Other barriers include the absence of processes to identify, record and share information about impairments and the lack of adjustments (such as registered intermediaries) to ensure that disabled people accused of crime can understand and effectively participate in legal proceedings against them.

69. The impact of remote hearings on justice outcomes has not been fully evaluated and their implications are not fully understood. There may be unintended equality implications associated with video hearings given the disproportionate representation of people sharing particular protected characteristics in the criminal justice system.<sup>138</sup>

70. The Ministry of Justice has found that defendants appearing over video were less likely to be represented and more likely to plead guilty and to receive custodial

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<sup>134</sup> The Home Affairs Committee reported increased reporting of domestic abuse with calls to the National Domestic Abuse helpline increased 49% to the three weeks to 15<sup>th</sup> April. See the Home Affairs Select Committee (24 April 2020), '[Home Office preparedness for Covid-19 \(Coronavirus\): domestic abuse and risks of harm within the home](#)', Second Report of Session 2019 -21

<sup>135</sup> Coronavirus Act 2020, Sections 53-57 [Courts and tribunals: use of video and audio technology](#).

<sup>136</sup> EHRC (April 2020), '[Inclusive justice: a system designed for all](#)'. Whilst the findings relate to defendants in criminal hearings, they should provide a helpful insight into the impact on participation for parties to other proceedings.

<sup>137</sup> See, for example, JUSTICE (2017), '[Mental health and fair trial](#)'. JUSTICE has made the case for accurate reporting by police and courts on the number of people identified as having a vulnerability in the criminal justice system.

<sup>138</sup> See, for example, The Lammy Review (2017) '[An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System](#)'



sentences.<sup>139</sup> Early anecdotal reports indicate challenges to participation and fair hearings in criminal courts<sup>140</sup>, the family court<sup>141</sup> and the Court of Protection since the expansion of remote hearings.<sup>142</sup> Remote hearings could also undermine the principle of open justice owing to restrictions on access at the current time,<sup>143</sup> while the current suspension of jury trials may risk incentivising defendants on remand to enter guilty pleas.<sup>144</sup>

71. We recommend that the **Ministry of Justice, judiciary and other frontline professionals should consider the evidence from our inquiry report on the use of video-links in the criminal justice system as the use of video and telephone hearings expands.**

72. **Guidance on video and telephone hearings across all courts and tribunals should refer to the need to consider and make adjustments for disabled people<sup>145</sup> and the effect of this guidance should be kept under review.** HM Courts and Tribunal Service (HMCTS) guidance acknowledges that the current expansion of telephone and video hearings across courts and tribunals would ordinarily involve ‘extensive testing, training and slow roll-out’.<sup>146</sup> **The Ministry of Justice should take urgent steps to capture data on the experiences of court users and outcomes of cases across courts and tribunals, disaggregated by case type and protected characteristic, to inform any required changes to the use of remote hearings.**

### **Access to legal advice and information, and legal aid**

73. While many advice services have moved to operating online, digital exclusion may affect the ability of some older and disabled people<sup>147</sup> to access this advice. Telephone advice may also be available, but our inquiry into civil legal aid for discrimination cases showed the real difficulties that many people, particularly disabled people, faced in accessing telephone advice.<sup>148</sup>

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<sup>139</sup> Ministry of Justice (2010), ‘[Virtual courts pilot: outcome evaluation report](#)’

<sup>140</sup> Transform Justice (April 2020), [Is closed justice a price worth paying to keep courts running?](#)

<sup>141</sup> See Jack Harrison, Transparency Project (23 April 2020), [P \(A Child: Remote Hearing\) \(Rev 3\) \[2020\] EWFC 32: When is remote justice not justice?](#). See also Mr Justice MacDonald (16 April 2020), [The Remote Access Family Court](#), Version 4.

<sup>142</sup> Legal Futures, [Daughter in CoP case questions “second-rate” Skype justice](#), 1 April 2020 [accessed 24 April 2020].

<sup>143</sup> Legal Education Foundation (March 2020), [Coronavirus Bill, Courts and the Rule of Law](#).

<sup>144</sup> Transform Justice (April 2020), [Trial by Skype – uncharted waters](#)

<sup>145</sup> In line with the provisions of the Equal Treatment Bench Book. See Courts and Tribunal Judiciary (March 2020), [Equal Treatment Bench Book](#)’.

<sup>146</sup> HM Courts and Tribunal Service (March 2020), [Guidance: HMCTS telephone and video hearings during coronavirus outbreak](#) [accessed 25 April 2020].

<sup>147</sup> EHRC (2018), [Is Britain Fairer? 2018](#) and [Is Britain Fairer? 2018: supporting data](#). This showed that in 2017 1 in 5 disabled people and just under half of those over 75 had never used the internet.

<sup>148</sup> EHRC (June 2019), [Access to Legal Aid for Discrimination Cases](#).

74. As set out in section 4, many smaller charities providing services for protected characteristic groups, including advice services, may struggle to meet increasing demand. The legal aid sector is also facing difficulties. Access to free legal representation for those who cannot afford to pay for it themselves is crucial for people to assert their rights, including the right to non-discrimination.

75. We welcome the Government's announced expansion of the evidence requirements needed to qualify for legal aid for domestic abuse victims in response to the coronavirus pandemic.<sup>149</sup> We also welcome the initial Government support measures for the legal aid sector<sup>150</sup> but this must be kept under review as the crisis unfolds to ensure the survival of the legal aid sector.

76. Our legal aid inquiry found that victims of discrimination are not getting the help they need to enforce their rights in the courts.<sup>151</sup> Government has addressed some but not all of our recommendations from this inquiry. **The Ministry of Justice should address all outstanding recommendations from our inquiry into legal aid for discrimination cases and consider what further support measures are necessary to ensure the legal aid sector can survive the coronavirus crisis.**

77. Increased barriers to accessing legal advice and information, including for discrimination claims, during the pandemic may lead to delays in lodging claims. The judiciary may exercise their discretion to permit claims made out of time for COVID-19 related reasons, but this does not provide certainty for people with potential claims who are unable to access advice or help. We welcome new Practice Direction 51ZA<sup>152</sup> which makes provision for parties to certain civil proceedings to agree extensions of time to comply with procedural time limits in the Civil Procedure Rules, Practice Directions and court orders, and provides guidance to the court when considering applications for extensions of time and adjournments. **Government should ensure the impact of Practice Direction 51ZA is kept under review; and judicial guidance should be strengthened to support discretionary decisions to extend time limits beyond the statutory limits.**

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<sup>149</sup> Ministry of Justice (April 2020) [Vulnerable groups set to benefit from improved legal aid support.](#)

<sup>150</sup> Ministry of Justice (April 2020) [Support package for legal providers will ensure access to justice during coronavirus outbreak.](#)

<sup>151</sup> EHRC (June 2019), [Access to Legal Aid for Discrimination Cases.](#)

<sup>152</sup> Courts and Tribunal Judiciary (2 April 2020), Practice Direction Update on Civil Procedure Rules, ['51ZA Extension of Time Limits and Clarification of PD51Y'](#). This applies to procedural time limits in county courts, High Court and Court of Appeal.

78. The time limits for bringing claims under the Equality Act 2010<sup>153</sup> may prevent some people with protected characteristics from getting access to justice in the current circumstances.<sup>154</sup> **Government should legislate to extend the time limits in Employment Tribunals for bringing claims under the Equality Act 2010 to six months, to help alleviate any barriers to accessing justice and ensure that people who have experienced discrimination can get an effective remedy. In addition, the discretion to extend time limits on a just and equitable basis should be extended to include equal pay claims.**

## Violence against women and girls

79. Increased risk of violence against women and girls is a predictable major 'secondary' impact of the coronavirus pandemic. Evidence suggests that domestic abuse is increasing during the crisis, with large increases in calls to helplines<sup>155</sup> and reports that domestic homicides have 'more than doubled'.<sup>156</sup> These are gender-based crimes that disproportionately affect women,<sup>157</sup> and we know that ethnic minority and disabled women are at greater risk.<sup>158</sup> Children are also seriously impacted by witnessing domestic abuse, which is the most common factor amongst children considered to be 'in need' of support from local authority children's social care.<sup>159</sup>

80. The Government has positive obligations under international and domestic human rights law to prevent, and protect women from, gender-based violence, and to prosecute offenders, especially where there is a predictable increased risk to women and children.<sup>160</sup> Obligations under the UN Convention on All Forms of

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<sup>153</sup> Six months for bringing non-employment claims (Section 118 of the Equality Act 2010) and three months for both employment claims (Section 123 of the Act) and judicial review (See Ministry of Justice (2020), [Civil Procedure Rules, Part 54, Judicial Review and Statutory Review](#))

<sup>154</sup> The Presidents of the Employment Tribunals have already recognised that 'the pandemic may have an impact on when and how individuals can take legal advice about claims', acknowledging it 'has no power to change those time limits' and that this is a decision for Parliament. See Tribunals Judiciary (2020), [The Employment Tribunals in England and Wales and in Scotland, FAQs arising from the Covid-19 pandemic](#), question 18

<sup>155</sup> (see footnote 57)

<sup>156</sup> The Guardian (15 April 2020), '[Domestic abuse killings 'more than double' amid Covid-19 lockdown](#)',

<sup>157</sup> Women are around twice as likely as men to experience domestic violence, and men are far more likely to be perpetrators. See Office for National Statistics (2017), '[Domestic Abuse in England and Wales](#)', 2017. See also Crown Prosecution Service (2017) '[Violence against women and girls report, 10th edition](#)'

<sup>158</sup> EHRC (2018), '[Is Britain Fairer? 2018](#)', page 141. See also ONS (2019), '[Crime Survey England and Wales 2019](#)'

<sup>159</sup> Barnardo's (February 2020), '[Not just collateral damage: The hidden impact of domestic abuse on children](#)', page 9.

<sup>160</sup> Under domestic law (the European Convention on Human Rights ('ECHR'), given domestic effect by the Human Rights Act 1998), the government has relevant obligations under Article 2 (right to life), Article 3 (the prohibition on torture), Article 8 (the right to respect for private and family life) and Article 14 (the right to non-discrimination). The ECHR imposes positive obligations on the Government to protect individuals against abuse or harm caused by other individuals. Under article 2 ECHR, the

Discrimination Against Women (CEDAW) also require Government to place particular emphasis on those who are most marginalised, including women who are migrants, refugees, seeking asylum or stateless.<sup>161</sup> Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a State’s “failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.”<sup>162</sup>

**81. Government should ensure that addressing the increase in violence against women and girls is integral in the response to coronavirus, and that the duty to prevent and protect is built into planning at all levels.**<sup>163</sup>

### **Domestic abuse support services**

82. There is a serious lack of funding and shortage of services for domestic abuse survivors, including for survivors with no recourse to public funds.<sup>164</sup> Funding cuts have disproportionately affected organisations run by and for disabled and ethnic minority women,<sup>165</sup> even though some ethnic minority groups and disabled people are more likely to suffer sexual violence and domestic abuse<sup>166</sup> and there is a stark lack of service provision for disabled women.<sup>167</sup>

83. The UK Government’s announcement of £750 million for charities, including domestic abuse charities, and £2 million for domestic abuse helplines and online

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Government has positive obligations, in appropriate circumstances, to take preventative measures to protect an individual whose life is at risk from the criminal acts of another individual. There is an equivalent positive obligation to take preventative measures to protect an individual from inhuman and degrading treatment under article 3. Further, under article 8 the Government has a duty to protect the physical and psychological integrity of an individual against harm that might be caused by other individuals. See also, UN Committee on the Elimination of Discrimination against Women (2010), [General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention](#), para 19.

<sup>161</sup> UN Committee on the Elimination of Discrimination against Women (2010), [General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention](#), para 26.

<sup>162</sup> *Opuz v Turkey* (2009), Application no. 33401/02, para 186-191.

<sup>163</sup> In this respect, we welcome the Home Affairs Select Committee recommendation that a co-ordinated cross-government action plan on domestic abuse should be “integrated into the wider Government planning through the emergency COBR committee.” See Home Affairs Select Committee (24 April 2020), [‘Home Office preparedness for Covid-19 \(Coronavirus\): domestic abuse and risks of harm within the home’](#) Recommendation 5, page 27.

<sup>164</sup> EHRC (2020), [‘Briefing: Domestic Abuse Bill, House of Commons, Second Reading’](#).

<sup>165</sup> See, for example, APPG on Domestic and Sexual Violence, Women’s Aid, Rape Crisis England & Wales (2015) [‘The Changing Landscape of Domestic and Sexual Violence Services: APPG on Domestic and Sexual Violence Inquiry’](#). See also Imkaan (2019) [‘From Survival to Sustainability’](#).

<sup>166</sup> EHRC (2018), [‘Is Britain Fairer? 2018’](#), page 141. See also ONS (2019), [‘Crime Survey England and Wales 2019’](#)

<sup>167</sup> Women’s Aid has reported that during 2018-19 only 0.9% of refuge vacancies were in rooms fully accessible for wheelchairs and only a further 1.0% were suitable for someone with limited mobility. See Women’s Aid (2020) [‘The Domestic Abuse Report 2020: The Annual Audit’](#)

support services is welcome.<sup>168</sup> However, it is unclear what proportion of the £750 million will be allocated to domestic abuse charities, or how the funds will be distributed. We are concerned funding may not reach smaller organisations providing life-saving services to survivors of violence against women and girls, particularly those organisations led by and for ethnic minority, disabled and LGBT women.<sup>169</sup>

**84. Government should urgently provide unrestricted and ring-fenced funding to cover the additional costs to domestic abuse charities resulting from coronavirus (both now and to respond to a likely spike in demand when emergency measures are eased), ensuring this funding is available to smaller organisations, including those led ‘by and for’ ethnic minority, disabled and LGBT women.<sup>170</sup>**

85. Migrant survivors, especially those with insecure immigration status and no recourse to public funds (NRPF), face particular barriers to accessing support,<sup>171</sup> including being unable to access key support services such as refuges, and are not entitled to other welfare benefits. **The Government must ensure that migrant survivors of domestic abuse with no recourse to public funds NRPF can access equal protection and support (including refuge accommodation). This should include extending the route to secure immigration status to all domestic abuse survivors with NRPF,<sup>172</sup> and**

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<sup>168</sup> Home Office (April 2020), [‘News Story: Home Secretary announces support for domestic abuse victims’](#). The Ministry of Justice has also announced £600,000 for helplines for victims and witnesses, see Ministry of Justice (April 2020) [Funding boost for remote victim services](#).

Additionally, Welsh Government have announced an additional £200,000 funding to help refuges source furnishings and white goods to respond to the crisis, whilst the annual Violence Against Women, Domestic Abuse and Sexual Violence capital grant will prioritise projects that respond to the immediate crisis. See Welsh Government (April 2020) [Welsh Government supports survivors of domestic abuse during coronavirus](#). The Scottish Government has granted £1.576 million to Scottish Women’s Aid and Rape Crisis Scotland. See Scottish Government (March 2020) [Support for victims of domestic violence during COVID-19 outbreak](#).

<sup>169</sup> See, for example, Consortium for Stronger LGBT+ Communities (April 2020), [Covid-19 Insight Report](#) which found that 78% of its members are ‘micro’ organisations with an annual income of between £0 and £50,000, and are very ill-placed to weather the storm

<sup>170</sup> We welcome the Home Affairs Select Committee’s recommendation on ensuring sufficient funding for domestic abuse organisations, and particularly that “Government funding for support services and refuge accommodation must include specialist provision and must ensure that BME services can continue and expand to meet any increased need”. See [Home Office preparedness for Covid-19 \(Coronavirus\): domestic abuse and risks of harm within the home](#), 24 April 2020, Recommendation 19 p.29.

<sup>171</sup> Bates, L., Gangoli, G., Hester, M. and Justice Project Team (2018), [Policy Evidence Summary 1: Migrant Women](#), University of Bristol, Bristol. See also End Violence Against Women (2018), [‘Women living in a hostile environment - Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill’](#).

<sup>172</sup> The Commission has recommended that barriers to protection and support faced by survivors with insecure immigration status could be reduced by extending eligibility to apply under the Domestic Violence (DV) Rule and Destitution Domestic Violence Concession (DDVC) to all migrants experiencing or at risk of abuse. See, EHRC (2020), [Briefing: Domestic Abuse Bill, House of Commons, Second Reading](#).

**prohibiting the sharing of survivors' personal data for the purposes of immigration enforcement if collected when accessing assistance or support for domestic abuse.**<sup>173</sup>

### **Policing violence against women and girls (VAWG)**

86. Prior to the pandemic, there were already significant concerns about the low rates of prosecution of crimes of rape and sexual offences, linked to significant delays to the progress of these offences through the criminal justice system.<sup>174</sup> With all new jury trials currently suspended, delays may now increase further. **Government should work with the National Police Chiefs' Council (NPCC) and police forces to ensure that crimes of VAWG continue to be addressed as high priorities. Police and Crime Commissioners and Chief Constables should give public assurances of this at a local level.**

### **Police enforcement of restrictions**

87. Regulations introduced in response to the pandemic have given police<sup>175</sup> across the UK unprecedented powers to intervene in the lives of the public, including by dispersing gatherings and fining people who leave their homes without a 'reasonable excuse'.<sup>176</sup> We recognise these powers are key to slowing the spread of coronavirus and protecting the right to life. However, their use may have a disproportionately negative impact on groups with particular protected characteristics, as well as people who have less opportunity to access outside space, which may align with socio-economic factors.<sup>177</sup>

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<sup>173</sup> This is in addition to our recommendation under section 4 for a general prohibition on data-sharing between the Home Office, police, education, and healthcare services for the purposes of immigration enforcement. We welcome the Home Affairs Select Committee's recommendation that domestic abuse survivors with no recourse to public funds be entitled to access state support during the coronavirus crisis, regardless of their immigration status. See Home Affairs Select Committee (24 April 2020), [Home Office preparedness for Covid-19 \(Coronavirus\): domestic abuse and risks of harm within the home](#), Recommendation 20, p.29.

<sup>174</sup> Claire Waxman, Independent Victims' Commissioner for London (2019), [The London Rape Review: Reflections and recommendations](#) (2019); HMCPSI (2019) [2019 Rape Inspection: thematic review of rape cases by HM Crown Prosecution Service Inspectorate](#), p.16.

<sup>175</sup> The regulations provide police officers, PCSOs and others if designated with a range of enforcement powers. See House of Commons Library (17 April 2020), ['Coronavirus: Policing the instruction to stay at home'](#), p. 4.

<sup>176</sup> Regulations 6 to 9, [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); regulations 5 to 9, [The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); regulations 8 and 12, [The Health Protection \(Coronavirus\) \(Wales\) Regulations 2020](#).

<sup>177</sup> Blackall, M., The Guardian (23 April 2020), ['Lockdown UK: "There now two classes, people with gardens and the rest of us"'](#)

88. Some ethnic minority groups are at risk of disproportionate enforcement of the new powers given that they are already subject to stop and search and police use of weapons at a far higher rate than White people.<sup>178</sup>

89. Before recent changes in Government guidance in England,<sup>179</sup> people with specific health needs were disproportionately impacted by guidance limiting the number of times people are expressly permitted to leave the house to exercise to once a day. This was having a negative impact on people with autism or learning disabilities, who may require specific exercise outside more than once a day.<sup>180</sup>

90. To ensure the exercise of powers under the Coronavirus Act 2020 and enforcement of restrictions under the coronavirus regulations effectively balances the safeguarding of public health and people's rights, we recommend that the **Home Office should work with the National Police Chiefs' Council, College of Policing, Association of Police and Crime Commissioners and police forces in England and Wales to:**

- a. **Ensure that police officers are properly informed about the limits of the new powers and restrictions, including the obligation to use or enforce them in a proportionate, non-discriminatory manner.**
- b. **Consult with diverse communities to better understand particular needs, including around police community relations, and ensure that the use and enforcement of new powers does not have a disproportionate impact on particular groups;** police forces should record data and report on the number of fines issued, including a breakdown by protected characteristic under the Equality Act.
- c. **Establish a mechanism for independent oversight of police use of new emergency powers in England and Wales to monitor compliance with equality and human rights obligations, similar to that established by Police Scotland.**<sup>181</sup>

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<sup>178</sup> UK Government (March 2020), [Stop and Search](#); Busby, M., The Guardian (17 April 2020), '[Rights groups quit police body over stun gun use against BAME people](#)'.

<sup>179</sup> Unlike the Welsh regulations, the English and Scottish regulations do not specify a limit on the number of times a person will have a 'reasonable excuse' to go out to exercise. Recent guidance from the National Police Chiefs' Council and College of Policing has specified that in England exercising more than once per day is 'likely to be reasonable'. See National Police Chiefs' Council and College of Policing (April 2020), '[What constitutes a reasonable excuse to leave the place where you live](#)'.

<sup>180</sup> Cabinet Office (March 2020), '[Coronavirus outbreak FAQs: what you can and can't do](#)', paragraph 1 specifies that people should only leave the house for one form of exercise a day. Following legal action this was updated to include paragraph 15, which specifies that people with specific health conditions requiring them to leave the house more than once a day may do so. See Bindmans (April 2020), '[Government guidance changed to permit people with specific health needs to exercise outside more than once a day and to travel to so where necessary](#)'.

<sup>181</sup> In Scotland, Chief Constable Iain Livingstone has commissioned John Scott QC to lead a review of how Police Scotland officers and staff are applying emergency powers provided for by coronavirus

## Hate crime

91. There have been reports of racist incidents and racially-aggravated offences targeting people perceived to be Chinese or East Asian, and incidents of violence and abuse against LGBT people in connection with the pandemic.<sup>182</sup> This comes when levels of hate crime are rising, with more than 100,000 such crimes recorded by police in 2018/19.<sup>183</sup> There are reports of materials shared online falsely suggesting that Muslim communities are not following social distancing measures,<sup>184</sup> and various forms of antisemitism connected to the pandemic including the hacking of virtual synagogue services.<sup>185</sup> Online harms not directly linked to the pandemic may also increase as people spend longer periods at home and online.<sup>186</sup>
92. It is unclear whether police contingency plans during the pandemic explicitly prioritise hate crime. The Association of Police and Crime Commissioners has urged the Government to confirm publicly that police forces will continue to investigate hate crimes and incidents, and that victims should continue to report.<sup>187</sup> This is particularly important as charities who provide third-party reporting and support services are likely to have reduced capacity, and victims may be hesitant to draw on police resources. **The National Police Chiefs' Council, with the support of the Home Office, should make clear that preventing and responding to hate crime remains a priority. The Home Office should ensure that sufficient support is available to victims, including by providing sufficient funding for third-party reporting and other support services.**

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legislation. See Law Society of Scotland (14 April 2020), '[John Scott QC to oversee police use of emergency powers](#)'.

<sup>182</sup> The Guardian (February 2020), [Chinese in UK report 'shocking' levels of racism after coronavirus outbreak](#); BBC News (April 2020), [Coronavirus: arrests over 'disgusting' racist Covid-19 stickers](#); Crown Prosecution Service (March 2020), '[News story: Man jailed for coronavirus-related hate crime](#)'. See also Galop (2020), Covid-19 and anti-LGBT+ hate crime (unpublished), notes that LGBT people have been falsely linked to the spread of the virus and that there is evidence of an escalation in hate crime towards LGBT people from neighbours.

<sup>183</sup> Home Office (2019), [Hate crime, England and Wales 2018/19](#).

<sup>184</sup> See, for example, Tell MAMA, [Shropshire Police debunk malicious tweet about a mosque 'ignoring' the coronavirus lockdown](#), 20 March 2020.

<sup>185</sup> Community Security Trust (2020), [Briefing: coronavirus and the plague of antisemitism](#).

<sup>186</sup> For information on the prevalence of online harms, see, for example, Department for Health and Social Care (2020), [Online harms white paper](#).

<sup>187</sup> Association of Police and Crime Commissioners, [Evidence to the Home Affairs Select Committee on Home Office preparedness for Covid-19 \(Coronavirus\)](#), April 2020.



## 9. Education

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93. This section considers the impacts of the Government's response to the pandemic on children and young people with certain protected characteristics in education, particularly the decision to close schools at a time when children's services are under unprecedented pressure.

### **Children with special educational needs and disabilities (SEND)**

94. Disproportionate impact of school closures on children with special educational needs and disabilities (SEND). We support the case-by-case risk assessment which local authorities are required to undertake to determine whether pupils on an Education, Health and Care Plan (EHCP) should attend school or stay at home – as long as this process reflects the wishes of pupils and their families.<sup>188</sup>

95. Although children with EHCPs who stay at home are entitled to receive appropriate support,<sup>189</sup> anecdotal evidence suggests that children with substantial needs are now at home without support.<sup>190</sup> **Part of the Government's pandemic grant to local authorities should be ring-fenced to ensure that children with special educational needs and disabilities (SEND) who stay at home receive the support they need, including specialist equipment, training materials and social care.**

96. The Alliance for Inclusive Education (ALLFIE) is concerned that the Government's guidance permits the transfer of children from mainstream to special schools in order to manage shortages of specialist staff. This may raise long-term risks for the right of disabled children to be educated in mainstream schools.<sup>191</sup> **Government should require local authorities to publish a re-integration policy for any children moved from mainstream education to special schools during the pandemic.**

97. The Government's decision to issue a notice temporarily modifying the duty on local authorities and health commissioning bodies to secure special educational and health provision in accordance with a child's EHCP is a concern.<sup>192</sup>

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<sup>188</sup> UN Convention on the Rights of the Child ('UNCRC'), Articles 3 and 12 and UNCRC, General comment No. 14 (2013) on the right of the child to have their best interests taken as a primary consideration (art. 3, para. 1) establish a right for children to be heard in the determination of their best interests

<sup>189</sup> UK Government (April 2020), [Guidance: Coronavirus \(COVID-19\): SEND risk assessment guidance](#).

<sup>190</sup> Challenging Behaviour Foundation (updated 20 March 2020), [Information Sheet: Coronavirus and the Law](#).

<sup>191</sup> ALLFIE Briefing (March 2020), [Coronavirus Bill Debate 23 March 2020](#)

<sup>192</sup> UK Government (30 April 2020), [Decision: Modification notice: EHC plans legislation changes](#). The order modifying this duty was issued alongside a new regulation modifying the time limits for undertaking certain processes relating to children with special educational needs and disabilities,

**Following modification of the duties to secure provision set out in EHCPs, Government must provide effective oversight of the ‘reasonable endeavours’ adopted by local authorities and health bodies to discharge these duties in order to ensure that decision-making complies with equality and human rights obligations.<sup>193</sup>**

### **Risk that the shift to online learning will exacerbate existing inequalities**

98. Up to one million pupils from lower socio-economic backgrounds are estimated to lack adequate access to computers or the internet. This is likely to significantly affect their ability to access education while schools are closed.<sup>194</sup> These effects will be more pronounced for children from migrant backgrounds and for Gypsy, Roma and Traveller pupils, whose parents often face language or literacy barriers.<sup>195</sup>

99. The Department for Education announced that it would give free laptops and internet access to disadvantaged Year 10 pupils,<sup>196</sup> as well as those receiving support from a social worker and care leavers.<sup>197</sup>

100. This announcement is welcome, but we are concerned that the scheme has narrow eligibility criteria. **The Department for Education should seek to ensure that the provision of digital devices and internet access is available**

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principally those relating to the Education, Health and Care needs assessments and plans. See [‘The Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) 2020’](#). Under the Coronavirus Act 2020, the Secretary of State has powers to downgrade the duty on local authorities to deliver the support listed in an EHCP from a legal obligation to a ‘reasonable endeavours’ duty. Coronavirus Act 2020, s38 and Schedule 17, Part 1, para 5.

<sup>193</sup> The Coronavirus Act 2020 provides that an order temporarily relaxing or removing the duties of local authorities in relation to EHCPs can only be issued when ‘strictly necessary’ and for the shortest possible amount of time, but there is no requirement for the Secretary of State to disclose his reasons for issuing an order.

<sup>194</sup> Institute for Public Policy Research (March 2020), [Children of the Pandemic: Policies needed to support children during the Covid-19 crisis](#).

<sup>195</sup> Traveller Movement (April 2020), [Open letter to the Department for Education](#)

<sup>196</sup> This followed a legal challenge citing breaches of the right to education and discrimination on grounds of sex and race. See Richard Adams, The Guardian (6 April 2020), [UK councils face lawsuits over access to education in lockdown London](#). A pre-action protocol issued by the Good Law Project notes that the effect of digital exclusion will be felt more by children in lone parent families which are mainly comprised of lone parent mothers, and by children from certain ethnic minority groups, given their disproportionate representation among socio-economically deprived households. See Simpson Millar LLP (17 April 2020), [Letter to the Secretary of State for Education](#), Judicial Review – Pre-action Protocol.

<sup>197</sup> UK Government (April 2020), [Guidance: Get help with technology for remote education during coronavirus \(COVID-19\)](#). The guidance indicates that pupils aged 16 to 19 without a suitable device for education may be eligible for support through the 16 to 19 Bursary Fund. The eligibility criteria for accessing a bursary are restricted to 16-19 year olds who are in receipt of benefits or income support in their own name.

**to children of all ages who do not have adequate access to computers or the internet, including those in primary education.<sup>198</sup>**

### **Concerns about discrimination in approaches to grading**

101. Concerns have been raised about the decision to replace exams with predicted grades, in view of evidence that suggests there may be patterns of conscious or unconscious bias when teachers predict grades, with particular implications for Black and Gypsy, Roma and Traveller pupils, and children with SEND.<sup>199</sup>

102. We welcome Ofqual's decision to publish a consultation on the exceptional arrangements for awarding exam grades this year. This will include a statistical standardisation process to address inconsistencies in the grade predictions made by individual schools, and proposals to address any that may arise due to conscious or unconscious bias.<sup>200</sup> To ensure that this process is effective:

- a. Government should issue guidance on the approach that teachers should take to predicting grades and ranking pupils, to minimise the risk of conscious or unconscious bias. Schools should be required to provide exam boards and Ofqual with data on the socio-economic background and protected characteristics of the assessed pupils, including by ethnic group.**
- b. Ofqual should require exam boards to use this data to support the statistical standardisation process and should then publish a report evaluating this. It should also investigate any higher than average disparities for pupils sharing particular protected characteristics revealed by the report.**
- c. Government should ensure that pupils are able to appeal their grades, including on grounds of suspected unlawful discrimination.**

### **Increased vulnerability of children eligible for free school meals**

103. School closures have placed children eligible for free school meals (FSM) at increased risk of going hungry.<sup>201</sup> The Government's introduction of a national

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<sup>198</sup> Similar issues concerning digital exclusion in Higher Education have been raised by the National Union of Students. See NUS (April 2020), ['National approach needed to exams, assessment and 'no detriment'](#).<sup>199</sup> Runnymede Trust (5 April 2020), [Open Letter: Predicted Grades and BME students](#).

<sup>199</sup> Runnymede Trust (5 April 2020), [Open Letter: Predicted Grades and BME students](#).

<sup>200</sup> Ofqual (15 April 2020), [Open consultation: Exceptional arrangements for exam grading and assessment in 2020](#).

<sup>201</sup> Sally Weale and Jessica Murray, The Guardian (9 April 2020), ['UK's poorest families suffering as free school meal vouchers delayed'](#).

voucher scheme to make sure all eligible children can benefit from FSM<sup>202</sup> has been marred by administrative difficulties.<sup>203</sup>

104. With disabled children<sup>204</sup> and children from certain ethnic minorities<sup>205</sup> disproportionately represented among those eligible for FSM, the failure to deliver food to the families concerned could breach the Equality Act and potentially violate the Government's international obligation to provide an adequate standard of living, including for children. **Government should urgently address any remaining administrative difficulties associated with the national voucher scheme and consider introducing an option for families to receive cash payments rather than vouchers.**

### Concerns about the safeguarding gap created by school closures

105. School closures may weaken the safeguarding role of schools in respect of children at risk of abuse and neglect, including those who experience domestic abuse at home.<sup>206</sup> Although government guidance specifies that schools should remain open for children identified as 'vulnerable', the uptake of school places by 'vulnerable' children has been low.<sup>207</sup> This situation is compounded in England by reduced children's social care services due to social distancing measures and regulatory changes that have weakened the duties of local authorities toward children in care.<sup>208</sup>
106. The increased risk of exposure of children to online abuse and grooming due to the shift to remote learning raises additional safeguarding challenges for

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<sup>202</sup> UK Government (20 April 2020), [Guidance: Coronavirus \(COVID-19\): free school meals guidance for schools](#). The Government has described the voucher scheme as a 'back up' where schools cannot continue to provide FSM through current providers. See, Freddie Whittaker, Schools Week (22 April 2020) 'Coronavirus: Schools can feed pupils without 'evidence' of universal credit claim, says minister'.

<sup>203</sup> Judith Burns, BBC News (21 April 2020), [Schools give emergency food to families with nothing to eat](#).

<sup>204</sup> UK Government (24 April 2020), [Special education needs in England: January 2019](#), national tables (table 5).

<sup>205</sup> UK Government (24 April 2020), [Key stage 4 performance 2019 \(revised\), national characteristics tables \(table CH2\)](#).

<sup>206</sup> The Government's announcement of £3.1 million for specialist services for children affected by domestic abuse is welcome. See Home Office (April 2020), [Further support for children affected by domestic abuse](#).

<sup>207</sup> Jason Farrell, Sky News (21 April 2020), [Coronavirus: Fears for vulnerable children as thousands miss first day of new school term](#). Early data shows that uptake by 'children in need' or with an EHCP is as low as 5%. See Department for Education (21 April 2020), [Coronavirus \(COVID-19\) attendance in education and early years settings – summary of returns](#).

<sup>208</sup> The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 came into force on 24 April 2020, temporarily removing a number of legal protections for children in care, including an entitlement to receive visits from social workers on a 6-weekly basis. See Article 39 (23 April 2020), [Ministers use COVID-19 to destroy children's safeguards](#).

schools,<sup>209</sup> particularly where platforms have reduced human moderation owing to self-isolation.<sup>210</sup>

107. Disabled children are likely to be particularly affected by these developments, because it is harder for them to report abuse and receive support.<sup>211</sup> **Government should reinstate the legal protections that have been removed for children in care and allocate additional, ring-fenced funding to local authorities to ensure increased access to support services for children at risk of harm while schools are closed.**

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<sup>209</sup> BBC News (27 March 2020), [Coronavirus: Online child abuse warning during lockdown](#).

<sup>210</sup> Home Affairs Committee (15 April 2020), '[Home Office preparedness for COVID-19 \(Coronavirus\) – Summary](#)'.

<sup>211</sup> Childline has reported an unprecedented spike in demand for their services since the outbreak of COVID-19, with a 13% rise from young people who are disabled or have special educational needs. See NSPCC (27 March 2020), '[Hundreds of children counselled over impact of coronavirus \(COVID-19\) outbreak](#)'.

## 10. Transport

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108. Coronavirus and the response to it has significantly affected the transport industry, including through a dramatic drop in passenger numbers.<sup>212</sup> Many transport operators are now at risk of serious financial difficulty, and the Government has announced targeted measures to help support the rail<sup>213</sup> and bus industries.<sup>214</sup> Staff shortages, lack of staff training and awareness, as well as reductions and changes in scheduled bus and train services associated with the pandemic, have particularly affected disabled passengers who may rely on public transport.

109. The Coronavirus Act 2020 did not change the law in terms of accessible travel.<sup>215</sup> The Government has written to the Rail Delivery Group (RDG)<sup>216</sup> emphasising that, 'rail must, irrespective of the circumstances, always be accessible for all.'<sup>217</sup> However, disabled passengers have experienced a lack of accurate and accessible information about the operation of services, uncertainties about the availability of passenger assistance, and reduced travel options compared to non-disabled people.

### Accurate and accessible information

110. Early data suggests that disabled rail passengers have found it harder than non-disabled passengers to find accurate and accessible information about which services are running.<sup>218</sup>

111. Disabled rail passengers require accessible information on the provision of passenger assistance. The RDG has issued guidance on how train operating companies can continue to meet their legal obligations regarding assistance, while ensuring passenger and staff safety.<sup>219</sup> **Government should advise transport**

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<sup>212</sup> Domestic rail passenger journeys are down 95% compared with the equivalent week in 2019. On buses and coaches, excluding London, bus passengers are down 88%, within London they are down 80%. See evidence from Chris Heaton-Harris MP to the Transport Select Committee (7 April 2020), ['Oral evidence: Coronavirus: implications for transport, HC 268'](#)

<sup>213</sup> Department for Transport (23 March 2020), ['Written statement to Parliament: Rail emergency measures during the COVID-19 pandemic'](#)

<sup>214</sup> Department for Transport (3 April 2020), ['News story: Almost £400 million to keep England's buses running'](#)

<sup>215</sup> The Equality Act 2010, the international human rights framework, in particular the UN Convention on the Rights of Persons with Disabilities, the relevant EU legislation and rail companies' Accessible Travel Policies remain fully in force.

<sup>216</sup> The Rail Delivery Group is a membership organisation that brings together all the passenger and freight rail companies in the UK into a single representative body.

<sup>217</sup> Department for Transport (8 April 2020), ['Letter from the Rail Minister to the Rail Delivery Group on maintaining accessibility during the COVID-19 outbreak'](#)

<sup>218</sup> Transport Focus (April 2020), ['Coronavirus travel survey'](#)

<sup>219</sup> Guidance shared confidentially to the Equality and Human Rights Commission by the Department for Transport.

**operators to provide accessible information on the operation of services. Where possible, operators should seek to involve disabled passengers in decisions regarding changes to scheduled services during the pandemic.**

### **Concessionary travel**

112. Many disabled passengers and their families are likely to face particular financial hardship during this period, and measures to support them with their costs of essential travel may be needed to address this.<sup>220</sup> **Government should look to support disabled passengers with their essential travel costs during the pandemic where possible. This could include increasing the discount offered by the Disabled Persons Railcard, or allowing a carer travelling with a disabled person to travel for free.**

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<sup>220</sup> Those living in a family with a disabled member are more likely to be on low income than non-disabled families. See Department for Work and Pensions (March 2020), [Households Below Average Income](#), page 11.

## 11. Living standards

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113. Under international human rights law, everyone has the right to an adequate standard of living, including adequate food and housing;<sup>221</sup> this right must be guaranteed without discrimination, including on grounds of disability, age, sex, ethnicity and socio-economic status.<sup>222</sup> The current crisis has increased existing inequalities in living standards, raising concerns that the UK is not meeting its international obligations to ensure equal access to adequate food and housing.

### Access to food

114. The coronavirus crisis is exacerbating levels of food insecurity: the number of food insecure adults in Great Britain is estimated to have quadrupled since social distancing measures commenced, with 1.5 million people having gone a day without eating.<sup>223</sup> Children, disabled people, older people and ethnic minority groups are particularly disadvantaged.<sup>224</sup> Disabled and older people, and those with health conditions, are already at heightened risk of food insecurity, with social distancing measures creating new challenges.<sup>225</sup> Thousands of disabled people who need to self-isolate or face challenges in complying with social distancing guidelines (because, for example, they are blind or visually impaired) struggle to buy food;<sup>226</sup> difficulties in securing online delivery timeslots, and a lack of accessible services in supermarkets, have been reported.<sup>227</sup>

115. We welcome the UK Government's emergency delivery scheme for those in England considered to be at 'high risk' if they contract COVID-19.<sup>228</sup> However, many disabled people who are not on the database also face considerable barriers to shopping and require reasonable adjustments to enable them to buy essentials such as food and medicine.<sup>229</sup> Disabled people's organisations and

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<sup>221</sup> Article 11 ICESCR; Articles 24(2)(c) and Article 27(3) CRC; Article 28 CRPD; Article 5(e)(iii) ICERD.

<sup>222</sup> Article 2(2) ICESCR; Committee on Economic, Social and Cultural Rights (2009), [General Comment No. 20: Non-discrimination](#).

<sup>223</sup> Food Foundation (April 2020), [New Food Foundation Survey: Three Million Britons Are Going Hungry Just Three Weeks Into Lockdown](#); Loopstra, R. (April 2020), King's College London, [Vulnerability to food insecurity since the COVID-19 lockdown](#).

<sup>224</sup> As above. For older people, see Research Institute for Disabled Consumers (April 2020), [Covid-19: the impact on disabled and older people in the UK](#).

<sup>225</sup> See above and Loopstra, R (April 2020), [Vulnerability to food insecurity since the COVID-19 lockdown](#), King's College London.

<sup>226</sup> Disability Rights UK (April 2020), [Thousands struggle to buy food](#); Disability News Service (April 2020), [Coronavirus: Government could face legal action over food delivery fears](#).

<sup>227</sup> See The Guardian (April 2020), [Disabled people left off coronavirus vulnerable list go without food](#).

<sup>228</sup> Under this scheme, up to 1.5 million people in England, identified by the NHS as being at higher risk of severe illness if they contract COVID-19, are entitled to receive home deliveries of basic groceries and medicines. See UK Government (March 2020), [Major new measures to protect people at highest risk from coronavirus](#).

<sup>229</sup> See our letter to the British Retail Consortium, EHRC (April 2020), [Letter to the British Retail Consortium](#).



charities have called on the Government to work urgently with supermarkets to update and implement guidance on eligibility for priority access to buying goods online.<sup>230</sup> In addition to the specific needs of disabled people, it is also important for retailers to consider the needs of carers and those living in unsafe households, who may require flexibility around one-person shopping policies.

116. **Government should work with the British Retail Consortium and supermarkets to update and implement guidance on who is considered to be ‘high risk’. This should ensure that policies related to access to shops are flexible to accommodate the needs of carers, or those living in unsafe households, and that reasonable adjustments are made to enable disabled and older people access. Government should also clarify the role of GPs in identifying individuals who are at ‘high risk’ and registering those individuals on the Government’s database.**

## Housing

117. Ethnic minorities may face challenges in complying with government guidelines as they are more likely to live in overcrowded accommodation<sup>231</sup> and may have lower ability to self-isolate.<sup>232</sup>

118. Gypsy, Roma and Traveller (GRT) communities, who already experience persistent disadvantage,<sup>233</sup> face particular challenges to self-isolation in encampments and traveller sites, exacerbated by limited access to water and sanitation, and the long-standing acute shortage of authorised sites.<sup>234</sup> We welcome the Government’s recognition that local authorities have a responsibility to support GRT communities,<sup>235</sup> but are concerned about possible disparities in outcomes across different regions. **Government should direct local authorities and other local partners to facilitate access by GRT groups to sanitation facilities and healthcare services, open additional temporary sites where possible, and adopt a presumption against eviction (including by police) unless suitable alternative provision has been secured.**<sup>236</sup>

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<sup>230</sup> See also Disability Rights UK (April 2020), [Thousands struggle to buy food](#).

<sup>231</sup> Equality and Human Rights Commission (2018), [Is Britain Fairer?](#).

<sup>232</sup> Atchison, C. and others (April 2020), [Perceptions and behavioural responses of the general public during the COVID-19 pandemic: A cross-sectional survey of UK Adults](#).

<sup>233</sup> GRT communities experience some of the most persistent disadvantages in Britain. See Equality and Human Rights Commission (2018), [Is Britain Fairer?](#).

<sup>234</sup> Friends Families and Travellers (March 2020), [COVID-19: UK Government Must Lay Out Clear Plan To Support Gypsies, Travellers And Boaters](#); Community Law Partnership (March 2020), [CLP Writes to Lord Chancellor about Traveller Evictions](#).

<sup>235</sup> Minister Stephen Greenhalgh (April 2020), [COVID-19 – Mitigating Impacts on Gypsy and Traveller Communities](#).

<sup>236</sup> A presumption against eviction has been taken in Scotland as part of local authority responses to the pandemic. See Scottish Government and COSLA (April 2020), [COVID-19 Response Planning Supporting Gypsy and Traveller Communities: A Framework to Support Local Authorities and Their Partners in Local Decision-Making](#).

119. More broadly, **Government should tailor current and future guidance on social distancing and self-isolation to different living arrangements and accommodation settings** (see also our recommendation on guidance in section 3).

### Human Rights Legal Framework

1. Public authorities in the UK are bound by the Human Rights Act 1998 (HRA) which incorporates into domestic law the rights contained in the European Convention on Human Rights (ECHR). The UK is also party to seven legally binding UN human rights treaties, which protect civil and political rights,<sup>237</sup> economic, social and cultural rights,<sup>238</sup> freedom from torture and other ill-treatment,<sup>239</sup> and the rights of women,<sup>240</sup> racial and ethnic minorities,<sup>241</sup> disabled people,<sup>242</sup> and children.<sup>243</sup> The UK Government's human rights obligations should inform its response to the current crisis – both in the immediate and longer term – and provide a framework against which to assess whether its response protects everyone's rights. There are a number of overarching principles which should guide the Committee's inquiry:

- a. The UK Government is obliged to respect, protect and fulfil these rights without discrimination.<sup>244</sup> The grounds of discrimination prohibited under international human rights law are broader than under the Equality Act 2010; for example, they include socio-economic status<sup>245</sup> and nationality.<sup>246</sup> Furthermore, the UK Government must take specific, positive measures to ensure the protection and equal enjoyment of rights for groups particularly affected by the current crisis,<sup>247</sup> such as disabled people<sup>248</sup> and women at risk of violence and abuse.<sup>249</sup>

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<sup>237</sup> Including the rights to life, liberty, and a fair trial; freedom of expression, thought and religion; the rights to privacy and a family life; and freedom of movement, association and peaceful assembly: [International Covenant on Civil and Political Rights \(ICCPR\)](#) [accessed: 9 April 2020].

<sup>238</sup> Including the rights to education, health, work, social security and an adequate standard of living: [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) [accessed: 9 April 2020].

<sup>239</sup> [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT\)](#) [accessed: 9 April 2020].

<sup>240</sup> [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) [accessed: 9 April 2020].

<sup>241</sup> [International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#) [accessed: 9 April 2020].

<sup>242</sup> [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) [accessed: 9 April 2020].

<sup>243</sup> [Convention on the Rights of the Child \(CRC\)](#) [accessed: 9 April 2020].

<sup>244</sup> Article 14 ECHR; Articles 2(1) and 26 ICCPR; Article 2(1) ICESCR.

<sup>245</sup> Economic, Social and Cultural Rights, [General Comment No. 20: Non-discrimination](#), 2 July 2009 [accessed: 9 April 2020]; Human Rights Committee, [General Comment No. 36: Right to Life](#), 3 September 2019 [accessed: 15 April 2020].

<sup>246</sup> Nationality encompasses migrants, refugees, asylum-seekers, stateless persons: see Economic, Social and Cultural Rights, [General Comment No. 20: Non-discrimination](#), 2 July 2009 [accessed: 9 April 2020].

<sup>247</sup> Human Rights Committee, [General Comment No. 18: Non-discrimination](#).

<sup>248</sup> Article 11 CRPD.

<sup>249</sup> Article 2 CEDAW; Committee on the Elimination of Discrimination against Women, [General Comment No. 35: gender-based violence against women](#), 26 July 2017.

- b. Domestic and international human rights law recognises that certain rights may be restricted for public health reasons, provided there is a legal basis for such restrictions, and the action taken is necessary and proportionate.<sup>250</sup> Some rights – such as the prohibition of torture and inhuman or degrading treatment – cannot be restricted under any circumstances.<sup>251</sup>
  - c. Human rights are interdependent. This means that the UK Government must take a holistic view of the rights implications of the current crisis, considering how interferences with certain rights (such as freedom of movement) will affect the enjoyment of other rights (such as the right to adequate food, and freedom from ill-treatment). There is also no hierarchy of rights: all human rights have equal status,<sup>252</sup> meaning the UK Government should not narrowly pursue the fulfilment of one right to the detriment or exclusion of others.
  - d. As regards the enjoyment of economic and social rights – which include the rights to education, health, work, social security and an adequate standard of living – the UK Government must not take regressive measures that hinder or reduce the enjoyment of these rights unless there are strong justifications.<sup>253</sup> In the context of economic and financial crises, the UN has made clear that any regressive measures must be temporary, necessary, proportionate, non-discriminatory, and meet a core minimum level of protection of the right(s) in question.<sup>254</sup>
2. Lasting changes to our equality or human rights legal framework should not be made during the crisis. The human rights framework is explicitly designed to accommodate emergency situations, for example through the ability written into the legislation to place restrictions on rights. The crisis must not be used to justify any long-term, radical or unnecessary changes to our rights and freedoms.

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<sup>250</sup> The articles of the HRA set out the lawful basis for any restriction in those rights. According to the Human Rights Committee, in order to be proportionate, restrictive measures “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected”. Furthermore, “In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.” See Human Rights Committee, [General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), 26 May 2004; and Human Rights Committee, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#), 2 November 1999.

<sup>251</sup> Article 3 ECHR; Article 7 ICCPR.

<sup>252</sup> On the basis that each right is inherent to the dignity of every individual, see the Universal Declaration of Human Rights, 1948.

<sup>253</sup> Committee on Economic, Social and Cultural Rights, [General comment No. 3: The nature of States parties’ obligations](#), 1990.

<sup>254</sup> Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights), [Personal communication by letter 16 May 2012](#).

3. Government must ensure that its response to the current crisis – both in the immediate and longer term – is informed by and compliant with its international and domestic human rights law obligations. Any measures that restrict rights must be lawful, necessary, proportionate, temporary, non-discriminatory, and meet a core minimum level of protection for rights.

### Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on [our website](#).

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# **Evidence to the Home Affairs Select Committee inquiry on the Macpherson Report: twenty-one years on**

3 July 2020

## Introduction

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1. The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.
2. We responded to the Committee's inquiry on this subject in 2019, providing two written submissions<sup>1</sup> and oral evidence. This submission focuses on developments since those submissions, in particular the Covid-19 pandemic and the equality and human rights implications of the regulatory and enforcement response.
3. The Black Lives Matter movement has focused the world's attention on racial bias in law enforcement. It is vital that Governments, Parliaments and others seize this opportunity to take concrete steps to tackle both the immediate and entrenched inequalities that some ethnic minorities face.
4. We are using the full range of our powers to deliver a coherent programme of work to highlight and address structural racial inequality, which Covid-19 has further exposed and exacerbated. We are keen to work closely with the Committee and others in this work.
5. We support the primary role of Government in the current context: to keep people safe and protect the future of our nation. The actions taken by Government, the police and others in response to this crisis will be more effective and will better serve and protect our diverse communities if they fully consider and comply with equality and human rights laws and standards.

## Summary of recommendations

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### Covid-19 enforcement

- (1) The Home Office should work with police authorities to ensure that officers are properly informed about the limits of powers and restrictions introduced in response to the pandemic (including the obligation to use or enforce them in a proportionate, non-discriminatory manner), and that police authorities consult with

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<sup>1</sup> Home Affairs Select Committee (2019), [Written evidence submitted by the Equality and Human Rights Commission](#) and [Supplementary written evidence submitted by the EHRC \(covering positive action\)](#).

organisations representing protected characteristics, including ethnic minority groups, to avoid a disproportionate impact on particular groups.

- (2) The Home Office should establish an independent mechanism to oversee police forces' use of the emergency powers and monitor compliance with equality and human rights obligations, similar to that established by Police Scotland.
- (3) The National Police Chiefs' Council and police forces should take further steps to gather and publish the necessary data to understand race disparities in the enforcement of restrictions during the pandemic, and should use the data to avoid disproportionate impacts on certain groups (including those impacts where protected characteristics intersect with socio-economic disadvantage), in line with their obligations under the public sector equality duty.

#### Stop and search

- (4) The Government should hold police forces to account for their use of stop and search and make sure these powers are used in a lawful, non-discriminatory manner and only on the basis of reasonable suspicion. This should include ensuring that forces comply with the best use of stop and search scheme, effectively record and monitor ethnicity data, and put in place appropriate procedural safeguards to protect the rights to privacy, liberty and security.
- (5) The Home Office should carefully analyse the impact that removing section 60 stop and search safeguards has had on groups sharing relevant protected characteristics and publish its findings. The pilot should not be extended unless the Home Office can demonstrate the changes are justified and proportionate, and measures to prevent any discriminatory impact are in place, in line with the requirements of the public sector equality duty.

#### Use of force

- (6) The Government with the National Police Chiefs' Council should take urgent steps to understand and address disproportionate use of force on people from Black ethnic groups.
- (7) The Government with the National Police Chiefs' Council should continue to improve the quality and consistency of use of force data, including data on protected characteristics, to ensure transparency, promote best practice and support efforts to address racial disproportionality.



- (8) The Government should ensure there are sufficient safeguards, training and oversight in place for the use of tasers, including specific measures to prevent disproportionate use on people from Black and other ethnic minority groups.
- (9) The Government should prohibit the use of tasers on children, implementing the recommendations of the UN Committee on the Rights of the Child.
- (10) The Government, National Police Chiefs' Council, College of Policing and local forces should consider using the Commission's human rights framework on restraint in the development and implementation of use of force policies, practices and training.

#### Custody-related deaths

- (11) The Government should prioritise implementing the recommendations of the 2017 Angiolini review of deaths and serious incidents in police custody, commit to a timetable for full implementation and report on its progress.
- (12) The Independent Office for Police Conduct should continue to improve the quality of investigations into deaths during or following police contact to ensure there is adequate scrutiny and accountability and that families are fully involved, in line with the recommendations of our inquiry into deaths in detention and the State's positive obligations to protect life. Police forces should ensure that recommendations from investigations are followed up, lessons are learned and improvements are made to prevent similar incidents in future.

#### Embedding equality in Government and policing

- (13) Government should implement an effective and comprehensive cross-Government strategy to tackle race inequalities. A single government department should set the strategy and lead action across Government to drive improvements to race equality in Britain, coordinating effectively with the Scottish and Welsh Governments as appropriate. This department should be responsible for developing a mechanism for monitoring and reporting on the progress that has been made against the strategy and holding other departments to account.
- (14) The Home Secretary should set national equality objectives for policing in England and Wales, and police forces should set objectives to address inequalities in their areas.
- (15) Her Majesty's Inspectorate of Constabularies and Fire & Rescue Services should monitor police forces' progress against their equality objectives as part of their regular inspections.

## Race disproportionality in Covid-19 enforcement

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6. Since the outbreak of the pandemic, police have been given extraordinary powers to enforce restrictions designed to protect public health.<sup>2</sup> We recognise that these restrictions have been key to slowing the spread of Covid-19. However, as our written evidence to the Women and Equalities Committee in May highlighted, enforcement has had a disproportionate impact on some ethnic minorities.<sup>3</sup>
7. In addition to the data from the Metropolitan Police Service cited in the Inquiry call for evidence,<sup>4</sup> the National Police Chiefs' Council (NPCC) has published data showing that the overall number of Fixed Penalty Notices recorded by police forces in England and Wales under the emergency health regulations has fallen as the Government has eased the lockdown.<sup>5</sup> However, we are alarmed by figures demonstrating disproportionate enforcement of restrictions against some ethnic minorities.<sup>6</sup> We are concerned that the disproportionality may be greater than the numbers show, given that a significant proportion (23 per cent) of fines have been recorded with no ethnicity attached.<sup>7</sup> Police monitoring organisations report that it is more often ethnic minorities who do not disclose their ethnicity to police.<sup>8</sup>
8. As the country slowly transitions out of lockdown, it is essential that the disproportionate impact of restrictions on some ethnic minorities remains the subject of scrutiny. This is relevant both retrospectively and for any period in which the country or any part of it operates under the Health Protection (Coronavirus Restrictions) Regulations 2020,<sup>9</sup> and faces the potential for further increases in infections. Scrutiny should focus not only on areas with an ethnically diverse population, but also on areas where ethnic minority populations are low and disproportionality nevertheless exists. It should take into account the impact

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<sup>2</sup> [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020; The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020; The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020;](#)

<sup>3</sup> Women and Equalities Committee (2020), [Written evidence submitted by the Equality and Human Rights Commission.](#)

<sup>4</sup> Metropolitan Police Service (3 June 2020), [Final FPN arrest analysis report.](#)

<sup>5</sup> National Police Chiefs' Council (25 June 2020), [Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales.](#)

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Liberty Investigates (17 June 2020), [Police forces in England and Wales up to seven times more likely to fine BAME people in lockdown.](#)

<sup>9</sup> There are different versions of these regulations in Scotland, Wales and England.

of socio-economic disadvantage, which is linked to ethnicity,<sup>10</sup> and may make compliance with restrictions more difficult. For example, some people may be less able to afford a break in employment in order to self-isolate, and those living in more crowded conditions or areas with higher population density may be less able to practise social distancing.

9. **The Home Office should work with police authorities to ensure that officers are properly informed about the limits of powers and restrictions introduced in response to the pandemic (including the obligation to use or enforce them in a proportionate, non-discriminatory manner), and that police authorities consult with organisations representing protected characteristics, including ethnic minority groups, to avoid a disproportionate impact on particular groups.**<sup>11</sup> We also recommended that **the Home Office establish an independent mechanism to oversee police forces' use of the emergency powers and monitor compliance with equality and human rights obligations**, similar to that established by Police Scotland.<sup>12</sup>
10. In addition to these recommendations, **the NPCC and police forces should take further steps to gather and publish the necessary data to understand race disparities in the enforcement of restrictions during the pandemic, and should use the data to avoid disproportionate impacts on certain groups (including those impacts where protected characteristics intersect with socio-economic disadvantage), in line with their obligations under the public sector equality duty.** We support calls by the Home Affairs Select Committee Chair, Yvette Cooper, for a breakdown of ethnicity data on fines by police force.<sup>13</sup>

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<sup>10</sup> Inequalities of outcome related to socio-economic disadvantage are closely linked to inequality experienced by people sharing protected characteristics. See, for example, EHRC (2018), [Is Britain Fairer?](#) which found in 2015/16 disabled people (36.8 per cent) were nearly three times as likely to experience severe material deprivation as non-disabled people (13.5 per cent). Pakistani (44.3 per cent), Bangladeshi (48.4 per cent) and Black African (44.9 per cent) adults were over twice as likely as White British people (17.2 per cent) to live in poverty

<sup>11</sup> We also made this recommendation in evidence to the Women and Equalities Committee. See: EHRC (2020), [Written evidence submitted by the Equality and Human Rights Commission, Unequal impact: Coronavirus \(Covid-19\) and the impact on people with protected characteristics.](#)

<sup>12</sup> In Scotland, Chief Constable Iain Livingstone has commissioned John Scott QC to lead a review of how Police Scotland officers and staff are applying emergency powers provided for by coronavirus legislation. Police Scotland (9 April 2020), [Human rights lawyer to lead scrutiny of emergency police powers.](#)

<sup>13</sup> Liberty Investigates (17 June 2020), [Police forces in England and Wales up to seven times more likely to fine BAME people in lockdown.](#)

## Stop and search

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11. Alongside the enforcement of coronavirus restrictions, there have been concerns about a further rise in stop and search during this period. The Metropolitan Police reported an increase in stop and search of 84 per cent between March and May.<sup>14</sup> This is in the context of a 36 per cent rise in stop and search in the last year across England and Wales.<sup>15</sup> People from every ethnic minority group are stopped at higher rates than those from White groups, particularly Black people, who are stopped at almost 10 times the rate.<sup>16</sup> The UN Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Human Rights Committee have all expressed concern about disproportionality in stop and search.<sup>17</sup>

12. We have significant concerns about the pilot announced in August 2019 which removes important safeguards on section 60 ‘suspicionless’ stops.<sup>18</sup> Black people are almost 40 times more likely than White people to be subject to these powers, and people from Asian, Mixed, and Chinese or ‘other’ ethnic groups are also disproportionately stopped.<sup>19</sup> The Home Office equality impact assessment acknowledges the removal of safeguards risks “magnifying any residual levels of discrimination,” and that people from ethnic minorities will be more likely to be searched under this power “despite not committing any offences, and without being provided with significant person-specific justification for searches taking place.”<sup>20</sup>

13. As we previously recommended to the Committee, **the Government should hold police forces to account for their use of stop and search and make sure these powers are used in a lawful, non-discriminatory manner and only on the basis of reasonable suspicion. This should include ensuring**

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<sup>14</sup> MPS, [Stop and search dashboard](#) [accessed: 1 July 2020]. There were 43,844 stop and searches reported in May, compared with 23,826 in March.

<sup>15</sup> Home Office (2019), [Stop and search statistics data tables, police powers and procedures year ending 31 March 2019](#), table 1.

<sup>16</sup> Ibid, table 13.

<sup>17</sup> UN Committee on the Elimination of Racial Discrimination (2016), [Concluding observations on the twenty-first to twenty-third periodic reports of the United Kingdom](#), paras 26-7; UN Committee on the Rights of the Child (2016), [Concluding observations on the fifth periodic report of the United Kingdom](#), paras 38(a), (b) and (c); and UN Human Rights Committee (2015), [Concluding observations on the seventh periodic report of the United Kingdom](#).

<sup>18</sup> Home Office (2019), [Section 60 stop and search pilot extended](#).

<sup>19</sup> Home Office (2019), [Equality impact assessment, Relaxation of section 60 conditions in the best use of stop and search scheme](#).

<sup>20</sup> Ibid, p10 and p11.

that forces comply with the best use of stop and search scheme,<sup>21</sup> effectively record and monitor ethnicity data, and put in place appropriate procedural safeguards to protect the rights to privacy, liberty and security.<sup>22</sup> Further, the Home Office should carefully analyse the impact that removing section 60 stop and search safeguards has had on groups sharing relevant protected characteristics and publish its findings. The pilot should not be extended unless the Home Office can demonstrate the changes are justified and proportionate, and measures to prevent any discriminatory impact are in place, in line with the requirements of the public sector equality duty.

## Use of force

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14. Disparity in reported use of force has increased in the last year, with police now more than five and a half times more likely to use force against Black people than White people.<sup>23</sup> Black people represent 3.3 per cent of the population but experience a quarter of police firearm tactics and a fifth of all tactics in which ‘less lethal weapons’ are used.<sup>24</sup> **The Government with the National Police Chiefs’ Council should take urgent steps to understand and address disproportionate use of force on people from Black ethnic groups.**

15. Reported incidents in which force was used by police increased by over a third between 2017-18 and 2018-19.<sup>25</sup> There is significant variation in recording levels between police forces and the Home Office acknowledges the statistics “do not give a full, national picture”.<sup>26</sup> There remain issues with data quality and

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<sup>21</sup> Home Office and College of Policing (2014), [Best use of stop and search scheme](#).

<sup>22</sup> Articles 5 and 8 of the Human Rights Act 1998.

<sup>23</sup> Home Office (2019), [Police use of force statistics, England and Wales, April 2018 to March 2019, data tables](#), table 4. Of the total 427,725 incidents where a force tactic was used in 2018-19, 70 per cent involved White people and 16 per cent involved Black people. This compares to 73 per cent and 12 per cent respectively the previous year, see Home Office (2018), [Police use of force statistics, England and Wales, April 2017 to March 2018, data tables](#), table 4. According to the latest census data (see Office for National Statistics (2018), [Population of England and Wales](#)) this suggests there were 62 incidents in which force was used per 10,000 people for White groups in 2018-19, compared with 361 per 10,000 people for Black groups. We note that use of force statistics are designated ‘experimental’ and subject to some data quality issues.

<sup>24</sup> Ibid. ‘Less lethal weapons’ refers to conducted energy devices, such as tasers, and attenuating energy projectiles.

<sup>25</sup> See Home Office (2018), [Police use of force statistics, England and Wales, April 2017 to March 2018, data tables](#), table 4, and Home Office (2019), [Police use of force statistics, England and Wales, April 2018 to March 2019, data tables](#), table 4. Force was used in 427,725 incidents in 2018-19 compared with 313,137 incidents the previous year.

<sup>26</sup> Home Office (2019), [User guide to ‘Police use of force statistics, England and Wales’](#), p6.

collection, including the lack of any central recording system.<sup>27</sup> **The Government with the National Police Chiefs' Council should continue to improve the quality and consistency of use of force data, including data on protected characteristics, to ensure transparency, promote best practice and support efforts to address racial disproportionality.**

16. The UN Committee Against Torture has recently expressed concern about the reported rise in taser use and called on the Government to investigate disproportionate use on people from ethnic minorities.<sup>28</sup> In March this year the Home Office announced funding to deploy tasers to 8,000 more police officers,<sup>29</sup> and while we recognise the often difficult situations in which police officers work, we are concerned this could result in further disproportionality. The Independent Office for Police Conduct has recommended more robust oversight for tasers and a “visible demonstration that police forces are learning from their experiences”.<sup>30</sup> **The Government should ensure there are sufficient safeguards, training and oversight in place for the use of tasers, including specific measures to prevent disproportionate use on people from Black and other ethnic minority groups.** We urge the Home Office to take this into account in decisions about further rollout, and in the development of the forthcoming Police Powers and Protections Bill.<sup>31</sup>
17. We remain seriously concerned about the use of tasers on children, which the UN Committee on the Rights of the Child has called on the Government to prohibit.<sup>32</sup> Home Office statistics show tasers were used 1,700 times on children aged under 18 last year (an increase of 78 per cent compared with the previous year), including 29 times on children aged 10 or younger.<sup>33</sup> Those from ethnic minorities may be particularly at risk; for example, in 2017 more than half of the Metropolitan Police’s use of tasers on children involved Black children.<sup>34</sup> **The**

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<sup>27</sup> Ibid.

<sup>28</sup> UN Committee Against Torture (2019), [Concluding observations](#), paras 28-29.

<sup>29</sup> Home Office (2020), [Forcers awarded extra funding for Taser](#).

<sup>30</sup> Independent Office for Police Conduct, [Deaths during or following police contact: statistics for England and Wales, time series tables 2004/05 to 2018/19](#) [accessed: 1 July 2020].

<sup>31</sup> See [Queen’s Speech 2019 background briefing](#).

<sup>32</sup> UN Committee on the Rights of the Child (2016), [Concluding observations on the fifth periodic report of the United Kingdom](#), para 40(a). For the purposes of the Convention, a child is anyone under 18.

<sup>33</sup> Home Office (2019), [Police use of force statistics, England and Wales, April 2018 to March 2019, data tables](#), table 2. Age is as perceived by the officer. There are known errors in the data on children under 11.

<sup>34</sup> Children’s Rights Alliance for England (2019), [State of children’s rights in England 2018](#).

**Government should prohibit the use of tasers on children, implementing the recommendations of the UN Committee on the Rights of the Child.**

18. We have developed a human rights framework on restraint setting out the key principles that must be complied with in any act of restraint, including use of force.<sup>35</sup> The framework provides a rights-based approach that can be used to develop more comprehensive sector-specific guidance and training.<sup>36</sup> **We encourage the Government, National Police Chiefs' Council, College of Policing and local forces to use the Commission's human rights framework on restraint in the development and implementation of use of force policies, practices and training.**<sup>37</sup>

## Custody-related deaths

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(16) It is difficult to establish clear patterns from the available data on deaths in and following police custody,<sup>38</sup> although we are aware of concerns that restraint features more often in the deaths of Black individuals.<sup>39</sup> **The Government must prioritise implementing the recommendations of the 2017 Angiolini review of deaths and serious incidents in police custody, commit to a timetable for full implementation and report on its progress.**<sup>40</sup> This includes recommendations on tackling harmful restraint and ensuring that independent investigators consider whether discrimination is a factor in any restraint-related death. Our inquiry into deaths in detention made a number of recommendations to ensure investigations are effective and reflect the Government's obligations to protect life, which include involving bereaved families fully in the process.<sup>41</sup> **The**

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<sup>35</sup> EHRC (2018), [Human rights framework for restraint](#). The use of restraint is governed by Article 3 (prohibition on torture, inhuman and degrading treatment), Article 8 (respect for autonomy, physical and psychological integrity) and Article 14 (non-discrimination) of the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998.

<sup>36</sup> Ibid.

<sup>37</sup> Note the framework is not intended as a tool to guide frontline practice without supplementary guidance.

<sup>38</sup> Independent Office for Police Conduct (2019), [Deaths during or following police contact: statistics for England and Wales 2018/19](#) and (2018) [Deaths during or following police contact: statistics for England and Wales 2017/18](#).

<sup>39</sup> See eg INQUEST (2020), [BAME deaths in police custody](#) and Rt Hon Dame Elish Angiolini DBE QC (2017), [Report of the independent review of deaths and serious incidents in police custody](#).

<sup>40</sup> Rt Hon Dame Elish Angiolini DBE QC (2017), [Report of the independent review of deaths and serious incidents in police custody](#). We are not aware of further progress updates since 2018, see DHSC, Home Office and Ministry of Justice (2018), [Deaths in police custody: progress update](#).

<sup>41</sup> EHRC (2017), [Preventing deaths in detention of adults with mental health conditions](#). Article 2 ECHR requires the state to initiate an effective public investigation by an independent body into any death where the state may have failed to protect life. Investigations must involve the next of kin.

**Independent Office for Police Conduct should continue to improve the quality of investigations into deaths during or following police contact to ensure there is adequate scrutiny and accountability, and that families are fully involved, in line with the recommendations of our inquiry on deaths in detention and the State’s positive obligations to protect life. Police forces should ensure that recommendations from investigations are followed up, lessons are learned and improvements are made to prevent similar incidents in future.**

## **Embedding equality in Government and policing**

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19. We note the NPCC’s intention to draw up a plan of action to tackle racism and discrimination in the police force,<sup>42</sup> as well as the Government’s announcement of a Commission on Race and Ethnic Disparities. A number of recent reviews<sup>43</sup> have provided ample evidence on race inequalities in policing and justice, and the action needed to address them. Our 2017 Roadmap to Race Equality<sup>44</sup> identified the criminal justice system as a priority area where Government must improve trust and ensure fairness, in light of the overrepresentation of ethnic minorities both as victims of crime and defendants.
20. The issues raised in this submission are not new but have been exacerbated in some areas during the pandemic. They reinforce the urgent need for **an effective and comprehensive cross-Government strategy to tackle race inequalities. We recommend that a single government department should set the strategy and lead action across Government to drive improvements to race equality in Britain, coordinating effectively with the Scottish and Welsh Governments as appropriate. This department should be responsible for developing a mechanism for monitoring and reporting on the progress that has been made against the strategy and holding other departments to account.**
21. In our previous submission to the Committee,<sup>45</sup> we highlighted the need for a stronger public sector equality duty which would better realise the vision that grew out of the Macpherson Report for ‘specific and coordinated action’ to eradicate racism. Too often, public authorities focus on internally-facing

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<sup>42</sup> NPCC (18 June 2020), [Police chiefs to take action on racial inequalities](#).

<sup>43</sup> The 2017 Lammy Review, the 2017 McGregor-Smith Review, and the 2020 Williams Review.

<sup>44</sup> EHRC (2017), [Roadmap to Race Equality](#).

<sup>45</sup> Home Affairs Select Committee (2019) [Written evidence submitted by the Equality and Human Rights Commission](#).





# **Equality and Human Rights Commission**

## **Evidence to Women and Equalities Committee sub- inquiry: 'Unequal impact? Coronavirus and BAME people'**

Friday 10 July 2020

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## Introduction

1. The Equality and Human Rights Commission has powers to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.<sup>1</sup>
2. Since the Committee's initial inquiry on the impact of coronavirus on people with protected characteristics,<sup>2</sup> new evidence has emerged pointing to the disproportionate impacts that coronavirus is having on people from certain ethnic minorities, both in terms of infection and death rates.<sup>3</sup>
3. If the Government fails to fully understand and address these unequal impacts, such failure may amount to a breach of its domestic and international obligations to promote equality and eliminate discrimination on grounds of race, colour, or national or ethnic origin.<sup>4</sup>
4. We therefore welcome the opportunity to update the Committee on the disproportionate impact of coronavirus on ethnic minorities; to suggest measures needed to address these issues; and ensure compliance with equality and human rights law.
5. The evidence we present in this submission should be read alongside our initial submission to the Committee, where we also covered other issues including the over-representation of ethnic minority workers in sectors with high potential for exposure to the virus and race equality concerns around the risk of COVID-19 outbreaks in prisons.<sup>5</sup>
6. In summary, we present evidence here that the unequal health impacts of coronavirus are linked to long-standing and interlocking racial inequalities across many areas of life, from employment, education, housing and justice. These inequalities are not new, but rather have been highlighted and exacerbated by coronavirus. In order to address these unequal health impacts, the Government must identify and address the cumulative, and overlapping, effects of racial

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<sup>1</sup> Equality Act 2006. References to Government, Departments and Ministers throughout this submission refer to the UK Government, Departments and Ministers, except where specified.

<sup>2</sup> Equality Human Rights Commission (1 May 2020), [Evidence to the Women and Equalities Committee inquiry on coronavirus](#).

<sup>3</sup> Public Health England (June 2020), [Disparities in the risk and outcomes of COVID-19](#).

<sup>4</sup> See, in particular, Equality Act 2010, s 4 and s 149 and Art 5 of the International Convention on the Elimination of Racial Discrimination.

<sup>5</sup> Equality and Human Rights Commission (1 May 2020), [Evidence to the Women and Equalities Committee inquiry on coronavirus \(COVID-19\) and the impact on people with protected characteristics](#).

inequality in all these areas.<sup>6</sup> We consider that the Government should do this in two ways.

7. First, it should implement the targeted, issue-specific actions that we identify here and in our initial submission to the Committee in relation to healthcare, education, housing, employment and the justice system. The Government can complete many of these actions in the short-term. It should also implement the outstanding recommendations from other relevant reviews, such as Lammy,<sup>7</sup> McGregor-Smith,<sup>8</sup> and Williams'<sup>9</sup> reviews.
8. Second, and larger in scope, it should develop a comprehensive, coordinated and long-term race equality strategy for England designed to tackle more persistent and systemic racial inequalities.<sup>10</sup> This race equality strategy should have adequate resources, clear targets and timescales as well as clear governance and accountability structures.
9. A single UK Government department, preferably the Cabinet Office, should set the strategy, leveraging actions across Government and coordinating effectively with the devolved administrations in Scotland and Wales as appropriate. In line with our suggested reforms to the Public Sector Equality Duty (**PSED**), public authorities, such as the NHS, should target their PSED equality objectives (outcomes in Scotland) at key priorities for their sectors identified in this strategy.<sup>11</sup>
10. We, therefore, welcome the Government's recent announcement that it is setting up a cross-Government commission on race and ethnic disparities.<sup>12</sup> This commission provides an ideal vehicle to implement a new race equality strategy. It cannot simply focus on generating further evidence of already well-understood disparities – it must be designed and empowered to drive urgent action and solutions.

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<sup>6</sup> As briefly identified by the second part (recommendations) of the Public Health England review: Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#).

<sup>7</sup> [Lammy Review: final report](#) (8 September 2017).

<sup>8</sup> [Race in the workplace: The McGregor-Smith review](#) (28 February 2017).

<sup>9</sup> [Windrush Lessons Learned Review: independent review by Wendy Williams](#) (31 March 2020)

<sup>10</sup> Scotland already has a race equality strategy: [A fairer Scotland for all: race equality action plan and highlight report 2017 – 2021](#); and we welcome the Welsh Government commitment to develop and deliver a Wales race action plan: [Welsh Parliament plenary](#) (June 3, 2020), para 108. We note that a race equality strategy for England is also the recommendation of various stakeholders in England, including Lord Simon Woolley: Operation Black Vote (27 May 2020), [BAME Leadership Demand COVID-19 Race Equality Strategy](#). The accompanying [petition](#) calling for the strategy has, at the time of submission, attracted over 138,000 signatures.

<sup>11</sup> We have been developing proposals to reform the PSED specific duties with civil society, academics and officials and would welcome the opportunity to share our thinking with the Committee.

<sup>12</sup> UK Government (15 June 2020), [Prime Minister's article in the Telegraph](#).

11. To support this work, we will strengthen and update our existing race equality strategy<sup>13</sup> in collaboration with race equality leaders, to identify solutions to tackle persistent barriers that exist across all our institutions. We urge the Government to adopt our 'Roadmap to Race Equality' as the blueprint for their strategy.

### **Inequalities in healthcare**

12. The recent review by Public Health England (**PHE**) confirmed findings from previous studies<sup>14</sup> that people from Black ethnic groups were most likely to be diagnosed with COVID-19. In addition, death rates from COVID-19 were highest among people of Black and Asian ethnic groups.<sup>15</sup>

13. Results show that these differences are partly a result of socio-economic disadvantage and other related circumstances, including existing structural inequalities in health, housing<sup>16</sup> and employment, as well as structural racism in wider society.<sup>17</sup> While there is not yet any complete explanation for the differences, they may be linked to a greater incidence of co-morbidities amongst certain ethnic groups influenced by, at least in part, the same structural disadvantages that a race equality strategy will need to address.<sup>18</sup>

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<sup>13</sup> Equality and Human Rights Commission (Oct 2017) [A Roadmap to Race Equality](#) (developed in collaboration with the Runnymede Trust, Operation Black Vote, the Black Training and Enterprise Group and Business in the Community)

<sup>14</sup> ONS (2020), [Coronavirus \(COVID-19\) related deaths by ethnic group, England and Wales: 2 March 2020 to 10 April 2020](#); ; Institute for Fiscal Studies (May 2020), [Are some ethnic groups more vulnerable to COVID-19 than others?](#) ; D Pan, S Sze, J Minhas, M Bangash, N Pareek, P Divall et al. (3 June 2020), [The impact of ethnicity on clinical outcomes in COVID-19: a systematic review \(The Lancet\)](#).

<sup>15</sup> The review by Public Health England identified people of Bangladeshi ethnicity at twice the risk of death, and people of Chinese, Indian, Pakistani, Other Asian, Caribbean and Other Black ethnicity at between 10% and 50% higher risk of death when compared to White British people: Public Health England (June 2020), [Disparities in the risk and outcomes of COVID-19](#) p 39.

<sup>16</sup> See our discussion below.

<sup>17</sup> Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#). Data shows that ethnic minority workers are overrepresented in sectors with high potential for exposure to the virus: Office for National Statistics (May 2020), [Which occupations have the highest potential exposure to the coronavirus \(COVID-19\)?](#)

<sup>18</sup> For example, people of Bangladeshi and Pakistani background have higher rates of cardiovascular disease than people from White British ethnicity, and people of Black Caribbean and Black African ethnicity have higher rates of hypertension compared with other ethnic groups. PHE reported a higher risk of death from COVID-19 among ethnic minority patients with diabetes and heart disease: Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#); Public Health England (June 2020), [Disparities in the risk and outcomes of COVID-19](#); Institute for Fiscal Studies (May 2020), [Are some ethnic groups more vulnerable to COVID-19 than others?](#); S Bailey and M West (30 April 2020), [Ethnic minority deaths and Covid-19: what are we to do? \(The King's Fund\)](#); A Prats-Urbe, R Paredes and D Prieto-Alhambra (June 2020), [Ethnicity, comorbidity, socioeconomic status, and their associations with COVID-19 infection in England: a cohort analysis of UK Biobank data](#).

14. Inequalities in access to healthcare may have also contributed to the unequal impacts of coronavirus on ethnic minorities.<sup>19</sup> Gypsy, Roma and Traveller groups and migrant groups face multiple barriers when seeking access to healthcare. These include discrimination, and difficulties when registering with GPs,<sup>20</sup> because of their inability to provide proof of address or ID,<sup>21</sup> despite NHS guidance that states that such documents are not required.<sup>22</sup>
15. There is evidence from migrant support organisations that some migrants are not seeking healthcare during the pandemic out of fear driven by the Government's so-called 'hostile/compliant environment' policies and NHS Charging Regulations.<sup>23</sup> Whilst treatment for coronavirus is exempt from the charging regime, there are concerns that migrants may not be aware of this exemption, and there are reports of people still being required to prove their entitlement for coronavirus treatment.<sup>24</sup>
16. People from certain ethnic minorities may face additional barriers to accessing healthcare,<sup>25</sup> including language barriers and digital exclusion.<sup>26</sup> Generally, stakeholders consider that there remains a lack of culturally competent healthcare services, including in relation to the commissioning of health services<sup>27</sup> and, in particular, early-stage mental health services.<sup>28</sup> There are also concerns about that the commissioning of healthcare services does not do

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<sup>19</sup> Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#); S Latif (March 2010), [Effective methods of engaging black and minority ethnic communities within health care settings" \(Race Equality Foundation\)](#).

<sup>20</sup> Equality and Human Rights Commission (Aug 2016), [Healing a divided Britain: the need for a comprehensive race strategy](#) p 31. United Nations Committee on Economic, Social and Cultural Rights (July 2016), [Concluding observations on the sixth periodic report of the UK](#) paras 55 and 56; Equality and Human Rights Commission (2018), [Access to healthcare for people seeking and refused asylum in Great Britain](#).

<sup>21</sup> Doctors of the World (May 2020), [A rapid needs assessment of excluded people in England during the 2020 Covid-19 pandemic](#).

<sup>22</sup> NHS England, [How to register with a doctor \(GP\) leaflet](#).

<sup>23</sup> Medact (June 2020), [Patients Not Passports – Migrants' Access to Healthcare During the Coronavirus Crisis](#). The 'hostile/compliant environment' is a series of policy interventions intended to make it progressively harder for irregular migrants to live, work and access services in the UK, and to emphasise individuals' responsibility to prove that they are in the UK legally. Now known as the 'compliant environment' (Definition from Glossary of the [Williams Windrush Lessons Learned review](#) (March 2020)).

<sup>24</sup> Medact (June 2020), [Patients Not Passports – Migrants' Access to Healthcare During the Coronavirus Crisis](#).

<sup>25</sup> Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#); Medact (June 2020), [Patients Not Passports – Migrants' Access to Healthcare During the Coronavirus Crisis](#).

<sup>26</sup> Those living on Traveller sites, unauthorised encampments or roadsides, for example often have poor or unstable access to the internet: Doctors of the World (May 2020), [A rapid needs assessment of excluded people in England during the 2020 Covid-19 pandemic](#).

<sup>27</sup> S Salway, D Turner, G Mir, L Carter, J Skinner, B Bostan, K Gerrish and G Ellison, [High Quality Healthcare Commissioning: Why race equality must be at its heart \(Race Equality Foundation\)](#).

<sup>28</sup> Operation Black Vote (4 May 2020), [COVID-19 and BAME mental health](#).

enough to address inequalities in access, experiences and outcomes between ethnic minority groups.<sup>29</sup>

17. Finally, certain ethnic minority workers, including migrant workers, are at a higher risk of COVID-19 exposure as a result of their over-representation in key, but often low-paid, frontline roles within the health and social care sectors.<sup>30</sup> This is part of a wider problem of inequalities in employment, recruitment and progression in the labour market as a whole which we deal with in detail in other submissions.<sup>31</sup>

**18. We recommend that, as part of a new race strategy, the Government should:**

- **Take action to close the health inequalities experienced by different ethnic minority groups by improving commission processes and accelerating the development of culturally competent services. This should include improving access to information; improved staff development; and trialling interventions to assess what works in improving the healthcare experience for ethnic minorities.**
- **Improve the quality of data collection and analysis on access, experience and outcomes from health service users by protected characteristics by mandating ethnicity data collection and recording as part of routine data collection systems. To support this, the NHS should ensure that its data dictionary reflects the 2021 census ethnicity categories, particularly the Gypsy, Roma and Traveller categories.**
- **Address remaining barriers that Gypsy, Roma and Traveller groups face in registering with GPs, including by ensuring consideration of access to services and appointments for digitally excluded populations in all Care Quality Commission (CQC) inspections.**
- **Introduce mandatory monitoring and reporting on the recruitment, retention and progression of ethnic minority groups for employers with over 250 staff by April 2022 and mandatory action planning for employers to address the factors contributing to ethnicity employment and pay gaps.**

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<sup>29</sup> Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#) p 39.

<sup>30</sup> Office for National Statistics (April 2020), [Which occupations have the highest potential exposure to the coronavirus \(COVID-19\)?](#); The Health Foundation (7 May 2020), [Black and minority ethnic workers make up a disproportionately large share of key worker sectors in London.](#)

<sup>31</sup> Equality and Human Rights Commission (28 May 2020), [Evidence to the Business, Energy and Industrial Strategy Committee inquiry on the impact of coronavirus on businesses and workers.](#)



## Inequalities in education

19. Although data on the impact of Government measures to contain the virus is still limited in the field of education, initial evidence suggests that some of the measures may have exacerbated pre-existing racial inequalities.
20. Since our initial submission to the Committee, new evidence has emerged substantiating our concerns that disadvantaged children have spent significantly less time in education than children from wealthier families since the shift to online learning.<sup>32</sup> There is also evidence that children with Pakistani and Bangladeshi background have spent substantially less time on home learning than their peers.<sup>33</sup> The Traveller Movement have identified particular challenges facing Gypsy, Roma and Traveller pupils in accessing remote learning, including high rates of digital exclusion.<sup>34</sup> These factors could risk significantly widening the attainment gap.<sup>35</sup>
21. Some of the groups most affected are likely to be disadvantaged children who are home educated as a result of off-rolling, and who have therefore lacked support from a school in terms of remote learning provision.<sup>36</sup> These groups are likely to include a disproportionate number of ethnic minority children, in particular Gypsy, Roma and Traveller pupils.<sup>37</sup>
22. There are also concerns about outcomes for excluded children in Alternative Provision (**AP**) settings, including Pupil Referral Units, where Gypsy, Roma and Traveller, and Black Caribbean children are over-represented.<sup>38</sup> In a recent

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<sup>32</sup> The Institute for Fiscal Studies found that 'children from better-off families are spending 30% more time on home learning than are those from poorer families'. See IFS (2020), [Learning during the lockdown](#). University College London have estimated that 2 million children in the UK have done no school work or less than one hour per day since lockdown started. See UCL (2020), [Schoolwork in lockdown: new evidence on the epidemic of educational poverty](#). Also see EEF (2020), [Impact of school closures on the attainment gap: rapid evidence assessment](#). We know that certain ethnic minorities are over-represented in FSM eligibility (a proxy for poverty) with the highest percentages amongst Gypsy, Roma and Traveller, Bangladeshi and Pakistani pupils. See ONS (2020), [Child poverty and education outcomes by ethnicity](#).

<sup>33</sup> LSE (2020), [Open schools first for the hardest hit children](#).

<sup>34</sup> Travellers Times (2020), [Traveller Movements survey findings reveal education challenges young people face during COVID-19](#).

<sup>35</sup> In 2016/17, in England, 72.5% of White British children achieved a 'good level of development' at Foundation Stage (as assessed by a teacher), higher than Black (69.6%), Bangladeshi (67.1%), Pakistani (64.3%) and Other White (63.9%) children and children of other ethnicities (66.6%). children. Attainment was lowest, by a large margin, for Gypsy, Roma and Irish Traveller children (33.2%): Equality and Human Rights Commission (2018), [Is Britain Fairer?](#)

<sup>36</sup> Issue raised with the Commission by Race on the Agenda.

<sup>37</sup> Gypsy and Traveller students are more likely to be withdrawn from education. Women and Equalities Committee (2019), [Tackling inequalities faced by Gypsy, Roma and Traveller communities](#). Also The Traveller Movement (2018), [Scoping study on Elective Home Education](#).

<sup>38</sup> See FFT Education Datalab (2017), [Who are the pupils in alternative provision? We know that Gypsy and Traveller children have high exclusion rates, and in England, Black and Mixed ethnicity](#)

survey, AP leaders estimated that a ‘quarter of their [Year 11] pupils currently on roll would be immediately not in education, employment or training (**NEET**) in September’.<sup>39</sup>

23. In our initial submission to the Committee, we noted that the cancellation of exams has the potential to deepen racial inequalities in education in view of evidence that predicted grades can be influenced by conscious or unconscious bias.<sup>40</sup> Ofqual has now provided guidance to schools on avoiding bias,<sup>41</sup> and have committed to producing a guide for students who wish to challenge their results, including on grounds of suspected unlawful discrimination.<sup>42</sup>
24. We are concerned about the impact of exam cancellations on children who are home-schooled or have not been at their current school for long,<sup>43</sup> including excluded children.<sup>44</sup> Schools are not obliged to issue grade predictions in the case of these ‘private candidates’ if they consider they do not have sufficient information upon which to base their predictions.<sup>45</sup> Whilst these candidates will be able to sit exams in the Autumn, this option may not be feasible for all pupils, and may prevent candidates, who cannot afford to delay, from progressing to Further or Higher education, apprenticeships or employment this year.<sup>46</sup>
25. Ofqual have engaged with representatives of Higher and Further Education providers regarding admissions decisions for students who do not receive a grade, and have reported that some institutions might be able to consider a range

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children are more likely to be excluded than their White British peers. See Equality and Human Rights Commission (2018), ‘[Is Britain Fairer?](#)’. See also Traveller Movement (2016), [Never giving up on them: School exclusions of Gypsy, Traveller and Roma pupils in England](#).

<sup>39</sup> Centre for Social Justice and The Difference (2020), [Post-16 support in Alternative Provision](#). We welcome the announcement of Government funding to support the transition of these pupils. DfE (2020), [Guidance: Alternative provision: year 11 transition funding](#). However, there are questions about the effectiveness of this funding. In the survey conducted of AP leaders, half of the respondents reported that they would struggle to use the fund.

<sup>40</sup> Equality Human Rights Commission (1 May 2020), [Evidence to the Women and Equalities Committee inquiry on coronavirus](#).

<sup>41</sup> See Ofqual (2020), [Guidance for Heads of Centre, Heads of Department and teachers on objective in grading and ranking](#).

<sup>42</sup> Ofqual (2020), [Consultation on statutory guidance in relation to appeals under the GQCovid regulatory framework](#).

<sup>43</sup> Ofqual’s equality impact assessment recognises that this could impact on ‘learners who have recently arrived in the country (who may well share the protected characteristic of race), or who change schools frequently – this will include Gypsy/Roma/Irish Traveller learners.’ See Ofqual (2020), [Consultation: Exceptional arrangements for assessment and grading in 2020](#).

<sup>44</sup> As stated above, we know that Gypsy and Traveller, Black and Mixed ethnicity children are more likely to be excluded than their White British peers.

<sup>45</sup> Ofqual (2020) [Consultation Decisions: Exceptional arrangements for exam grading and assessment in 2020](#).

<sup>46</sup> Further details of the Commission’s concerns about these exams can be found in our consultation response to Ofqual on their exam series: Equality and Human Rights Commission (June 2020), [Consultation response: An additional GCSE, AS and A level exam series in autumn 2020](#).

of other evidence to allow students to enrol wherever possible.<sup>47</sup> However, there are no commitments or mechanisms in place to manage this process.

26. Finally, we are concerned that Government is not giving sufficient attention to the particular needs of ethnic minority pupils and staff in their plans to open schools to all pupils in September. The re-introduction of fines for non-attendance, which may be levelled against families concerned about coronavirus, may adversely affect ethnic minority households who, for example, are more likely to live in multi-generational households that include at-risk individuals.<sup>48</sup>

27. Emerging evidence suggests that the trauma of the pandemic may be disproportionately affecting the mental health of ethnic minority children.<sup>49</sup> We therefore welcome Government guidance for schools to work with pupils to manage the effects of the pandemic on children's behaviour and well-being,<sup>50</sup> and the announcement that Ofsted will initiate an interim series of inspections in September that will include a focus on how pupils are settling back into expected routines and behaviours.<sup>51</sup>

28. However, we have concerns about a separate piece of guidance, which allows schools to relax timescales for reviewing exclusions.<sup>52</sup> This could result in a reduction in safeguards against discriminatory exclusions. This is a particular issue given concerns that schools could become less tolerant as a result of new health and safety rules, resulting in a possible increase in the use of exclusions.<sup>53</sup>

**29. In order to address the unequal impacts of coronavirus, the Government should:**

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<sup>47</sup> Ofqual (2020), [Exceptional arrangements for exam grading and assessment in 2020](#).

<sup>48</sup> Issues raised to the Commission by ROTA and Traveller Movement. Government guidance states that: "If parents of pupils with significant risk factors [including those from ethnic minority backgrounds] are concerned, we recommend schools discuss their concerns and provide reassurance of the measures they are putting in place to reduce the risk in school. Schools should be clear with parents that pupils of compulsory school age must be in school unless a statutory reason applies (for example, if the pupil has been granted a leave of absence, is unable to attend because of sickness, is absent for a necessary religious observance)." See Department for Education (2020), [Guidance for full opening: schools](#).

<sup>49</sup> Kooth (an online mental wellbeing community service for ages 11-24) reports that users from BAME backgrounds are showing higher levels of self-harm, suicidal thoughts, depression and anxiety than White service users compared to the same period in 2019. See XenZone / Kooth (2020), [How Covid-19 is affecting the mental health of young people in the BAME community](#).

<sup>50</sup> See Department for Education (2020), [Guidance for full opening: schools](#). We note Government activities including a webinar with Public Health England and NHS England for school and college staff on how to support returning pupils' and students' mental wellbeing, and the early publication of the training module on [teaching about mental wellbeing](#).

<sup>51</sup> Ofsted (2020), [Guidance: Education plans from September 2020](#).

<sup>52</sup> Department for Education (2020), [Statutory guidance: changes to the school exclusion process during the coronavirus \(COVID 19\) outbreak](#). The amended guidance on exclusions applies to all exclusions occurring from 1 June until 24 September 2020 (as well as to exclusions before that date, which have not yet been considered or the decision reviewed.)

<sup>53</sup> University of Oxford (2020), [School exclusion risks after COVID-19](#).

- **Ensure that the education recovery plan is used to provide individualised and targeted support for ethnic minority pupils.**
- **Ensure that Ofsted’s interim arrangements for inspections identify and address discriminatory exclusions and off-rolling.**
- **Reinstate pre-coronavirus rules and procedures for governing bodies and independent review panels to review exclusions.**
- **Work with Universities UK and the Office for Students to encourage Higher and Further Education providers to adopt more flexible approaches to admissions, including allowing students to defer places, or offering later start dates after the autumn exam results are issued.**
- **Develop a plan of concrete actions to tackle the disproportionate levels of exclusion, absences and attainment rates among certain ethnic minority groups, including Gypsy, Roma and Traveller children, in primary and secondary schools.**

### **Inequalities in housing**

30. There is a strong association between ethnicity and inequalities in living conditions. We know that certain ethnic minorities, including Bangladeshi, Pakistani, Black African and Black Caribbean people, are more likely to live in deprived neighbourhoods and in over-crowded housing than White British people.<sup>54</sup> A study of living conditions in England during lockdown has shown that children from ethnic minorities experience poorer quality indoor conditions than White British children, but also more limited access to outdoor space.<sup>55</sup>

31. Housing inequalities are particularly pronounced for Gypsies and Travellers due to long-standing failures by Government and local authorities to provide sufficient,

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<sup>54</sup> In 2019, people from all ethnic minority groups except Indian, Chinese, White Irish and White Other groups were more likely than White British people to live in the most overall deprived 10% of neighbourhoods in England. Race Disparity Unit (16 June 2020), [People living in deprived neighbourhoods](#). In 2015/16, one in 10 (10.5%) ethnic minority households experienced overcrowding compared with one in 50 (2.0%) White households. Equality and Human Rights Commission (2018) [Is Britain Fairer?](#)

<sup>55</sup> Close to 40 per cent of under-16s from ethnic minority groups have no garden, and one-quarter are said to live in an “objectively poor-quality environment.” Resolution Foundation (2020) [Lockdown Living: Housing Quality Across the Generations](#).

safe and culturally appropriate sites for these groups.<sup>56</sup> Recent changes in planning policies have only exacerbated this problem.<sup>57</sup>

32. We are concerned to hear that the 90-day stay of possession claims does not cover protections for Gypsies and Travellers living on unauthorised encampments.<sup>58</sup> Eviction powers remain available to the police and local authorities<sup>59</sup> that has resulted in a postcode lottery, with reports of some continued evictions of Gypsies and Travellers living on public and private land during the pandemic.<sup>60</sup>

33. Evictions and the shortage of suitable sites has significant health implications. The limited guidance from the UK Government so far to mitigate the risks to people living on unauthorised encampments and authorised sites contrasts with the more detailed guidance produced by the Welsh<sup>61</sup> and Scottish<sup>62</sup> Governments. We also note that access to basic amenities such as water and sanitation for Gypsies, Roma and Travellers remains inconsistent between local authorities in England.<sup>63</sup>

34. This is compounded by a loss in income for many people from Gypsy, Roma and Traveller groups due to the seasonal, informal and self-employed nature of work that has been impacted upon because of the pandemic.<sup>64</sup> We are concerned that these two issues combined will have a significant impact on Gypsies, Roma and Travellers and result in severe hardship.

35. Finally, we are concerned that a significant number of Gypsies and Travellers<sup>65</sup> may not be able to take part in the NHS test and trace service.<sup>66</sup> Those living on unauthorised encampments and with no fixed address will be unable to receive

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<sup>56</sup> Equality and Human Rights Commission (2018) [Is Britain Fairer?](#)

<sup>57</sup> Equality and Human Rights Commission (2019) [Gypsy and Traveller sites: the revised planning definition's impact on assessing accommodation needs.](#)

<sup>58</sup> Evidence provided to the Equality and Human Rights Commission by Friends, Families and Travellers. See also Courts and Tribunals Judiciary (20 April 2020) [Amending Practice Direction, which amends Practice Direction 51Z \(PD\) in relation to possession proceedings during the Coronavirus pandemic.](#)

<sup>59</sup> Rt Hon Lord Keen of Elie QC (14 May 2020), [Eviction action against Gypsies and Travellers.](#)

<sup>60</sup> Community Law Partnership (30 March 2020), [Eviction action against Gypsies and Travellers.](#)

<sup>61</sup> Welsh Government (June 2020), [Guidance for those supporting gypsy and traveller communities: Covid-19.](#)

<sup>62</sup> Scottish Government (June 2020) [Covid – 19 Framework for local decision making on Gypsy/Traveller support.](#)

<sup>63</sup> Doctors of the World (May 2020), [A rapid needs assessment of excluded people in England during the 2020 Covid-19 pandemic.](#)

<sup>64</sup> Doctors of the World (May 2020), [A rapid needs assessment of excluded people in England during the 2020 Covid-19 pandemic.](#)

<sup>65</sup> In evidence provided to the Commission by Friends, Families and Travellers, live aboard boater households are specifically affected by this issue.

<sup>66</sup> Department of Health and Social Care (27 May 2020), [Government launches NHS Test and Trace Service.](#)

home testing kits. There are also accessibility issues to accessing drive through regional test sites for those with large live-in vehicles and towing vehicles.<sup>67</sup>

**36. In order to address the unequal impacts of coronavirus, the Government should:**

- **Identify the reasons why certain ethnic minority groups are more likely to live in substandard housing and overcrowded housing, and take forward strategies to address them in an effective way.**
- **Review the adequacy of site provision for Gypsies and Travellers across all local authorities.**
- **Require local authorities and other local partners to open additional temporary sites during the period of the pandemic and adopt a presumption against eviction (including by police) unless suitable alternative provision has been secured.**
- **Explore options to enable Gypsies, Roma and Travellers to access NHS test and tracing services either through local authorities or assertive outreach models of testing.**

**Inequalities in the justice system**

37. Since the Committee's first inquiry, new data has emerged substantiating the risks we flagged in our initial submission around the impact on pre-existing racial inequalities of measures to contain the coronavirus in the areas of policing and the justice system.<sup>68</sup>

38. As regards policing, data published by the National Police Chiefs' Council (**NPCC**) in June indicate that police enforcement of coronavirus restrictions under the emergency regulations is having a disproportionate impact on ethnic minorities.<sup>69</sup> Analysis conducted by Liberty suggests that the disproportionality in

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<sup>67</sup> Evidence provided to the Equality and Human Rights Commission by Friends, Families and Travellers.

<sup>68</sup> Women and Equalities Committee (2020), [Written evidence submitted by the Equality and Human Rights Commission](#).

<sup>69</sup> National Police Chiefs' Council (25 June 2020), [Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales](#). This disproportionality is evident in spite of the overall fall in the number of fines issued by the police in England and Wales under the emergency health regulations.

police enforcement is even evident in areas where there are proportionately low numbers of ethnic minority people.<sup>70</sup>

39. New data from the Metropolitan Police indicates a substantial rise in stop and search by the police in London during this period.<sup>71</sup> This is also likely to have a disproportionate impact on ethnic minorities, given the pattern of increasing race disproportionality in stop and search practices over the last six years.<sup>72</sup>
40. We welcome the efforts of the Ministry of Justice to keep the justice system operating and reduce the case backlog. However, we are aware of suggestions that jury trials might be suspended for either-way offences<sup>73</sup> and replaced with a judge and two magistrates, without evaluation.<sup>74</sup> If such a proposal were considered by Government, the lack of judicial diversity amongst judges and magistrates could lead to significant unintended equality implications for equal access to justice for victims and defendants sharing particular protected characteristics, including people from ethnic minorities.<sup>75</sup>
41. A number of concerns have been raised around the suitability of video and audio hearings in immigration and asylum proceedings. The Supreme Court has previously held, in the context of human rights appeals against deportation, that for appeals to be effective, the applicant would need the opportunity to give live evidence.<sup>76</sup> Stakeholders note that power imbalances between appellants and witnesses are likely to be amplified in remote hearings.<sup>77</sup>
42. The findings from our Inquiry Inclusive Justice: a system designed for all identified a number of issues in relation to a lack of appropriate technology, internet access, and private space.<sup>78</sup> There are likely to be parallels for remote hearings in the immigration and asylum context.

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<sup>70</sup> Liberty also suggest that the disproportionality may be even larger than the numbers show, given that a number of police forces have recorded a significant percentage of fines with no ethnicity attached, and it is more often ethnic minorities who do not disclose their ethnicity to police. Liberty Investigates (17 June 2020), [Police Forces in England and Wales up to seven times more likely to fine BAME people in lockdown](#).

<sup>71</sup> The Metropolitan Police reported an increase in stop and search of 84 per cent between March and May 2020. MPS, [Stop and search dashboard](#) [accessed: 1 July 2020]. There were 43,844 stop and searches reported in May, compared with 23,826 in March.

<sup>72</sup> Home Office (March 2019) [Police powers and procedures, England and Wales, year ending 31 March 2019](#).

<sup>73</sup> An either-way offence is a criminal offence that can be heard in the magistrates' or Crown Court)

<sup>74</sup> BBC (June 2020), [Robert Buckland warns over court case backlog](#).

<sup>75</sup> Courts and Tribunals Judiciary (Apr 2019), [Judicial diversity statistics 2019](#).

<sup>76</sup> Garden Court Chambers (June 2020), [Implications for statutory appeals in the first tier and upper tribunal](#) (Immigration and Asylum Chamber).

<sup>77</sup> Helen Bamber Foundation (May 2020), [The courts, tribunal and the Covid-19 public health crisis](#).

<sup>78</sup> Equality and Human Rights Commission, (May 2020), [Inclusive Justice: a system designed for all](#).

**43. In order to address the unequal impacts of coronavirus, the Government should:**

- **Implement our recommendations on addressing race disparities in policing in our recent submission to the Home Affairs Select Committee on the MacPherson Report.<sup>79</sup>**
- **Ensure that any proposal to reduce the right for individuals to be tried by a jury must be subject to an appropriate level of parliamentary scrutiny and impact assessment in line with the significance of the proposal,<sup>80</sup> and other options short of constitutional change should be implemented first.**
- **Ensure that greater consideration is given by legal practitioners and judges to applicants/appellants in the Immigration and Asylum Chamber for whom remote hearings would be unsuitable.**

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<sup>79</sup> Equality and Human Rights Commission (July 2020) [Evidence to the Home Affairs Select Committee Inquiry on the MacPherson Report: Twenty Years on](#).

<sup>80</sup> This must include a full analysis of the equality and human rights implications of such a change to ensure that Article 6 protections under the ECHR are not undermined.



### **Further information**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on [our website](#). We would be happy to provide additional information to the Committee, if requested to do so.

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# **Evidence to the Joint Committee on Human Rights inquiry on the Government's response to covid- 19: human rights implications of long lockdown**

Submission of the Equality and Human  
Rights Commission

29 January 2021

## Introduction

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1. The Equality and Human Rights Commission has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information and advice, including to Parliament, on equality and human rights matters.
2. The Coronavirus pandemic continues to have a profound impact on everyday life for everyone in the UK. Parliament has a vital role in examining this impact and Government's response, and we welcome the Committee's continued focus on the extent to which the pandemic and resulting restrictions have affected human rights. This submission follows our earlier response on care homes and hospital visits, and focuses on two of the sub-issues (the impact on areas subjected to the most stringent restrictions, and policing of lockdown) on which we have particular evidence to offer, reflecting our current strategic priorities and recent work.

## Addressing the impact of localised restrictions

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3. Different regions in England, Scotland and Wales have been subject to varying degrees of restriction during the Covid-19 pandemic. In England, following the first national lockdown, tighter restrictions were initially focused on some areas in the North West from July 2020, and from December new measures were introduced in the South East aimed at containing the new variant.<sup>1</sup> Tougher and longer-lasting restrictions in different areas have led to greater interference with human rights.<sup>2</sup> In particular, the rules have restricted rights to liberty, free association, and respect for family life, and have likely contributed to a concerning decline in mental health.<sup>3</sup>

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<sup>1</sup> Department of Health and Social Care (30<sup>th</sup> July 2020), '[Press release: New rules on gatherings in some parts of Northern England](#)'; (14<sup>th</sup> December 2020), '[Health and Social Care Secretary's statement on coronavirus \(COVID-19\)](#)'

<sup>2</sup> Analysis on the tiers-based system indicated deprived areas were more likely to be put under tougher restrictions: Guardian (7<sup>th</sup> October 2020), '[Poorest areas of England four times as likely to face lockdown as richest](#)'

<sup>3</sup> Research by the Princes Trust found that more young people were feeling anxious than had ever been previously recorded in the 12-year history of their Youth Index: Princes Trust (19<sup>th</sup> January 2021), '[Prince's Trust Tesco Youth Index 2021](#)'

4. A localised approach to restrictions is likely to be a more proportionate means of controlling the virus,<sup>4</sup> (as it restrict the rights of fewer people and those at greater risk, compared to full a national lockdown). However, the Government should analyse how different groups in specific areas have been affected, and use this insight to mitigate the most harmful effects of restrictions. The Government should apply this approach to its commitments to ‘level up’ and ‘build back better’, in policy areas beyond infrastructure investment, including social security, the labour market and the wider economy.
  
5. Our overarching concern is that the crisis will entrench existing inequalities. Before the pandemic, some persistent disadvantages facing certain groups were failing to reduce. Our flagship report, ‘Is Britain Fairer? 2018’, found that poverty remained high for women, disabled people and some ethnic minorities.<sup>5</sup> Many of these inequalities were even more pronounced at a regional level; for example, our analysis in England found that severe material deprivation was higher in the North East and North West than in England as a whole. Pakistani adults in the North West had particularly high rates of severe material deprivation, and in the North East 25% of adults in general, and half of all disabled adults, experienced severe material deprivation.<sup>6</sup> In October we published research on the impact of Coronavirus which clearly showed that the economic impact of the pandemic had already been unequal and was widening existing inequalities.<sup>7</sup> We remain particularly concerned about the cumulative impacts on groups in society who are in or close to poverty, because of the strong links between poverty and equality and human rights outcomes.
  
6. Inequalities with regional variation are also likely to arise in other areas, including education and employment. There is extensive evidence of the negative equality and human rights impacts of school closures<sup>8</sup> (which have also varied

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<sup>4</sup> British Medical Journal (July 2020), ‘Covid-19: How does local lockdown work, and is it effective?’. See also, British Medical Journal (July 2020), [‘Mahase E Covid-19: Four in 10 cases in Italian town that locked down early were asymptomatic’](#)

<sup>5</sup> EHRC (2018), [‘Is Britain Fairer? \(2018\)’](#).

<sup>6</sup> EHRC (2018), [‘Is England Fairer? \(2018\)’](#).

<sup>7</sup> EHRC (2020), [‘How has Coronavirus affected equality and human rights?’](#), page 22.

<sup>8</sup> October 2020 - Equality and Human Rights Commission, [How coronavirus has affected equality and human rights](#).

significantly between and within regions). They have reduced schools' ability to safeguard vulnerable children,<sup>9</sup> and are likely to exacerbate attainment gaps for certain groups including disabled pupils,<sup>10</sup> children from certain ethnic minorities and those who are socio-economically disadvantaged.<sup>11</sup> Working parents, in particular mothers, are facing continuing pressure as they struggle to balance childcare and work. These include financial pressures from having to reduce hours or take unpaid leave, and anxiety about being at risk of redundancy in the future.<sup>12</sup> This, and pre-existing labour market gender inequalities such as concentration in part-time, low-paid employment, and over-representation in health and social care,<sup>13</sup> childcare and education sectors, as well as shut-down sectors such as hospitality and retail, places pressure on women's labour market participation and financial stability as Britain shifts towards economic recovery.

7. As the Government's responses continue to evolve, we want to see evidence they are taking account of the equality and human rights implications in the areas most affected. This should include consciously considering ways to balance these risks, including by seeking the views of affected groups in affected areas, and actively and conscientiously planning measures to mitigate the risks affecting particular groups.
8. We have developed a measurement framework that underpins our research on equality and human rights, covering six key areas of life.<sup>14</sup> The Government should use tools such as this to track progress throughout our recovery. A purely economic analysis, even if regional or local breakdowns are included, must be

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<sup>9</sup> The Children's Society (April 2020), [School's out and young people are at risk: what closures mean for children across the country](#); Children's Commissioner (April 2020), [We're all in this together?](#)

<sup>10</sup> Disabled Children's Partnership (2020), [Left in Lockdown – Parent carers' experiences of lockdown](#).

<sup>11</sup> It is estimated that the attainment gap between disadvantaged pupils and their peers widened by 46% as a result of the coronavirus pandemic. A similar widening of the gap between children from ethnic minorities and other children is estimated. See the National Foundation for Educational Research (2020), [Schools' responses to Covid-19: The challenges facing schools and pupils in September 2020](#).

<sup>12</sup> TUC (2021) [Working mums: paying the price](#). We note that respondents were self-selecting so are not necessarily representative of the working population in Britain.

<sup>13</sup> According to the Women's Budget Group, 77% of healthcare staff are women. 83% of those working in social care are women, and around 21% are ethnic minorities. See Women's Budget Group (April 2020), [Crises Collide: Women and Covid-19](#)

<sup>14</sup> EHRC (October 2017), [Measurement framework for equality and human rights](#)

supported by a thorough assessment of how the impact of Coronavirus varies between different groups of people in different regions.

9. The Socio-economic Duty is a potentially useful lever for Government to use to tackle the most pressing inequalities of outcome arising from the pandemic, while delivering its 'levelling-up' agenda. The Duty provides a framework for public authorities to address the socio-economic disadvantage that lies beneath, and often compounds, inequalities.<sup>15</sup> The Duty is not in force in England, but some local and combined authorities in England are voluntarily implementing the Duty and using it to focus their efforts to respond to the crisis.<sup>16</sup> Accompanied with a wide-ranging policy agenda, the Duty would assist in achieving a more equitable post-crisis recovery.

### **Recommendations:**

- **Government should put thorough analysis of the regional impacts of restrictions on human rights at the heart of its post-pandemic recovery strategies. As part of this approach, Government should ensure strategic frameworks and contracts include conditions designed to target support at the groups most affected by restrictions.**
- **Government should use the Commission's measurement framework for equality and human rights as part of a wider approach to track and measure progress as we recover from the crisis and as part of its 'levelling up' agenda.**
- **Government should bring the socio-economic duty into force in England and use it as a tool to support its levelling-up policy agenda.**

### **Race disproportionality in Covid-19 enforcement**

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10. Throughout the pandemic, police have been given extraordinary powers to enforce restrictions designed to protect public health.<sup>17</sup> While these restrictions

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<sup>15</sup> Section 1, Equality Act 2010

<sup>16</sup> Just Fair (4<sup>th</sup> June 2020), ['Press release: North of Tyne Combined Authority Implement Socio-Economic Duty'](#)

<sup>17</sup> As of 21 January 2021, the latest set of Covid-19 related restrictions in England are contained in the [Health Protection \(Coronavirus, Restrictions\) \(No. 3\) and \(All Tiers\) \(England\) \(Amendment\)](#)

have been key to slowing the spread of Covid-19, regular changes in the law, differing laws throughout the country, and a lack of clarity between the law and Government guidance, have at times led to confusion among the public and Government officials themselves.<sup>18</sup> The police are tasked with the challenging job of enforcing these complex and ever-changing laws, and have acknowledged the difficulties they face in doing so.<sup>19</sup>

11. Enforcement of Covid-19 restrictions has had a disproportionate impact on some ethnic minorities.<sup>20</sup> In June 2020 the National Police Chiefs' Council (NPCC) published data demonstrating that Fixed Penalty Notices (FPN) recorded by police forces in England and Wales under the emergency health regulations were disproportionately issued to individuals belonging to particular ethnic minorities.<sup>21</sup> Specifically, Asian and Black people were 1.8 times more likely to be issued with an FPN under the emergency health regulations than white people, and those from a mixed ethnic group were 1.2 times more likely than white people to receive a FPN.<sup>22</sup> Young men (aged 18-24 and 25-34) from ethnic minority backgrounds were approximately twice as likely to receive a FPN as white men in the same age groups.<sup>23</sup>
12. Disproportionality in the issuing of fines may in fact be even higher than these number suggest, as a significant proportion (23 per cent) of fines were recorded

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[Regulations 2021](#), which amend the previous [Health Protection \(Coronavirus, Restrictions\) \(All Tiers\) \(England\) Regulations 2020](#).

<sup>18</sup> The Guardian (29 September 2020), [Boris Johnson apologises for getting north-east England lockdown rules wrong](#); ITV News (29 September 2020), [Education minister Gillian Keegan was unable to clarify new Covid restrictions in BBC interview](#); The Guardian (24 March 2020), [UK lockdown: Gove tries to clarify confusion over coronavirus rules](#); BBC (31 July 2020), [Coronavirus: Manchester lockdown rules cause 'confusion and distress'](#); The Independent (23 October 2020), [Coronavirus: More than half of British don't 'fully understand' current rules](#); The Guardian (30 September 2020), [Newcastle council chief hits out at 'contradictory' Covid rules](#).

<sup>19</sup> Home Affairs Select Committee (21 October 2020), [Oral evidence: Home Office preparedness for Covid-19 \(Coronavirus\)](#), Q786; The Guardian (24 March 2020), [Police leaders say enforcing UK lockdown may be impossible](#); The Independent (11 September 2020), [Coronavirus: Police 'do not have capacity to enforce rule of six restrictions', officers warn amid public confusion](#).

<sup>20</sup> Women and Equalities Committee (2020), [Written evidence submitted by the Equality and Human Rights Commission](#); Home Affairs Select Committee (2020), [Written evidence submitted by the Equality and Human Rights Commission](#).

<sup>21</sup> NPCC (25 June 2020), [Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales](#); NPCC (27 July 2020), [Analysis of Coronavirus fines published](#).

<sup>22</sup> NPCC (27 July 2020), [Analysis of Coronavirus fines published](#).

<sup>23</sup> NPCC (27 July 2020), [Analysis of Coronavirus fines published](#).

with no ethnicity attached.<sup>24</sup> Police monitoring organisations report that it is more often ethnic minorities who do not disclose their ethnicity to police.<sup>25</sup>

13. There is currently no nationwide mechanism to appeal FPNs issued for breaches of emergency health regulations.<sup>26</sup> As such, the only way to challenge an FPN is to refuse to pay it, risking prosecution. While this is the norm for FPNs,<sup>27</sup> and there may be examples of egregious breaches that clearly merit one, the Covid-19 emergency health regulations have changed frequently since the first lockdown in March 2020 and, unlike with FPNs issued for driving offences or parking tickets, it is reasonable to expect that both members of the public and police officers may be unfamiliar with the detail of the law. Indeed, the Crown Prosecution Service's (CPS) monthly reviews of completed prosecutions under the emergency health regulations has found that approximately 12% of cases between March and December 2020 were incorrectly charged.<sup>28</sup> This suggests that a significant proportion of FPNs are being wrongly issued. Based on NPCC's data from June 2020, this is likely to be having a disproportionate impact on ethnic minorities, particularly young men from ethnic minority backgrounds.

14. With the country in its third national lockdown, and suggestions from Government that officer numbers will be increased and they will move more quickly to

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<sup>24</sup> NPCC (25 June 2020), [Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales](#).

<sup>25</sup> Liberty Investigates (17 June 2020), [Police forces in England and Wales up to seven times more likely to fine BAME people in lockdown](#).

<sup>26</sup> JCHR (21 September 2020), [The Government's response to COVID-19: human rights implications](#), pp. 24-25. Councils are, however, free to set up an appeals procedure if they wish to do so. See: Liberty, [Coronavirus: Criminal Penalties](#) [accessed 21 January 2021].

<sup>27</sup> In its response to JCHR's report 'The Government's Response to COVID-19: Human Rights Implications', the Government said: 'As has always been the case, if someone chooses not to pay a Fixed Penalty Notice the offence for which the FPN was issued can be considered at court, but the individual may face a criminal conviction if found guilty and courts can levy whatever fines they deem fit within sentencing guidelines'. See: Secretary of State for Health and Social Care (December 2020), [The Government's Response to the Joint Committee on Human Rights Report: The Government's Response to COVID-19: Human Rights Implications](#).

<sup>28</sup> There were a total of 1020 cases during this period, 127 of which were incorrectly charged. CPS (15 May 2020), [CPS announces review findings for first 200 cases under coronavirus laws](#); CPS (15 June 2020), [CPS review finds improvements in coronavirus charging compliance](#); CPS (16 July 2020), [Latest findings for CPS coronavirus review](#); CPS (14 August 2020), [July's coronavirus review findings](#); CPS (25 September 2020), [August's coronavirus review findings](#); CPS (28 October 2020), [September's coronavirus review findings](#); CPS (27 November 2020), [October's coronavirus review findings](#); CPS (22 December 2020), [November's coronavirus review findings](#); CPS (21 January 2021), [December's coronavirus review findings](#).



enforcement through the issuing of FPNs,<sup>29</sup> it is essential that the Government and police continue to scrutinise the disproportionate impact of restrictions on some ethnic minorities. This is relevant both retrospectively and for any period in which the country or any part of it continues to operate under emergency health regulations. Scrutiny should focus both on areas with an ethnically diverse population, and on areas where ethnic minority populations are small but disproportionality nevertheless exists. It should take into account the impact of socio-economic disadvantage, which is linked to ethnicity,<sup>30</sup> and may make compliance with restrictions more difficult.<sup>31</sup>

### **Recommendations:**

- **The Home Office should work with police authorities to ensure that officers are properly informed about the limits of powers and restrictions introduced in response to the pandemic (including the obligation to apply them in a proportionate, non-discriminatory manner), and that police authorities consult with organisations representing, particularly, ethnic minority groups, to avoid a disproportionate impact on them. We also recommend that the Home Office establish an independent mechanism to oversee police forces' use of the emergency powers and monitor compliance with equality and human rights obligations, similar to that established by Police Scotland.**<sup>32</sup>

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<sup>29</sup> NPCC (12 January 2021), [Daily UK Government Covid-19 briefing – Speech from the Chair of the NPCC, Martin Hewitt](#); Home Office (21 January 2021) [Home Secretary's statement on coronavirus](#).

<sup>30</sup> Inequalities of outcome related to socio-economic disadvantage are closely linked to inequality experienced by people sharing protected characteristics. See, for example, EHRC (2018), [Is Britain Fairer?](#) which found in 2015/16 disabled people (36.8 per cent) were nearly three times as likely to experience severe material deprivation as non-disabled people (13.5 per cent). Pakistani (44.3 per cent), Bangladeshi (48.4 per cent) and Black African (44.9 per cent) adults were over twice as likely as White British people (17.2 per cent) to live in poverty

<sup>31</sup> For example, some people may be less able to afford a break in employment in order to self-isolate, and those living in more crowded conditions or areas with higher population density may be less able to practise social distancing.

<sup>32</sup> In Scotland, Chief Constable Iain Livingstone commissioned John Scott QC to lead a review of how Police Scotland officers and staff apply emergency powers provided for by coronavirus legislation. Police Scotland (9 April 2020), [Human rights lawyer to lead scrutiny of emergency police powers](#). We also made this recommendation in evidence to the Women and Equalities Committee and the Home Affairs Select Committee. See: EHRC (2020), [Written evidence submitted by the Equality and Human Rights Commission](#); EHRC (2020), [Written evidence submitted by the Equality and Human Rights Commission](#).



# Briefing for the Coronavirus Act 2020 Six Month Review Debate House of Commons

24 September 2020

## Background

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The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of legislation and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

This briefing for MPs reflects our key concerns about the Coronavirus Act 2020 (the Act) and the significant impact this crisis is having on our rights and freedoms. It also sets out our key recommendations for action below. The provisions of the Act will be debated on 30 September as part of a six month review of the Act.

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## Introduction

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The emergency measures extended under the Coronavirus Act were rightly intended to protect public health and the right to life for people in the most vulnerable situations. However, the restrictions to everyday life have had significant equality and human rights implications for all of us, while the implications continue to be profound for those who are already disadvantaged in other ways. We must ensure they are not left further behind.

It is of course necessary that protection of the right to life has been prioritised. But it must be carefully balanced against the significant curtailment of other fundamental, hard-won rights and freedoms such as the right to a private and family life, to freedom of assembly, and to an education. In many instances, the restrictions have prohibited people from being with their loved ones at pivotal moments, including at the end of their lives, and there have been significant corollary impacts on general health and wellbeing, many of which have yet to be evaluated or understood. Meanwhile, lockdowns have instigated an economic crisis that risks entrenching existing inequalities for years to come, and further threatening health and wellbeing.<sup>1</sup>

Older and disabled people continue to be acutely affected by the virus, yet saw their rights impacted by reduced access to appropriate health and social care services, while all children have had their education severely disrupted. It has become harder to challenge detention in mental health contexts, there has been an increase in domestic abuse, and new policing powers have had a disproportionate effect on some ethnic minorities. These measures demand

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<sup>1</sup> In our evidence to the Business, Energy and Industrial Strategy Committee we provided evidence on the equality and human rights implications of the coronavirus pandemic and responses to it in relation to employment. This looked across protected characteristics, including our particular concerns regarding the impact on women and girls: EHRC (May 2020) '[Evidence to the Business, Energy and Industrial Strategy Committee inquiry on the impact of coronavirus on businesses and workers](#)'. See also: EHRC (July 2020) '[Evidence to Women and Equalities Committee sub-inquiry 'Unequal Impact? Coronavirus and the gendered economic impact'](#)'

stricter parliamentary scrutiny to properly consider these collateral impacts, and reflect the considerable sacrifices already made by the British people.

As we move beyond the first wave of coronavirus and towards an uncertain future, human rights can provide a clear and practical framework to help reassess what are reasonable restrictions and what are not, ensuring governments can navigate the delicate balance between protecting lives and safeguarding our vital freedoms and individual needs. They can also help us frame a debate on what kind of post-pandemic society we aspire to be.

Protections that complement or enhance our hard-won rights will maximise consent and compliance, and ultimately best safeguard public health. Changes of such magnitude should be proportionate and measured, and rooted in science and the law. They must have further review and end points, be flexible to specific needs, and remain open to challenge.<sup>2</sup> The positive and negative impacts must be measured and, where necessary, mitigated. This six-month review is an essential point in that process.

## Scrutiny of legislation

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The Coronavirus Bill 2020 was fast-tracked through both Houses in just four sitting days.<sup>3</sup> As the initial emergency response to the pandemic subsides and we adjust to a potential extended period living alongside Covid-19, parliamentary scrutiny is crucial for any legislation or policy that restricts individual liberty or exacerbates inequality. We consider that, as a matter of principle, any changes affecting fundamental rights should be subject to procedures which allow for rigorous parliamentary scrutiny.

**Parliamentary reports and review:** We welcomed provisions introduced during the Bill's passage to improve scrutiny. These included reports to Parliament every

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<sup>2</sup> EHRC (23 March 2020), [Briefing: Coronavirus Bill 2019-21 House of Commons and House of Lords \(all stages\)](#).

<sup>3</sup> Legislative Consent for the Act was also fast-tracked by both the Senedd and the Scottish Parliament.

two months on the Act's implementation, and six-monthly review of the legislation.<sup>4</sup> However, we remain concerned that the two-monthly reports provide minimal detail. They fail to address the impact of how the provisions have been used, including the equality or human rights impact, and do not include evidence on how the views and experiences of groups sharing protected characteristics have been considered.<sup>5</sup> The provisions enabling this parliamentary debate are also limited in that they appear to provide only for wholesale acceptance or rejection of the legislation, with little or no opportunity for amendments.

**Post-legislative review:** We also consider that careful post-legislative scrutiny of the Act is necessary, due to its significant equality and human rights implications and the speed with which it was passed. This concurs with the 2009 conclusion of the House of Lords Select Committee on the Constitution that there should be a presumption in favour of early review of fast-track legislation, ideally within one year.<sup>6</sup>

**Delegated legislation:** We have further concerns about the significant volume of delegated legislation passed during the pandemic. Of the 237 Covid-19 related Statutory Instruments (SIs) laid before Parliament up to 22 September 2020,<sup>7</sup> 175 have been subject to the 'made negative' procedure, many of which have had significant equality and human rights implications.<sup>8</sup>

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<sup>4</sup> Section 97 of the Coronavirus Act 2020 requires the Secretary of State to prepare and publish a report on the status of the main non-devolved provisions in the Act. Section 98 provides for the present debate in Parliament by way of six monthly reviews.

<sup>5</sup> Department of Health and Social Care (May 2020), [Two-monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: May 2020, Coronavirus Act 2020](#) and [Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020](#).

<sup>6</sup> House of Lords Select Committee on the Constitution (7 July 2009), [Fast-track Legislation: Constitutional Implications and Safeguards Volume I: Report](#), paragraphs 208 and 209 [accessed 21 August 2020].

<sup>7</sup> Sixteen of these Statutory Instruments have been laid using powers under the Coronavirus Act 2020. A complete list of the Acts of Parliament and Orders that have been used to lay Covid-19 related Statutory Instruments is available at: Hansard Society (22 September 2020), [Coronavirus Statutory Instruments Dashboard](#) [accessed: 23 September 2020].

<sup>8</sup> We have in particular been concerned about the equality and human rights implications of the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#). We are also concerned about [The Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) Regulations 2020](#), and the [Secure Training Centre \(Coronavirus\) \(Amendment\) Rules 2020](#) which allow for restrictions to the rights of children in custody, including restrictions on visits from families and significantly reduced access to education, up to March 2022.

Parliament has previously adopted a ‘sifting procedure’ for significant and time-sensitive legislation, such as secondary legislation under the European Union (Withdrawal) Act 2018, to determine whether SIs should be subject to negative or affirmative procedure. This model should be used for Covid-19 related SIs, prioritising those with potentially serious implications for equality and human rights. This would improve scrutiny, ensuring powers are used only when necessary and proportionate and in accordance with equality and human rights obligations.<sup>9</sup>

**Reduced scrutiny beyond the legislation:** Beyond the Act, we have concerns that the crisis has led to a broader deterioration of public scrutiny, particularly over closed institutions.<sup>10</sup> Significant restrictions and policy changes have been imposed in these settings, affecting older and disabled people in care homes, children and young people in custody, and people with learning disabilities and autism in secure care, among others.<sup>11</sup> These institutions have been increasingly closed to the outside world during the pandemic,<sup>12</sup> and there is a real risk that the people who live in them are exposed to harm<sup>13</sup> and left behind in the recovery plan, if the impacts are not effectively scrutinised.

## **Recommendations**

**Government should ensure that statutory reports to Parliament under the Act address the impact of the legislation on equality and human rights, with**

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<sup>9</sup> We note and welcome the fact that the House of Lords Secondary Legislation Scrutiny Committee is already considering statutory instruments to tackle the coronavirus pandemic and providing a brief information paragraph for each instrument in its reports.

<sup>10</sup> The CQC defines a closed culture as “a poor culture that can lead to harm, which can include human rights breaches such as abuse”, see CQC (2020), [Identifying and responding to closed cultures](#). Lack of external oversight is identified as a key risk factor.

<sup>11</sup> For instance, the Ministry of Justice rolled out the use of PAVA incapacitant spray in all male closed prisons in response to the pandemic, in anticipation of increasing violence, without implementing safeguards. See BBC (13 June, 2020), [Pepper spray deployed in prisons despite concerns for BAME inmates](#). The expected increase in violence did not occur but PAVA spray has not been withdrawn.

<sup>12</sup> For example, both [HMIP](#) and the [CQC](#) suspended inspections during the pandemic.

<sup>13</sup> For example, the Joint on Human Rights heard concerning evidence of increased use of restraint on children with learning disabilities and autism in secure care, and the Children’s Commissioner has expressed that children in custody have been spending more than 23 hours a day in their cells. See JCHR (2020), [Human Rights and the Government’s response to COVID-19: The detention of young people who are autistic and/or have learning disabilities](#), and Children’s Commissioner (2020), [Briefing: children in custody](#).

**analysis that includes data, views and experiences of groups sharing protected characteristics, against each provision.**

**Government should introduce provisions to enable improved post-legislative scrutiny of the Act. This could include requiring review by Parliament of the appropriateness of each of the substantive Part 1 powers under the Act, with a specific focus on the equality and human rights impact of the powers.<sup>14</sup>**

**Parliament should ensure that all SIs relating to Covid-19 are considered by a sifting committee to recommend the appropriate procedure, prioritising SIs with significant effects on equality and human rights for the affirmative procedure.**

## **Changes to adult social care – Section 15 and Schedule 12**

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Section 15 of and Schedule 12 to the Act replace a duty, provided under the Care Act 2014, which requires local authorities in England to assess and meet a person's needs for care and support, and in the Social Services and Wellbeing (Wales) Act 2014 which has similar obligations for adults care and support in Wales. This duty to assess and meet needs was replaced with a power for local authorities to do so, thereby downgrading the level of care to which an individual is entitled.<sup>15</sup>

Local authorities in England must report any decision to use these easements<sup>16</sup> and communicate the decision in an accessible way to a range of interested parties, including service users and local MPs.<sup>17</sup> The Coronavirus Act guidance for England, however, makes clear that local authorities can change provision or 'apply flexibilities' under existing provisions in the Care Act without triggering the

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<sup>14</sup> This echoes the recommendation of the Public Administration and Constitutional Affairs Committee which called for thematic debates on specific provisions within the Coronavirus Act 2020 in its inquiry on [Parliamentary Scrutiny of the Government's handling of Covid-19](#) (8 September 2020).

<sup>15</sup> Section 15, [Coronavirus Act 2020](#). See also [Coronavirus Bill Explanatory Notes](#), paras 232-237

<sup>16</sup> Birmingham, Coventry, Derbyshire, Solihull, Staffordshire, Sunderland, Middlesbrough and Warwickshire Councils used the easements: Community Care (April 2020), '[Eight councils have triggered Care Act duty moratorium in month since emergency law came into force](#)'. As of 31<sup>st</sup> July, use of easements has now ceased: 'DHSC (31 July 2020), '[Two-monthly report on the non-devolved provisions of the Coronavirus Act: July 2020](#)'

<sup>17</sup> DHSC (20 May 2020), [Care Act Easements: Guidance for local authorities](#).



easements or notifying the Department of Health and Social Care (DHSC).<sup>18</sup> In Wales, there is no similar formal announcements process but the easements have not to date been used.

A number of disabled people's organisations have reported significant reductions in care provision for disabled people, including in areas where local authorities have not triggered the easements.<sup>19</sup> They have also reported a lack of information and transparency regarding decisions taken by local authorities to reduce or change care provision.<sup>20</sup> We are concerned there is not a clear picture of how social care provision has been affected during the pandemic and that there is a lack of central oversight.<sup>21</sup>

Whilst our concerns that these easements would be widely triggered have to date not materialised,<sup>22</sup> the limited safeguards and widespread use of existing flexibilities places disabled adults, those with long-term health conditions and older people at risk of having their essential needs neglected.

## **Recommendations**

**Care Act 2014 and Social Services and Wellbeing (Wales) Act 2014 easements in the Coronavirus Act must be urgently repealed.**

**DHSC and Welsh Government should increase their oversight of changes to**

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<sup>18</sup> Ibid. Appendix A sets out that local authorities can prioritise short term allocation of care and support using current flexibilities within the Care Act 'where COVID-19 related absence means service types need to be changed, delayed or cancelled'.

<sup>19</sup> RIDC (8 June 2020), '[Covid-19: our third survey into the impact on disabled and older people' \(due to a small sample size, the results of the RIDC Survey should be viewed as an indication of a possible trends only\)](#)'; See also Lisney, E. et al. (April 2020), '[The Impact of COVID 19 on Disabled Women from Sisters of Frida: Voices of Disabled women in the pandemic](#)', Sisters of Frida; Inclusion London (June 2020), '[Abandoned, forgotten and ignored: impact of the coronavirus on disabled people](#)'

<sup>20</sup> See for example, concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK) in oral evidence to [Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

<sup>21</sup> There is no requirement on local authorities to inform the DHSC or the CQC if they change or reduce provision by applying flexibilities under the pre-amendment Care Act. Moreover, there is no requirement on local authorities to publish data on any changes to the number of care recipients or care hours funded or provided by the local authority during the pandemic.

<sup>22</sup> The Government's two-month-on report on the use of powers under the Coronavirus Act reported that eight local authorities had triggered the Care Act easements since commencement. DHSC (31 July 2020), '[Two-monthly report on the non-devolved provisions of the Coronavirus Act: July 2020](#)'. The report confirmed all of these have now ceased.

**social care provision across local areas and ensure that recovery planning and national policy decisions are informed by accurate and up-to-date data.**

**DHSC and Welsh Government should use this information to identify whether any groups have been disproportionately affected by changes to social care provision and take immediate remedial action to address systemic problems that risk having a serious long-term effect.**

## **Disabled children in education - Section 38 and Schedule 17**

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Under this power in the Act, the UK Government issued monthly Notices temporarily modifying the duty on public bodies responsible for securing special educational and health provision in accordance with a child's Education, Health and Care Plan (EHC Plan) in England. Following the Notices, these bodies were only required to make 'reasonable endeavours' to discharge their duties, rather than this being an absolute requirement.<sup>23</sup> In addition, the UK Government issued new Regulations relaxing the timescales for conducting EHCP assessments.<sup>24</sup> Although the Coronavirus Act 2020 allows for similar actions in Wales, Welsh Government did not issue notices or make similar regulations.

The Commission, parliamentarians, Chair of the APPG for SEND<sup>25</sup> and organisations including the Children's Commissioner<sup>26</sup> raised concerns about these powers. Developments at local level during the period of school closures substantiated these concerns. The Commission received reports that some local authorities effectively ceased SEND provision.<sup>27</sup> The last monthly Notice was issued in July and the UK Government announced that the Regulations will expire on 25 September. However, we remain concerned that the UK Department for

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<sup>23</sup> Department for Education (29 June 2020), '[Decision: Modification notice: EHC plans legislation changes](#)'.

<sup>24</sup> [The Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) Regulations 2020](#). Note, in contrast to the modification notices, these regulations were made under powers given to the Secretary of State by the Children and Families Act 2014, not the Coronavirus Act 2020.

<sup>25</sup> Emma Hardy MP, (2020), [Letter about concerns over SEND legal changes](#).

<sup>26</sup> Children's Commissioner, (2020), [Requesting additional safeguards to ensure that children's rights and best interests are upheld during the coronavirus outbreak](#).

<sup>27</sup> A Jackson and E Wright (May 2020), [Education: recent developments \(Legal Action\)](#). This view is also supported by anecdotal evidence provided to us by Just for Kids Law in May 2020.

Education’s guidance on re-opening special schools continues to allow for modifications in individual local areas,<sup>28</sup> and have consistently called for greater scrutiny of the use of the powers to issue these Notices.

**The importance of EHC Plans:** EHC Plans are vital to advancing equality of opportunity as they seek to ensure the educational needs of children and young people with special educational needs and disability (SEND) are met. Another key feature of EHC Plans is that they are to be “reviewed regularly to reflect ... changing needs,”<sup>29</sup> and the statutory timescales are important to prevent potentially damaging delays in delivery of support for children and young people.

We are therefore concerned that reductions in support are likely to have exacerbated attainment gaps between disabled and non-disabled pupils.<sup>30</sup> They may also increase the number of disabled children reaching crisis point and being admitted to inpatient units or held in restrictive settings.<sup>31</sup>

## **Recommendations**

**UK Government must allow time for effective Parliamentary scrutiny of any future decisions to modify SEND provision as a result of coronavirus (including, at a minimum, complying with the usual “21-day rule” under the negative procedure for Regulations). Any restrictions imposed on children’s rights such as their right to education must be imposed only where necessary, proportionate and be kept to an absolute minimum.**<sup>32</sup>

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<sup>28</sup> DfE, (2020), [Guidance for full opening: special schools and other specialist settings](#). See section on ‘SEND legislation’

<sup>29</sup> Department for Education (March 2011), [Support and aspiration: a new approach to special educational needs and disability para 5](#).

<sup>30</sup> Department for Education (May 2020), [Special educational needs and disability: an analysis and summary of data sources](#).

<sup>31</sup> This is in breach of the right to live independently as part of the community, guaranteed in [Art 19 United Nations Convention of the Rights of Persons with Disabilities](#). Children in these settings are no longer receiving support normally provided in schools or community services. See National Preventive Mechanism (2020), [Letter to UK Secretary of State for Justice Robert Buckland QC MP](#). See also Joint Committee on Human Rights (2019), [The detention of young people with learning disabilities and/or autism](#); and Equality and Human Rights Commission (2020), [Health Secretary faces legal challenge for failing patients with learning disabilities and autism](#).

<sup>32</sup> Human Rights Council (15 June 2020), [Report of the Special Rapporteur on the right to education: Right to education: impact of the COVID-19 crisis on the right to education; concerns, challenges and](#)

**Should further Notices be issued, UK Government must provide effective oversight of their implementation. We recommend that the UK Government commission the Office for Standards in Education, Children’s Services and Skills and the Care Quality Commission to conduct targeted joint assessments of local area SEND provision where modifications of legal duties have been granted**

**Education easements in Schedule 17 should be repealed for Wales as they have not been used.**

## **Challenging mental health detention – Schedule 8**

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The pandemic has caused a substantial worsening of people’s mental health,<sup>33</sup> particularly for those with pre-existing mental health issues<sup>34</sup> and disabled children.<sup>35</sup> At the same time, access to mental health services has been drastically reduced.<sup>36</sup> We are concerned that these trends, along with reduced oversight of

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[opportunities](#) para 13. See also recommendation at paragraph 180 regarding the communication and use of powers concerning children’s rights to education made by the Joint Committee on Human Rights: Joint Committee on Human Rights (September 2020), [‘The Government’s response to COVID-19: human rights implications’](#)

<sup>33</sup> Nearly two-thirds of disabled adults said coronavirus-related concerns were affecting their wellbeing, from loneliness and problems at work, to worsening mental health. ONS (24 April 2020), [‘Coronavirus and the social impacts on disabled people in Great Britain’](#).

<sup>34</sup> 79 per cent of people with pre-existing mental illnesses reported declining mental health as a result of the pandemic. Rethink Mental Illness (June 2020), [‘Access to NHS mental health services for people living with severe mental illness’](#).

<sup>35</sup> 78 per cent of parents of disabled children reported that the lockdown was having a negative impact on their disabled child’s mental health. Disabled Children’s Partnership (June 2020), [‘Left in Lockdown’](#). 83 per cent of young people with a history of mental health needs agreed that the pandemic had made their mental health worse. YoungMinds (30 March 2020), [‘Coronavirus having major impact on young people with mental health needs – new survey’](#).

<sup>36</sup> For example, 42 per cent of people with pre-existing mental illnesses reported that their mental health had declined during the pandemic due to reduced support from mental health services. Rethink Mental Illness (June 2020), [‘Access to NHS mental health services for people living with severe mental illness’](#). See also Rethink Mental Illness (7 July 2020), [‘How Covid-19 limited my access to mental health support’](#) (describing a patient’s experiences, including her inability to receive medication for 12 weeks); see also concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, ‘Unequal impact? Coronavirus, disability and access to services’](#) (24 June 2020).

places of detention and reductions in social care support, could lead to increased and prolonged rates of detention.<sup>37</sup>

Government has not yet triggered provisions in the Act that would relax crucial safeguards under the Mental Health Act ('MHA').<sup>38</sup> However, the Act has significantly changed the operation of mental health tribunals in Wales, with similar changes in England brought into effect at the direction of the Courts and Tribunals Judiciary.<sup>39</sup> Fewer tribunal panel members are now needed to make a decision,<sup>40</sup> pre-hearing assessments are waived, and decisions can sometimes be made without a hearing, without the consent of parties.<sup>41</sup> This could reduce people's ability to challenge their detention, potentially resulting in prolonged or unnecessary hospital stays for people who could be better supported at home and in their communities.<sup>42</sup>

In addition, revised legal guidance on the operation of mental health services now allows 'temporary departures from the [MHA] Code of Practice' which provides statutory guidance for practitioners caring for people with mental health conditions.<sup>43</sup> We have serious concerns that this legal guidance relaxes important safeguards against unnecessary detention for an undefined period of time.<sup>44</sup> It has

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<sup>37</sup> We have heard from stakeholders that diminished community support has already led to an increase in detention rates, and that in some areas, there has been a rapid increase of detention of minority ethnic patients since the outbreak of the pandemic. Additionally, we are concerned that the reductions in SEND support could result in an increased number of disabled children reaching crisis point and being admitted to inpatient units or held in restrictive settings.

<sup>38</sup> The Act creates provisions which, if triggered, would reduce the number of doctors needed to approve detention, extend or remove time limits on detention, and reduce oversight for forced treatment. [Coronavirus Act 2020, Schedule 8, Part 2](#); Royal College of Psychiatrists (2020), [Legal matters - COVID-19 guidance for clinicians](#).

<sup>39</sup> [Coronavirus Act 2020 \(Commencement no. 1\) \(Wales\) Regulations 2020](#); Mental Health Review Tribunal for Wales (2020), [Practice direction COVID-19](#); Courts and Tribunal Judiciary (2020), [Pilot practice direction: health, education and social care chamber of the first-tier tribunal \(mental health\)](#).

<sup>40</sup> A judge acting alone can now make a decision in mental health tribunals in England and Wales. However, in England there is provision for a judge acting alone to receive advice from a doctor or lay member before or during the tribunal. There is no equivalent provision explicitly set out in Wales.

<sup>41</sup> Paper hearings are now allowed in certain contexts in England and Wales. In England, but not in Wales, the consent of all parties is required before a decision can be made in these cases.

<sup>42</sup> [Coronavirus Act 2020 \(Commencement no. 1\) \(Wales\) Regulations 2020](#); Mental Health Review Tribunal for Wales (2020), [Practice direction COVID-19](#); Courts and Tribunal Judiciary (2020), [Pilot practice direction: health, education and social care chamber of the first-tier tribunal \(mental health\)](#).

<sup>43</sup> NHS England (19 May 2020), '[Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic](#)'.

<sup>44</sup> For example, the guidance allows hospitals to temporarily suspend hospital managers' hearings (which provide a route to challenge detention under the MHA in certain circumstances) if holding a

not been possible to monitor the impact of these changes as there is no available data on detention rates or referrals to the mental health tribunal during the pandemic.

### **Recommendations**

**Government should repeal provisions in the Act that would allow for crucial safeguards on detention under the MHA to be removed.**

**Government should monitor the use of temporary changes to mental health tribunal rules, including on people sharing protected characteristics, and take action to address any adverse or disproportionate impacts on people's ability to challenge their detention.**

**Government should amend legal guidance allowing for departures from the MHA Code of Practice as soon as possible to ensure there is no reduction in people's ability to challenge their detention.**

**Government should closely monitor and regularly publish rates of detention under the MHA during the pandemic, disaggregated by protected characteristic and geographic location, and take action to address any disproportionate use.**

### **Disproportionate impact on ethnic minorities**

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Evidence has emerged during this crisis of the disproportionate impact Coronavirus is having on people from certain ethnic minorities, both in terms of infection and death rates.<sup>45</sup> These effects are linked to long-standing and inter-related racial inequalities across many areas of life, including health, employment, education and housing, which have been exacerbated by Coronavirus.

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panel would be 'unfeasible due to reasons relating to the current pandemic'. Ibid, p.42. This applies 'for the duration of the pandemic period' but the guidance does not define what this period is. This represents a significant potential erosion of a pathway to challenge detention. Any postponement or suspension of rights should be limited in duration as much as possible.

<sup>45</sup> Public Health England (June 2020), [Disparities in the risk and outcomes of COVID-19](#).

In our evidence to the Women and Equalities Committee,<sup>46</sup> we warned that if Government fails to fully understand and, where appropriate, address these unequal impacts this may amount to a breach of its domestic and international obligations to pay due regard to the need to advance equality of opportunity and eliminate discrimination on grounds of race.<sup>47</sup>

We have also raised particular concerns about regulations introduced in response to the pandemic which have given police across the UK unprecedented powers to intervene in the lives of the public. Whilst these powers do not arise exclusively from the Act,<sup>48</sup> data published by the National Police Chiefs' Council in June indicated that police enforcement of coronavirus restrictions under the emergency regulations was having a disproportionate impact on ethnic minorities.<sup>49</sup> Analysis conducted by Liberty suggests that the disproportionality in police enforcement is evident even in areas where there are proportionately low numbers of ethnic minority people.<sup>50</sup>

Data from the Metropolitan Police indicates a substantial rise in stop and search by the police in London during this period.<sup>51</sup> This is also likely to have a

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<sup>46</sup> Women and Equalities Committee (August 2020), '[EHRC written evidence to the inquiry on the unequal impact of Coronavirus on BAME people](#)' [accessed: 23 September 2020].

<sup>47</sup> See, in particular, Equality Act 2010, s 4 and s 149 and Art 5 of the International Convention on the Elimination of Racial Discrimination.

<sup>48</sup> Regulations in England and Wales which restrict movement and allow for Police enforcement and Fixed Penalty Notices have been made under the Public Health (Control of Disease) Act 1984. Scottish Regulations which restrict movement and allow for Police enforcement and Fixed Penalty Notices have been made under either the Coronavirus Act 2020 (in the case of the general Regulations) or the Public Health etc. (Scotland) Act 2008 (in the case of the International Travel Regulations).

<sup>49</sup> National Police Chiefs' Council (25 June 2020), '[Fixed penalty notices issued under COVID-19 emergency health regulations by police forces in England and Wales](#)'. This disproportionality is evident in spite of the overall fall in the number of fines issued by the police in England and Wales under the emergency health regulations.

<sup>50</sup> Liberty also suggest that the disproportionality may be even larger than the numbers show, given that a number of police forces have recorded a significant percentage of fines with no ethnicity attached, and it is more often ethnic minorities who do not disclose their ethnicity to police. Liberty Investigates (17 June 2020), '[Police Forces in England and Wales up to seven times more likely to fine BAME people in lockdown](#)'.

<sup>51</sup> The Metropolitan Police reported an increase in stop and search of 84 per cent between March and May 2020. MPS, '[Stop and search dashboard](#)' [accessed: 1 July 2020]. There were 43,844 stop and searches reported in May, compared with 23,826 in March.

disproportionate impact on ethnic minorities as they are already subject to stop and search and police use of weapons at a far higher rate than White people.<sup>52</sup>

## **Recommendations**

Our concern goes beyond the scope of this Act, but it is vital that Government urgently takes action to address racial inequalities that have been exacerbated during the six months since passage of the legislation.

**The UK Government should adopt a comprehensive and coordinated race equality strategy.<sup>53</sup> The strategy should be led by a single department, preferably the Cabinet Office, to leverage action and accountability across Government.**

**Our ‘Roadmap to Race Equality’ identifies solutions to tackle persistent racial barriers that exist across employment, education, health, criminal justice system and housing and should be used as the blue print for the Government’s race equality strategy.<sup>54</sup>**

**In addition, Government should fully implement our recommendations on tackling racial disparities in policing outlined our submission to the Home Affairs Select Committee on the MacPherson Report.<sup>55</sup>**

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<sup>52</sup> UK Government (March 2020), [Stop and Search](#); Busby, M., The Guardian (17 April 2020), ‘Rights groups quit police body over stun gun use against BAME people’.

<sup>53</sup> Scotland already has a race equality strategy: [A fairer Scotland for all: race equality action plan and highlight report 2017 – 2021](#); and we welcome the Welsh Government commitment to develop and deliver a Wales race action plan: [Welsh Parliament plenary](#) (June 3, 2020), para 108. We note that a race equality strategy for England is also the recommendation of various stakeholders in England, including Lord Simon Woolley: Operation Black Vote (27 May 2020), [BAME Leadership Demand COVID-19 Race Equality Strategy](#). The accompanying [petition](#) calling for the strategy has, at the time of submission, attracted over 138,000 signatures.

<sup>54</sup> Equality and Human Rights Commission (Oct 2017) [A Roadmap to Race Equality](#) (developed in collaboration with the Runnymede Trust, Operation Black Vote, the Black Training and Enterprise Group and Business in the Community)

<sup>55</sup> Equality and Human Rights Commission (July 2020) [Evidence to the Home Affairs Select Committee Inquiry on the MacPherson Report: Twenty Years on](#).



## Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the [Equality and Human Rights Commission website](#). For more information, please contact:

### Policy leads

[Redacted text]

Rt Hon Caroline Nokes MP  
Chair, Women and Equalities  
Committee  
House of Commons  
London  
SW1A 0AA

Wednesday 30 September 2020

Dear Caroline,

### **Equality Impact Assessment of the Coronavirus Act 2020**

Thank you for writing to us about the Government's Equality Impact Assessment ('EIA') of the Coronavirus Act 2020, ahead of the six month review debate scheduled in the Commons today.

We have not undertaken a comprehensive review of the Government's EIA, however I am able to share some preliminary thoughts with you below.

In your letter you asked whether the EIA demonstrates that the provisions in the Act comply with existing equality legislation. The Government's EIA alone is not enough to determine whether the provisions of the Coronavirus Act 2020, and their use, are compliant with equality legislation. The EIA provides analysis of the equality impact which the Government has considered, but does not provide comprehensive information about how this information has

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influenced decision making about the development of powers under the Act, and the exercise of those powers.

You also asked whether we consider the EIA to be an accurate reflection of the impact of the provisions on those with protected characteristics. We consider that the EIA's assessment of this impact is very limited. Although the EIA identified some potential and actual impacts on some protected characteristic groups, the subsequent update provided in Annex A is limited and unclear as to what additional actual or potential impacts were subsequently identified or are occurring.

We therefore in [our briefing](#) ahead of the debate today asked the Government to improve its analysis of the impact of the legislation. We said that the Government should ensure that statutory reports to Parliament under the Act address the impact of the legislation on equality and human rights, with analysis that includes data and the views and experiences of groups sharing protected characteristics, against each provision.

The following are some of our preliminary thoughts on the EIA:

- The EIA is unclear in that it does not thoroughly explain in Annex A which new actual or potential impacts of the provisions have subsequently been identified or have occurred since the initial EIA of the legislation was conducted. It is also unclear when the EIA was updated and what approach was taken to updating it.
- The EIA lacks information about which organisations, if any, representing people sharing protected characteristics were consulted about the potential or subsequent actual impacts of the provisions.
- The EIA does not attempt to summarise the impact of the legislation as a whole by protected characteristic. We know this is of interest to people sharing certain protected characteristics and parliamentarians.

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- The EIA states that 'most impacts will be temporary, spanning the duration of the coronavirus pandemic and emergency situation'. We do not think the EIA fully analyses the potential longer-term impacts of the legislation.
- The EIA repeatedly states that the 'PSED is an ongoing duty and we will continue to monitor and review the impacts of these provisions', yet it lacks an explanation of how this will be done and when and where this information will be made accessible to the public. We welcome the acknowledgment of the need for continuing equality impact analysis, however this should be accompanied by an explanation of how it is going to inform future decision making.
- The EIA does not appear to contain much explanation of how, if at all, the EIA actually changed decision making. Whilst the selected intervention is occasionally compared to 'do nothing', there is little apparent analysis of how any potential negative impact identified on certain protected characteristics could be specifically mitigated in the chosen response.

I hope you find this information useful.

Yours sincerely,



**Rebecca Hilsenrath**

Chief Executive

Equality and Human Rights Commission

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Thank you for the opportunity to comment on the Coronavirus (CV19) safer public places – urban centres and green spaces. We understand the need to ensure the Welsh Safer Public Places guidance for local authorities and wider stakeholders reflects the landscape in Wales.

You will be well aware that Coronavirus and the societal impact of the pandemic are having a disproportionately negative impact on certain groups in society. It is imperative that equality and human rights are central to the response to Coronavirus to ensure inequality is not exacerbated further by the current crisis.

There are some broad considerations that we would like to highlight.

### **Equality Act 2010**

In developing this guidance it is imperative that local authorities and wider stakeholders ensure continued compliance with the Equality Act 2010 (EA2010). The guidance could include a reference to the Equality Act, such as the Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It protects individuals from unfair treatment and promotes a fair and more equal society. The Equality Act is useful for people receiving the guidance to assist with the planning for the use of public spaces. It will help to ensure that the needs of protected groups are considered. This could be included in the section which refers to complying with relevant legislation.

### **Public Sector Equality Duty (PSED)**

Under the Equality Act 2010, public bodies in Wales are required to meet their obligations under the PSED and the specific duties in Wales. Your guidance should include a reference to explain that this duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all. This could be included in the section which refers to complying with relevant legislation.

Your guidance should include a reference to the need to engage with those who are likely to be impacted by the proposed policy or decision. For example, the proposals in the guidance will affect a range of people including disabled people; older people and pregnant women/breastfeeding mothers.

Equality Impact Assessments (EIAs) are a legal requirement under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and a

useful tool to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made. Your guidance should reinforce this message by including a reference to making it clear that an assessment of the impact of policies on protected groups and publishing that assessment is a legal requirement. This will ensure that decisions are fair.

We have guidance on the Public Sector Equality Duty. It can be found here:

<https://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales>

<https://www.equalityhumanrights.com/en/publication-download/engagement-and-equality-duty-guide-listed-public-authorities-wales>

<https://www.equalityhumanrights.com/en/publication-download/assessing-impact-and-equality-duty-guide-listed-public-authorities-wales>

This guidance includes steps that should be taken relating to engagement and assessing the impact on protected groups. It would be helpful to include these links in your guidance.

The flow diagram included in the Identification of issues in urban centres and green spaces could also be updated to include these considerations – see specific suggestions below.

## **Reasonable Adjustments**

In meeting obligations under the Equality Act organisations are required to comply with the duty to make reasonable adjustments for disabled people and to consider accessibility issues with regards to these proposals. This duty is an anticipatory duty. This means an organisation cannot wait until a disabled person wants to use its services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment, a learning disability or a mental health condition. The guidance should include a reference to the need to consider what disabled people with a range of impairments might reasonably need, and that engagement with representative groups will be key.

We have guidance on making reasonable adjustments. It can be found here:

<https://www.equalityhumanrights.com/en/multipage-guide/using-service-reasonable-adjustments-disabled-people>

It would be helpful to include this link in your guidance.

The flow diagram included in the Identification of issues in urban centres and green spaces could also be updated to include these considerations – see specific suggestions below.

### **Social Model of Disability**

The Welsh Government has adopted the social model of disability as the basis for all its work. The social model acknowledges that disadvantage and social exclusion stem from the barriers disabled people face rather than from an individuals impairments. The social model helps us recognise barriers that make life harder for disabled people. Removing these barriers creates equality and offers disabled people more independence, choice and control. It is important that all measures taken to maintain social distancing as we move out of lockdown consider the social model of disability. The language used in the UK Government guidance Coronavirus (COVID-19): safer public places - urban centres and green spaces does not reflect the social model of disability. Some examples of language that should be changed is included in the “suggestions” section below.

### **Accessible Information**

An issue that is consistently raised in relation to service provision, including transport is the need for accessible information. Article 9 of the UNCRPD relates to accessibility of information and the built environment.

We would recommend that Welsh Government advise transport operators to provide accessible information on the operation of services including guidance at stations on social distancing and how passenger assistance will work. This guidance would be particularly important for passengers who require additional assistance including people with visual impairments and to ensure protection for frontline staff.

Given that disabled people and older people are amongst the most digitally excluded groups hard copy information or support via telephone services for booking assistance is vital as is visual and verbal information

at transport hubs and on vehicles. This will also support people for whom English or Welsh is not their first language.

## **Respecting all users**

Respecting all users in public spaces, both green and urban, is important. With large numbers of different people using the same spaces, for instance people with sensory impairments; cyclists and runners using shared pathways, this can lead to problems. The guidance should include a reference to the need to respect all users in public spaces.

Guidance is also available on the Commissions website relating to [assistance dogs](#) and can be found here:

<https://www.equalityhumanrights.com/en/publication-download/assistance-dogs-guide-all-businesses>

It would be helpful to include these link in your guidance.

## **Specific suggestions for inclusion in the guidance**

### *3. Identification of issues in urban centres and green spaces*

Flow diagram

- point 2 should include a reference to engaging with user groups
- Point 3 should include a reference to assessing the impact of any potential interventions
- Point 4 should include a reference to the consideration of reasonable adjustments for people with different impairments
- Point 5 should include a reference to complying with the Equality Act 2010 and the Public Sector Equality Duty (PSED).

### *4. Management of urban centres*

This section includes some reference to people with disabilities but the language does not reflect the social model of disability. The language used should refer to “disabled people” rather than people with disabilities. Access and accessibility do not appear to be specifically referred to in the guidance. It is important to ensure that the guidance includes a reference to ensuring that all interventions consider the need for spaces to be accessible for people with various impairments. The Equality Act, Disabled People, Disabled Peoples’ organisations and local Access Groups are all sources of advice and guidance.



The interventions already listed in your guide which should be reviewed include:

- People with disabilities and other groups who may have additional needs to be kept under consideration.
- Reduce unnecessary obstacles, for example planters and add markings/tape on seating to maintain social distancing. Security considerations and the impacts of measures on people with disabilities and other groups needs to be kept under consideration and may call for a balanced approach.
- Security considerations, and the impact of measures on people with disabilities and other groups, need to be kept under consideration. This includes access for blue badge holders and may call for a balanced approach.
- Security considerations, and the impact of measures on people with disabilities and other groups, need to be kept under consideration. This includes access for blue badge holders and may call for a balanced approach.
- Seating areas for the disabled and elderly

The following are suggestions that can be used to review and replace the statements above and any other similar references in the guidance.

### **Page 10**

- Ensure accessibility and the needs of disabled people and other groups (such as older people, pregnant women and breastfeeding mothers) who may have additional needs are considered at the outset and kept under consideration.
- Ensure accessibility, reduce unnecessary obstacles, for example bollards and planters. Seating needs to be maintained and accessible for all. Ensure accessibility and the needs of disabled people and other groups (such as older people, pregnant women and breastfeeding mothers) are considered at the outset and kept under consideration. This includes when using markings/tape could to maintain social distancing and security considerations.
- Respecting all users will enhance the safety of all users. This statement could be included on page 10 under the point relating to widening footpaths.

- In the queuing section consideration needs to be given to ensuring instructions are effectively communicated to disabled people.

### **Page 11**

- Security considerations, and the impact of measures on disabled people and other groups, need to be considered at the outset and kept under consideration. This includes access for blue badge holders, as well as accessible public transport, which includes licensed taxis.

### **Page 13**

- Public toilets should be available, particularly for disabled people and older people, as a lack of these services may present a significant barrier to being able to go out. It is important that these facilities are safe and cleaned regularly.
- Where interventions are included in relation to queuing systems, consideration should be given to how instructions can be effectively communicated to disabled people.
- Point 16 – use the term older people rather than elderly. This language should be used throughout your guidance.
- Point 16 – Language should be changed to use the term older people rather than elderly.

### **Page 17 and 19**

- See previous points about queuing instructions being effectively communicated to disabled people.

### **Page 21**

- See previous points about queueing instructions. A point should also be included in relation to consideration should be given to ensuring blue badge parking spaces are available.

## *5. Management of green spaces*

The interventions should include the same languaging examples as set out above for the management of urban centres.

## *6. Additional communication, technology and regulatory considerations*

The Equality Act, Public Sector Equality Duty and the specific duties in Wales should be added into this section.

- The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It provides Britain with a discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.
- The Public Sector Equality Duty ensures that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. It is an integral and important part of the mechanisms for ensuring the fulfilment of the aims of the Equality Act 2010. The purpose of the specific duties in Wales is broadly to help listed bodies in their performance of the general duty and to aid transparency.
- Article 9 of the UNCRPD – Accessibility. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

## *7. Appendix*

The Equality and Human Rights Commission should be listed here with a link to our CV19 webpages/guidance

<https://www.equalityhumanrights.com/en/our-work/our-response-coronavirus-covid-19-pandemic>

# Equality and Human Rights Commission

## Submission to the Legislation, Justice and Constitution Committee for their inquiry

### Making Justice Work in Wales

2nd June 2020

1. We have consistently recommended that both the UK Government and Welsh Government ensure that the UK and Welsh equality and human rights legal framework is strengthened by improved access to justice because legal rights are of little value unless we are able to seek justice when they are breached.
2. One of our Priority Aims in our strategic plan for 2019 – 2022 is that people can access redress when they are wronged and have a fair trial in the criminal justice system. Our ‘Is Britain Fairer?’ 2018 report concludes that it has been increasingly difficult to access representation and redress in British courts. The opening statement from the Commission on Justice in Wales accords with our own inquiries and research in relation to access to justice:

*“We have unanimously concluded that the people of Wales are being let down by the system in its current state.”*

3. When transforming the justice system in Wales, we recommend tht Welsh Government ensures that:
  - Mechanisms for seeking redress for breaches of the Equality Act 2010 and Human Rights Act 1998 are made more accessible and effective
  - More people in Wales are able to access high quality advice in relation to discrimination and human rights.
  - Barriers to justice for women and girls who have survived violence are exposed and reduced,
  - The needs of the people of Wales are considered by the UK Government when changes are made to the legal aid system, and rules governing access to legal aid for discrimination cases are amended in line with our recommendations.
  - Practice and procedures in the criminal justice system are improved by the UK Government to ensure a fair trial for disabled people.
4. We acknowledge Welsh Government’s commitment to funding the provision of discrimination advice in Wales via the Single Advice Fund.

### Public Sector Equality Duty

5. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010. Organisations subject to the public sector equality duty must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and

foster good relations between people who share a protected characteristic and those who do not. We have produced [guidance](#) to support organisations to comply with the Public Sector Equality Duty,

6. Welsh Government must consider how the Public Sector Equality Duty can be better complied with and used as a lever for improvement within the Justice system in Wales. Welsh Government must also assess the likely impact of proposals and recognise and respond to disproportionate impact on particular groups; and ensure that the system itself reflects the community it serves at all levels.
7. Chapter 12 of the Commission on Justice's report which relates to governance, the law of Wales and the judiciary highlights the need for alignment and a whole system approach. We recommend that all public authorities involved in the Justice system in Wales and associated services consider how the Public Sector Equality Duty can be better complied with and used to guide this alignment.

### **Data Gaps**

8. The Commission on Justice identify a number of data gaps within their report. This aligns with our Strategic Plan, where we have identified that to improve equality and human rights outcomes, we must have access to relevant data that enables us, Government, regulators and inspectorates, service providers and civil society organisations to understand the different experiences and outcomes for certain groups, and the underlying reasons behind them.
9. Our [measurement framework](#) is the tool we use to monitor progress on equality and human rights across a range of areas of life in Great Britain. There are six areas in the framework; education, work, living standards, health, justice and personal security and participation. We emphasise the importance of Wales specific data and that there are gaps in Wales specific data in a number of areas.
10. We have identified limited data on certain protected characteristics in the make-up of court and tribunal users. We are taking action to engage with the Ministry of Justice and Her Majesty's Courts and Tribunals Service to make sure that information on protected characteristics is effectively included in data on the make-up of court users.

### **Key findings in Wales for Justice and Personal Security**

11. We have conducted research and gathered evidence in a number of areas to inform our priorities. This evidence may be helpful in informing Welsh Government's proposals for transform justice in Wales. Evidence within our [Is Wales Fairer? 2018 report](#) sets out the key equality and human rights challenges currently facing Wales. The key findings in Wales in relation to Justice and Personal security are:
  - a. There have been a number of court and tribunal closures in Wales in recent years. There are concerns that these closures have created geographical

- barriers to people's access to justice, especially among people living in rural areas and those with mobility-related conditions.
- b. Reduced financial support through legal aid and the use of tribunal fees have created a negative effect on people's access to civil and criminal justice.
  - c. The number of recorded hate crimes has increased across all recorded protected characteristics in Wales, particularly for disability hate crimes.
  - d. There has been a sharp increase in the number of sexual and domestic violence offences reported to, and recorded by, the police since 2015. This include sexual abuse offences against children. This could be due to improved reporting or recording, or due to an increase in incidents.
  - e. Three of the five prisons in Wales are overcrowded, posing potential risks for prisoner safety. There has been a considerable increase in self-harm and assault incidents in prisons in Wales.
  - f. The inappropriate use of police stations as a 'place of safety' for people with mental health conditions has decreased considerably, but there has been a slight increase in detentions.
12. All of these issues have been exacerbated by the recent Coronavirus crisis, for example Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020, 17 days after the World Health Organisation declared the outbreak of Covid-19 a global pandemic, and HMP Swansea was the most overcrowded prison in England and Wales at the end of March 2020.
13. In a [letter](#) to the Prime Minister on 19<sup>th</sup> March 2020, David Isaac, Chair of the Equality and Human Rights Commission, highlighted the following "*We know that during periods of confinement domestic abuse (a crime mostly impacting women and girls) tends to increase, and that the healthcare and educational settings that offer a way of identifying this issue will be under unprecedented pressure.*"

### **Court Closures, Video Hearings and digital technology**

14. Chapter 8 of the Commission on Justice's report is about delivering justice locality and structure and gives a lot of detail about the numbers of courts, their locations and court closures. The chapter gives time, distances, and geographical locations of courts, explaining that some places are two hours by public transport from a Magistrates' Court. The report concludes with this: "Given the geography and demography of Wales, the dearth of public transport and the state of the digital network, there is after the extensive court closures little alignment between the justice system and communities and people in Wales."(Page 361)
15. In March 2018, we submitted [evidence](#) to the consultation on the strategy for the courts and tribunals estate, including the approach to court closures, improvements to court buildings, and the modernisation of some court administration. We acknowledged that modernising the courts may provide a number of opportunities to improve access to justice, for example by improving accessibility for disabled court users. However, our key concerns about the proposals, in relation to both the closure of existing courts and the introduction of digital justice alternatives, are:

- the lack of comprehensive evidence and impact assessment to underpin decision-making and ensure the courts modernisation programme does not disproportionately disadvantage people with certain protected characteristics, in particular disability, age, pregnancy and maternity, and sex;
  - the closure of courts on the basis of increased use in the future of digital processes, which will necessarily exclude people with certain protected characteristics who have lower levels of digital literacy, before the impact of digital processes has been thoroughly assessed; and
  - the potentially detrimental implications of virtual processes (including virtual hearings and online court processes) on access to justice and fair trial rights.
16. In light of our concerns, and the requirement for HM Courts & Tribunals Service (HMCTS) to comply with the public sector equality duty, we recommend that HMCTS:
- does not proceed with any court closures until it has collected the evidence about court users necessary to conduct a meaningful equality impact assessment, and has conducted that assessment;
  - conducts a thorough assessment of the digital literacy of court users in order to determine the nature and content of the support required to ensure access to justice in the context of increased digitalisation; and
  - establishes a clear evidence base setting out the impacts of virtual processes (including virtual hearings and online court processes) and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.
17. The Commission on Justice also comments on the use of video hearings and digital technology. On 27<sup>th</sup> April 2020, we published an [interim report](#) for our inquiry: Does the criminal justice system treat disabled people fairly? This inquiry looked at whether the needs of disabled defendants are properly identified and whether adjustments are put in place to meet their needs, so they are able to take part fully in court processes. Existing evidence tells us that people with cognitive impairments, mental health conditions and neuro-diverse conditions are significantly overrepresented in the criminal justice system.
18. The interim report highlights the use of video hearings in England and Wales which can significantly hinder communication and understanding for people with learning disabilities, autism spectrum disorders and mental health conditions. Defendants' needs must be identified from the outset so that adjustments can be put in place. We warn that if this does not happen, then disabled people are at risk of not understanding the charges they face, the advice they receive or the legal process, so cannot participate effectively in legal proceedings against them. Adjustments can include the use of intermediaries, allowing extra time for breaks, or providing information using visual aids.
19. While we have not called for video and audio hearings to be halted, we expressed concerns about the lack of data currently available on the use of remote hearings, and encouraged Governments to begin collecting this data now to inform its use in the future.

20. We agree with the Commission on Justice's 39th recommendation that a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales. This reflects our own recommendations, but we would add that this strategy should also reflect the Public Sector Equality Duty. We also agree with the Commission on Justice's 20<sup>th</sup> recommendation that digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them. This reflects the recommendations in our own interim report. Our final report will be published later this year.

### **Access to Justice - Information, Advice and Assistance**

21. In Chapter 2 of the Commission on Justice Report, resources for the justice system in Wales are considered. Page 78 of the report details the legal aid spend differences between England and Wales.

*"The criminal legal aid expenditure of £36 million in Wales in 2018-19 equates to £11.50 per head of population; the equivalent figure in England was £15 per head."*

22. In paragraph 3.50, it is highlighted that 93% of Welsh households have access to the internet but Wales has around 10% lower network capability than England. The report goes on to give details about lack of awareness about rights and that those who need advice are least likely to be able to access it, including disabled people, people with mental health issues, people with learning difficulties, people in crisis and people whose first language is not English or Welsh. Within the conclusions at paragraph 3.53, it states that of additional concern is disabled people's access to legal advice and assistance with benefits cases has been diminished – this is based on evidence from Disability Wales.
23. Chapter 9 of the Commission on Justice's report on the legal sector refers to and is complemented by the Welsh Government review of the legal sector in Wales, which was undertaken by Jomati Consultants LLP. Both highlight the difficulties for firms and solicitors in Wales and lack of legal aid practitioners in Wales.
24. We highlighted in our [briefing](#) in 2017 that changes to civil law justice are adversely impacting children, disabled people, ethnic minorities and women. These changes included: substantial reductions to the scope of civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO); proposals for further reforms to legal aid (including a residence test); reforms to judicial review; and the introduction of fees in employment tribunals. Cuts to legal aid, as well as the imposition of Employment Tribunal fees until the Supreme Court's judgment in July 2017, damaged access to justice for ordinary people, with disproportionate impacts on some groups. Reduced access to justice risks allowing employers, service providers and public authorities to breach people's rights with impunity, bringing down standards in the workplace and impeding fair access to goods, facilities and services for everyone.
25. Our own research [report](#) looked at the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) since it came into force in 2013.



LASPO introduced funding cuts to legal aid and resulted in fewer people being able to access legal advice and representation. Using case studies, this report looks at how LASPO has negatively affected people's lives and access to justice in three areas of law: family law, employment law, welfare benefits law. When the UK Government carried out a review of LASPO, we made a submission to the review setting out recommendations to address the issues that we identified. We are pleased that some of these have been adopted as part of the UK Government's action plan following the review. For example, the UK Government agreed to remove the mandatory telephone gateway for debt, discrimination and special educational needs and it was removed on 15<sup>th</sup> May 2020. The UK Government also agreed to seek to improve the available data so that they can consider the equality implications and put in place better systems and a communication campaign. We are monitoring their progress.

26. In June 2019, we published the final [report](#) for our inquiry which looked at whether legal aid enables people who raise a discrimination complaint in Wales and England to get justice. We found that very few people are getting the representation they need in courts or tribunals. Between 2013/14 and 2017/18 no workplace discrimination cases received legal aid funding for representation in the employment tribunal, and only 1 in 200 cases taken on by discrimination specialists received funding for representation in court. We identified a number of barriers to representation, including rules which effectively limit funding to cases with high compensation awards. This requirement misses the point when it comes to discrimination cases, which are often more about challenging unacceptable behaviour and upholding rights than obtaining financial awards.
27. Recent [research](#) in April 2020 has identified barristers who may be at greater financial risk due to Covid-19 interrupting their fee incomes. In broad terms, these barristers supply up to 50% of legal aid defence work and, hence, their loss would constitute a severe obstacle to restarting criminal trials. In all cases, the practitioners in the most vulnerable situations are more likely to be predominantly female, BAME, young or with newer practices. Their loss from the profession would impact substantially on the diversity of those supplying legal services.

## **Criminal Justice**

### **Black, Asian and Minority Ethnic people**

28. Part 3 of Chapter 4 of the Commission on Justice's report focuses on the evidence that those who are charged, tried and punished are disproportionately likely to come from Black, Asian and Minority Ethnic (BAME) communities. [Evidence](#) published very recently on 15<sup>th</sup> May 2020 by the National Police Chief's Council shows that even during the current Coronavirus crisis, BAME people are more likely to receive fines under the emergency legislation.
29. In December 2018, we held a roundtable discussion in Cardiff about [The Lammy Review](#), an independent review of the treatment of, and outcomes for, BAME individuals<sup>i</sup> in the Criminal Justice System in England and Wales. The Review published its final report, which included a range of recommendations, in September 2017. Stakeholders reflected that there has been a lack of

engagement and discussion on the Lammy Review in Wales since its publication. It was acknowledged that, arguably, some of the problems the Review responds to are less acute in Wales than in England's big urban areas. However, all participants agreed that significant problems exist and improvements are needed.

30. It is clear that the Criminal Justice System cannot be seen in isolation. Efforts to improve the treatment of, and outcomes for, BAME individuals in the Criminal Justice System in Wales touch on all areas of life. For example, improved education services and access to health and social services is vital if we are to reduce re-offending, especially among BAME individuals, who often face significant obstacles into accessing high quality public services. Many of the relevant levers for this are devolved to the Welsh Government.
31. The Lammy Review identified three central principles for the taking forward of its recommendations. These principles were fully supported by individuals we spoke to. In summary, these are:
  - There must be robust systems in place to ensure fair treatment in every part of the criminal justice system. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment.
  - Trust is low not just among defendants and offenders, but among the BAME population as a whole. The answer to this is to remove one of the biggest symbols of an 'us and them' culture – the lack of diversity among those making important decisions in the criminal justice system.
  - The criminal justice system must have a stronger analysis about where responsibility lies beyond its own boundaries. Statutory services are essential and irreplaceable, but they cannot do everything on their own. The system must do more to work with local communities to hold offenders to account and demand that they take responsibility for their own lives.
32. During our project, five practical steps emerged to take forward the Lammy Review's principles and recommendations in Wales. The five steps are:
  - To build further on multi-agency working, utilising the close relationships that can be built in Wales.
  - To improve scrutiny and accountability mechanisms at all levels in order to improve service delivery and ensure transparency.
  - To invest in better mentoring, support, and training.
  - To actively engage with local communities through a range of projects and approaches.
  - To collect and share data on ethnicity throughout services and procedures.
33. Finally, participants echoed the Lammy Review's statement that criminal justice agencies should adopt a principle of 'explain or reform': if they cannot provide an evidence based explanation for disparities between ethnic groups then reforms should be introduced.
34. We recommend that Welsh Government consider these points when considering the Commission on Justice's 6<sup>th</sup> recommendation that each of the

police, Crown Prosecution Service, the judiciary and HM Prison and Probation Service should publish a strategy in respect of BAME people in Wales and report annually on the strategy to the Senedd.

### **Children and Young people**

35. In Wales and England, the age of criminal responsibility is 10 years old. Any child below the age of 10 is not considered to have the capacity to infringe the criminal law. Scottish Government is giving consideration to raising the age. We recommend the age raised in line with Committee on the Rights of the Child (CRC) Article 40 recommendations. More details can be found in our [response](#) to the Justice Committee inquiry on children and young people in custody in October 2019. We therefore agree with the Commission on Justice's 11<sup>th</sup> recommendation that the age of criminal responsibility should be raised to at least 12 years old.
36. In February 2019, we published our [report](#) on Women's rights and Gender Equality which was our formal submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women. In June 2018, the UK Government published its female offender strategy. The strategy sets out the measures it will take to enhance mental health services for women in prisons, promote alternative sentencing and ensure that treatment of women in the criminal justice system takes account of gender and gender-based violence. It also includes a shift away from building new community prisons for women to encouraging the greater use of non-custodial sentences by increasing community-based support. While the general direction of the policy has been praised, several organisations, including the Association of Police and Crime Commissioners and members of the female offender strategy advisory board, have expressed concerns about how effective the strategy is likely to be in practice.
37. We recommend that the UK and Welsh governments, where relevant, should:
- provide an increased and longer-term funding commitment for a network of women's centres to support liaison and diversion from the criminal justice system and enable rehabilitation, particularly for ethnic minority women;
  - implement the [Corston Report](#) recommendation relating to interdepartmental coordination and transfer of responsibility;
  - improve the provision and availability of mental health services for women in prison, recognising the different issues women, including trans women, experience in prison, to prevent suicide and self-harm, and facilitate resettlement;
  - monitor and collect data on the use of community sentences for women, and;
  - evaluate the community treatment sentence requirements to ensure that women are not unduly pressured to receive mental health treatment in order to avoid detention, and provide valid consent to treatment.
38. We agree with the Commission on Justice's 13<sup>th</sup> recommendation that the comprehensive network of services and centres as alternatives to custody for women in Wales must be established rapidly and sustained over time.

## Hate Crime

39. In 2016 we [responded](#) to the Home Affairs Select Committee inquiry into hate crime and its violent consequences. In summary we said: There is extensive knowledge, expertise and experience in tackling hate crime across Britain. However, pockets of knowledge and good practice often exist in silos, with organisations across Britain developing their own practices in isolation from one another. We recommend a review of the most effective strategies in tackling hate crime and leadership at government level to share leading work in this area. Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010, which requires them to have due regard to the need to tackle prejudice and promote understanding. In this context, we would like to see greater efforts from public authorities to proactively tackle hate crime.
40. Although criminal justice is not devolved, Welsh Government has taken - and could take further - legislative and policy opportunities with the aim of reducing hate crime and to help heal divisions in society. The Welsh Government's Hate Crime Delivery Plan and the Public Sector Equality Duty offer mechanisms for doing this. Our monitoring of the PSED showed that many public authorities have set equality objectives that relate to tackling hate crime.
41. In 2016, we undertook research into [LGBT hate crime reporting](#) and [disability-related harassment](#), and [causes and motivations of hate crime](#). Welsh Government should consider the evidence and recommendations in these reports to support further improvements to reduce hate crime.
42. The UN made recommendations to the UK Government on what it should do to tackle hate crime. As the body tasked by statute with promoting compliance by the UK with its obligations under international human rights law, we recommended:
- a full-scale review of aggravated offences and sentencing provision in Wales and England without further delay, as recommended by the Law Commission;
  - monitoring use of the sentencing guideline for hate crime in Wales and England to assess consistency of sentencing;
  - consistent data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis;
  - evaluation by the police and other statutory agencies of their reporting and recording processes, in consultation with people from local communities, and steps taken to simplify them;
  - a review of the provision of third-party reporting, to evaluate their impact and sustainability, highlight geographical and thematic gaps and ensure they are consistent with police recording systems;
  - police should refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution.

43. Welsh Government should consider these recommendations when considering the Commission on Justice's report and their statement (Page 151):

*“Although much has been done, the evidence leads us to conclude that much more needs to be done in ensuring that support is provided immediately to all victims of crime.”*

### **Domestic Abuse**

44. In Part 2 of Chapter 4 the Commission on Justice considers victims of crime and refers to the Welsh Government's work in domestic violence, including reference to the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.
45. Domestic abuse is an abuse of human rights. Both domestic and international equality and human rights law impose positive obligations on the UK and Welsh Government to prevent and protect women from domestic abuse. These obligations are heightened where there is a predictable increased risk. Under the UN Convention on the Elimination of Discrimination against Women (CEDAW), which is binding in international law, the UK and Welsh Governments have committed to take all appropriate measures to eliminate all forms of discrimination against women, including gender-based violence. The CEDAW Committee's general recommendation 35 emphasises that gender-based violence in the form of domestic violence constitutes discrimination against women, and may amount to torture or cruel, inhuman or degrading treatment. There is a due diligence obligation to prevent, investigate, prosecute and punish such acts.
46. The key rights engaged by domestic abuse under the European Convention on Human Rights (ECHR), given domestic effect by the Human Rights Act 1998, are: the right to life (article 2), the prohibition on torture (article 3), the right to respect for private and family life (article 8) and the right to non-discrimination (article 14). The ECHR imposes positive obligations on the Government to protect individuals against abuse or harm caused by other individuals, including a duty to put in place necessary law enforcement. Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a state's "failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."
47. There is clear evidence that sexual violence and domestic abuse increase during epidemics and other times of crisis. UK helplines are reporting a sharp rise in calls, and reports that domestic homicides have more than doubled since social distancing restrictions were implemented. The increased risk to women at this time is therefore a predictable major 'secondary' impact of the Covid-19 pandemic. Calls for services are likely to increase as the lockdown is lifted in Wales and women are able to flee their abusers.
48. Our 'Is Britain Fairer?' 2018 report highlighted that domestic abuse and sexual violence are gender based crimes that disproportionately affect women, and we

know that disabled, LGBT and some ethnic minority women are at particular risk. Further, it is clear that ethnic minority, migrant, disabled, LGBT and older women face particular barriers to accessing non-specialist support, and that specialist organisations supporting these groups already faced funding difficulties even prior to the pandemic. We know that specialist provision in Wales has reduced due to changes in procurement processes by Local Authorities.

49. Welsh Government has a duty to provide appropriate protective and support services to all women who are victims of or at risk of violence - including provision of refuges, specially trained health workers, rehabilitation and counselling. In its policies on gender-based violence Welsh Government is expected to place “particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination.”
50. We have expressed concerns about a serious lack of funding and shortage of services for domestic abuse survivors, prior to the pandemic and in the context of the UK Domestic Abuse Bill. Sufficient crisis funding must be urgently provided to charities and organisations providing refuge and/or support services for survivors, including advice and advocacy. We welcome the Welsh Government’s commitment to provide £24 million for charities overall, as well as £200,000 specifically for refuges and support services. However, it is not yet clear what proportion of the £24 million will be allocated to domestic abuse and sexual violence charities, or how funds will be distributed. Whilst it’s noted that UK Government has announced £25million towards helping victims of domestic abuse and sexual violence to be distributed via Police and Crime Commissioners, it is unclear what proportion of this fund will reach Wales.
51. We consider that a proportion of the £24 million funding for charities in Wales should be ring fenced for domestic abuse and sexual violence charities. Funding should be unrestricted crisis funding to cover the additional costs to domestic abuse and sexual violence charities resulting from Covid-19, including staff shortages and moving to remote service provision. In particular, it must include clear ring-fenced funding for smaller organisations led by and for groups sharing protected characteristics, including ethnic minority, disabled and LGBT women, to ensure continued provision of vital support to these groups. Consideration should be given to ensuring sufficient accessible safe accommodation and support for disabled and deaf survivors. In addition to immediate crisis funding, further funding will be required to respond to increased demand, including the likely spike in the numbers of survivors seeking help (and consequent pressure on services) in the coming months when social distancing restrictions are eased.
52. The UK and Welsh Governments must ensure that police retain capacity to respond to all forms of violence against women and girls during the pandemic, and that local police leaders communicate clearly to the public that responding to these crimes remains a priority. Prior to the pandemic, there were already significant concerns about the low rates of prosecution of rape and sexual offences, and this issue is currently the subject of a Home Office review. The

significant delays to the progress of these offences through the criminal justice system, often taking years to be charged, is one reason for the high levels of victim withdrawal. With all new jury trials suspended from the end of March until last week, these delays look set to increase and long-term attention should be given to how to reduce delays once normal service resumes.

53. Crimes of violence against women and girls, including domestic abuse, must continue to be addressed by police as a high priority. Community Cohesion Coordinators have a key role in working with devolved and non-devolved organisations to help tackle hate crime and heal divisions in society. Police and Crime Commissioners and Chief Constables should give public assurances of this at a local level. If and when remote jury trials take place, careful consideration should be given as to how to ensure fair proceedings, in consultation with survivor groups and experts on the effects of trauma on survivors, including migrant and child survivors.

## Prisons

54. The Commission on Justice consider prisons in detail in Part 4 of Chapter 4 in their report and highlight that Wales has one of the highest imprisonment rates in Western Europe. Prisoners are particularly vulnerable to human rights breaches as all aspects of their lives are controlled by the state.
55. Families can provide valuable support for prisoners, who are all in a vulnerable situation, but particularly for those with mental health conditions. Our [inquiry](#) in 2015 into non-natural deaths of adults with mental health conditions reported that families can also play an important role in helping to develop a treatment plan for prisoners with such conditions. In order to comply with their obligations under the right to life, institutions should provide appropriate social support which will include the opportunity for regular family contact.
56. Our *Is Wales Fairer? Report 2018* gives details about prisons and overcrowding. Welsh Government has reiterated the problems caused by the lack of prisons for either women offenders or high-risk offenders, who currently have to be housed in jails in England, especially the impact it has on maintaining family connections (Welsh Affairs Committee, 2015). There are also limited facilities for young offenders in Wales. As stated above, Dr Robert Jones of the Wales Governance Centre recently [reported](#) that the number people held in Welsh prisons climbed to its highest ever level by 27th March 2020. We highlight the difficulties that this is causing in our [submission](#) to the UK Parliament Women and Equalities Committee inquiry into the impact of COVID-19.
57. We are concerned about unlawful use of restraint against children and young people in custody, as well as the disproportionate use of restraint on certain groups sharing protected characteristics. Our [human rights framework](#) for restraint is a tool for policy makers and has already been used to inform policy and legal developments in Wales and England. We use the framework to inform our own work on restraint. It provides useful examples explaining the key principles of the following articles of the European Convention on Human Rights:

- Article 3 (prohibition on torture, inhuman and degrading treatment)
- Article 8 (respect for autonomy, physical and psychological integrity)
- Article 14 (non-discrimination)

58. The development of the framework was informed by discussion with government departments; regulators; inspectorates and ombudspersons; and the third sector. In 2016 a [follow-up report](#) examined the steps taken to act on our recommendations. We identified that changes are being made in some areas where we had concerns, but some key areas still need to be addressed.

59. We recommend that when implementing the Commission on Justice's recommendations, Welsh Government considers how our recommendations on preventing non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals can be adopted in the Welsh context and in particular our Human Rights Framework can be embedded in institutions in Wales.

### **People with Mental Health Conditions**

60. The Commission on Justice highlight in their executive summary on page 11 of the report that the evidence that they received showed that the approach to those with mental health issues is not properly addressed within the criminal justice system. At page 178 of the report, they detail that police forces are also seeing a high level of demand from those experiencing mental health issues and that the four Welsh forces are working in partnership with their local health boards to provide support to those who are experiencing mental health issues, whether that is through a triage process in the control room or through mental health staff working alongside response officers.

61. This accords with the evidence in our *Is Wales Fairer? 2018* report. We will be publishing the results of our criminal justice inquiry, which looks at this issue in more detail with associated recommendations, shortly.

### **Conclusion**

62. In conclusion, we would ask that the Legislation, Justice and Constitution Committee consider the following relevant recommendations from our *Is Wales Fairer? 2018* report, as follows:

- a. To ensure access to justice in Wales, Welsh Government should:
  - i. implement any recommendations of the Commission on Justice in Wales that address the key findings and recommendations in '*Is Wales Fairer? 2018*', including on the mitigation of UK legislation and policy on access to justice and legal aid, and conditions of detention;
  - ii. improve the availability of transport for accessing courts, particularly for rural households;
  - iii. continue to review the provision of both general advice services and specialist discrimination advice in Wales, to ensure adequate access to good quality services across Wales.
- b. To increase confidence in the criminal justice system and improve the response to hate crime, the Welsh Government, police forces and other relevant bodies in Wales should improve support for victims and witnesses



- to report online and offline hostility and intimidation, and develop effective mechanisms for tackling it.
- c. To address violence against women, domestic abuse and sexual violence, Welsh Government should:
    - i. ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and deliver the national violence against women, domestic abuse and sexual violence strategy by November 2021, ensuring that appropriate prevention programmes are developed and implemented, and survivors of violence against women, sexual or domestic abuse, receive appropriate and timely support, including specialist support for women from ethnic minorities, disabled women, women with complex needs, and children and young people;
    - ii. raise awareness of the issue, including by implementing all outstanding actions from the National Assembly for Wales Equality, Local Government and Communities Committee post-legislative scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015;
    - iii. collect and monitor data about the number of spaces needed in refuges, and develop a sustainable funding model for refuges and domestic abuse services, including those that provide specialist services.
  - d. To improve conditions in detention settings and reduce overcrowding across Wales:
    - i. Welsh Government should work with the UK Government to invest in appropriate alternatives to prisons, including community sentencing, rehabilitation centres and diversion.
    - ii. Police forces in Wales should keep accurate and detailed reports on the use of police cells as a 'place of safety' under the Mental Health Act.

Boris Johnson MP  
Prime Minister  
By email  
boris.johnson.mp@parliament.uk  
<https://email.number10.gov.uk/>

Thursday 30 April 2020

Dear Prime Minister,

**Lack of British Sign Language (BSL) interpretation at UK Government daily Coronavirus briefings**

As you are aware, the Equality and Human Rights Commission is Great Britain's national equality body and human rights institution. We entirely recognise and endorse the primary role of government in the current context: to keep people safe and protect the future of our nation. We are contributing our expertise on the equality and human rights implications of the pandemic, and of the Government's response, on an ongoing basis.

To that end, I am writing to raise our concerns about the lack of provision of live

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British Sign Language (BSL) interpretation at your daily Government Coronavirus briefings. We note your commitment on 16<sup>th</sup> March 2020, in response to a written Parliamentary Question, to provide a sign language service during official statements for the foreseeable future in line with the approaches of the Scottish and Welsh Governments at their daily briefings. However, the provision that has been made by your Government is only for an on screen interpreter on the separate BBC News Channel.

You will know that there are more than 80,000 Deaf people living in the United Kingdom whose first language is BSL. The provision of an interpreter is essential for them to understand the information being provided, and the delays with onscreen interpretation make this more difficult. This is a particular concern given the importance of these briefings, and the potentially significant health or even criminal implications if the information is unclear or misunderstood.

Including a BSL interpreter live at your daily briefings would allow you to demonstrate your commitment to equality for all, meeting your obligations to make reasonable adjustments under the Equality Act 2010.

I am therefore writing to ask that you immediately reconsider your position and provide live BSL interpretation at your daily Government Coronavirus briefings.

I look forward to hearing from you.

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Yours sincerely,



Rebecca Hilsenrath

Chief Executive

Cc Minister for Disabled People, Health and Work

| cc Minister for Women and Equalities

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# **Evidence to the Women and Equalities Committee inquiry ‘Unequal impact? Coronavirus, disability and access to services’**

Monday 13 July 2020

## Introduction

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1. The Equality and Human Rights Commission has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

## Summary and recommendations

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2. We welcome the opportunity to respond to this inquiry. In our submission we focus on how the coronavirus pandemic has impacted the lives of disabled people in the areas of adult social care, mental health services and detention, education, transport, access to food, accessible information, and access to healthcare services. This submission updates and supplements evidence we submitted in May to the Committee's inquiry on coronavirus and the impact on people with protected characteristics.<sup>1</sup> Recommendations in our submissions to the Committee's other sub-inquiries (on coronavirus and BAME people, and coronavirus and the gendered economic impact) will also be relevant to disabled people.
3. Recommendations:

### Changes to the provision of adult social care

- (1) Provisions for Care Act Easements in the Coronavirus Act should be repealed at the earliest opportunity.
- (2) In line with its obligations under the Public Sector Equality Duty, the Department of Health and Social Care<sup>2</sup> should increase its oversight of changes to social care provision across local areas and ensure that recovery planning and national policy decisions are informed by accurate and up-to-date data.
- (3) Local authorities must engage with service users and disabled people's organisations to ensure there is transparency and meaningful consultation about decisions relating to the allocation of care provision and the rights of those with care and support needs, in line with provisions of the Equality Act 2010 and the UN Convention on the Rights of Persons with Disabilities.

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<sup>1</sup> Equality and Human Rights Commission (1 May 2020), [evidence to the Women and Equalities Committee \(WEC\) inquiry on coronavirus \(COVID-19\) and the impact on people with protected characteristics](#).

<sup>2</sup> References to Government and Departments throughout this submission refer to the UK Government and Departments, except where otherwise specified.

- (4) Local authorities should carry out and publish equality impact assessments to demonstrate that they have considered and minimised any negative impact for people sharing protected characteristics when changing social care provision under the pre-amendment Care Act.
- (5) Government should consider all possible means to ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic.

#### Mental health services and detention

- (6) The Government should commit to sustained resourcing of mental health services during and after the pandemic, including provision of sufficient community-based support to prevent crisis and unnecessary detentions.
- (7) Provisions that would relax safeguards under the Mental Health Act in the Coronavirus Act should be repealed at the earliest opportunity.
- (8) The Department of Health and Social Care should amend the legal guidance allowing for departures from the Mental Health Act Code of Practice as soon as possible in order to guarantee all pre-pandemic methods of challenging detention under the Mental Health Act.
- (9) Government should closely monitor, and publish, the current rates of detention under the Mental Health Act, disaggregated by protected characteristic and geographic location, and take action to address any disproportionate use of detention.
- (10) Government should ensure data is collected and published on COVID-19 cases and deaths among those detained under the Mental Health Act, disaggregated by all protected characteristics, types of impairments, institutional settings, and cause of death.

#### Education

- (11) Government should commission the Office for Standards in Education, Children's Services and Skills and the Care Quality Commission to conduct targeted joint assessments of local area special educational needs and disabilities provision, with a focus on local areas where modifications of legal duties have been granted.
- (12) Government should include specific, ring-fenced support for special educational needs and disabilities provision.

- (13) The Office of Qualifications and Examinations Regulation should produce specific guidance on reasonable adjustments in relation to the autumn exam series. Guidance should set out a clear process for learners and centres to be informed and updated about any learner's change in circumstances affecting the reasonable adjustments needed.

### Transport

- (14) The Department for Transport should produce a single, accessible document on how legal obligations in respect of rail passenger assistance will be met.
- (15) The Department for Transport should more widely publicise the exemptions to face coverings, including through a variety of formats (including Easy-read Versions), and ensure staff are aware of these exemptions.
- (16) The Department for Transport should publish a review, after appropriate consultation with stakeholders, into the effect of coronavirus on the substantive commitments and timescales within the Department's Inclusive Transport Strategy, with a focus on how to continue to secure disabled people's safe access to transport services.

### Access to Food

- (17) Government should continue to work with the British Retail Consortium and supermarkets to ensure that social distancing measures do not disadvantage disabled people. Policies related to access to shops should be flexible to accommodate the needs of carers and personal assistants, and reasonable adjustments should be made to ensure disabled people have access to food, taking into account both visible and hidden impairments.

### Accessible Information

- (18) Government must ensure that all information related to the pandemic, either in printed form or published online, is accessible to disabled people, including by providing British Sign Language interpreters during televised press announcements, publishing materials in alternative formats, and proactively reaching out to people affected. This includes all major announcements on the recovery process, as well any announcements that may be made in preparation for a potential second wave of COVID-19.



### Access to healthcare services

- (19) Government should undertake or commission a review into the disproportionate deaths of disabled people, including an assessment of the excess deaths of people with recognised physical or mental impairments, deaths in care homes, and deaths of people with learning disabilities and/or autism. Government should work with disabled people and their representative organisations in this review, and use the findings to identify the policy and practice changes needed to mitigate any further negative disproportionate impact on disabled people now and in the future.
- (20) Government should urgently review its track and trace programme to ensure it is accessible to disabled people across impairment types, particularly as it prepares for a potential 'second wave' of COVID-19.
- (21) Government must ensure all policy decisions about care and treatment for both COVID-19 and routine care are made in collaboration and consultation with disabled people and their representative organisations, underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.

### Independent Living

- (22) Government should incorporate the right to independent living in domestic law to protect the human rights of disabled people during and in the aftermath of the pandemic.

## Changes to the provision of adult social care<sup>3</sup>

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4. Pressures on the adult social care system in England, already under severe strain prior to the outbreak of COVID-19,<sup>4</sup> have worsened because of the impact of the pandemic, with increased demand for services and reductions in workforce capacity.<sup>5</sup> In these challenging circumstances, compliance with equality and human rights laws will help ensure that essential standards are maintained.<sup>6</sup>
5. The provisions of the Coronavirus Act 2020 allow scope for services to deteriorate by permitting local authorities in England to suspend their duties under the Care Act 2014 ('Care Act easements').<sup>7</sup> While our concerns that these easements would be widely triggered have to date not materialised,<sup>8</sup> we are concerned by reports that social care provision has nonetheless significantly reduced.<sup>9</sup>

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<sup>3</sup> We are submitting detailed evidence (currently unpublished) to the Joint Committee on Human Rights concerning the impact of the pandemic and responses to it on adult social care and the right to independent living.

<sup>4</sup> Before the pandemic, only those with severe needs were receiving support, due to an ageing population, rising demand and substantial reductions in government funding to local authorities since 2010-11. See The King's Fund (April 2019), ['More people asking for social care support but fewer getting it as demand leaves social care system at crisis point'](#); CQC (14 Oct 2019), ['The state of health care and adult social care in England 2018/19'](#); The Health Foundation (29 May 2019), ['£4.4bn funding gap projected for social care in England as spending per person falls further behind other UK countries'](#).

<sup>5</sup> Association of Directors of Adult Social Services (11 June 2020), ['Budget Survey 2020'](#).

<sup>6</sup> Including the right to life, the prohibition on inhuman and degrading treatment, the right to liberty and security, and respect for private and family life, without discrimination. See Articles 2, 3, 5, 8, in conjunction with Article 14, of the European Convention on Human Rights, which is enacted into UK law through the Human Rights Act (1998).

<sup>7</sup> Coronavirus Act 2020 replaces the previous duty on local authorities in England to assess and meet a person's needs for care and support (as provided for by the Care Act 2014) with a power to do so, thereby downgrading the level of care to which an individual is entitled. The Coronavirus Act also allows local authorities to suspend their duties to review care plans and carry out financial assessments. See [Coronavirus Act 2020](#), Clause 15 and Schedule 12, and [Coronavirus Bill Explanatory Notes](#), paras 232-237.

<sup>8</sup> The Government's two-month-on report on the use of powers under the Coronavirus Act 2020 reported that seven local authorities had triggered the Care Act easements. DHSC (29 May 2020), ['Two-monthly report on the non-devolved provisions of the Coronavirus Act: May 2020'](#). As of 9 July 2020, the CQC reported that there were currently no local authorities in England that are operating under the easements. CQC (3 July 2020), ['The Care Act and the "easements" to it'](#).

<sup>9</sup> A survey by the Research Institute for Disabled Consumers (RIDC) found that 54.6 per cent of respondents with care support needs are no longer receiving health or personal care visits to their homes. RIDC (8 June 2020), ['Covid-19: our third survey into the impact on disabled and older people'](#) (due to a small sample size, the results of the RIDC Survey should be viewed as an indication of a possible trends only); see also Disabled Children's Partnership (June 2020), ['Left in Lockdown'](#) (noting that 76 per cent of parents of disabled children who had previously received support no longer did); Lisney, E. et al. (April 2020), ['The Impact of COVID 19 on Disabled Women from Sisters of Frida: Voices of Disabled women in the pandemic'](#), Sisters of Frida; Inclusion London (June 2020), ['Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report'](#).

6. Under the Coronavirus Act 2020 and associated guidance, local authorities must report any decision to operate under the Care Act easements to the Department of Health and Social Care ('DHSC'), together with the reasons for doing so. However, the Coronavirus Act guidance makes clear that local authorities can reduce short-term service provision due to COVID-19-related absence by 'applying flexibilities' under the pre-amendment Care Act, without having to formally trigger easements or notify the DHSC.<sup>10</sup>
7. Reductions in adult social care provision risk leaving disabled people without vital care and support, or placing a higher burden on family members or unpaid carers,<sup>11</sup> who are disproportionately likely to be women<sup>12</sup> or living in poverty.<sup>13</sup> Furthermore, there have been reports of disabled and older people foregoing vital home care and support after determining that the risks of catching COVID-19 are too high due to the lack of adequate PPE for carers.<sup>14</sup> A reduction in care provision could also place disabled adults and older people with care needs at risk of having their essential needs neglected, such as access to food and water, medicines, clothing, hygiene and exercise.<sup>15</sup>
8. We are concerned that there is a lack of central oversight of how social care provision has been affected during the pandemic.<sup>16</sup> We also share concerns raised by disabled people's organisations about the lack of information and transparency regarding decisions taken by local authorities to reduce or change care provision under the pre-amendment Care Act.<sup>17</sup>

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<sup>10</sup> DHSC (20 May 2020), '[Care Act Easements: Guidance for local authorities](#)'. Appendix A sets out that local authorities can prioritise short term allocation of care and support using current flexibilities within the Care Act 'where COVID-19 related absence means service types need to be changed, delayed or cancelled'.

<sup>11</sup> Research estimates 4.5 million people have been forced to become unpaid carers during the pandemic. Hill, A. (19 June 2020), '[Coronavirus: 4.5m people in UK forced to become unpaid carers](#)', The Guardian.

<sup>12</sup> Women's Budget Group (16 April 2020), '[Social care and Covid-19](#)'.

<sup>13</sup> Hill, A. (17 June 2020), '[More than 100, 000 carers 'forced to use food banks in UK lockdown](#)', The Guardian.

<sup>14</sup> See, for example, Inclusion London (June 2020), '[Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report](#)'; Lean, E. (8 June 2020), '[Making care visible](#)', Age UK.

<sup>15</sup> Samuel, M. (22 March 2020), '[Coronavirus legislation becomes law, allowing ministers to suspend key Care Act duties](#)', Community Care; CASCAIDr (20 March 2020), '[The Coronavirus Act and its impact on the Care Act](#)'; Inclusion London (June 2020), '[Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report](#)'.

<sup>16</sup> There is no requirement on local authorities to inform the DHSC or the CQC if they change or reduce provision by applying flexibilities under the pre-amendment Care Act. Moreover, there is no requirement on local authorities to publish data on any changes to the number of care recipients or care hours funded or provided by the local authority during the pandemic.

<sup>17</sup> See for example, concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women](#)

9. In light of the limited use of the Care Act easements to date and the weak safeguards associated with them,<sup>18</sup> together with the widespread use of pre-amendment Care Act flexibilities and lack of information on this, **we recommend:**

- **Provisions for Care Act Easements in the Coronavirus Act are repealed at the earliest opportunity.**
- **In line with its obligations under the Public Sector Equality Duty, the DHSC should increase its oversight of changes to social care provision across local areas and ensure that recovery planning and national policy decisions are informed by accurate and up-to-date data.**
- **Local authorities must engage with service users and disabled people’s organisations<sup>19</sup> to ensure there is transparency and meaningful consultation about decisions relating to the allocation of care provision and the rights of those with care and support needs, in line with provisions of the Equality Act 2010 and the UN Convention on the Rights of Persons with Disabilities (‘UN CRPD’).<sup>20</sup>**
- **We further encourage local authorities to carry out and publish equality impact assessments to demonstrate that they have considered and minimised any negative impact for people sharing**

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[and Equalities Committee, ‘Unequal impact? Coronavirus, disability and access to services’](#) (24 June 2020).

<sup>18</sup> The Coronavirus Act 2020, Schedule 12, paragraph 4 makes clear that the provision of social care should remain compliant with the European Convention on Human Rights (ECHR). However, we are concerned this relies on local authority staff having sufficiently sophisticated knowledge of the law to make a determination about whether care and support is required to avoid a breach of an individual’s Convention rights. Further, even if a correct determination is made, the threshold for a breach of the ECHR is particularly high in relation to social care and many people with significant needs may fall through the net.

<sup>19</sup> UN CRPD Articles 3, 4 and 33, and [General Comment No. 7 ‘Article 4.3 and 33.3: Participation with persons with disabilities in the implementation and monitoring of the Convention’](#) (Adopted 21 September 2018) make clear the importance of disabled people and their representative organisations being involved in all decisions affecting their lives.

<sup>20</sup> All public authorities have a duty to ensure that the equality impacts of any changes or reduction to services are considered in the context of the public sector equality duty (PSED). Having due regard to the aims of the PSED requires public authorities to have an adequate evidence base for their decision-making; engagement with people with protected characteristics is vital to this process. See Equality and Human Rights Commission (2014), [‘The Essential Guide to the Public Sector Equality Duty: England and Non-Devolved Public Authorities in Scotland and Wales’](#). The UN CRPD further requires that states closely consult with and actively involve persons with disabilities through their representative organisations when developing and implementing policy and decisions relating to disabled people. UN CRPD Articles 3, 4 and 33, and [General Comment No. 7 ‘Article 4.3 and 33.3: Participation with persons with disabilities in the implementation and monitoring of the Convention’](#) (Adopted 21 September 2018).

## protected characteristics when changing social care provision under the pre-amendment Care Act.

10. Evidence suggests the pandemic has driven increased demand and mounting unmet need due to providers not accepting referrals, service closures and people declining services.<sup>21</sup> Local authorities and care providers face significant additional costs due to the pandemic,<sup>22</sup> and there is a risk that more disabled adults would be left without vital care and support if state-funded care providers become insolvent.<sup>23</sup> **Government should consider all possible means to ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic.**

### Mental health services and detention<sup>24</sup>

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11. The pandemic has caused a substantial worsening of disabled people's mental health,<sup>25</sup> particularly for those with pre-existing mental health issues<sup>26</sup> and disabled children.<sup>27</sup> At the same time, access to mental health services has been drastically reduced.<sup>28</sup> We share stakeholder concerns that the focus on digital

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<sup>21</sup> Association of Directors of Adult Social Services (11 June 2020), '[Budget Survey 2020](#)'.

<sup>22</sup> The Local Government Association estimates that providers of adult social care services may face more than £6.6 billion in extra costs due to the coronavirus crisis by the end of September this year, with maintaining safe staffing levels and providing PPE identified as the biggest drivers of these extra financial pressures. LGA (4 June 2020), '[Social care providers face more than £6bn in extra Covid-19 costs](#)'.

<sup>23</sup> Townson, J. (26 April 2020), '[Homecare in the time of coronavirus](#)', United Kingdom Home Care Association.

<sup>24</sup> We have submitted [detailed evidence and recommendations to the Health and Social Care Select Committee's inquiry on delivering core NHS and care services during the pandemic and beyond](#), some of which is summarised in this section of this submission.

<sup>25</sup> Nearly two-thirds of disabled adults said coronavirus-related concerns were affecting their wellbeing, from loneliness and problems at work, to worsening mental health. ONS (24 April 2020), '[Coronavirus and the social impacts on disabled people in Great Britain](#)'.

<sup>26</sup> 79 per cent of people with pre-existing mental illnesses reported declining mental health as a result of the pandemic. Rethink Mental Illness (June 2020), '[Access to NHS mental health services for people living with severe mental illness](#)'.

<sup>27</sup> 78 per cent of parents of disabled children reported that the lockdown was having a negative impact on their disabled child's mental health. Disabled Children's Partnership (June 2020), '[Left in Lockdown](#)'. 83 per cent of young people with a history of mental health needs agreed that the pandemic had made their mental health worse. YoungMinds (30 March 2020), '[Coronavirus having major impact on young people with mental health needs – new survey](#)'.

<sup>28</sup> For example, 42 per cent of people with pre-existing mental illnesses reported that their mental health had declined during the pandemic due to reduced support from mental health services. Rethink Mental Illness (June 2020), '[Access to NHS mental health services for people living with severe mental illness](#)'. See also Rethink Mental Illness (7 July 2020), '[How Covid-19 limited my access to mental health support](#)' (describing a patient's experiences, including her inability to receive medication for 12 weeks); see also concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

technology in mental healthcare services<sup>29</sup> may not be accessible to disabled people with certain impairments<sup>30</sup> and who might face higher levels of digital exclusion.<sup>31</sup> We are concerned that these trends, along with reduced oversight of places of detention and reductions in social care support, could lead to increased and prolonged rates of detention.<sup>32</sup> **The Government should commit to sustained resourcing of mental health services during and after the pandemic, including provision of sufficient community-based support to prevent crisis and unnecessary detentions.**

12. We are pleased that the Government has not yet triggered the provisions in the Coronavirus Act that would relax crucial safeguards under the Mental Health Act ('MHA'). However, significant changes have been made in the operation of mental health detention. Specifically, changes to the mental health tribunals in England and Wales are already in force which could reduce people's ability to challenge detention and treatment.<sup>33</sup> Additionally, DHSC and NHS England published legal guidance on the operation of mental health services which allows 'temporary departures from the [MHA] Code of Practice'.<sup>34</sup> We have serious concerns that this legal guidance relaxes important safeguards against unnecessary detention for an undefined period of time.<sup>35</sup>

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<sup>29</sup> NHS England (25 March 2020), ['Responding to COVID-19: Mental health, learning disabilities and autism'](#).

<sup>30</sup> See Moore, J. (17 June 2020), ['Severe Mental Illness & Covid 19: Service support and digital solutions'](#), Rethink Mental Illness; see [submitted evidence to the Health and Social Care Select Committee by Alzheimer's Society \(DEL0115\)'s inquiry into delivering core NHS and care services during the pandemic and beyond](#); see also concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

<sup>31</sup> In 2017, 56 per cent of adult internet non-users were disabled, more than double the estimated proportion of disabled adults in the UK population as a whole at that time (22 per cent). See Office for National Statistics (4 March 2019), ['Exploring the UK's digital divide'](#).

<sup>32</sup> We have heard from stakeholders that diminished community support has already led to an increase in detention rates, and that in some areas, there has been a rapid increase of detention of minority ethnic patients since the outbreak of the pandemic. Additionally, we are concerned that the reductions in SEND support could result in an increased number of disabled children reaching crisis point and being admitted to inpatient units or held in restrictive settings.

<sup>33</sup> See paragraph 59 in our [submitted evidence to the Women and Equalities Committee \(WEC\) inquiry on coronavirus \(COVID-19\) and the impact on people with protected characteristics](#).

<sup>34</sup> NHS England (19 May 2020), ['Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic'](#).

<sup>35</sup> For example, under certain conditions, a patient detained under the MHA can challenge their detention through a hospital managers' panel. However, the guidance allows hospitals to depart from the MHA Code of Practice and suspend hospital managers' hearings 'temporarily, for the duration of the pandemic period' if holding a panel would be 'unfeasible due to reasons relating to the current pandemic'. *Ibid.*, p.42. The guidance does not define 'pandemic period'. This represents a significant potential erosion of a pathway to challenge detention. Any postponement or suspension of rights should be limited in duration as much as possible.

13. It has not been possible to clearly track the impact of these changes, as no centralised data on detention rates is available. We have consistently recommended that the Government must ensure any restrictions on people's rights in response to the pandemic must be necessary, proportionate, time-bound and are properly scrutinised. Accordingly, **we recommend:**

- **Provisions that would relax safeguards under the MHA in the Coronavirus Act are repealed at the earliest opportunity.**
- **The DHSC amend the legal guidance allowing for departures from the MHA Code of Practice as soon as possible in order to guarantee all pre-pandemic methods of challenging detention under the MHA.**
- **The Government closely monitor, and publish, the current rates of detention under the MHA, disaggregated by protected characteristic and geographic location, and take action to address any disproportionate use of detention.**

14. We are also concerned about the recent data showing that the rate of deaths of those detained under the MHA (either in hospital or in the community) has doubled from the past year.<sup>36</sup> However, as this data is not disaggregated, it does not provide any insight into deaths in particular settings or among particular groups, nor any information on type of death. **The Government should ensure data is collected and published on COVID-19 cases and deaths among those detained under the MHA, disaggregated by all protected characteristics, types of impairments, institutional settings, and cause of death.**

## Education<sup>37</sup>

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15. Families with children with special educational needs and disabilities ('SEND') have faced particular difficulties accessing educational and other support during the period of school closures.<sup>38</sup> We have concerns about the long-term impact of this period on the wellbeing and attainment of these children.

<sup>36</sup> CQC (7 May 2020), '[Our concerns about mental health, learning disability and autism services](#)'.

<sup>37</sup> We have submitted [detailed evidence and recommendations to the Education Select Committee's inquiry on the impact of coronavirus \(COVID-19\) on children's services and education](#), some of which is summarised in this section of this submission.

<sup>38</sup> 45 per cent of surveyed parents of disabled children said that their child's physical health had deteriorated during the period of lockdown, and just over 70 per cent said their child's emotional or mental health was worse. Disabled Children's Partnership (June 2020), '[Left in Lockdown](#)'.

16. We are concerned by the Government's decision to temporarily modify the legal obligations on local authorities and health commissioning bodies to provide the support listed in a child's Education, Health and Care Plan ('EHCP'). Following this decision, local authorities and health bodies ('local areas') are now only required to make 'reasonable endeavours' to discharge their duties.<sup>39</sup>
17. We therefore welcome the announcement that unless the evidence changes, the notice modifying the EHCP requirements expiring on the 31 July will be the final one covering the whole of England.<sup>40</sup> The Department for Education's guidance on re-opening special schools, however, continues to allow more targeted modifications in local areas.<sup>41</sup> Moreover, the Coronavirus Act-related amendments to the EHCP timetables continue to run until 25 September, with no indication that these will be repealed sooner.<sup>42</sup>
18. We support greater levels of independent scrutiny to ensure decisions taken by local areas to modify provision are necessary, proportionate and time-limited. Stakeholders report that some local areas have used the change in the law to effectively cease SEND provision, despite the requirement to make 'reasonable endeavours'.<sup>43</sup> **We recommend that the Government commission the Office for Standards in Education, Children's Services and Skills ('Ofsted') and the Care Quality Commission ('CQC') to conduct targeted joint assessments of local area SEND provision, with a focus on local areas where modifications of legal duties have been granted.**<sup>44</sup>
19. In light of the current financial pressures on local authorities, further support for work supporting children with SEND is required, particularly as children return

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<sup>39</sup> Department for Education (29 June 2020), '[Decision: Modification notice: EHC plans legislation changes](#)'.

<sup>40</sup> Department for Education (2 July 2020), '[Guidance for full opening: special schools and other specialist settings](#)'.

<sup>41</sup> Ibid.

<sup>42</sup> The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020.

<sup>43</sup> Jackson, A. and Wright, E. (May 2020), '[Education: recent developments](#)', Legal Action Group; Weale, S. (1 July 2020), '[English schools "using coronavirus as excuse" not to teach special needs pupils](#)'. This view is also supported by anecdotal evidence provided to us by Just for Kids Law in May 2020, and evidence given by the Special Educational Consortium in [oral evidence to the Education Select Committee, 'The impact of Covid-19 on education and children's services'](#) (1 July 2020). We also raised concerns about this issue, including the lack of online support for children with SEND through the Government's National Oak Academy in [our submitted evidence to the Education Select Committee's inquiry on the impact of COVID-19 on education and children's services](#).

<sup>44</sup> These inspections should be focussed on those local areas where Ofsted/CQC have already identified significant weaknesses in SEND provision through their existing project of joint SEND inspections, which is currently on pause. In line with the recent recommendation from the Public Accounts Committee, these inspections should utilise intelligence from a broad range of stakeholders, including parent carer forums, school forums and head teachers. House of Commons Committee of Public Accounts (6 May 2020), '[Support for children with special educational needs and disabilities](#)'.



to school. **We recommend that the Government include specific, ring-fenced support for SEND provision.**

20. We have also expressed concerns about the potential adverse effects for children with SEND of the decision to replace exams this summer with a system of calculated grades.<sup>45</sup> Children who are home-schooled may be particularly affected since they will only be able to receive a calculated grade if a school has sufficient information about their performance upon which to predict a grade.<sup>46</sup> This group of pupils may include a disproportionate number of children with SEND.<sup>47</sup>
21. The Office of Qualifications and Examinations Regulation ('Ofqual') has addressed some of our concerns by providing guidance to schools on avoiding bias,<sup>48</sup> and clarifying the obligation of schools to take into account reasonable adjustments in the grade predictions they make.<sup>49</sup> An autumn exam series is available for students who cannot receive a calculated grade, but questions remain about the ability of schools to assess and meet the needs of disabled learners in the context of these exams, given the disruption caused by the school closures.<sup>50</sup>
22. **Ofqual should produce specific guidance on reasonable adjustments in relation to the autumn exam series. Guidance should set out a clear process for learners and centres to be informed and updated about any learner's change in circumstances affecting the reasonable adjustments needed.**

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<sup>45</sup> In particular, we have been concerned that predicted grades, which Ofqual will use to work out calculated grades for each pupil, can be influenced by conscious or unconscious bias. Equality and Human Rights Commission (10 April 2020), ['Predicted grading during COVID-19 could limit young people's futures'](#).

<sup>46</sup> Ofqual recognises that a disproportionate effect on children with SEND is possible. Ofqual (April 2020), ['Equality impact assessment: literature review'](#); Ofqual (May 2020), ['Consultation decisions: Exceptional arrangements for assessment and grading in 2020'](#); and Ofqual (2020), ['Consultation: Exceptional arrangements for assessment and grading in 2020'](#).

<sup>47</sup> Although there is no robust data in relation to the number of children with SEND in elective home education, analysis shows a 52 per cent increase in the number of pupils with EHCP plans taken out of school to be home educated between 2014 and 2018. Foster, D. and Danechi, S. (24 July 2019), ['Home education in England: Briefing Paper Number 5108'](#), House of Commons Library.

<sup>48</sup> Ofqual (May 2020), ['Guidance for Heads of Centre, Heads of Department and teachers on objectivity in grading and ranking'](#).

<sup>49</sup> Ofqual has also confirmed that a route will be available for pupils to challenge the results they receive on grounds of suspected disability discrimination. Ofqual (June 2020), ['Consultation: Extraordinary regulatory framework, General Qualifications COVID-19: Guidance'](#).

<sup>50</sup> Further details of our concerns about these exams can be found in [our response to Ofqual's consultation on an additional GCSE, AS and A level exam series in autumn 2020](#).

## Transport<sup>51</sup>

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23. Disabled people were already less likely to use public transport prior to the pandemic<sup>52</sup> in part due to long-standing accessibility and assistance issues, including a lack of effective and accessible communications.<sup>53</sup> Similarly, post-pandemic outbreak data suggests that disabled passengers are less confident about returning to public transport than non-disabled passengers,<sup>54</sup> and stakeholders have informed us that disabled rail passengers have found it harder to access information, particularly around rail passenger assistance.
24. There has been a particular problem during this crisis for disabled people in accessing digital communications.<sup>55</sup> Despite a legal obligation to make reasonable adjustments,<sup>56</sup> websites are often not accessible; the lack of large-print and other appropriate solutions for disabled people has been cited as a barrier to accessing information about transport.<sup>57</sup> The exemptions to the requirement to wear face coverings in England on public transport have been particularly poorly communicated.<sup>58</sup>
25. Without concerted effort to reassure disabled passengers, we are concerned that the existing inequalities in this area will only increase. **We recommend that the Department for Transport ('DfT'), in conjunction with transport operators:**
- **Produce a single, accessible document on how legal obligations in respect of rail passenger assistance will be met; and**

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<sup>51</sup> We have submitted [detailed evidence and recommendations to the Transport Select Committee's inquiry on the implications of coronavirus for transport](#), some of which is summarised in this section of this submission.

<sup>52</sup> Department for Transport (2019), '[Transport Statistics Great Britain 2019](#)'.

<sup>53</sup> Smith, C. and Symonds, C. (September 2019), '[Travel fair](#)', Scope.

<sup>54</sup> The latest statistics from Transport Focus's tracking survey show that 21 per cent of disabled passengers said that they would be happy to use public transport when restrictions are relaxed, compared to 26 per cent of non-disabled passengers. Transport Focus (3 July 2020), '[Travel during Covid-19: tracking research – week 9](#)'.

<sup>55</sup> Concerns summarised by Andy Burnham (Metro Mayor, Greater Manchester Combined Authority), [oral evidence to Transport Select Committee, 'Coronavirus: implications for transport'](#) (17 June 2020).

<sup>56</sup> Equality Act 2010, s29. The duty to make reasonable adjustments applies to all operators' websites, even though the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 only applies to websites of public sector bodies.

<sup>57</sup> Concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

<sup>58</sup> Disability Rights UK (18 June 2020), '[40% fear challenge without face masks – DR UK survey](#)'.

- **More widely publicise the exemptions to face coverings, including through a variety of formats (including Easy-read Versions), and ensure staff are aware of these exemptions.**

26. The extent of the challenges faced by disabled people, and the transport industry as a whole, requires careful reflection. **The DfT should publish a review, after appropriate consultation with stakeholders, into the effect of coronavirus on the substantive commitments and timescales within the Department’s Inclusive Transport Strategy, with a focus on how to continue to secure disabled people’s safe access to transport services.**

## **Access to food**

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27. Despite some progress, access to food for disabled people continues to be a concern.<sup>59</sup> For example, a recent survey found that 60 per cent of disabled people have struggled to access food, medicine and necessities during the pandemic.<sup>60</sup> The Food Foundation reports levels of food insecurity are almost 250 per cent higher than pre-pandemic levels, and that rates of food insecurity are much higher in households with disabled adults or households with disabled children than in households with non-disabled people.<sup>61</sup>

28. Following the Government’s announcement that shielding will be paused at the end of July,<sup>62</sup> we are concerned that the removal of food and medicine boxes provided by the National Shielding Service will create food insecurity for

<sup>59</sup> RIDC has issued three surveys into the impact of pandemic-related restrictions on disabled and older people. Its most recent survey found that though supermarket deliveries have improved since the initial lockdown period, delivery slots remain difficult for disabled people. RIDC (8 June 2020), [‘Covid-19: our third survey into the impact on disabled and older people’](#) (due to a small sample size, the results of the RIDC Survey should be viewed as an indication of a possible trends only); see also Equality and Human Rights Commission (7 May 2020), [‘Equality body calls on retailers to do more for disabled customers during corona crisis’](#).

<sup>60</sup> Inclusion London (June 2020), [‘Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report’](#).

<sup>61</sup> See Food Foundation (May 2020), [‘New Food Foundation Data: food insecurity and debt are the new reality under lockdown’](#) (finding that 24 per cent of adults whose daily activities were ‘limited a lot’ by a health problem or disability, and 14 per cent of adults whose activities were ‘limited a little’, faced food insecurity, compared to just over 6 per cent of non-disabled adults who faced food insecurity); see also Food Foundation (May 2020), [‘Food Foundation Polling: third survey – five weeks into lockdown’](#) (finding higher rates of food insecurity among households with disabled children).

<sup>62</sup> UK Government (6 July 2020), [‘Guidance on shielding and protecting people who are clinically extremely vulnerable from COVID-19: Updated 6 July 2020’](#).

individuals who choose to continue to shield,<sup>63</sup> particularly given the continuing issues with accessing essential groceries.<sup>64</sup>

29. We welcome the Referral Scheme established by the Department for Environment, Food and Rural Affairs which enables local authorities and disabled people's organisations to directly allocate delivery slots for some supermarkets.<sup>65</sup> However, we share recent concerns from stakeholders that some disabled people (particularly those with hidden disabilities such as dementia) or their carers are unable to access delivery slots.<sup>66</sup> Supermarkets have a legal responsibility to provide reasonable adjustments as required for all potential disabled customers, not just those who are on a shielded list.<sup>67</sup> Supermarkets must ensure that systems are in place (both now and for any potential future wave of the virus) so that all disabled and older people who rely on delivery slots can be confident that they will be able to access food.

30. Disabled people's organisations have also reported concerns around the failure of supermarkets to provide accessible services, both in store and online.<sup>68</sup> These include: failing to take into account the requirement to provide accessible information in a range of formats; poor staff behaviour, including asking for 'proof' of disability; complaints being ignored; limited provision for those who cannot use telephone services; design of in-store social distancing measures that do not take into account the needs of those with visual or perceptual impairments; refusal to allow personal assistants or carers to enter stores with disabled customers; and a lack of communication around what adjustments disabled people can expect when they visit a store.

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<sup>63</sup> Ryan, F. (1 July 2020), '[Boris Johnson is gambling with shielders' lives by ending support on 1 August](#)', The Guardian.

<sup>64</sup> See Walsh, H. (2 July 2020), '[Which? calls for urgent action as vulnerable people still struggle to get food](#)', Which.co.uk.

<sup>65</sup> Department for Environment Food & Rural Affairs (11 June 2020), '[Access to Supermarket Delivery Slots for Non-shielded Vulnerable People](#)'.

<sup>66</sup> See, for example, Alzheimer's Society (2 June 2020), '[Life during lockdown: "Shopping for food has been critically difficult"](#)'.

<sup>67</sup> See Equality and Human Rights Commission (19 Feb 2019), '[Equality law - Businesses selling products, such as shops and petrol stations](#)'; Equality and Human Rights Commission (19 Feb 2019), '[Delivering services and the law](#)'; Equality and Human Rights Commission (1 Jan 2011), '[Services, Public functions and Associations: Statutory Code of Practice](#)'.

<sup>68</sup> Legal cases have also been launched by individuals alleging direct discrimination. See Pring, J. (16 April 2020), '[Coronavirus: Supermarkets face mass legal action over "discrimination"](#)', Disability News Service; see also concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), '[oral evidence to Women and Equalities Committee, "Unequal impact? Coronavirus, disability and access to services"](#)' (24 June 2020).

31. **Government should continue to work with the British Retail Consortium and supermarkets to ensure that social distancing measures do not disadvantage disabled people. Policies related to access to shops should be flexible to accommodate the needs of carers and personal assistants, and reasonable adjustments should be made to ensure disabled people have access to food, taking into account both visible and hidden impairments.**

### Accessible information

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32. We share stakeholders' concerns about inaccessible Government communications relating to public health and critical changes in support, including a lack of guidance in 'Easy-Read' or alternative formats.<sup>69</sup> Many disabled people, particularly those who are shielding, self-isolating or in care, report difficulty accessing information and advice online.<sup>70</sup> **The Government must ensure that all information related to the pandemic, either in printed form or published online, is accessible to disabled people, including by providing British Sign Language ('BSL') interpreters during televised press announcements, publishing materials in alternative formats, and proactively reaching out to people affected. This includes all major announcements on the recovery process, as well any announcements that may be made in preparation for a potential second wave of COVID-19.**
33. On 30 April, we wrote to the Prime Minister expressing concerns about the lack of live BSL interpretation at the daily coronavirus briefings.<sup>71</sup> In response to a petition calling for regular BSL interpretation,<sup>72</sup> the Government stated that it 'cannot safely include a BSL interpreter in the room for daily briefings without

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<sup>69</sup> See Walawalkar, A. (25 June 2020), '[Disabled People "Struggle To Access Food And Medicine Amid Pandemic"](#)', Each Other; Inclusion London (June 2020), '[Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report](#)' (noting that nearly half of survey respondents discussed 'inaccessible information, confusing guidance and lack of advice'); concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020); Casserly, C. and Fry, C. (2 July 2020), '[The Coronavirus Act 2020 and its impact on disabled people](#)', Fry Law, Discrimination Law Association Briefings Vol 70 935.

<sup>70</sup> See Inclusion London (June 2020), '[Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report](#)'; concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

<sup>71</sup> Equality and Human Rights Commission (30 April 2020), '[Letter to Prime Minister: Lack of British Sign Language \(BSL\) interpretation at UK Government daily Coronavirus briefings](#)'.

<sup>72</sup> UK Government: Petitions (2020), '[Require British Sign Language Interpreters for emergency announcements on TV](#)' (accessed 3 July 2020).

potentially putting them and others at risk' and committed to provide BSL interpretation of the briefings via BBC News channel and iPlayer.<sup>73</sup> We received a response to our letter to the Prime Minister on 23 June largely expressing a similar message. After 23 June, televised briefings changed from daily occurrences to 'ad hoc' briefings 'to coincide with significant announcements'.<sup>74</sup>

34. As of 9 July, the Government has given almost 100 televised briefings on the pandemic,<sup>75</sup> which often contained critical information about the spread of the virus and social distancing requirements—none of which hosted any live BSL interpretation.<sup>76</sup> In contrast, BSL interpreters are present at Scottish and Welsh Government briefings, and BSL and Irish Sign Language interpreters are shown in Northern Ireland on a small screen.<sup>77</sup>

35. The lack of a live BSL interpreter considerably disadvantages disabled people, as some people are still unable to access vital health information,<sup>78</sup> and potentially represents a failure by the Government to meet its legal obligations.<sup>79</sup> In addition to its 'ad hoc' coronavirus briefings, the Government has announced plans to hold daily televised press briefings by October 2020.<sup>80</sup> Thus far, no announcement has been made regarding the availability of BSL at these briefings. The Government must ensure that live BSL interpretation is provided at all Government coronavirus briefings moving forward, as well as at the planned televised press briefings beginning in autumn 2020.

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<sup>73</sup> Ibid.

<sup>74</sup> BBC News (23 June 2020), '[Coronavirus: Daily Downing Street press conference scrapped](#)'.

<sup>75</sup> YouTube, BBC News, '[Coronavirus \(Covid-19\): UK Daily Government Briefings – BBC News](#)' (accessed 9 July 2020). The Government has televised three of the 'ad hoc' briefings containing 'significant announcements' (one on mandatory school plan starts, one on lockdown easements, and one on gyms, pools and outdoor performances).

<sup>76</sup> Ibid.

<sup>77</sup> Dawson, B. (8 June 2020), '[How Deaf People Are Fighting To Be Heard Amid Covid-19 And Beyond](#)', Each Other.

<sup>78</sup> Inclusion London (June 2020), '[Abandoned, forgotten and ignored: the impact of the coronavirus on disabled people: interim report](#)'; concerns summarised by Fazilet Hadi (Policy Manager, Disability Rights UK), Ayla Ozmen (Head of Research and Policy, Action on Hearing Loss), Edel Harris (Chief Executive, Mencap) and Sarah Hughes (Chief Executive, Centre for Mental Health), [oral evidence to Women and Equalities Committee, 'Unequal impact? Coronavirus, disability and access to services'](#) (24 June 2020).

<sup>79</sup> Including the obligation to make reasonable adjustments under the Equality Act 2010, obligations under the UN CRPD, and under the Human Rights Act.

<sup>80</sup> BBC News (3 July 2020), '[UK government plans to hold daily White House-style televised press briefings](#)'.

## Access to healthcare services

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36. Between 2 March and 15 May, over 22,000 disabled people died from COVID-19 in England and Wales – representing almost two-thirds of all deaths from COVID-19 in England in Wales during this period.<sup>81</sup> For certain disabled groups, including disabled women,<sup>82</sup> those with dementia,<sup>83</sup> and those with learning disabilities and/or autism,<sup>84</sup> the risk of harm from COVID-19 may be particularly high. These patterns are especially troubling given that 63 per cent of disabled people are concerned they would not be able to access hospital treatment for COVID-19.<sup>85</sup> **We recommend the Government undertake or commission a review into the disproportionate deaths of disabled people, including an assessment of the excess deaths of people with recognised physical or mental impairments, deaths in care homes, and deaths of people with learning disabilities and/or autism. Government should work with disabled people and their representative organisations in this review,<sup>86</sup> and use the findings to identify the policy and practice changes needed to mitigate any further negative disproportionate impact on disabled people now and in the future.**

37. Disabled campaigners have also raised concerns around the accessibility of the Government's trace and testing system, including issues with a potential test and trace app, communications, information and testing implementation.<sup>87</sup> **We recommend the Government urgently review its track and trace programme**

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<sup>81</sup> 30.3 per cent of all deaths involving COVID-19 in this period were among people who said their daily activities were 'limited a lot' by a health problem or disability, and 28.9 per cent of all deaths were among people who said activities were 'limited a little'. Office for National Statistics (19 June 2020), '[Coronavirus \(COVID-19\) related deaths by disability status, England and Wales: 2 March to 15 May 2020](#)'.

<sup>82</sup> The same ONS figures suggest that working-aged disabled women are 11 times more likely to die from COVID-19 than non-disabled women, while disabled men are more than 6.5 times more likely to die than non-disabled men. Webster, L. (4 July 2020), '[Coronavirus: Why disabled people are calling for a Covid-19 inquiry](#)', BBC News.

<sup>83</sup> 27.5 per cent of those who died from COVID-19 between 1 March and 30 May had dementia, and half of those who died from COVID-19 in care homes between 2 March and 12 June had dementia. See Alzheimer's Society (23 June 2020), '[ONS figures show almost 13,000 people who died from Covid-19 had dementia](#)'; Alzheimer's Society (3 July 2020), '[ONS figures show 50 per cent of all Covid-19 deaths in care homes also had dementia – Alzheimer's Society comment](#)'.

<sup>84</sup> The CQC reported a 134 per cent increase in deaths of those with learning disabilities and/or autism in adult social care, independent hospitals or in community care (half of these deaths were related to COVID-19). CQC (2 June 2020), '[CQC publishes data on deaths of people with a learning disability](#)'. Statistics from NHS England suggest that, up to 26 June, at least 620 people with learning disabilities have died of COVID-19 in England. NHS England (2 July 2020), '[COVID-19 deaths of patients with a learning disability notified to LeDeR](#)'.

<sup>85</sup> Scope (May 2020), '[The disability report: Disabled people and the coronavirus crisis](#)'.

<sup>86</sup> In line with requirements under the Equality Act and the UN CRPD, as noted in prior sections.

<sup>87</sup> Reasonable Access (11 June 2020), '[Open letter asking about accessibility of the entire COVID-19 Test and Trace system](#)'. See also Action on Hearing Loss (2020), '[Government's new NHS Test and Trace programme needs to be accessible to all](#)'.

**to ensure it is accessible to disabled people across impairment types, particularly as it prepares for a potential ‘second wave’ of COVID-19.<sup>88</sup>**

38. We are concerned that disabled people may face discrimination in access to routine healthcare as well as COVID-19 care. As a result of the pandemic, many disabled groups continue to report fears about being unable to access non-coronavirus health care if needed,<sup>89</sup> fears about missing out on critical medicines,<sup>90</sup> and delayed or cancelled NHS services for conditions unrelated to COVID-19.<sup>91</sup>

**39. The Government must ensure all policy decisions about care and treatment for both COVID-19 and routine care are made in collaboration and consultation with disabled people and their representative organisations, underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.<sup>92</sup>**

### **Right to independent living**

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40. A number of issues explored in this submission underscore our concern that the pandemic has created significant threats to the right to independent living for disabled people, including in relation to reductions in personal, residential and

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<sup>88</sup> This would include, for example, conducting and publishing an Equality Impact Assessment in order to identify how disabled people may be affected by or excluded from the Government’s track and trace programme.

<sup>89</sup> A recent study revealed that as a result of the pandemic, 69.1 per cent of disabled women, 66 per cent of disabled men and 64 per cent of non-disabled women were worried they might not be able to get NHS treatment unrelated to COVID-19 (compared to 48.4 per cent of non-disabled men). Women’s Budget Group, et al. (2020), ‘[Disabled women and Covid-19 - Research evidence](#)’; see also Disabled Children’s Partnership (June 2020), ‘[Left in Lockdown](#)’ (noting that 44 per cent of parents of disabled children reported that the lockdown has led to them not seeking necessary medical healthcare for their children).

<sup>90</sup> 60.6 of disabled women and 55.9 per cent of disabled men reported being afraid of missing out on medicines, compared with 43.2 per cent of non-disabled women and 36.5 per cent of non-disabled men. Women’s Budget Group, et al. (2020), ‘[Disabled women and Covid-19 - Research evidence](#)’.

<sup>91</sup> See, for example, waiting time patterns summarised by Sir Simon Stevens (Chief Executive Officer, NHS England and NHS Improvement) and Professor Andrew Goddard (President, Royal College of Physicians), [oral evidence to Health and Social Care Committee, ‘Delivering Core NHS and Care Services during the pandemic and beyond’](#) (30 June 2020); Centre for Aging Better (18 June 2020), ‘[Lockdown could leave next generation of retirees poorer and sicker than the last](#)’ (noting half of people in their 50s or 60s have had a medical or dental appointment delayed or cancelled); BBC News (6 July 2020), ‘[Coronavirus could cause 35,000 extra UK cancer deaths, experts warn](#)’.

<sup>92</sup> In particular, the rights to equality and non-discrimination, including in the enjoyment of the rights to life and health; and the principles of individual autonomy and participation in decision-making.



other community support services;<sup>93</sup> reductions in detention safeguards;<sup>94</sup> and barriers preventing equal access to services.<sup>95</sup>

41. The Government has a UN treaty obligation to protect, respect and fulfil the right to independent living.<sup>96</sup> This is a fulcrum right about ensuring that disabled people are able to exercise freedom of choice and control over decisions affecting their lives on an equal basis with others.<sup>97</sup> In line with recommendations from the UN Committee on the Rights of Persons with Disabilities in 2017, **we have recommended the Government should incorporate the right to independent living in domestic law. We urge the Committee to consider endorsing this recommendation, to protect the human rights of disabled people during and in the aftermath of the pandemic.**<sup>98</sup>

### Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about the Commission's work on our [website](#).

For more information, please contact:

### Policy lead

[Redacted contact information]

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<sup>93</sup> See paragraphs 4-11 and 15-19 of this submission.

<sup>94</sup> See paragraphs 12-13 of this submission.

<sup>95</sup> See paragraphs 11, 23-30, 32-35, and 36-38 of this submission.

<sup>96</sup> Article 19 of the UN CRPD.

<sup>97</sup> UN Committee on the Rights of Persons with Disabilities, '[General Comment No. 5: Right to independent living](#)' (adopted 31 August 2017).

<sup>98</sup> The right to independent living is not currently incorporated into domestic law in the UK. Following evidence of a regression on this right in England, and a recommendation from the UN Committee on the Rights of Persons with Disabilities in 2017, we have developed a proposed legal model for incorporation of this right. See our [supplementary evidence to the JCHR's inquiry into the detention of children and young people with learning disabilities and/or autism \(submission YDA0045\)](#) (May 2019).

# **Evidence to the Joint Committee on Human Rights inquiry into the Government's response to COVID-19: human rights implications**

Submission of the Equality and Human Rights Commission on  
the privacy implications of the NHS test and trace service

14 July 2020

## Introduction

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1. The Equality and Human Rights Commission has statutory authority to advise Government on equality and human rights implications of existing and proposed legislation, and can publish information and advice on equality and human rights matters.
2. We support the primary role of Government in the current context: to keep people safe and protect our future, whilst ensuring respect for human rights. We recognise that the NHS Test and Trace service has the potential to play a key role in allowing the safe resumption of economic activity and social contact, while also protecting the rights to life and health.<sup>1</sup> While some interference with the right to private and family life<sup>2</sup> may be justified in the pursuit of this goal, it is crucial that this does not extend beyond what is proportionate and necessary to protect life and public health.<sup>3</sup>
3. We support the Committee's existing recommendations on the implications of the NHSX contact tracing app and consider many of these remain relevant subsequent to the announcement in June that the app will be reconfigured to use a decentralised system.<sup>4</sup> We have identified a number of concerns related to the manual Test and Trace service and the use of any future contact tracing app, and have made our own recommendations for addressing these issues below.

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<sup>1</sup> Article 2, European Convention on Human Rights (ECHR); Article 6 International Covenant on Civil and Political Rights (ICCPR); Article 12 International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>2</sup> Article 8 ECHR; Article 17 ICCPR; Article 16 Convention on the Rights of the Child (CRC).

<sup>3</sup> According to the UN Human Rights Committee, in order to be proportionate, restrictive measures "must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected". Furthermore, "In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right." See Human Rights Committee (2004), [General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#); and Human Rights Committee (1999), [General Comment No. 27: Article 12 \(Freedom of Movement\)](#); United Nations (April 2020), [Covid-19 and Human Rights: We are all in this together](#), p. 16

<sup>4</sup> Joint Committee on Human Rights (7 May 2020), [Human Rights and the Government's Response to Covid-19: Digital Contact Tracing](#); Department of Health and Social Care (18 June 2020), [Health and Social Care Secretary's statement on coronavirus \(COVID-19\): 18 June 2020](#); BBC News (20 June 2020), [Coronavirus: What went wrong with the UK's contact tracing app?](#)

## Manual Test and Trace service

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4. The Government launched the NHS Test and Trace service on 28 May, using human contact tracers to identify and control the spread of the virus.<sup>5</sup> Personal information about those who test positive<sup>6</sup> is provided to contact tracers by hospital and laboratory reports sent to Public Health England (PHE). Infected individuals are then contacted and asked to provide the contact details of anyone with whom they have been in close, recent contact.<sup>7</sup>
  
5. Personally identifiable information of people who have Covid-19 symptoms and their contacts are kept by PHE for eight years<sup>8</sup> and five years respectively. The NHS states that data needs to be retained for this long because Covid-19 is a new disease and it may be necessary to control future outbreaks or to provide any new treatments.<sup>9</sup> We are concerned that the stated purpose for retaining personal data for these periods is vague. No explanation is provided for why the data of symptomatic individuals (who may in fact test negative for Covid-19) is retained for a longer period than people without symptoms (who may have Covid-19 but be asymptomatic). The General Data Protection Regulation (GDPR) stipulates that the processing of personal data should be limited to what is necessary in relation to the specified purpose,<sup>10</sup> and that data must be erased as soon as it is no longer necessary for that purpose<sup>11</sup> - in this case Covid-19 contact tracing.<sup>12</sup> **We urge the UK Government to clarify and justify the specific types of data that will be retained by the NHS Test and**

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<sup>5</sup> Department of Health and Social Care (27 May 2020), [Government launches NHS Test and Trace Service](#).

<sup>6</sup> This includes name, date of birth, sex, NHS number, home postcode, house number, telephone number, email address and Covid-19 symptoms, including when they started and their nature.

<sup>7</sup> Close, recent contacts are contacted and asked to confirm or provide their full name, date of birth, contact details and details of any Covid-19 symptoms they may have had. See NHS (9 June 2020), [NHS Test and Trace Privacy Information](#); Department of Health and Social Care (27 May 2020), [NHS test and trace: how it works](#).

<sup>8</sup> Following legal proceedings by Open Rights Group and Ravi Naik, PHE has reportedly agreed to amend the previous twenty year data retention period for people with Covid-19 symptoms to eight years. See Big Brother Watch (June 2020), [Emergency Powers and Civil Liberties Report \[June 2020\]](#), p. 48

<sup>9</sup> NHS (9 June 2020), [NHS Test and Trace Privacy Information](#).

<sup>10</sup> Article 5(1)(c), GDPR.

<sup>11</sup> Article 17(1)(a), GDPR.

<sup>12</sup> NHS (9 June 2020), [NHS Test and Trace Privacy Information](#).

**Trace service, the purposes for retaining each type of data, and the retention period for each type of data.**

6. The NHS Test and Trace service was reportedly deployed without the NHS or PHE conducting a Data Protection Impact Assessment (DPIA).<sup>13</sup> The GDPR requires that a DPIA is carried out where the processing of data is ‘likely to result in a high risk to the rights and freedoms of natural persons’<sup>14</sup>, which includes financial loss or any other significant economic or social disadvantage.<sup>15</sup> Given the scale of the Test and Trace service and the sensitive data collected, combined with the impact on rights and freedoms that arise from being asked to self-isolate for 14 days,<sup>16</sup> it is likely that the programme meets the threshold to require a DPIA under the GDPR.<sup>17</sup> **The NHS and PHE must urgently complete and publish a Data Protection Impact Assessment for the overall NHS Test and Trace Service, as required by the GDPR.**
7. A number of private companies are involved in the NHS Test and Trace service, including Serco UK, which is providing contact tracing staff.<sup>18</sup> Prior to the launch of the Test and Trace service Serco UK reportedly accidentally shared the email addresses of 296 newly recruited staff members, raising concerns over the company’s data handling practices.<sup>19</sup> Given that Serco UK also has a contract with the UK Government to provide border control and immigration services,<sup>20</sup> we are concerned that sensitive data collected in the course of the Test and Trace programme could be shared – intentionally or otherwise – for immigration enforcement purposes. **The Government must ensure that all private**

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<sup>13</sup> Politico (28 May 2020), [UK ‘test and trace’ service did not complete mandatory privacy checks; Wired](#) (3 July 2020), [Government faces court over NHS Test and Trace privacy failings](#).

<sup>14</sup> [GDPR](#), Article 35.

<sup>15</sup> [GDPR Recitals](#), Recital 75.

<sup>16</sup> Including the right to free movement (Article 12 ICCPR), freedom of assembly (Article 11 ECHR, Article 21 ICCPR), the right to a private and family life (Article 8 ECHR, Article 17 ICCPR) and the right to manifest religion or belief, including in worship (Article 9 ECHR, Article 18 ICCPR).

<sup>17</sup> Open Rights Group (4 June 2020), [ORG demands Government act to secure ‘track and trace’ data](#); Mathew Ryder QC, Edward Craven, Gayatri Sarathy and Ravi Naik, Matrix Chambers (3 May 2020), [Covid-19 & Tech responses: Legal opinion](#), para. 40.

<sup>18</sup> NHS (9 June 2020), [NHS Test and Trace Privacy Information](#).

<sup>19</sup> The Guardian (20 May 2020), [Serco accidentally shares contact tracers’ email addresses](#).

<sup>20</sup> Serco, [Border control and immigration services](#).

**companies involved in the Test and Trace service are GDPR compliant and fully aware of their obligations not to use data collected by the Test and Trace service for any purpose other than Covid-19 contact tracing.**

8. The New Policy Institute and Race Equality Foundation have highlighted concerns that the NHS Test and Trace service does not adequately encourage ethnic minorities to come forward for testing, citing previous experience illustrating that screening programmes for particular cancers have been less effective in reaching ethnic minority communities.<sup>21</sup> **We urge the Department of Health and Social Care to make NHS Test and Trace information available in multiple languages, work with locally-based trusted intermediaries to better encourage ethnic minorities to come forward for testing, and provide advice on the economic, social and cultural implications of a positive test.** For example, the Government should engage, support and build trust with organisations that represent Gypsy, Roma and Traveller communities, and produce specific guidance that reflects differences in living arrangements, and any specific challenges in self-isolating following a positive test.<sup>22</sup>
  
9. Women's Aid has raised concerns that NHS Test and Trace could have unintended negative consequences for survivors of domestic abuse. Perpetrators could use the service to make fraudulent claims that they have been in contact with survivors in order for them to be asked to self-isolate unnecessarily. Contact tracers could also inadvertently share with an abuser the contact details of a survivor who has left them.<sup>23</sup> **The Department for Health and Social Care should ensure that all contact tracing staff receive robust training on domestic abuse as part of their wider safeguarding training. This should be developed with domestic abuse specialists and**

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<sup>21</sup> New Policy Institute and Race Equality Foundation, [Evidence into Action; A review of the report by Public Health England into disparities in risks and outcomes of COVID-19 between ethnic groups by level of deprivation](#), p. 12.

<sup>22</sup> Friends, Families and Travellers (2020), [Stay at Home: Guidance for Gypsy, Traveller and Liveaboard Boater Households with Possible Coronavirus \(COVID-19\) Infection](#) and [Covid-19: Efforts to support gypsies and travellers in England must go further](#).

<sup>23</sup> Women's Aid (2020), Covid-19 Test, Trace and Tracking: The impact on survivors.

**include how to speak to survivors safely, an understanding of the means in which perpetrators could manipulate the system, and the risks associated with disclosing contact information between those already personally connected.<sup>24</sup>**

10. Disabled people's organisations have raised concerns about the accessibility of the NHS Test and Trace service, noting that no mention has been made of the specific needs disabled people may have during the process. Among other issues, organisations have raised questions about how a deaf or disabled person can alert the service to their communication needs, the availability of testing and tracing information in different accessible formats, including British Sign Language, and reasonable adjustments at testing sites.<sup>25</sup> **The Test and Trace service must make use of a range of contact methods and ensure all information is available in accessible formats so that the service does not exclude disabled people. All contact tracing and testing staff should receive deaf and disability awareness training and reasonable adjustments should be in place to allow disabled people access to testing sites.**

## Contact tracing app

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11. We welcome the Government's recent announcement that it will develop a contact tracing app based on technology developed by Google and Apple.<sup>26</sup> Unlike the original contact tracing app proposed by the Government, the Google and Apple software is based on a 'decentralised' model which ensures that exposure notification data is stored and processed on individual devices, rather than a central server.<sup>27</sup> This approach is more likely to build trust among

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<sup>24</sup> This has been recommended by Women's Aid. See: Women's Aid (2020), Covid-19 Test, Trace and Tracking: The impact on survivors.

<sup>25</sup> Reasonable Access (11 June 2020), [Open letter asking about accessibility of the entire COVID-19 Test and Trace system](#); Action on Hearing Loss (2020), [Government's new NHS Test and Trace programme needs to be accessible to all](#).

<sup>26</sup> Department of Health and Social Care (18 June 2020), [Health and Social Care Secretary's statement on coronavirus \(COVID-19\): 18 June 2020](#).

<sup>27</sup> Apple and Google (May 2020), [Exposure Notification Frequently Asked Questions v1.1](#).

marginalised communities<sup>28</sup> and comply with data protection laws, representing a more proportionate – and therefore more likely lawful – interference with the right to private life.<sup>29</sup>

12. Though the decision to use a decentralised app is a positive step, it remains crucial that effective privacy safeguards are put in place to prevent the app being used for any means other than controlling the spread of Covid-19, and we continue to support the Committee’s recommendations in this regard.<sup>30</sup> In addition to producing a DPIA for the overall NHS Test and Trace service, **we urge the Government to adopt primary legislation, such as the draft Bill provided by the Joint Committee on Human Rights, which will provide additional privacy protections and safeguards ahead of the launch of any future contact tracing app.**

13. Information regarding how data collected by the app will be used must be accessible and clear to all age groups, including children.<sup>31</sup> Children are at particular risk of having the app downloaded onto their phone by a parent or guardian without their consent.<sup>32</sup> **The NHS must ensure that all functions of the Test and Trace service comply with child safeguards provided by the GDPR, and are discharged with regard for the need to promote the welfare of children, in line with the Children Act 2004<sup>33</sup> and the UN Convention on the Rights of the Child.<sup>34</sup>**

14. Women’s Aid has raised concerns that the contact tracing app could put survivors of domestic abuse at risk of being tracked by their abusers. While the proposed contact tracing app itself will rely on Bluetooth rather than location

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<sup>28</sup> This includes migrant communities and other groups who may be reluctant to interact with government agencies. See Foxglove, Joint Council for Welfare of Immigrants, Liberty, Medact, Open Rights Group, Privacy International (28 May 2020), [Open letter: NHSX app safeguards for marginalised groups](#).

<sup>29</sup> Mathew Ryder QC, Edward Craven, Gayatri Sarathy and Ravi Naik, Matrix Chambers (3 May 2020), [Covid-19 & Tech responses: Legal opinion](#), para. 64.

<sup>30</sup> Joint Committee on Human Rights (7 May 2020), [Human Rights and the Government’s Response to Covid-19: Digital Contact Tracing](#)

<sup>31</sup> Article 12(1), GDPR.

<sup>32</sup> Unicef (June 2020), [Digital contact tracing and surveillance during COVID-19](#), pp. 16 and 22

<sup>33</sup> Section 11, Children Act 2004.

<sup>34</sup> Articles 3 and 16, CRC.



data, Women's Aid is concerned that in order for Bluetooth to work on Android phones location services have to be switched on. If a perpetrator has uploaded spyware onto a survivor's phone or is able to hack into it, then turning on location data may expose their location to their abuser.<sup>35</sup> **Before launching any future contact tracing app the NHS must ensure that that the app never requires location services to be enabled, regardless of the make and model of phone.**<sup>36</sup>

15. Privacy organisations have raised concerns that although installation and use of the app is intended to be voluntary, employers may place pressure on employees to use the app as a condition of work, or businesses could stipulate that access to their premises or services are conditional on use of the app.<sup>37</sup> **Primary legislation should be enacted prohibiting use of any future contact tracing app becoming the basis for selection in employment or access to business premises or services.**

16. Consideration will need to be given to ensuring access to the app for different groups. A poll carried out by The Health Foundation and Ipsos Mori has revealed a significant divide in terms of likelihood to download and use the app along the lines of occupation, education level and age.<sup>38</sup>

17. Consideration will also need to be given to potential unintended impacts on some groups. The Health Foundation has warned that the app may send false alerts to people who live in densely populated settings, where Bluetooth signals could be detected through thin walls without any face-to-face contact.<sup>39</sup> This risks having a disproportionately negative impact on people from lower socioeconomic

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<sup>35</sup> Women's Aid (2020), Covid-19 Test, Trace and Tracking: The impact on survivors.

<sup>36</sup> This has been recommended by Women's Aid. See: Women's Aid (2020), Covid-19 Test, Trace and Tracking: The impact on survivors.

<sup>37</sup> Open Rights Group, Article 19, Index on Censorship (22 May 2020), [Response to the JCHR draft Digital Contact Tracing \(Data Protection\) Bill](#), p. 3.

<sup>38</sup> The poll found that 73% of people in managerial, administrative or professional jobs say they are likely to download the app, while this figure falls to 50% when it comes to routine and manual workers, state pensioners and the unemployed. One in five people aged 65 or older reported not owning a smartphone and therefore being unable to download any future app. See: The Health Foundation (3 June 2020), [Contact tracing app threatens to exacerbate unequal risk of COVID-19](#).

<sup>39</sup> The Health Foundation (3 June 2020), [Contact tracing app threatens to exacerbate unequal risk of COVID-19](#).

backgrounds and ethnic minorities, who are more likely to live in overcrowded accommodation.<sup>40</sup> It could also have financial implications for those who are unable to work from home and are in low paid or insecure employment, who risk loss of income if they are repeatedly asked to self-isolate. Young workers, women and certain ethnic minorities are overrepresented in precarious and low paid roles.<sup>41</sup> In addition, pregnant women's entitlement to Statutory Maternity Pay could be affected if they have to self-isolate with no income.<sup>42</sup> **Before launching any future app the Government should publish an Equality Impact Assessment identifying segments of the population who may be digitally excluded from the health benefits offered by the app or disproportionately impacted by false or repeated alerts.** Rectifying these issues will increase the efficacy of the app, further protecting public health and ensuring respect for the right to private life.

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<sup>40</sup> Equality and Human Rights Commission (2018), [Is Britain Fairer?](#).

<sup>41</sup> Department for Business, Innovation and Skills (2018), [The characteristics of those in the gig economy](#); Recent analysis shows that BME women are three times more likely to be in precarious work and are therefore unlikely to qualify for either SSP or furlough; Women's Budget Group (April 2020) [Crises Collide: Women and Covid-19](#).

<sup>42</sup> Working Families (2020), [Weathering the storm: the COVID-19 pandemic and working parents](#), p. 6

## Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the [Equality and Human Rights Commission website](#).

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