

REPORT

# Socio-Economic Rights in the UK

Equality and Human Rights Commission  
Submission to the United Nations  
Committee on Economic, Social and  
Cultural Rights on the United Kingdom's  
Implementation of the International  
Covenant on Economic, Social and  
Cultural Rights

# Contents

<b>Section 1. Introduction</b> .....	<b>5</b>
1.1 The role of the EHRC .....	5
1.2 The context of this submission .....	6
1.3 The shape of this submission .....	7
1.4 Summary of this submission.....	8
1.5 Devolution and the scope of this submission.....	8
<b>Section 2. Adequate standard of living and social security – Articles 9 and 11</b> .....	<b>10</b>
2.1 Financial decision making and equality impact assessments.....	11
2.2 Impact of social security reform on people with disabilities .....	14
2.3 Impact of social security reforms on women.....	19
2.4 Impact of social security reforms on children.....	23
2.5 Income poverty .....	24
2.6 Child poverty .....	25
2.7 Food poverty .....	26
<b>Section 3. Right to adequate housing – Article 11</b> .....	<b>30</b>
3.1 Substandard housing.....	30
3.2 Overcrowded housing.....	30
3.3 Site provision for Gypsies and Travellers .....	31
3.4 Violence against women and girls (VAWG) and the right to adequate housing .....	33
3.5 Recommendations .....	34
<b>Section 4. Right to health – Article 12</b> .....	<b>36</b>
4.1 Legal and regulatory framework .....	36
4.2 Experiences of healthcare of people with disabilities .....	38
4.3 Older people’s right to health.....	41
4.4 Access to healthcare by other vulnerable people .....	42
4.5 Health care for adults with mental health problems .....	45
4.6 Health care for children with mental health problems .....	51
4.7 Violence against women and girls (VAWG) and the right to health .....	52

<b>Section 5. Access to work and working conditions – Articles 6 and 7</b>	<b>54</b>
5.1 Migrant workers	54
5.2 Low pay	57
5.3 Agency work in the meat and poultry processing sector	59
<b>Section 6. Equal pay gaps - Articles 3, 6 and 7</b>	<b>62</b>
6.1 Recommendations	68
<b>Section 7. Right to education– Articles 13 and 14</b>	<b>70</b>
7.1 Recommendations	70
7.2 Access to further and higher education	71
7.3 Recommendations	74
<b>Section 8. Access to civil law justice</b>	<b>75</b>
8.1 The impact of reforms introduced by the LASPO Act 2012	76
8.2 Impact of the proposed residence test	81
8.3 Legal aid for judicial review	82
8.4 Impact of new tribunal fees	82
8.5 Reduction in funding for non-governmental organisation (NGO) advice services	84
<b>Section 9. Violence Against Women and Girls (VAWG) - Article 3</b>	<b>86</b>
9.1 Ratification of the Istanbul Convention	87
9.2 Recommendations	90
<b>Annex 1. Equality and Human Rights Commission recommendations to improve implementation of the International Covenant on Economic, Social and Cultural Rights in the UK</b>	<b>91</b>
A.1 Financial decision making and the Public Sector Equality Duty (PSED)	91
A.2 Impact of social security reforms on people with disabilities	91
A.3 Impact of social security reforms on women	92
A.4 Impact of social security reforms on children	93
A.5 Income poverty and child poverty	93
A.6 Food Poverty	93
A.7 The right to adequate housing	94
A.8 Health – legal and regulatory framework	95
A.9 Healthcare of people with disabilities	95
A.10 Healthcare of older people	95
A.11 Access to healthcare by other vulnerable groups	96
A.12 Healthcare for adults with mental health problems	96

A.13 Healthcare for children with mental health problems.....	96
A.14 Violence against women and girls and the right to health.....	97
A.15 Working conditions of migrant workers and overseas domestic workers.....	97
A.16 Working conditions - low pay and agency workers.....	98
A.17 Equal pay .....	99
A.18 Right to education .....	100
A.19 Access to further and higher education .....	100
A.20 Access to justice.....	101
A.21 Violence against women and girls .....	102
<b>Annex 2. Children's Rights in the UK.....</b>	<b>103</b>

# Section 1.

## Introduction

1. This submission aims to provide the UN Committee on Economic, Social and Cultural Rights (CESCR) with information on the implementation of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup> in the United Kingdom (UK) since CESCR last reviewed the UK in 2009.<sup>2</sup>
2. This submission aims to cover England and Wales for all of the thematic areas and Scotland for issues which are reserved to Westminster. The submission of the Scottish Human Rights Commission will cover Scotland in more detail and the submission of the Northern Ireland Human Rights Commission will cover Northern Ireland, over which the Equality and Human Rights Commission (EHRC) does not have a mandate. Therefore, the specific recommendations in this submission are addressed to the UK and Welsh Governments. However, they may also be relevant to the other devolved administrations and the EHRC expects all of the UK's Governments to work together to progressively realise the rights set out in ICESCR.

### 1.1 The role of the EHRC

3. The EHRC was established by the UK Parliament in the Equality Act 2006 as an independent body with a mandate covering both equality and human rights. Among other human rights responsibilities, the EHRC was tasked by the UK Parliament with “encouraging good practice in relation to human rights”.<sup>3</sup>
4. The UK Parliament has also given the EHRC responsibilities to assess and report on the UK's progress in achieving the human rights in the treaties the

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<sup>1</sup> ICESCR, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [accessed on 7 August 2015, as were all other weblinks in this submission]

<sup>2</sup> CESCR, Concluding observations, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, E/C.12/GBR/CO/5, June 2009, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en)

<sup>3</sup> Section 9(1)(b) of the Equality Act 2006, available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

UK has chosen to ratify, both within the European Convention on Human Rights (ECHR) and other international human rights treaties.<sup>4</sup> The EHRC works with its colleague National Human Rights Institutions (NHRIs) in the UK and with government departments and agencies to fulfil this role.

## 1.2 The context of this submission

5. The realisation of the economic, social and cultural rights in the ICESCR has of course been subject particularly to the global economic context of the last few years. All countries have faced trying times and governments have needed to make difficult decisions on fiscal and public spending choices. Article 2(1) ICESCR recognises that the level and rate of progress in realising rights will depend on the available resources in a particular State at a given time.
6. Since the UK was last reviewed, the economic crisis and the UK Government's responses have had a significant impact on the fulfilment of people's economic, social and cultural rights (ESCR). With this in mind, the EHRC will include here an examination of how the UK and devolved Governments are acting in accordance with the CESCR's guidelines for policy adjustments in times of economic crisis.<sup>5</sup> These guidelines accept that States may need to take necessary measures in such situations, on condition that they are temporary, necessary and proportionate, non-discriminatory, and that they do not undercut a core minimum level of protection of ESCR.<sup>6</sup>
7. Our aim is to encourage the UK and devolved Governments to use the ICESCR reporting process as a means for continuing and strengthening their efforts to improve compliance with their human rights obligations and progressively realise ESCR across the UK. To this end, our submission includes specific recommendations for consideration which we believe can support the UK Government in this task. The EHRC plans to make an updated] submission to CESCR in advance of the full examination of the UK's State report.

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<sup>4</sup> Section 9(2) of the Equality Act 2006, available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

<sup>5</sup> Pillay, A., Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties on ICESCR in times of economic crises, CESCR/48th/SP/MAB/SW, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

<sup>6</sup> Whilst these guidelines are not binding on the UK, they are an authoritative interpretation by CESCR of the obligations that States Parties have under ICESCR in times of economic crisis. As such, they provide an extremely useful reference point against which to assess the UK's implementation of ICESCR since its last review.

### 1.3 The shape of this submission

8. The EHRC's analysis of the implementation of ICESCR will consider the general duty for the UK and devolved Governments to take steps towards achieving progressively the full realisation of ESCR in ICESCR, to the maximum of its available resources.<sup>7</sup>
9. The duty of the UK and devolved Governments to achieve these rights without discrimination<sup>8</sup> also forms a central tenet of this submission. In its dual role as both a National Equality Body and a National Human Rights Institution, the EHRC will also consider discrimination towards people who share protected characteristics under the Equality Act 2010.<sup>9</sup> However, unlike under the Equality Act 2010, the list of grounds on which discrimination is prohibited in ICESCR is not a closed list; it includes "other status", so this submission will also address groups which are potentially vulnerable, but not expressly covered as groups of individuals sharing characteristics afforded special protection by the Equality Act 2010. Where evidence is available, this submission provides analysis on the lived experience of individuals who suffer from discrimination in the fulfilment of their ESCR on the basis of more than one protected characteristic.
10. In relation to the core minimum level of protection, the analysis of the UK's implementation of its obligations under ICESCR is considered in the light of the statement of CESCR from 2015 on social protection floors as "a basic set of essential social guarantees" which ensure respect for a minimum core content of ESCR.<sup>10</sup> CESCR holds these to be essential in promoting income security and facilitating the enjoyment of ESCR by the most marginalized groups.<sup>11</sup> It is not the purpose of this submission to make recommendations on fiscal policy. Instead, the EHRC aims to set out some of the key changes in the implementation of ESCR since 2009 and to highlight areas where more progress could be made, as well as areas where regression may have occurred.

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<sup>7</sup> ICESCR, Article 2(1) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>8</sup> ICESCR, Article 2(2) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>9</sup> Section 4 of the Equality Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>10</sup> CESCR, Statement on social protection floors: an essential element of the right to social security and of the sustainable development goals, E/C.12/54/3, 6 March 2015, para 1/2, available at: <http://www.social-protection.org/gimi/gess/ShowResource.action?resource.ressourceId=50857>

<sup>11</sup> CESCR, Statement on social protection floors: an essential element of the right to social security and of the sustainable development goals, E/C.12/54/3, 6 March 2015, para 1, citing UN Secretary General, A/HRC/28/35, available at: <http://www.social-protection.org/gimi/gess/ShowResource.action?resource.ressourceId=50857>

## 1.4 Summary of this submission

11. The EHRC recognises and commends the progress made by the UK and devolved Governments in the implementation of a number of economic, social and cultural rights (ESCR) since it was last reviewed in 2009. In many cases, these achievements provide good evidence of the UK implementing the provisions of ICESCR, as well as the concluding observations of CESCR from 2009. For example, we welcome:
  - the engagement of the UK Government with the EHRC on improving financial decision making to ensure it is in accordance with the Public Sector Equality Duty (PSED)
  - changes to the legal framework around health which increase focus on reducing inequalities, and
  - initiatives to improve access to education and attainment, for example free early education or childcare places and the pupil premium.
12. Nevertheless, the EHRC also focuses on areas in which there has been insufficient progress, or emerging challenges in the realisation of ESCR. For example, we raise concerns in relation to:
  - the impact of social security reform on people with disabilities, in particular through the under-occupation deduction<sup>12</sup> and the closure of the independent living fund, and the impact of social security reforms on women and on children
  - unequal access to health of disabled people and older people, and inadequate provision of mental health services for children and adults, and
  - the need to strengthen protections for migrant workers, tackle low pay in the cleaning and home care sector, the increasing casualization of the labour market, and the persistent gender, race and disability pay gap.

## 1.5 Devolution and the scope of this submission

13. The National Assembly for Wales was established by the Government of Wales Act 1998.<sup>13</sup> In a referendum in 2011, the people of Wales voted in favour of granting the Assembly further powers for legislating in Wales without

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<sup>12</sup> A reduction in the amount of housing benefit paid to claimants if they live in social housing that is deemed to be too large for their needs, widely known as the bedroom tax.

<sup>13</sup> Government of Wales Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents>

first needing the agreement of the UK Parliament.<sup>14</sup> The 20 devolved areas include culture, economic development, education and training, health and health services, local government, public administration, and social welfare.<sup>15</sup>

14. The Scottish Parliament was created by the Scotland Act 1998.<sup>16</sup> Its powers were extended by the Scotland Act 2012.<sup>17</sup> Matters devolved to the Scottish Parliament include education and training, health and social services, housing and local government.

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<sup>14</sup> National Assembly for Wales, Media Pack, available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx>

<sup>15</sup> National Assembly for Wales, Media Pack, available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx>

<sup>16</sup> Scotland Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>

<sup>17</sup> Scotland Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

## Section 2.

# Adequate standard of living and social security – Articles 9 and 11

15. In 2009, CESCR recommended that the UK provide disaggregated data on the effects of the UK Government's welfare reform agenda and intensify efforts to combat poverty and social exclusion for the most disadvantaged and marginalized groups.<sup>18</sup> Given that "[s]ocial security, through its redistributive character, plays an important role in poverty reduction and alleviation",<sup>19</sup> this analysis will consider the UK Government's progress in implementing Articles 9 and 11 of ICESCR in parallel. Social security remains a reserved matter, with law and policy determined by the UK Government, but it interacts with policy areas which have been devolved to the Scottish and Welsh Governments.
16. The UK Government introduced a series of reforms to the social security system between 2010 and 2015, some of which will be addressed below.<sup>20</sup>
17. Following the General Election in May 2015, the new UK Government has outlined further reforms to the social security system in the Full Employment and Welfare Benefits Bill which would apply to England, Scotland and Wales. This would "freeze the main rates of the majority of working-age benefits, tax-credits and Child Benefit for two years from 2016-17" and "lower the benefit

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<sup>18</sup> CESCR, paras 42 and 28. See also: Universal Periodic Review Recommendations to the UK, Annex 1, September 2012, available at: [www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx). For example, recommendation 101 calling on the UK to provide more resources for reforming the welfare system in order to make it better able to tackle poverty and worklessness, and reduce negative impact on social vulnerable groups.

<sup>19</sup> CESCR, General Comment No. 19: the right to social security (Article 9), para 3, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>20</sup> For an overview of these measures, see Department for Work and Pensions, Policy Paper: 2010 to 2015 government policy: welfare reform, available at: <https://www.gov.uk/government/publications/2010-to-2015-government-policy-welfare-reform/2010-to-2015-government-policy-welfare-reform>

cap so that the total amount of benefits a non-working family can receive in a year would be £23,000.”<sup>21</sup>

## 2.1 Financial decision making and equality impact assessments

### 2.1.1 Financial decision making and the Public Sector Equality Duty (PSED)

18. The PSED is a statutory duty on all public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations, including by considering the need to minimise disadvantages suffered by persons who share protected characteristics and take steps to meet their needs.<sup>22</sup> Specific equality duties have been introduced in England, Scotland and Wales.<sup>23</sup>
19. The EHRC considers that UK Government’s financial decisions which are made on the basis of a process which is compliant with the PSED will be more likely to be consistent with the UK’s obligations under Article 2 ICESCR, taken in conjunction with Articles 9 and 11 as well as the non-discrimination obligation set out in Article 2(2) ICESCR and CESCR’s General Comment No. 20.<sup>24</sup>
20. The EHRC conducted a formal assessment of the extent to which the UK Government’s 2010 Spending Review<sup>25</sup> complied with the requirements of the duties in force at that time for race, gender and disability.<sup>26</sup> It found that a number of the decisions were fully in accord with the requirements of the

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<sup>21</sup> Prime Minister's Office, The Queen's Speech 2015: Background briefing notes, pp. 13-17, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/430149/QS\\_lobby\\_pack\\_FINAL\\_NEW\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf)<sup>22</sup> Section 149 of the Equality Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>22</sup> Section 149 of the Equality Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>23</sup> The Equality Act 2010 (Specific Duties) Regulations 2011, available at:

<http://www.legislation.gov.uk/uksi/2011/2260/made>; The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, available at: <http://www.legislation.gov.uk/ssi/2012/162/contents/made>; and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, available at: <http://www.legislation.gov.uk/wsi/2011/1064/contents/made>

<sup>24</sup> CESCR, General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, para 2 ICESCR), E/C.12/GC/20, 2 July 2009, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en)

<sup>25</sup> HM Treasury, Spending Review 2010, October 2010, available at:

<https://www.gov.uk/government/publications/spending-review-2010>

<sup>26</sup> EHRC, Making fair financial decisions: An assessment of HM Treasury’s 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>. The Equality Act 2010, which introduced a single, public sector equality, did not come into legal force until October 2010, so the previous public sector equality duties for race, gender and disability formed the basis of our assessment.

duties.<sup>27</sup> For example, equality impact assessments undertaken by the UK Government contributed to policies such as the pupil premium<sup>28</sup> which reduced inequality and drove forward the progressive realisation of children's right to education.<sup>29</sup> One example the EHRC identified of a lower level of compliance with the duties was the introduction of the cap for total household benefit payments, for which there was no evidence of an analysis of the potential impact of this policy on women.<sup>30</sup> The EHRC recommended ongoing monitoring to understand the actual impact on individuals sharing protected characteristics and the cumulative impacts of fiscal events.<sup>31</sup>

21. In its consideration of HM Treasury's Equalities Analysis report for the 2013 Spending Review<sup>32</sup>, the EHRC suggested further improvements in relation to data collection, including the identification of key areas of spending or tax where the Treasury considers an impact on people sharing protected characteristics is likely, but where data is inadequate.<sup>33</sup> EHRC Wales conducted an inquiry of the Welsh Government's approach to assessing the equality impacts of its budget.<sup>34</sup> Its findings confirmed the Welsh Government's commitment to improving the equality assessment of its budget and that improvement has taken place during recent years.<sup>35</sup> The report

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<sup>27</sup> See for example the pupil premium, discussed in the education section of this submission. EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 81-5, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

<sup>28</sup> See EHRC, Children's Rights in the UK, August 2015, p.58

<sup>29</sup> EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 81-5, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

<sup>30</sup> EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 7, 50-5, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

<sup>31</sup> EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 7 and 54, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

<sup>32</sup> HM Treasury (2013), Impact on equalities: analysis to accompany Spending Round 2013, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209039/spending-round-2013\\_impact\\_on\\_equalities.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209039/spending-round-2013_impact_on_equalities.pdf)

<sup>33</sup> EHRC, Future fair financial decision-making, February 2015, pp. 4 and 8, available at: <http://www.equalityhumanrights.com/publication/future-fair-financial-decision-making>

<sup>34</sup> EHRC Wales, Appreciative Inquiry Report: Welsh Government's Approach to Assessing Equality Impacts of its Budget, November 2012, available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-wales/equality-impact-assessments/appreciative-inquiry-report>

<sup>35</sup> EHRC Wales, Appreciative Inquiry Report: Welsh Government's Approach to Assessing Equality Impacts of its Budget, November 2012, p. 11, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/Wales/appreciative\\_inquiry\\_final.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Wales/appreciative_inquiry_final.pdf)

recommended ten ways to improve equality impact assessments that required solutions to be developed by the Welsh Government.<sup>36</sup>

### 2.1.2 Cumulative impact assessment

22. Whilst the UK Government has assessed the impact of individual welfare reform policies, it has not considered the combined or aggregate impact that several of the welfare reforms coming together could have on the same groups of people. This would enable the UK Government to: “determine whether a particular set of measures was proportionate, had discriminatory effects on particular groups, or caused a situation in which core minimum levels of a right would not be met for individuals and groups.”<sup>37</sup>
23. The UK Government has reasoned that modelling difficulties prevent it from undertaking a cumulative impact assessment that would be sufficiently robust.<sup>38</sup> However, an EHRC funded study by Landman Economics and the National Institute of Economic and Social Research (NIESR) has found that cumulative impact assessments which look at impacts on individuals who share a characteristic protected under the Equality Act 2010 are feasible and practicable.<sup>39</sup>

### 2.1.3 Recommendations

24. With a view to strengthening its fulfilment of Article 2 ICESCR, taken in conjunction with Articles 9 and 11, the EHRC recommends that the UK Government implement the recommendations contained in the EHRC’s Future Fair Financial Decision Making Report, including by:
  - taking steps to improve the coverage of evidence and analysis in the Equalities Impact Statement, published alongside Spending Reviews

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<sup>36</sup> EHRC Wales, Appreciative Inquiry Report: Welsh Government’s Approach to Assessing Equality Impacts of its Budget, November 2012, pp. 11-14, available at:

[http://www.equalityhumanrights.com/sites/default/files/documents/Wales/appreciative\\_inquiry\\_final.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Wales/appreciative_inquiry_final.pdf)

<sup>37</sup> Pillay, A., Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties on ICESCR in times of economic crises, CESCR/48th/SP/MAB/SW, available at:

<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

<sup>38</sup> Social Security Advisory Committee, SSAC Occasional Paper 12: The cumulative impact of welfare reform - summary, p. 5, available at: <https://www.gov.uk/government/publications/ssac-occasional-paper-12-the-cumulative-impact-of-welfare-reform-a-commentary>

<sup>39</sup> Reed, H. and Portes, J. (2014), Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the EHRC, available at: [www.equalityhumanrights.com/commission-works-government-ensure-spending-decisions-are-fair-everyone](http://www.equalityhumanrights.com/commission-works-government-ensure-spending-decisions-are-fair-everyone)

- reviewing its approach to impact assessment by extending its impact analysis to include the cumulative impact of decisions on people sharing different protected characteristics, and
- monitoring the impact of Spending Review measures in order to better understand where mitigations are needed and to inform the next round of spending decisions.

## 2.2 Impact of social security reform on people with disabilities

25. 24% of people with disabilities were living in poverty in 2012/13 compared with 18% of those without disabilities.<sup>40</sup> Since people with disabilities are likely to be in receipt of a combination of benefits, different reforms may cumulatively reduce their overall household income. Those receiving disability-related benefits may be less likely to be able to change their behaviour in order to mitigate any negative impact of the reforms.<sup>41</sup>
26. The Welsh Government's analysis highlighted that social security reforms would be likely to have even more significant impacts on people with disabilities in Wales than in the UK as a whole, "given the relatively high dependence on disability and sickness benefits in Wales."<sup>42</sup>

### 2.2.1 Transition from Disability Living Allowance (DLA) to Personal Independence Payments (PIP)

27. The Welfare Reform Act 2012 introduced Personal Independence Payments (PIP) to replace the Disability Living Allowance (DLA). PIP aims both "to provide support for disabled people with the greatest needs" and to "result in a 20% reduction in caseload and expenditure once fully implemented by 2015-16."<sup>43</sup>

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<sup>40</sup> Using the poverty measure of adults in the UK living in households with below 60% of contemporary median income after housing costs. The data are from the Households Below Average Income (HBAI) and Family Resources Survey (FRS) for 2012/13. The definition of people with disabilities is set out in the FRS as those 'people with a long-standing illness, disability or impairment which causes substantial difficulty with day-to-day activities.'

<sup>41</sup> Social Security Advisory Committee. (2014), The Cumulative Impact of Welfare Reform: a commentary, available at: [ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf](http://ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf)

<sup>42</sup> Welsh Government, Analysing the impact of the UK Government's welfare reforms in Wales – Stage 3 analysis: summary of key findings, July 2013, p. 6, available at: <http://gov.wales/docs/ds/jlg/report/130717wr-stage3-summaryv2-en.pdf>

<sup>43</sup> Gray, P., An Independent Review of the Personal Independence Payment Assessment, December 2014, pp. 17-18, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387981/PIP-assessment-first-independent-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/PIP-assessment-first-independent-review.pdf)

28. Department of Work and Pensions (DWP) figures estimate that around 3 million people will receive PIP by May 2018; this is around 600,000 fewer people than would have received DLA.<sup>44</sup> This loss of income may interfere with the enjoyment of ESCR of many people with disabilities.
29. The National Audit Office has highlighted backlogs in PIP assessment and claims processes, with the potential to cause claimants distress and financial difficulties.<sup>45</sup> A recent High Court judgment held that the delay in determining PIP claims was both “unacceptable and unlawful” due to unreasonable, systemic failings.<sup>46</sup> DWP has noted that waiting times more than halved in the last six months of 2014, from 30 to 14 weeks, and that it has doubled the number of people working on PIP and quadrupled the number of health professionals involved in assessments.<sup>47</sup> In the first four months of 2015, waiting times for new claims dropped further to an average of 11 weeks.<sup>48</sup>
30. The proportionality of the policy is difficult to measure because “available statistics on PIP awards are still very limited.”<sup>49</sup> An independent review has called for a “rigorous, quantitative and qualitative evaluation strategy with a scheduled plan for publication of findings” in order to “build confidence that award outcomes are fair and consistent”.<sup>50</sup> For reassessed DLA claims, the proportion of disputed PIP decisions which have led to changes in awards is high (6,800 out of 15,700 or 43%), although this figure is much lower for new claims (14,400 out of 88,200 or 16%).<sup>51</sup>

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<sup>44</sup> DWP, Personal Independence Payment: Reassessment and Impacts, December 2012, p. 8, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/180964/pip-reassessments-and-impacts.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180964/pip-reassessments-and-impacts.pdf)

<sup>45</sup> National Audit Office, Personal independent payment: early progress, February 2014, p. 7, available at: <http://www.nao.org.uk/wp-content/uploads/2014/02/Personal-independence-payment-early-progress.pdf>

<sup>46</sup> *R (C and W) v DWP* [2015] EWHC 1607, available at: <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/r-v-sswp.pdf>

<sup>47</sup> DWP, Housing Benefit: General Information Bulletin, 17 February 2015, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/404794/g2-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404794/g2-2015.pdf)

<sup>48</sup> DWP, Personal Independence Payment: Official Statistics to April 2015, 17 June 2015, p. 4, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434838/pip-stats-apr-2013-apr-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434838/pip-stats-apr-2013-apr-2015.pdf)

<sup>49</sup> DWP, Personal Independence Payment: Official Statistics to April 2015, 17 June 2015, p. 21, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434838/pip-stats-apr-2013-apr-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434838/pip-stats-apr-2013-apr-2015.pdf)

<sup>50</sup> Gray, P., An Independent Review of the Personal Independence Payment Assessment, December 2014, p. 63, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387981/pip-assessment-first-independent-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf)

<sup>51</sup> DWP, Personal Independence Payment: Official Statistics to April 2015, 17 June 2015, p. 5, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434838/pip-stats-apr-2013-apr-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434838/pip-stats-apr-2013-apr-2015.pdf)

31. The EHRC shares the analysis that a rigorous evaluation strategy is needed to build confidence in the consistency and fairness of the scheme and considers that further assessment would be needed to demonstrate that this proposal is proportionate and in line with CESCR's guidance in relation to retrogressive measures.<sup>52</sup>

### 2.2.2 Under-occupation deduction to housing benefit

32. Changes to housing benefit include reducing the amount paid to claimants if they live in social housing that is deemed to be too large for their needs.<sup>53</sup> The under-occupation deduction aimed to contribute to tackling the budget deficit and to change the behaviour of social housing tenants by providing an economic incentive for them to move to smaller properties.<sup>54</sup> Two-thirds of housing benefit claimants affected by this under-occupation deduction have disabilities and many of these individuals require an additional bedroom for a personal assistant or carer to stay overnight or to store equipment.<sup>55</sup>
33. DWP has set out that "Discretionary Housing Payments (DHPs) may be awarded when a [local authority] considers that a claimant requires further financial assistance towards housing costs and is in receipt of a social security benefit which qualifies them for a DHP payment."<sup>56</sup> However, different local authorities apply different eligibility rules and some have capped the total amount available for DHPs.<sup>57</sup> Currently, the funding for DHPs is sufficient to cover around one in seven cases.<sup>58</sup> The Scottish Government has been able

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<sup>52</sup> CESCR, General Comment No. 19: the right to social security (Article 9), para 9, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>53</sup> House of Commons Library, The impact of the under-occupation deduction from Housing Benefit (social rented housing), December 2014, available at:

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06896>

<sup>54</sup> DWP, Impact Assessment: Social sector housing under-occupation impact assessment, updated 28 June 2012, paras 15 and 18, available at: <https://www.gov.uk/government/publications/social-sector-housing-under-occupation-impact-assessment>

<sup>55</sup> National Housing Federation, The bedroom tax: some home truths, p. 4, available at: [http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom\\_tax\\_home\\_truths.pdf](http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom_tax_home_truths.pdf) [http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom\\_tax\\_home\\_truths.pdf](http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom_tax_home_truths.pdf)

<sup>56</sup> DWP, Discretionary Housing Payments Guidance Manual: Including Local Authority Good Practice Guide, April 2014, para 1.6, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300220/discretionary-housing-payments-guide-apr-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300220/discretionary-housing-payments-guide-apr-14.pdf)

<sup>57</sup> Work and Pensions Committee, Fourth Report of Session 2013/14: Support for housing costs in the reformed welfare system, April 2014, p. 42, available at:

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmworpen/720/720.pdf>

<sup>58</sup> Joseph Rowntree Foundation, Housing benefit size criteria: Impacts for social sector tenants and options for reform, June 2014, p. 21, available at: <http://www.jrf.org.uk/sites/files/jrf/housing-benefit-size-criteria-FULL.pdf>

to mitigate the impact of the under-occupation deduction somewhat “by providing local authorities with additional DHP funding.”<sup>59</sup>

34. DHPs are “are intended to address periods of temporary need while tenants make longer term arrangements to deal with the impact of the reforms.”<sup>60</sup> In practice, only 6% of affected tenants moved in the first six months following the introduction of the policy.<sup>61</sup> Around half of the affected households have gone into arrears on rent payments.
35. Following a visit to the UK, the UN Special Rapporteur on the right to adequate housing raised concerns about the negative impacts of the under-occupation deduction on the right to adequate housing of vulnerable individuals.<sup>62</sup>
36. In July 2013, the High Court accepted that the under-occupation criteria discriminated against adults and children with disabilities. In the case of adults with disabilities, the Court found that the discrimination could be justified, but in the case of children with disabilities it could not.<sup>63</sup> The rules were subsequently changed to ensure that families with children with disabilities were not subjected to the deduction, but the deduction can still be imposed on adults with disabilities.
37. The deduction forces adults with disabilities to rely on short-term discretionary payments, the availability of which depends on competing local priorities. The access to social security and adequate housing of people with disabilities are consequently placed in uncertainty, raising a concern as to whether the deduction can be demonstrated to be proportionate in line with the requirements set out by CESCR.<sup>64</sup> The deduction could also be viewed as an instance in which the UK Government has not maintained a social protection

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<sup>59</sup> SPICe Briefing, The Smith Commission's Welfare Proposals, 21 January 2015, p. 9, available at: [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_15-07\\_The\\_Smith\\_Commission\\_Welfare\\_Proposals.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-07_The_Smith_Commission_Welfare_Proposals.pdf)

<sup>60</sup> House of Commons Work and Pensions Committee, 26 March 2014, Support for Housing Costs in the reformed welfare system, Fourth Report of Session 2013/14, p. 42, available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmworpen/720/720.pdf>

<sup>61</sup> Joseph Rowntree Foundation, Housing benefit size criteria: Impacts for social sector tenants and options for reform, June 2014, p. 21, available at: <http://www.jrf.org.uk/sites/files/jrf/housing-benefit-size-criteria-FULL.pdf>

<sup>62</sup> Human Rights Council (2013), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

<sup>63</sup> *R (on the application of MA & Ors) v The Secretary of State for Work and Pensions and Birmingham City Council* [2013] EWHC 2213 (QB), available at: <http://www.bailii.org/ew/cases/EWHC/QB/2013/2213.html>

<sup>64</sup> Pillay, A., Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties on ICESCR in times of economic crises, CESCR/48th/SP/MAB/SW, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

floor, through failing to adequately pay attention to the most vulnerable and disadvantaged people, including those with disabilities.<sup>65</sup>

### 2.2.3 Employment support allowance

38. Employment Support Allowance (ESA) is a social security benefit that provides financial support to people who have a disability or are ill if they are unable to work and personalised help to enable people with disabilities or ill people to work.<sup>66</sup> There is some evidence that people with disabilities are being assessed incorrectly through the Work Capability Assessment (WCA) as being fit for work and thus losing entitlement to ESA. For example, according to figures provided by DWP, around 40% of work capability assessments are challenged and of these challenges, between 33 and 47% result in decisions being overturned.<sup>67</sup>

### 2.2.4 Independent Living Fund (ILF)

39. The ILF provided financial support over and above that provided by local authorities to people with severe disabilities to enable them to live independently in their homes and to participate in education, training and employment. ILF was closed on 30 June 2015, with the intention for the 18,000 people who relied upon it to receive support through the adult social care system, which is administered by local authorities.<sup>68</sup> Under the new arrangement, the budget allocation will not be ring-fenced and could be used for other social care priorities. If this were to happen, it could result in the loss of support that people with disabilities received and could force some into residential care, as local authorities might no longer be able to cover costs of supporting people with disabilities to live independently.
40. The Scottish Government has committed to protecting recipients' current awards in Scotland as long as they remain eligible. It is developing a national

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<sup>65</sup> CESCR, Statement on social protection floors: an essential element of the right to social security and of the sustainable development goals, E/C.12/54/3, 6 March 2015, para 8, available at: <http://www.social-protection.org/gimi/gess/ShowRessource.action?ressource.ressourceId=50857>

<sup>66</sup> Employment and Support Allowance, available at: <https://www.gov.uk/employment-support-allowance/overview>

<sup>67</sup> Department for Work and Pensions (June 2014), Employment and Support Allowance: outcomes of Work Capability Assessments, Great Britain, Quarterly official statistics bulletin, fig 3, p. 7, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/385578/esa\\_wca\\_summary\\_Dec14\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385578/esa_wca_summary_Dec14_final.pdf)

<sup>68</sup> DWP, press release: Future of the independent living fund, 6 March 2014, available at: <https://www.gov.uk/government/news/future-of-the-independent-living-fund>

system along with voluntary organisations to support existing users from 1 July 2015.<sup>69</sup>

41. The Welsh Government has announced that a new £20 million fund to support more than 1,600 people with disabilities in Wales with their care needs will be devolved to local authorities when the existing UK ILF fund closes at the end of June 2015.<sup>70</sup>

### 2.2.5 Recommendations

42. In order to realise progressively the right to social security and the right to an adequate standard of living of people with disabilities, in line with the UK's obligations under Articles 9 and 11 ICESCR, the UK Government should:
- implement the National Audit Office recommendation to set out a clear plan for informing Personal Independent Payments (PIP) claimants about delays while plans to improve the performance of PIP take effect<sup>71</sup>
  - collect and publish data, disaggregated by protected characteristic, on the reasons for the high rates of successful challenges to Work Capability Assessments, and
  - monitor the impact of the closure of the Independent Living Fund (ILF) on people with disabilities, including:
    - whether those who previously received support from the ILF are moving into residential care due to inability of local authorities to fund the level of support they need to live independently, and
    - whether support has been withdrawn that previously enabled people with disabilities to participate in education, training or employment.

## 2.3 Impact of social security reforms on women

43. CESCR emphasises that, in establishing and implementing non-contributory social security schemes, State parties must “take account of the fact that

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<sup>69</sup> The Scottish Government, Independent Living Fund Scotland, available at:

<http://www.gov.scot/Topics/Health/Support-Social-Care/Independent-Living/ScottishIndependentLivingFund>

<sup>70</sup> Welsh Government, New £20m fund to support 1,600 severely disabled people in Wales, 13 March 2015, available at: <http://gov.wales/newsroom/healthandsocialcare/2015/150313fund/?lang=en>

<sup>71</sup> See also recommendation made by the National Audit Office, Personal independent payment: early progress, February 2014, p. 10, available at: <http://www.nao.org.uk/wp-content/uploads/2014/02/Personal-independence-payment-early-progress.pdf>

women are more likely to live in poverty than men and often have sole responsibility for the care of children.”<sup>72</sup>

44. The EHRC’s initial trial of Cumulative Impact Assessment demonstrated that, on average, women’s losses from the tax and benefit changes between 2010 and 2015 are larger than men’s (women lose £338 per year on average compared with £213 for men). This is mainly to do with the fact that women receive a larger proportion of benefits and tax credits relating to children, and these comprise a large proportion of the reforms to social security between 2010 and 2015. As a proportion of net individual incomes, women’s average losses are twice as large as men’s.<sup>73</sup>
45. The Welsh Government’s analysis of the impact of social security reforms in Wales found that women’s average income is likely to be affected adversely as compared with men’s average income, from a number of reforms including Universal Credit, and that lone parents were amongst the groups that would incur the largest income losses.”<sup>74</sup>

### **2.3.1 Impact of the household benefit cap on women**

46. The household benefit cap restricted the amount of social security benefits received by any household to the level of the average earned income of working households. It aimed to act as an incentive to work, promote greater fairness in the welfare system and reduce benefit expenditure.<sup>75</sup> It was fully rolled out by September 2013<sup>76</sup> and operates through reducing claimants’ housing benefit entitlements.
47. DWP have recently set out that 58,700 households have experienced a reduction in their housing benefits as a result of the cap since its introduction and that 63% of capped households constituted a single parent with one or more child dependants.<sup>77</sup> After the first year of implementation, the DWP

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<sup>72</sup> CESCR, General Comment No. 19: the right to social security (Article 9), para 32, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>73</sup> EHRC, Cumulative Impact Assessment, p. 60, available at: <http://www.equalityhumanrights.com/publication/research-report-94-cumulative-impact-assessment>

<sup>74</sup> Welsh Government, Analysing the impact of the UK Government’s welfare reforms in Wales – Stage 3 analysis: summary of key findings, July 2013, p. 6, available at: <http://gov.wales/docs/dsjlg/report/130717wr-stage3-summaryv2-en.pdf>

<sup>75</sup> DWP, Benefit Cap: Equality impact assessment, July 2012, p. 3, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220153/eia-benefit-cap-wr2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220153/eia-benefit-cap-wr2011.pdf)

<sup>76</sup> DWP, Press release: Benefit cap successfully in place nationwide, 27 September 2013, available at: <https://www.gov.uk/government/news/benefit-cap-successfully-in-place-nationwide>

<sup>77</sup> DWP, Benefit Cap Quarterly Statistics: GB households capped to February 2015, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426846/benefit-cap-statistics-to-feb-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426846/benefit-cap-statistics-to-feb-2015.pdf)

stated that 95% of capped households contained children and 61% of capped households were single females.<sup>78</sup>

### 2.3.2 Impact of Universal Credit on women

48. In local authorities where it is implemented, Universal Credit brings together into a single payment almost all the means-tested working age benefits and tax credits previously paid separately. It aims to “help claimants and their families to become more independent [and] simplify the benefits system”.<sup>79</sup> It has been implemented in phases and is due to complete by April 2016.<sup>80</sup> Once households transfer to Universal Credit, their social security entitlements are capped at the same level as under the household benefit cap system.
49. In the case of couples, Universal Credit will be paid monthly to one member of the household chosen by the couple (or into a joint account). In 2013, the EHRC advised the Committee on the Elimination of Discrimination Against Women that a likely unintended consequence of making one payment to a single recipient on behalf of the whole family would be a reduction in the amount of independent income received by women in poorer households.<sup>81</sup>

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<sup>78</sup> House of Commons Library, Briefing paper: the benefit cap, June 2015, p. 32, available at: <http://researchbriefings.files.parliament.uk/documents/SN06294/SN06294.pdf>

<sup>79</sup> DWP, Policy paper: 2010 to 2015 government policy: welfare reform, Appendix 1, available at: <https://www.gov.uk/government/publications/2010-to-2015-government-policy-welfare-reform/2010-to-2015-government-policy-welfare-reform#appendix-1-government-policy-on-universal-credit-an-introduction>

<sup>80</sup> Universal Credit national expansion – Tranches One and Two, and Universal Credit national expansion – Tranches Three and Four, available at: <https://www.gov.uk/government/publications/universal-credit-national-expansion>

<sup>81</sup> EHRC, Submission on the Seventh Periodic Report of the United Kingdom to the United Nations Committee on the Elimination of All forms of Discrimination against Women, July 2013, pp.7-8, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/CEDAW/submission\\_7th\\_periodic\\_report\\_of\\_uk\\_to\\_cedaw\\_june\\_2013.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/CEDAW/submission_7th_periodic_report_of_uk_to_cedaw_june_2013.pdf)

### 2.3.3 Review of the impact of the benefit cap and proposed reduction

50. A briefing paper by the House of Commons Library raises the concern that “[t]he cap effectively ends the link between a household’s assessed need and its entitlement to benefit.”<sup>82</sup> This concern is reflected by the Institute of Fiscal Studies, which questions whether a cap on the total amount of benefits received by a household can effectively address problems with individual social security entitlements that must exist if total entitlements are deemed to be excessive.<sup>83</sup>
51. The DWP’s review of the first year of the benefit cap states that “the benefit cap has increased the proportion of households moving into employment”, however it also finds that 35% of respondents to their survey spent less on household essentials.<sup>84</sup> This would raise concerns in terms of whether the benefit cap prevents individuals from meeting their basic needs, which would run contrary to the economic accessibility of an adequate standard of living, as set out by CESCR. This is exacerbated by the fact that around two-thirds of respondents affected by the benefit cap perceive considerable barriers to employment, including costs of childcare, health and caring responsibilities.<sup>85</sup>
52. Further changes to the benefit cap were announced in the UK Government’s budget in July 2015 though it is too early to assess the impacts as legislation to implement this change has not yet been passed.<sup>86</sup>

### 2.3.4 Recommendations

53. In light of the UK Government’s announcement to further reduce the household benefit cap, and in order to guarantee the protection of women’s

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<sup>82</sup> House of Commons Library, Briefing paper: the benefit cap, June 2015, p. 13, available at: <http://researchbriefings.files.parliament.uk/documents/SN06294/SN06294.pdf>

<sup>83</sup> Institute for Fiscal Studies, Joyce, R., Thoughts on a benefit cap, February 2012, available at: <http://www.ifs.org.uk/publications/6012>

<sup>84</sup> DWP, The benefit cap: a review of the first year, December 2014, p. 19, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386911/benefit-cap-review-of-the-first-year.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386911/benefit-cap-review-of-the-first-year.pdf)

<sup>85</sup> DWP, The benefit cap: a review of the first year, December 2014, p. 20, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386911/benefit-cap-review-of-the-first-year.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386911/benefit-cap-review-of-the-first-year.pdf)

<sup>86</sup> The Budget set out that the household benefit cap will be reduced to £20,000 outside of London and £23,000 in London (HM Treasury, Summer Budget 2015: Key announcements, 8 July 2015, available at: <https://www.gov.uk/government/news/summer-budget-2015-key-announcements>). For details of the proposed legislation, see: Prime Minister’s Office, the Queen’s Speech 2015: Background briefing notes, pp. 13-17, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/430149/QS\\_lobby\\_pack\\_FINAL\\_NEW\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf)

right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:

- conducts a further equality impact assessment which fully considers the impacts of this additional reduction to the benefits received by women and that it sets out comprehensive strategies to mitigate any projected disproportionate and unjustified impacts
- further analyses people's responses to the household benefit cap, in particular whether it prevents individuals from meeting their basic needs, including when it is further reduced, and
- continues to monitor the roll-out of Universal Credit and the impact that it is having on women, in particular whether it has resulted in the reduction of the amount of independent income received by women in poorer households.

## 2.4 Impact of social security reforms on children

54. The EHRC's submission on the Convention on the Rights of the Child<sup>87</sup> (CRC) enters into some detail on the impact of social security reforms on children. In particular, it highlights:

- the findings of the Office of the Children's Commissioner for England (OCC) on the impact of the benefit cap and changes to housing benefit in terms of increasing child poverty,<sup>88</sup> and
- the recent decision of the Supreme Court in which three out of five judges found that the Secretary of State for Work and Pensions did not fulfil his duties to take the best interests of the child as a primary consideration in his decision to implement the household benefit cap.<sup>89</sup>

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<sup>87</sup> EHRC, *Children's Rights in the UK*, 2015, p.90

<sup>88</sup> Office of the Children's Commissioner: *A Child Rights Impact Assessment of the Welfare Reform Bill*, January 2012, p. 19, available at: [http://www.childrenscommissioner.gov.uk/force\\_download.php?fp=%2Fclient\\_assets%2Fcp%2Fpublication%2F676%2FA\\_Child\\_Rights\\_Impact\\_Assessment\\_of\\_Budget\\_Decisions.pdf](http://www.childrenscommissioner.gov.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F676%2FA_Child_Rights_Impact_Assessment_of_Budget_Decisions.pdf); Reed, H. and Portes, J., EHRC, *Research report 94, Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR*, Executive Summary, available at: [http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/Cumulative%20Impact%20Assessment%20of%20report%2030-07-14.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Cumulative%20Impact%20Assessment%20of%20report%2030-07-14.pdf); OCC, *A child rights impact assessment of budget decisions*, June 2013, available at: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_676](http://www.childrenscommissioner.gov.uk/content/publications/content_676)

<sup>89</sup> *R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 16, judgement of 18/03/2015, available at: [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2014\\_0079\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf)

### 2.4.1 Recommendations

55. In order to guarantee the protection of children's right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:
- conduct a cumulative impact assessment of the full range of social security reforms introduced between 2010 and 2015 on children, including those who have a disability or are an ethnic minority, as necessary to determine how the UK Government is acting in compliance with Article 11 ICESCR, as well as Articles 3(1), 26 and 27 CRC, and
  - in all future financial decision making, the UK Government should consider the impacts of social security reforms on children carefully, as well as the recent UK Supreme Court case that found the household benefit cap to be in breach of Article 3(1) CRC.

## 2.5 Income poverty

56. All figures below are taken from the DWP's 2013/14 release of Households Below Average Income (HBAI), which is based on the Households Below Average Income Survey and the Family Resources Survey.<sup>90</sup> The EHRC chose to consider these measures after housing costs because housing is such a significant part of household expenses particularly for those on low incomes and because housing costs vary considerably throughout the UK.

### 2.5.1 Relative poverty of adults<sup>91</sup>

57. In 2007/08, 23% of people in the UK lived in households with a relative low income. By 2013/14, this proportion had fallen to 21%. This equates to a decrease of 400,000 people living in poverty according to this measure, from 13.6 million to 13.2 million people. This clearly represents progress.
58. Individuals living in households headed by someone from an ethnic minority were more likely to live in relative low income: 19% of households headed by someone in the White ethnic group live in relative low income compared with 34% of households headed by someone in the mixed/multiple ethnic group,

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<sup>90</sup> DWP, Households Below Average Income, an analysis of the income distribution 1994/95 - 2013/14, June 2015, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf) (See in particular summary tables 3a and 3b on pp. 39-40)

<sup>91</sup> Relative low income is measured on the basis of the number and proportion of individuals in households with income that is less than 60% of median contemporary income.

37% of households headed by someone in the Asian/Asian British ethnic group and 41% of households headed by someone in the Black/African/Caribbean/Black British ethnic group.<sup>92</sup>

### 2.5.2 Absolute poverty of adults<sup>93</sup>

59. In 2007/08, 21% of people lived in households with an absolute low income. By 2013/14, this proportion had risen to 23%. This equates to an increase of 1.9 million people living in poverty according to this measure, from 12.6 million to 14.5 million people. This clearly represents regression.

## 2.6 Child poverty

60. In 2009, CESCR recommended the UK intensify efforts to achieve its target of reducing child poverty by half by 2010.<sup>94</sup> The EHRC's submission to CRC<sup>95</sup> sets out the progress that the UK has made in reaching the targets set out in the Child Poverty Act 2010 (CPA) in relation to relative low income, combined low income and material deprivation, absolute low income and persistent poverty.<sup>96</sup> In particular it highlights:

- DWP's announcement on 1<sup>st</sup> July 2015 that it would replace the measures in the CPA with indicators related to the proportion of children living in workless households and educational attainment, and the responses of the OCC and the Social Mobility and Child Poverty Commission (SMCPC)<sup>97</sup>

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<sup>92</sup> DWP, Households Below Average Income, 2013/14, table 3.5db in supporting data tables, available at: <https://www.gov.uk/government/statistics/households-below-average-income-19941995-to-20132014> Figures for this measure are based on a three year average.

<sup>93</sup> Absolute low income is measured on the basis of the number and proportion of individuals in households with income that is less than 60% of median income at 2010/11 levels, adjusted for inflation. It provides an indication of how "changes in income for the lowest income households compare to changes in the cost of living". (DWP, Households Below Average Income, an analysis of the income distribution 1994/95 - 2013/14, June 2015, p. 12, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/206778/full\\_hbai13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206778/full_hbai13.pdf))

<sup>94</sup> CESCR, Concluding observations on the UK, 2009, para 28.

<sup>95</sup> EHRC, Children's Rights in the UK, August 2015, pp.30-34

<sup>96</sup> Child Poverty Act 2010, Sections 2-6, available at: <http://www.legislation.gov.uk/ukpga/2010/9/contents>

<sup>97</sup> DWP, Press release: Government to strengthen child poverty measure, 1 July 2015, available at: <https://www.gov.uk/government/news/government-to-strengthen-child-poverty-measure>; SMCPC, Press release: response to government child poverty statement, 1 July 2015, available at: <https://www.gov.uk/government/news/response-to-government-child-poverty-statement>; SMCPC, Press release: response to government child poverty statement, 1 July 2015, available at: <https://www.gov.uk/government/news/response-to-government-child-poverty-statement>

- a reduction of around 600,000 children living in relative low income between 2007/08 and 2013/14<sup>98</sup>
- a reduction of the proportion of children living in absolute low income, from 22% in 2007/08 to 19% in 2013/14, compared with the CPA target of 5% by 2020, and
- a reduction of the proportion of children living in low income and material deprivation, from 17% in 2007/08 to 13% in 2013/14, compared with the CPA target of 5% by 2020. The Welsh Government's 2011 strategy to reduce child poverty.<sup>99</sup>

### 2.6.1 Recommendations

61. In order to realise progressively the right of children to an adequate standard of living under Article 11 ICESCR, the UK Government should take steps to:
- ensure that any new measures of child poverty address relative and absolute income poverty, and material deprivation, as well as taking into account causal risks that contribute to the perpetuation of poverty, and
  - in line with recommendations made by the Office of the Children's Commissioner and the Social Mobility and Child Poverty Commission, UK Government responses to child poverty should address the immediate effects of poverty on children, as well as addressing work poverty and the improvement of conditions of work.

## 2.7 Food poverty

62. Across the UK, people are increasingly finding it necessary to rely on food banks to receive emergency food. In 2009/10, 40,898 people in the UK received three days' emergency food; by 2014/15 this had risen to 1,084,604, of whom 396,997 were children.<sup>100</sup>

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<sup>98</sup> DWP, Households Below Average Income, an analysis of the income distribution 1994/95 - 2013/14, June 2015, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf) See in particular summary tables 4a, 4b and 4c on pp. 52-54). Full explanations of these and subsequent measures can be found in the EHRC's CRC submission.

<sup>99</sup> Child Poverty Strategy for Wales, February 2011, available at: <https://www.npted.org/section/youth-service/Downloads/Child%20Poverty%20Strategy.pdf>

<sup>100</sup> Take note: these are not all unique users; the statistics collected by the Trussel Trust measure the volume of food distributed, rather than the number of recipients. The Trussel Trust, Foodbank Statistics, available at: <http://www.trusseltrust.org/foodbank-projects>

63. Figures from the Department for Environment, Food and Rural Affairs (DEFRA) also show that while households are spending more on food year on year, they are purchasing less.<sup>101</sup> The All-Party Parliamentary Inquiry into Hunger in the United Kingdom (APPG Hunger) found that households have had to make cuts in the quantity or quality of food purchased, which could account for the increased reliance on food banks.<sup>102</sup> APPG Hunger cites the increase in living costs as the probable reason for household cuts in the quantity and quality of food.<sup>103</sup> This would suggest that food is not economically accessible to everyone in the UK, in that its acquisition threatens the satisfaction of other basic needs such as housing or fuel.<sup>104</sup>

### 2.7.1 Data on food bank use

64. The APPG Hunger identified a “real gap in the research on hunger” in the UK<sup>105</sup> and research funded by DEFRA found there was “a general lack of systematic UK evidence on the drivers of food aid use and trends in the UK”.<sup>106</sup> The UK Government has noted this lack of evidence when disputing the connection between social security reforms and the use of food banks.<sup>107</sup>
65. The UK Government has suggested collecting data about food bank use would place “unnecessary burdens on volunteers trying to help their communities.”<sup>108</sup> If this is the case, the UK Government needs to find alternative ways to collect this evidence so that it can use it to develop and

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<sup>101</sup> On average, UK households purchased 6.1% less food in 2013 than in 2007 while spending 20% more. DEFRA, Family Food 2013, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/385694/familyfood-2013report-11dec14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385694/familyfood-2013report-11dec14.pdf). On average, UK households purchased 4.7% less food in 2012 than in 2007 while spending 17% more. DEFRA, Family Food 2012, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265243/familyfood-2012report-12dec13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265243/familyfood-2012report-12dec13.pdf)

<sup>102</sup> APPG Hunger, Evidence Paper 2 – Expenditure, p. 2, available at:

<https://foodpovertyinquiry.files.wordpress.com/2014/04/evidence-paper-2-on-expenditure.pdf>

<sup>103</sup> “The overall combined proportion of household incomes spent on housing, fuel and food increased from 36% in 2003 to 40% in 2011”. APPG Hunger, Evidence Paper - Expenditure, p. 2, available at:

<https://foodpovertyinquiry.files.wordpress.com/2014/04/fact-sheet-1-expenditure.pdf>

<sup>104</sup> CESCR, General Comment 12: The right to adequate food, (Article 11), para 13, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>105</sup> APPG Hunger, Feeding Britain, p. 13, available at:

<https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

<sup>106</sup> Food Ethics Council and University of Warwick for DEFRA, Household Food Security in the UK: A review of food aid, p. xii, available at: <https://www.gov.uk/...data/.../household-food-security-uk-140219.pdf>

<sup>107</sup> Ed Davey MP, Secretary of State for Energy and Climate Change, May 2013, HC Deb, 14/05/13, c511, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130514/debtext/130514-0001.htm>

<sup>108</sup> David Heath, then Minister of State for Environment, Food and Rural Affairs in February 2013, HC Deb 27, February 2013, c523W, available at:

[http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130227/text/130227w0002.htm#130227w0002.htm\\_snew41](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130227/text/130227w0002.htm#130227w0002.htm_snew41)

adopt a national strategy to ensure food security for all that includes verifiable benchmarks for subsequent monitoring. This is required under Article 11 ICESCR and has been recommended by the UN Special Rapporteur on the Right to Food.<sup>109</sup>

### 2.7.2 Link between social security reform and food bank use

66. A recent study by the British Medical Journal has found that “local authorities with greater rates of sanctions and austerity are experiencing greater rates of people seeking emergency food assistance.”<sup>110</sup>
67. While the UK Government has now ended the recording of reasons for referrals to food banks from Jobcentre Plus,<sup>111</sup> historical evidence shows they involve a range of circumstances, including:
- the reduction in gross expenditure on Crisis Loans, and therefore their refusal
  - the increase in conditionality for benefit claimants
  - the increase in sanctions for benefit claimants
  - employment and support allowance and incapacity benefit reassessment, and
  - weaknesses in implementation, such as delays in payments and incorrect sanctioning.<sup>112</sup>

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<sup>109</sup> CESCR, General Comment 12: The right to adequate food, (Article 11), paras 21 and 29, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) UN Special Rapporteur on the right to food, Ziegler, J., A/HRC/4/30, 19/01/2007, para 69(b), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/43/PDF/G0710343.pdf?OpenElement>

<sup>110</sup> “The estimated likelihood of a food bank opening in an area that did not experience a spending cut in either of the past two years was 14.5%. This figure tripled to 52% for a local authority that experienced a mean budget cut of 3% in welfare spending in both years”. BMJ, Austerity, sanctions, and the rise of food banks in the UK, BMJ 2015;350:h1775 doi: 10.1136/bmj.h1775 (Published 8 April 2015), p. 4, available at: <http://www.bmj.com/content/bmj/350/bmj.h1775.full.pdf>

<sup>111</sup> The Work and Pensions Committee has also highlighted this issue (House of Commons Work and Pensions Committee, Second Report of Session 2013–14: The role of Jobcentre Plus in the reformed welfare system, p. 29, available at: [www.publications.parliament.uk/pa/cm201314/cmselect/.../479/479.pdf](http://www.publications.parliament.uk/pa/cm201314/cmselect/.../479/479.pdf))

<sup>112</sup> House of Commons Library, Standard Note, Food Banks and Food Poverty, 9 April 2014, pp. 21-24, available at: <http://www.parliament.uk/business/publications/research/briefing-papers/SN06657/food-banks-and-food-poverty>

### 2.7.3 The right to food in schools

68. The EHRC's submission on the implementation of CRC addresses the right to food in schools in detail<sup>113</sup>. It presents information on:
- the effect of paying for school meals on family budgets, on children's right to access adequate food, and emotional impacts on children
  - the provision of free school lunches for all pupils in Reception, Year 1 and Year 2, as the result of the Children and Families Act 2014, and
  - The recommendation in the School Food Plan for free school lunches to be extended to all primary school children.<sup>114</sup>

### 2.7.4 Recommendations

69. With a view to respecting, protecting and fulfilling the right to adequate food as part of the right to an adequate standard of living under Article 11 ICESCR, the EHRC considers the UK Government should:
- improve data collection, and develop robust indicators to establish and monitor the extent of food poverty across the UK, which fully take into account documented links between social security reform and food bank use, and
  - develop a comprehensive strategy for tackling food poverty in the UK, which includes specific provisions to address food poverty among children, including consideration of the universal provision of free school meals in primary schools.

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<sup>113</sup> EHRC, Children's Rights in the UK, August 2015, pp.30-31

<sup>114</sup> Dimbleby, H. and Vincent, J., Department for Education, The School Food Plan, July 2013, p.12, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251020/The\\_School\\_Food\\_Plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251020/The_School_Food_Plan.pdf)

## Section 3.

# Right to adequate housing – Article 11

### 3.1 Substandard housing<sup>115</sup>

70. There were significant reductions in the proportion of adults who lived in substandard housing (32.4% in 2007/09 compared with 21% in 2011/13).
71. There were significant reductions in the proportion of children who lived in substandard housing (30.9% in 2007/09 compared with 19.8% in 2011/13).
72. Higher proportions of ethnic minorities lived in substandard housing in 2011/13 (27.9% of Black households and 26.3% of Pakistani/Bangladeshi households, compared with 20.5% of White households).

### 3.2 Overcrowded housing<sup>116</sup>

73. Overall, the number of adults living in overcrowded accommodation remained static between 2008/09 (4.4%) and 2012/13 (4.8%).
  - Young people aged 16-24 (11%) were significantly more likely than all other age groups (0.5-6.4%) to live in overcrowded accommodation in both time periods.
  - A higher percentage of individuals from Indian (13.4%), Pakistani/Bangladeshi (21.7%), Black (15.7%) and Other (12.5%)

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<sup>115</sup> The fitness standard of a home in England has been assessed using the Housing Health and Safety Rating System (HHSRS) which assesses potential risks to the health and safety of occupants in residential properties in England and Wales (Office of the Deputy Prime Minister, Reducing the risks: the Housing Health and Safety Rating System, April 2006, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/8262/144527.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8262/144527.pdf)) All data are taken from the English Housing Survey (<https://www.gov.uk/government/collections/english-housing-survey>) analysis of the data is taken from; EHRC, Is Britain Fairer?: (F) Standard of living domain, October 2015, p. 40/41, available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/standard-living-domain>

<sup>116</sup> Overcrowding is measured by the bedroom standard, which is the difference between the number of bedrooms available and the number needed to avoid undesirable sharing (given the number, ages and relationships of the household members). For more information on the bedroom standard, see: ONS, Overcrowding and under-occupation in England and Wales, 17 April 2014, available at: <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/overcrowding-and-under-occupation-in-england-and-wales/rpt-overcrowding-and-under-occupation-in-england-and-wales.html> All data are taken from the English Housing Survey (<https://www.gov.uk/government/collections/english-housing-survey>)

households lived in overcrowded housing than those from White households (3.4%) in 2012/13.<sup>117</sup>

74. The last property survey in Wales was in 2008 and undertaken as part of the Living in Wales survey. In October 2014, the Chief Statistician for Wales noted “the scarcity of information on housing conditions to populate the housing domain” and stated that his department would be assessing the need and demand for data in this area.<sup>118</sup>

### 3.3 Site provision for Gypsies and Travellers

75. EHRC research shows that significant negative equality, human rights and good relations implications arise from the national shortfall in culturally appropriate accommodation for Gypsies and Travellers.<sup>119</sup> The EHRC has demonstrated that the Gypsy and Traveller community still faces

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<sup>118</sup> Welsh Government (2014), Chief Statistician's update Issue 2, available at: <http://gov.wales/docs/statistics/2014/141006-chief-statisticians-update-issue-2-en.pdf>

<sup>119</sup> The EHRC's evidence base includes:

- Cemlyn, S. *et al*, Inequalities experienced by Gypsy and Traveller Communities: A review, Research report 12, 2009, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities\\_experienced\\_by\\_gypsy\\_and\\_traveller\\_communities\\_a\\_review.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf)
- Brown, P. and Niner, P., Assessing local housing authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in England, Research report 13, 2009, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/13assessing\\_local\\_housing\\_authorities\\_progress.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/13assessing_local_housing_authorities_progress.pdf)
- EHRC, Gypsies and Travellers: Simple solutions for living together, 2009, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/gypsies\\_and\\_travellers.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/gypsies_and_travellers.pdf)
- Brown, P. *et al*, Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller Communities in England and Wales: 2010 update, Research report 68, 2010, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/research/gt\\_research\\_report\\_68\\_exec\\_summary\\_english.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/gt_research_report_68_exec_summary_english.pdf)
- Brown, P. *et al*, Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in Scotland: Final report, 2010, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Research/research\\_report\\_assessing\\_the\\_accomodation\\_needs\\_of\\_gypsy\\_traveller\\_in\\_scotland.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Research/research_report_assessing_the_accomodation_needs_of_gypsy_traveller_in_scotland.pdf)
- EHRC, Triennial Review: 'How Fair is Britain?', 2010, available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain>
- EHRC, Making the personalisation of care and support work for all communities in the English regions, 2011, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/research/making\\_personalisation\\_of\\_care\\_and\\_support\\_work\\_for\\_all\\_communities\\_in\\_er.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/making_personalisation_of_care_and_support_work_for_all_communities_in_er.pdf)
- EHRC, Submission to the UN CERD, 2011, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/cerd.pdf>

discriminatory attitudes which can jeopardise the provision of adequate sites.<sup>120</sup>

76. The EHRC recognizes the difficult balance local authorities must strike in ensuring appropriate site provision for Traveller communities and managing the impact on local residents, but emphasises the importance of protecting the rights of all individuals on such sites, particularly of safeguarding the rights of children and complying with the General Comment No. 7 of CESCR on Forced Evictions.<sup>121</sup>
77. EHRC research shows the most frequently cited barrier to the provision of Gypsy and Traveller sites is objections from councillors and local residents.<sup>122</sup> In 2014 alone, the EHRC received complaints about remarks made by councillors from Warwick, Chorley, Westminster, Leeds, Burnley and Thurrock Councils. In most cases, the remarks were inconsistent with councillors' statutory duty under the PSED to have due regard to the need to promote equality of opportunity, to foster good relations and to eliminate discrimination within the local community they serve.<sup>123</sup> The EHRC wrote to the relevant councillors to remind them of their duties under the Equality Act 2010.

### 3.3.1 Definition of Travellers in the planning system

78. The UK Government has proposed that, for planning purposes, the definition of Travellers should be amended to limit it to those who have a nomadic habit of life. The EHRC considers that the current definition of Gypsies and Travellers under the Planning Policy for Traveller Sites (PPTS) is restrictive

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<sup>120</sup> EHRC, Gypsies and Travellers: Simple Solutions for Living Together, 2009, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/gypsies\\_and\\_travellers.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/gypsies_and_travellers.pdf)

<sup>121</sup> Para 15 of this General Comment sets out procedural obligations of the State when it carries out forced evictions, including genuine consultation, adequate and reasonable notice, information, presence of officials, proper identification of individuals to be evicted, and the provision of legal remedies. This is available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11). For examples of cases involving evictions of Gypsies and Travellers, see: the Dale Farm Cases: *Egan v Basildon Borough Council* [2011] EWHC 2416 (QB) (26 September 2011); *Basildon District Council v McCarthy & Ors* [2009] EWCA Civ 13; *R (on the application of Margaret McCarthy) v Basildon Borough Council and Ors* [2011] QBD (Admin) October 12, 2011; and *Collins v Secretary of State for Communities and Local Government and another* [2013] EWCA Civ 1193, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1193.html>

<sup>122</sup> EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20DCLG%20planning.pdf>

<sup>123</sup> EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20DCLG%20planning.pdf>

and inconsistent with its stated aim “to ensure fair and equal treatment for Travellers, in a way that facilitates the traditional and nomadic way of life of Travellers.”<sup>124</sup> The proposal does not adequately take into account the fact that Gypsies and Travellers find it difficult to practice a nomadic way of life because of difficulties in accessing employment, education and health services.

79. The EHRC considers that restricting the definition of Travellers further could:
- prevent an even higher proportion of Gypsies and Travellers from being considered as such for planning purposes including site provision<sup>125</sup>
  - have the heaviest impact on those less able to travel such as the elderly and children, including those with disabilities and special educational needs who need a settled base for education,<sup>126</sup> and
  - be inconsistent with the UK’s international human rights obligations under Article 11 ICESCR, Article 3(1) CRC and other instruments.

### **3.4 Violence against women and girls (VAWG) and the right to adequate housing**

80. Providing refuge to victims of VAWG is part of the UK’s obligation to guarantee access to adequate housing for everyone.<sup>127</sup> In this context, the EHRC welcomes the UK Government’s announcement in November 2014 that it would allocate £10 million to support women’s refuges in 100 areas

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<sup>124</sup> EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government’s Consultation – ‘Ensuring Fairness in the Planning System’, November 2014, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20DCLG%20planning.pdf>

<sup>125</sup> For example, under Article 8 of the European Convention on Human Rights, Article 5 of the European Framework Convention for the Protection of National Minorities, and Article 27 of the International Covenant on Civil and Political Rights.

<sup>126</sup> Department for Communities and Local Government, Consultation: planning and travellers, Equality statement, September 2014, p.5 available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/354062/Equalities\\_Statement\\_publication\\_format\\_140905.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354062/Equalities_Statement_publication_format_140905.pdf)

<sup>127</sup> See Committee on Economic, Social and Cultural Rights, 1991, General Comment No 4: The right to adequate housing (Article 11(1) of the Covenant), available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11) . Also see Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, 2005, Economic, social and cultural rights: women and adequate housing, UN Doc E/CN.4/2005/43, available at: <http://www.un.org/womenwatch/ods/E-CN.4-2005-43-E.pdf>

across England and its reminder to England's 326 councils of their legal duty to house women and children who seek refuge from domestic violence.<sup>128</sup>

81. Nevertheless, as emphasised by the UK Parliament's Joint Committee on Human Rights (JCHR), funding for specialist support services may still be inadequate. The EHRC has also found that many refuges are ill-equipped to meet the needs of women with disabilities.<sup>129</sup> In relation to refuge spaces, the JCHR received evidence that nearly a third of referrals to refuges in 2013/14 were turned away because of lack of space.<sup>130</sup> In some local authorities, the number of refuge spaces in relation to the size of the population is not known.<sup>131</sup> Such data are essential to determine whether the right to adequate housing is being fulfilled for women and girls who seek refuge.

### 3.5 Recommendations

82. In order to guarantee the right to adequate housing for everyone, as protected under Article 11 ICESCR, the UK Government should:
- examine the causes for the disparities in terms of different ethnic groups living in substandard housing and those in terms of age and ethnicity with regard to overcrowded housing, so that it can develop a strategy to address them in an effective way, and
  - implement the EHRC's recommendations from its response to the Department for Communities and Local Government's consultation to:<sup>132</sup>
    - substitute the current Traveller definition in the Planning Policy for Traveller Sites for the more inclusive one in the Housing Act 2004, and

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<sup>128</sup> Department for Communities and Local Government, Home Office, Government Equalities Office, Government action to help eliminate violence against women and girls (Media Release, 25 November 2014), available at: <https://www.gov.uk/government/news/government-action-to-help-eliminate-violence-against-women-and-girls>

<sup>129</sup> EHRC, Hidden in plain sight: inquiry into disability-related harassment, August 2011, p. 92 (Word version), available at: <http://www.equalityhumanrights.com/publication/hidden-plain-sight-inquiry-disability-related-harassment>

<sup>130</sup> Women's Aid, 2014, Women's Aid Annual Survey 2014, available at: <http://www.womensaid.org.uk/page.asp?section=00010001001400130005&sectionTitle=Women's+Aid+Annual+Survey>

<sup>131</sup> See Joint Committee on Human Rights, 2015, Violence against women and girls – Sixth Report of Session 2014-15, section 4, available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/>

<sup>132</sup> EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20DCLG%20planning.pdf>

- reintroduce the duty on local authorities to provide sites for Gypsies and Travellers, as was previously required under the Caravan Sites Act 1968, and as is required in Wales under the Housing (Wales) Act 2014.<sup>133</sup>
  - work with local authorities to ensure that they avoid unlawful discrimination against Gypsies and Travellers, and ensure suitable provision is in place to meet their reasonable housing needs, and
  - implement the recommendation of the Joint Committee on Human Rights and work with local authorities to collect and monitor data about the number of beds needed in refuges to meet the need of domestic violence victims and ensure appropriate funding and provision, including for those with disabilities.
83. In order to better fulfil the right to adequate housing, the Welsh Government should prioritise the collection of data on substandard and overcrowded housing.

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<sup>133</sup> The Housing (Wales) Act 2014, Part 3, places a duty on local authorities in Wales to provide sites where a need has been identified. Available at: <http://www.legislation.gov.uk/anaw/2014/7/contents/enacted>

## Section 4.

# Right to health – Article 12

### 4.1 Legal and regulatory framework

#### 4.1.1 Devolution and healthcare

84. Since 1999, health has been a devolved matter in Scotland and Wales, with the Scottish Government and Welsh Government determining both the budget for most health care and how services are organised.<sup>134</sup>

#### 4.1.2 Duties to reduce inequalities in access to healthcare

85. In England, the Health and Social Care Act 2012 (HSCA) introduced duties on the Secretary of State for Health, NHS England and each Clinical Commissioning Group (CCG) to have regard to the need to reduce inequalities between patients in access to health services and health outcomes achieved.<sup>135</sup>

86. The Department of Health (DH) published an equalities analysis for the NHS Outcomes Framework in 2013.<sup>136</sup> The technical guidance for the framework requires NHS commissioners to disaggregate health outcomes by protected characteristics where possible.<sup>137</sup> The EHRC welcomes this aspect of the guidance, but notes that NHS England and CCGs are failing to collect

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<sup>134</sup> Health policy in Scotland was, in the main, devolved to the Scottish Parliament under the Scotland Act 1998, while the current arrangements for healthcare provision were set out in the National Health Service Reform (Scotland) Act 2004. The Government of Wales Act 1998 provided for the establishment of the National Assembly for Wales, with responsibility for health matters passing to the Welsh Government under devolution in 1999.

<sup>135</sup> Listed public health bodies are subject to specific equality duties which, in England, require them to publish information to demonstrate compliance with the PSED in relation to their employees and people affected by their policies and practices, and to prepare and publish equality objectives. See the Equality Act 2010 (Specific Duties) Regulations 2011, s2/3, available at: [http://www.legislation.gov.uk/ukxi/2011/2260/pdfs/ukxi\\_20112260\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/2260/pdfs/ukxi_20112260_en.pdf). NHS-funded private and voluntary sector health providers are subject to the general PSED when exercising a public function, but not the specific duties. Different specific equality duties have been introduced in England, Scotland and Wales.

<sup>136</sup> Department of Health NHS Outcomes Framework 2014/15, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256458/NHS\\_Outcomes\\_Framework\\_equalities\\_analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256458/NHS_Outcomes_Framework_equalities_analysis.pdf)

<sup>137</sup> Department of Health NHS Outcomes Framework 2014/15, Technical Appendix, p. 5, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257032/nhs\\_of\\_technical\\_append.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257032/nhs_of_technical_append.pdf)

sufficient data on outcomes for particular individuals with protected characteristics, preventing the identification of inequalities in health outcomes for these individuals at a local and national level.

#### 4.1.3 Equality Delivery System (EDS)

87. NHS England has developed an 'Equality Delivery System' to provide NHS commissioners and providers with a framework to assess their equalities performance for all protected characteristics for a selection of their functions.<sup>138</sup> In April 2015, NHS England made the implementation of the latest iteration of the framework, Equality Delivery System 2 (EDS2), mandatory for all CCGs and NHS Providers.<sup>139</sup>
88. While EHRC welcomes EDS2, we have noted that it the requirements of EDS2 are less exacting than the PSED and may distract CCGs and NHS providers from focussing on complying with the PSED.

#### 4.1.4 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

89. The EHRC notes that the adoption of the Fundamental Standards contained in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014<sup>140</sup> could help protect and promote the human rights of health and social care service users. Nevertheless, we consider they could be strengthened by the inclusion of explicit references to the Human Rights Act 1998 and Article 12 ICESCR in line with CESCR's General Recommendation 14 for state parties to base health strategies, policies, indicators and benchmarks on human rights principles.<sup>141</sup>
90. In response to serious threats to human rights and equality in health and social care discussed below<sup>142</sup> and legislative changes discussed above, the Care Quality Commission (CQC) has restructured and refocused the way it inspects health and social care providers. In this context, the EHRC welcomes that the CQC has embedded human rights in its inspection approach and that

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<sup>138</sup> A refreshed Equality Delivery System for the NHS, EDS2, November 2013, available at: <http://www.england.nhs.uk/wp-content/uploads/2013/11/eds-nov131.pdf>

<sup>139</sup> NHS England, The Equality Delivery System, November 2013, available at: <http://www.england.nhs.uk/ourwork/gov/equality-hub/eds/>

<sup>140</sup> Available at <http://www.legislation.gov.uk/ukxi/2014/2936/contents/made>

<sup>141</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para 52, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>142</sup> See, for example, sections below on cruel, inhuman or degrading treatment in healthcare settings, and older people's right to health, pp.38-42

its guidance for providers on meeting obligations under the Regulations references a range of international human rights standards.<sup>143</sup> The EHRC supports CQC's commitment to build the confidence of inspection teams on human rights<sup>144</sup> and has formed a partnership with the CQC to develop a staff learning programme.<sup>145</sup> The programme includes mandatory introductory level training as well as higher-level training for equality and human rights team leads and champions across the CQC.

#### **4.1.5 Recommendations**

91. In order to improve protections for the right to the enjoyment of the highest attainable standard of physical and mental health, as protected by Article 12 ICESCR, the UK Government should:
- ensure that NHS England and Clinical Commissioning Groups collect sufficient data disaggregated by protected characteristic in order to populate the NHS Outcomes Framework and thereby identify inequalities in health outcomes for particular groups
  - monitor the application of the Equality Delivery System 2 carefully to ensure it does not affect compliance with the Public Sector Equality Duty, and
  - include a reference to the Fundamental Standards in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to equality and human rights obligations under the Equality Act 2010, and European Convention on Human Rights and UN treaties, specifically Article 12 ICESCR.

## **4.2 Experiences of healthcare of people with disabilities**

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### **4.2.1 Unequal access to healthcare**

92. People with disabilities, particularly those with a learning disability or mental health condition, are more likely to have significant health risks, to experience health inequalities and major health problems, and are likely to die younger

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<sup>143</sup> CQC, Guidance for providers on meeting the regulations, March 2015, available at: [http://www.cqc.org.uk/sites/default/files/20150324\\_guidance\\_providers\\_meeting\\_regulations\\_01.pdf](http://www.cqc.org.uk/sites/default/files/20150324_guidance_providers_meeting_regulations_01.pdf) and also Annex A, available at: <http://www.cqc.org.uk/content/regulations-service-providers-and-managers-relevant-legislation>

<sup>144</sup> CQC, Human rights approach for our regulation of health and social care services, September 2014, p. 25, available at: [http://www.cqc.org.uk/sites/default/files/20140925\\_our\\_human\\_rights\\_approach\\_final.pdf](http://www.cqc.org.uk/sites/default/files/20140925_our_human_rights_approach_final.pdf)

<sup>145</sup> CQC, News stories: new human rights and equality partnership announced, 5 March 2015, available at: <http://www.cqc.org.uk/content/new-human-rights-and-equality-partnership-announced>

than other people.<sup>146</sup> They are also less likely to receive health checks, screening tests and treatment. Across the UK there is evidence of low levels of disability awareness among healthcare staff, failure to investigate or treat physical ill health because it is viewed as part of a mental health condition or learning disability<sup>147</sup> and a lack of user friendly written information in accessible formats.<sup>148</sup>

93. In response to findings of systemic problems in the care for people with learning disabilities,<sup>149</sup> the UK Government has noted that “there is still more that needs to be done to achieve the changes to the culture of care and compassion that we all want to see for people with learning disabilities.”<sup>150</sup> In this regard, the EHRC welcomes UK Government action through the Care Act 2014 to place a new duty on local authorities to appoint an independent advocate for someone who has substantial difficulty in being involved in a social care assessment or the review of adult safeguarding procedures, if there is no appropriate individual to support them. The UK Independent Mechanism for the Convention on the Rights of Persons with Disabilities (CRPD) also raised concerns about information on health and social care services not being provided in a way that is easily understandable to people with learning disabilities.<sup>151</sup> Across the UK there is a shortage of appropriately qualified Sign Language Interpreters, lip speakers and palantypists.<sup>152</sup>

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<sup>146</sup> EHRC, *How Fair is Britain? Equality, Human Rights and Good Relations in 2010*, chapter 6, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/triennial\\_review/how\\_fair\\_is\\_britain\\_-\\_complete\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/triennial_review/how_fair_is_britain_-_complete_report.pdf)

<sup>147</sup> Disability Rights Commission, 2006, *Equal Treatment - Closing the Gap*, available at: <http://disability-studies.leeds.ac.uk/files/library/DRC-Health-FI-main.pdf>

<sup>148</sup> Redley, M. et al (2012), ‘Healthcare for men and women with learning disabilities: understanding inequalities in access’, *Disability and Society*, Vol. 27, No. 6: 747–759; BMA (2014), *Recognising the importance of physical health in mental health and intellectual disability*.

<sup>149</sup> Parliamentary and Health Service Ombudsman and Local Government Ombudsman (2009), *Six lives: the provision of public services to people with learning disabilities*, available at: [http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0013/1408/six-lives-part1-overview.pdf](http://www.ombudsman.org.uk/_data/assets/pdf_file/0013/1408/six-lives-part1-overview.pdf)

<sup>150</sup> Department of Health, *Six lives: progress report on healthcare for people with learning disabilities*, July 2013, available at: <https://www.gov.uk/government/publications/six-lives-department-of-health-second-progress-report>

<sup>151</sup> ECNI (2013), *Review of the Formal Investigation into the Accessibility of Health Information for People with a Learning Disability in NI – Summary*; Harper, C et al (2014), *Disability programmes and policies: how does Northern Ireland measure up?; Monitoring Implementation (public policy and programmes) of the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland*, p. 61, available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/ReviewofInvestigationAccessibilityofHealthInfoSummary2013.pdf>

<sup>152</sup> UK Independent Mechanism on the Convention on the Rights of Persons with Disabilities, *List of Issues Interim Report*, December 2014, p. 14, available at: <http://www.equalityhumanrights.com/publication/monitoring-implementation-un-convention-rights-persons-disabilities>

#### 4.2.2 Cruel, inhuman or degrading treatment in healthcare settings

94. The UK Government's "Transforming Care" initiative responded to failings, at all levels, in the treatment of patients with learning disabilities in hospital assessment and treatment units, and their vulnerability to violations of their right to freedom from cruel, inhuman or degrading treatment or punishment under Article 7 International Covenant on Civil and Political Rights (ICCPR) and Article 3 ECHR<sup>153</sup> Also at risk was their right to the highest attainable standard of health under Article 12 ICESCR. Implementation of the initiative is monitored by the DH and includes a commitment to rapidly reduce hospital assessment and treatment unit placements for people with learning disabilities and/or autism by 1 June 2014, if those people's needs could be better met with community based support.<sup>154</sup> As the House of Commons Public Accounts Committee (PAC) notes, "the Government failed to meet its pledge and the number of patients in hospital has been broadly stable over the last year (3,250 in September 2013 and 3,230 in September 2014)."<sup>155</sup>
95. NHS England has since made a commitment "to a closure programme for large NHS mental health hospitals, along with a transition plan for the people with learning disabilities within these hospitals, from 2016–17."<sup>156</sup> The PAC emphasised that this closure programme must be "matched by the necessary growth in high-quality community services." It also emphasised the "fundamental failing" represented by the lack of "an overall dataset on the population with learning disabilities and challenging behaviour".<sup>157</sup>

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<sup>153</sup> South Gloucestershire Safeguarding Adults Board, Winterbourne View Hospital, A Serious Case Review, 2012, available at: <http://hosted.southglos.gov.uk/wv/report.pdf>

<sup>154</sup> Department of Health, Winterbourne View Review: Concordat: Programme of Action (2012), available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213217/Concordat.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213217/Concordat.pdf) and Department of Health, Winterbourne View: Transforming Care One Year On, December 2013, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265752/Winterbourne\\_View\\_One\\_Year\\_On\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265752/Winterbourne_View_One_Year_On_Report.pdf)

<sup>155</sup> House of Commons Committee of Public Accounts, Fifty-first Report of Session 2014–15: Care services for people with learning disabilities and challenging behaviour, HC 973, p. 5, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/973/973.pdf>

<sup>156</sup> House of Commons Committee of Public Accounts, Fifty-first Report of Session 2014-15: Care services for people with learning disabilities and challenging behaviour, HC 973,p. 5, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/973/973.pdf>

<sup>157</sup> House of Commons Committee of Public Accounts, Fifty-first Report of Session 2014-15: Care services for people with learning disabilities and challenging behaviour, HC 973,p. 5, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/973/973.pdf>

### 4.2.3 Recommendations

96. In order to guarantee access to healthcare on a non-discriminatory basis for people with disabilities, in line with Article 12 International Covenant on Economic, Social and Cultural Rights (ICESCR), the UK Government should:
- provide an update on the steps taken to ensure the provision of information about health services in accessible and appropriate formats, on the availability of sign language interpreters, lip speakers and palantypists, and the steps being taken to increase availability
  - demonstrate its plans for ensuring growth in high quality community services for people with learning disabilities as an alternative to treatment in large NHS mental health hospitals, and
  - improve data collection on the population with learning disabilities so that their health needs can be met more effectively.

### 4.3 Older people's right to health

97. The EHRC inquiry into older people and human rights in home care found some evidence of good practice in the commissioning and delivery of home care services, but highlighted evidence of serious, systematic threats to the dignity, autonomy and safety of older people.<sup>158</sup> 18% of the 9,000 complaints made to the Parliamentary and Health Service Ombudsman in 2010 were about the care of people over 65, and the Ombudsman accepted 226 cases about older people for investigation; twice as many as all other age groups put together in 2011.<sup>159</sup>
98. In a progress review, the EHRC found that while the majority of local authorities had taken some action to address the inquiry's recommendations, the way home care is commissioned by local authorities may be increasing the risks of older people suffering human rights abuses. For example, the issue of low pay to care providers did not seem to have been addressed adequately by many local authorities.<sup>160</sup>

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<sup>158</sup> Equality and Human Rights Commission, Close to home: an inquiry into older people and human rights in home care, 2011, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-home-care-older-people/download-inquiry-report>

<sup>159</sup> Parliamentary and Health Service Ombudsman, Care and compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people, 2011, available at: [http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0016/7216/Care-and-Compassion-PHSO-0114web.pdf](http://www.ombudsman.org.uk/_data/assets/pdf_file/0016/7216/Care-and-Compassion-PHSO-0114web.pdf)

<sup>160</sup> Equality and Human Rights Commission, Close to home recommendations review, October 2013, available at: <http://www.equalityhumanrights.com/publication/close-home-recommendations-review> See also pp.58-50 of this submission.

99. The EHRC welcomes that a key recommendation of this inquiry,<sup>161</sup> to extend the coverage of the Human Rights Act 1998 to the provision of home care, has now been implemented through section 73 of the Care Act 2014, which recognises that registered care providers providing publically funded and arranged domiciliary care are exercising a public function and under an obligation not to act in a way which is incompatible with an ECHR right.<sup>162</sup>

#### 4.3.1 Recommendations

100. In order to ensure older people's dignity is protected and respected and improve compliance with Article 12 ICESCR and CESCR General Comment 14, the EHRC recommends that the UK Government works with local authorities in England to implement the findings of the EHRC's Home Care Inquiry and to ensure home care providers comply with the Human Rights Act 1998.

#### 4.4 Access to healthcare by other vulnerable people

101. CESCR has held that "health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population."<sup>163</sup> There is evidence to suggest that some people in the UK may be facing discrimination which affects their access to health facilities and services.
102. In 2010, the EHRC noted the physical and mental health of **Gypsies and Travellers** was poorer than that of the rest of the population and they experienced poorer access to GPs and other primary care services.<sup>164</sup> A 2012 progress report by DCLG noted the problems experienced by Gypsies and Travellers: lower life expectancy; high infant mortality rates; high maternal mortality rates; low child immunisation levels; higher prevalence of anxiety and depression; chronic cough or bronchitis (even after smoking is taken into

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<sup>161</sup> Followed up in our parliamentary briefing: EHRC, Care Bill 2013: Briefing in support of Clause 48 - provision of certain care and support services to be a public function, available at:

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/care-bill-ping-pong>

<sup>162</sup> Care Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

<sup>163</sup> CESCR, General Comment No. 14: right to the highest attainable standard of health, para 12(b), available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>164</sup> EHRC, 2010, How Fair is Britain?, available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain>

account); asthma; chest pain; and diabetes, as compared with the general population.<sup>165</sup>

103. The Royal College of General Practitioners has noted that many Gypsies and Travellers remain unregistered with GPs for a variety of reasons, including being turned down as problematic users, a lack of cultural awareness on the part of healthcare professionals, including racism, and their nomadic lifestyle presenting barriers to registration.<sup>166</sup> Many Roma lack familiarity with the NHS and language barriers may also make it difficult for them to access health services.<sup>167</sup>
104. In 'Travelling to a Better Future', the Welsh Government (2011) set out measures to improve the delivery of health care for Gypsies and Travellers.<sup>168</sup> The Welsh Government has recently consulted on Guidance for Healthcare Practitioners on working effectively with Gypsies and Travellers.<sup>169</sup> The Welsh Government suggests the reasons for the comparatively poor access to health services for Gypsy, Traveller and Roma communities include “a lack of knowledge about these communities and their culture, poor prior experience of health services, suspicion and mistrust of these services and a strong desire to be self-reliant”.<sup>170</sup>
105. The EHRC noted in 2010 that evidence about the health of **asylum seekers and refugees** was limited. However, it indicated that particular health concerns arise from the impact of relocation, possible past experience of trauma and the impact of detention, particularly on children, if they are detained.<sup>171</sup> The Immigration Act 2014 introduced new restrictions, including a higher threshold for ordinary residence for the purpose of accessing NHS

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<sup>165</sup> DCLG, 2012, Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers, p. 12, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6287/2124046.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf)

<sup>166</sup> RCGP, 2013, Improving access to health care for Gypsies and Travellers, homeless people and sex workers, p. 21, available at: <http://www.rcgp.org.uk/common-elements/rss/~media/Files/Policy/A-Z-policy/RCGP-Social-Inclusion-Commissioning-Guide.ashx>

<sup>167</sup> Lane P et al, 2014, Gypsy, Traveller and Roma: Experts by Experience, available at:

[http://ww2.anglia.ac.uk/ruskin/en/home/news/roma\\_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf](http://ww2.anglia.ac.uk/ruskin/en/home/news/roma_report.Maincontent.0007.file.tmp/Experts%20by%20Experience.pdf)

<sup>168</sup> Welsh Government, 2011, Travelling to a Better Future: Gypsy and Traveller Framework for Action and Delivery Plan, available at:

<http://learning.wales.gov.uk/docs/learningwales/publications/121115gypsytravelleren.pdf>

<sup>169</sup> Welsh Government, Consultation: travelling to better health, August 2014, p. 2, available at:

<http://gov.wales/consultations/healthsocialcare/travelling/?status=open&lang=en>

<sup>170</sup> Welsh Government, Consultation: travelling to better health, August 2014, available at:

<http://gov.wales/consultations/healthsocialcare/travelling/?status=open&lang=en>

<sup>171</sup> EHRC, 2010, How Fair is Britain? available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain>.

services and an additional charge, prior to entry, for temporary migrants to cover potential NHS costs.<sup>172</sup>

106. Refugees and asylum-seekers are entitled to free health care until such time as an asylum application is refused. However, the EU Fundamental Rights Agency (FRA) noted in 2013 that people are sometimes refused access to health care due to providers' confusion over eligibility rules.<sup>173</sup> UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) expressed concern that women seeking asylum in the UK faced obstacles in gaining access to health care.<sup>174</sup> Immigration status is not a reason for refusing registration, but undocumented and documented migrants also face problems in registering with GPs.<sup>175</sup>
107. Evidence on access to healthcare of **transgender people** is limited. Transgender respondents are not identified in large-scale surveys, when relevant sample sizes would be low anyway, and many of the respondents to surveys that do exist are self-selected, so may not be representative of the overall population. In 2011, the EHRC reported that transgender people experienced a range of barriers in accessing NHS gender reassignment services, from referral by GPs to funding by Primary Care Trusts and treatment by clinicians.<sup>176</sup> This was the case even though gender dysphoria is a medical condition that falls under the remit of NHS health care services and the DH has produced guidance for clinicians on health care.<sup>177</sup> Various studies have found that transgender respondents in the UK have felt discriminated against, or have encountered negative attitudes or unfair treatment based on their gender identity when accessing health care.<sup>178</sup> The Welsh Government has published a review of the evidence on inequalities in

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<sup>172</sup> S38/39 Immigration Act 2014, available at:

<http://www.legislation.gov.uk/ukpga/2014/22/part/3/chapter/2/crossheading/national-health-service/enacted>

<sup>173</sup> FRA, 2013, Inequalities and multiple discrimination in access to and quality of healthcare, available at:

[http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare\\_en.pdf](http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf)

<sup>174</sup> UN, 2013, Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, available at:

<http://www.nawo.org.uk/wp-content/uploads/2012/07/Concluding-Observations.pdf>

<sup>175</sup> Experiences among undocumented migrants accessing primary care in the United Kingdom: a qualitative study, available at: <http://joh.sagepub.com/content/early/2015/02/12/0020731414568511.full.pdf+html>

<sup>176</sup> EHRC, 2011, A review of access to NHS gender reassignment services, available at:

<http://www.equalityhumanrights.com/about-us/our-work/key-projects/trans-inequalities-reviewed/review-access-nhs-gender-reassignment-services-england-only>

<sup>177</sup> NHS, 2013, Gender dysphoria services: a guide for General Practitioners and other healthcare staff, available at: <http://www.nhs.uk/Livewell/Transhealth/Documents/gender-dysphoria-guide-for-gps-and-other-health-care-staff.pdf>

<sup>178</sup> FRA, 2014, Being Trans in the EU – Comparative analysis of EU LGBT survey data, available at:

<http://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data>;

access to health services that are associated with gender identity and gender reassignment.<sup>179</sup> This was envisaged as a foundation for the development of interventions and sharing of good practice.

#### 4.4.1 Recommendations

108. In order to guarantee the right of everyone to the highest attainable standard of mental and physical health in line with Article 12 ICESCR, the EHRC recommends that the UK Government restate its commitment to ensuring that healthcare is accessible to all in the UK without discrimination, and that it demonstrates the steps it has taken to improve health outcomes for Gypsies and Travellers, refugees, asylum seekers and migrants, and transgender people, in particular by:

- facilitating their registration at GPs
- collecting and maintaining data on their health outcomes and access to health services, and
- ensuring that healthcare professionals receive the necessary training in order to be able to offer them appropriate and effective care.

#### 4.5 Health care for adults with mental health problems

109. In England, the percentage of adults at risk of poor mental health rose from 13.4% to 15% between 2008 and 2012. This figure was substantially higher in 2012 for people with disabilities, at 34.9%, although this is partly explained by the fact that some respondents will have identified themselves as people with disabilities because of a mental health condition. Pakistani/Bangladeshi adults and African/Caribbean/Black adults were also disproportionately at risk of poor mental health in 2012 (22.9% and 19.9% respectively compared with 14.6% of individuals in White groups). Women were more at risk of poor mental health than men (18% compared with 11.9% in 2012).<sup>180</sup>

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<sup>179</sup> Welsh Government, 2014, Review of Evidence of Inequalities in Access to Health Services in Wales and the UK: Gender, Gender Reassignment, and Sexual Identity, available at: <http://gov.wales/statistics-and-research/review-evidence-inequalities-access-health-services-wales/?lang=en>

<sup>180</sup> EHRC, Is Britain Fairer? (B) Health Domain, October 2015, pp. 70-73, available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/health-domain> Analysis based on figures from Health and Social Care Information Centre, Health Survey for England, available at: [http://data.gov.uk/dataset/health\\_survey\\_for\\_england](http://data.gov.uk/dataset/health_survey_for_england). The Health Survey for England presents information provided by a representative sample of the population in England. The responses to the questions are based on self-identification rather than access to mental health services.

110. In Wales, 31.4% of respondents aged 16 or over were at risk of poor mental health in 2012. Among people with disabilities, this figure rose to 52.2%. Women were more at risk than men (35.8% compared with 26.8%). 20% of individuals in the group with the highest socio-economic status were at risk of poor mental health, compared with 48% in the group with the lowest socio-economic status.<sup>181</sup>
111. The Health and Social Care Act 2012 included the principle that mental health must be given equal priority to physical health. The concept of 'parity of esteem' has been actively promoted since then.<sup>182</sup> In 2015, the APPG on Mental Health's Inquiry into parity of esteem found that, although progress has been made in some areas, there is still a long way to go before parity is achieved.<sup>183</sup> It called for improvements across a range of areas.
112. In 2014, the DH and NHS England acknowledged that there was a "large treatment gap, with most people with mental health problems receiving no treatment and with severe funding restrictions compared with physical health services".<sup>184</sup> Their policy paper announced an additional £33 million allocation for 2014/15 to improve services for people in mental health crisis and to boost early intervention services, and a further £80 million for 2015/16 to set access and waiting time standards.

#### 4.5.1 Variation in the availability and quality of services

113. The mental health care that is available varies by locality. For instance, the proportion of patients in England who are referred to Improving Access to Psychological Therapies (IAPT) programmes and who start treatment within 28 days varied between 3% and 96% in 2013/14, depending on the CCG concerned.<sup>185</sup> 11% of patients waited for over 90 days. According to data

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<sup>181</sup> EHRC, *Is Britain Fairer?* (B) Health Domain, October 2015, pp. 73/74, available at:

<http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/health-domain>  
Analysis based on figures from Welsh Government, *Welsh Health Survey*, available at: <http://gov.wales/statistics-and-research/welsh-health-survey/?lang=en>

<sup>182</sup> See, for example, DH, 2013, *Achieving parity of esteem between mental and physical health*. Speech by the Minister for Care Services, 19 June, available at: <https://www.gov.uk/government/speeches/achieving-parity-of-esteem-between-mental-and-physical-health>; NHS England, 2014, *Valuing mental health equally with physical health or "Parity of Esteem"*, available at: <http://www.england.nhs.uk/ourwork/qual-clin-lead/pe/>

<sup>183</sup> APPG on Mental Health's inquiry into parity of esteem for mental health, 2015, *Parity in Progress?* available at: <http://www.mind.org.uk/media/1939983/appg-parity-in-progress-final.pdf>

<sup>184</sup> DH and NHS England, 2014, *Achieving Better Access to Mental Health Services by 2020*, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/361648/mental-health-access.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361648/mental-health-access.pdf)

<sup>185</sup> HSCIC, 2014b, *Psychological Therapies, Annual Report on the use of IAPT services - England, 2013-14*, available at: <http://www.hscic.gov.uk/catalogue/PUB14899>

obtained under the Freedom of Information Act 2000, some waited over a year.<sup>186</sup>

114. The UK Government has acknowledged that there are gaps in mental health provision generally, long waits for services and insufficient support within communities, as well as the lower use of psychological therapies by older people and people from minority ethnic groups.<sup>187</sup> Both the DH and Welsh Government have provided substantial funding for IAPT.<sup>188</sup> However, evidence cited by the British Medical Association (BMA) suggests that there has been “[a]n overall funding cut [for mental health services] of 2.3 per cent in real terms between 2011-12 and 2013-14, [...] based on information from 43 out of 51 mental health trusts in England.”<sup>189</sup>
115. The variability of care also applies to in-patient wards. Inspection reports have included concerns about the inappropriate use of blanket rules, inadequate regard for patients’ privacy, and controlling practices.<sup>190</sup> While the causes of poor practice are multiple, the CQC has noted that the pressure to cut acute services in the interest of finding short-term savings may undermine good services, and inadequate staffing levels can exacerbate problem behaviour.<sup>191</sup>
116. Mind reported in 2013 on serious variations in the use of physical restraint in hospitals; over one year, one trust reported 38 incidents while another reported over 3,000.<sup>192</sup> There were also nearly 1,000 incidents of physical injury following restraint. UK Government policy papers have set out the need for a reduction in the use of restraint and an end to 'planned or intentional restraint of a person in a prone/face down position' - while accepting that

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<sup>186</sup> Pulse, 2013, IAPT programme struggling to achieve targets, 24 October 2013, available at: <http://www.pulsetoday.co.uk/clinical/mental-health/iapt-programme-struggling-to-achieve-targets/20004817.article#.VTTXRf6YYfg>

<sup>187</sup> DH, 2014, Closing the gap: priorities for essential change in mental health, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281250/Closing\\_the\\_gap\\_V2\\_-\\_17\\_Feb\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281250/Closing_the_gap_V2_-_17_Feb_2014.pdf)

<sup>188</sup> DH, 2014, Closing the gap and NHS Wales, £650,000 to improve access to psychological therapies in Wales, available at: <http://www.cardiffandvaleuhb.wales.nhs.uk/news/32929>

<sup>189</sup> BMA, 2014, Recognising the importance of physical health in mental health and intellectual disability: achieving parity of outcomes, p. 43, available at: <http://bma.org.uk/working-for-change/doctors-in-the-nhs/mental-health-parity-report>

<sup>190</sup> CQC, 2013, Monitoring the Mental Health Act in 2011/12, available at: [http://www.cqc.org.uk/sites/default/files/documents/cqc\\_mentalhealth\\_2011\\_12\\_main\\_final\\_web.pdf](http://www.cqc.org.uk/sites/default/files/documents/cqc_mentalhealth_2011_12_main_final_web.pdf)

<sup>191</sup> CQC, 2013, Monitoring the Mental Health Act in 2011/12, available at: [http://www.cqc.org.uk/sites/default/files/documents/cqc\\_mentalhealth\\_2011\\_12\\_main\\_final\\_web.pdf](http://www.cqc.org.uk/sites/default/files/documents/cqc_mentalhealth_2011_12_main_final_web.pdf)

<sup>192</sup> Mind, 2013, Mental health crisis care: physical restraint in crisis. A report on physical restraint in hospital settings in England, available at: [http://www.mind.org.uk/media/197120/physical\\_restraint\\_final\\_web\\_version.pdf](http://www.mind.org.uk/media/197120/physical_restraint_final_web_version.pdf) The data in the MIND report were obtained through a Freedom of Information request to all mental health trusts. However, the report does not provide a full picture as trusts were not recording or reporting to the same standards. It was also hard to make comparisons between trusts because data were not obtained on the numbers of beds within individual services.

some prone restraint may still occur.<sup>193</sup> The recording of data on restraint incidents is, however, incomplete, with only 46 out of 67 mental health organisations submitting returns in 2013/14,<sup>194</sup> without this, it is impossible to monitor practice, either locally or nationally.<sup>195</sup>

#### 4.5.2 Mental health safeguards

118. Under the amendments made to the Mental Health Act in 2009, qualifying patients detained under that Act are entitled to receive support from Independent Mental Health Advocates (IMHAs) to help them understand their rights under the Act, their treatment, and the reasons for that treatment.<sup>196</sup> The CQC found that many local authorities did not undertake needs assessments to inform commissioning of IMHA services and that there was a lack of access to information about IMHA services on wards, both of which can affect people's access to these services.<sup>197</sup>

#### 4.5.3 Access to care in a crisis

119. The CQC highlight problems in access to care during a mental health crisis.<sup>198</sup> Bed availability in England decreased by 10% in the four years between December 2010 and December 2014: from 23,740 to 21,446.<sup>199</sup> Yet the number of formal detentions increased by 14% between 2009/10 and

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<sup>193</sup> DH, 2014b, Positive and Proactive Care: reducing the need for restrictive interventions (paras 70 and 72), available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300293/JRA\\_DoH\\_Guidance\\_on\\_RP\\_web\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300293/JRA_DoH_Guidance_on_RP_web_accessible.pdf). DH, 2015c Mental Health Act 1983: Code of Practice (para 26.70). Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/435512/MHA\\_Code\\_of\\_Practice.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF)

<sup>194</sup> HSCIC, 2014c, Measures from the Mental Health Minimum Dataset (MHMDS), England: 2012-13 physical restraint, available at: <http://www.hscic.gov.uk/article/5317/2014-Supplementary-information-files>

<sup>195</sup> CQC, 2015, Mental Health Act Annual Report 2013/14, available at: <http://www.cqc.org.uk/content/mental-health-act-annual-report-201314>

<sup>196</sup> Mental Health Act 1983, s130A, B, C, D, available at: <http://www.legislation.gov.uk/ukpga/1983/20/section/130A>

<sup>197</sup> CQC, Monitoring the Mental Health Act in 2013/14, p. 40, available at [http://www.cqc.org.uk/sites/default/files/monitoring\\_the\\_mha\\_2013-14\\_report\\_web\\_0303.pdf.pdf](http://www.cqc.org.uk/sites/default/files/monitoring_the_mha_2013-14_report_web_0303.pdf.pdf)

<sup>198</sup> CQC, Monitoring the Mental Health Act in 2012/13, available at: [http://www.cqc.org.uk/sites/default/files/documents/cqc\\_mentalhealth\\_2012\\_13\\_07\\_update.pdf](http://www.cqc.org.uk/sites/default/files/documents/cqc_mentalhealth_2012_13_07_update.pdf)

<sup>199</sup> NHS England, 2015, Bed Availability and Occupancy Data - Overnight, available at: <http://www.england.nhs.uk/statistics/statistical-work-areas/bed-availability-and-occupancy/bed-data-overnight/>

- 2013/14: from 46,600 to 53,176.<sup>200</sup> Increasing numbers of patients are being detained far from home.<sup>201</sup>
120. Increasing suicide rates also suggest problems with access to mental health care in crises.<sup>202</sup> 6,233 suicides of people aged 15 and over were registered in the UK in 2013. This represented a 4% increase in suicides in comparison with 2012. The UK suicide rate was 11.9 deaths per 100,000 population in 2013, with the male suicide rate the highest since 2001.<sup>203</sup>
121. The House of Commons Home Affairs Committee recently expressed concern at the “extent to which frontline officers are increasingly spending their time helping people with mental health problems.”<sup>204</sup> Numbers of people detained in police cells under Section 136 of the Mental Health Act 1983 are falling: 8,667 people were detained in police cells in 2011/12 and 6,028 were detained in 2013/14.<sup>205</sup> Nevertheless, considerable concern has been expressed about their use for people who have committed no crime but require a mental health assessment or treatment.<sup>206</sup>
122. The Home Affairs Committee emphasised that further improvements could be made in how the authorities deal with people with mental health problems, in particular by improving collaboration between police and health services, providing training for police officers and avoiding disproportionate use of restraint.<sup>207</sup> In this regard, the EHRC welcomes the review of the DH and recommendations on how to avoid the use of police cells as places of safety,<sup>208</sup> as well as the joint commitment made in the Mental Health Crisis

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<sup>200</sup> HSCIC, 2014, Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2013-2014, Annual figures, available at:

<http://www.hscic.gov.uk/catalogue/PUB15812>

<sup>201</sup> DH, 2014, Closing the gap: priorities for essential change in mental health, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281250/Closing\\_the\\_gap\\_V2\\_-\\_17\\_Feb\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281250/Closing_the_gap_V2_-_17_Feb_2014.pdf)

<sup>202</sup> CESCR, Concluding observations on the UK, 2009, para 35

<sup>203</sup> ONS, Statistical bulletin, Suicides in the United Kingdom, 2013 Registrations, available at:

[http://www.ons.gov.uk/ons/dcp171778\\_395145.pdf](http://www.ons.gov.uk/ons/dcp171778_395145.pdf)

<sup>204</sup> HAC, Eleventh report of session 2014-15, Policing and mental health, p. 8, available at:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/202/202.pdf>

<sup>205</sup> Health and Social Care Information Centre, Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2013-2014, Annual figures, available at: <http://www.hscic.gov.uk/catalogue/PUB15812>

<sup>206</sup> HMIC, HMIP, CQC, HIW, 2013, A criminal use of police cells? available at:

<https://www.justiceinspectorates.gov.uk/hmic/media/a-criminal-use-of-police-cells-20130620.pdf>. See also EHRC, *forthcoming, Is Britain Fairer?*

<sup>207</sup> HAC, Eleventh Report, pp. 19 and 30

<sup>208</sup> DH, 2014a, Review of the operation of sections 135 and 136 of the Mental Health Act 1983: Review report and recommendations, available at:

Care Concordat to ensure sufficient health-based places of safety are available.<sup>209</sup> In this regard, the EHRC welcomes the announcement in May 2015 by the Home Secretary that the UK Government will allocate “up to £15 million of new funding to deliver health-based places of safety in England.”<sup>210</sup>

#### 4.5.4 Non-natural deaths in detention of adults with mental health conditions

123. In 2014, the EHRC conducted an inquiry into the reduction of ‘non-natural’ deaths of adults with mental health conditions detained in prisons, police cells and hospitals.<sup>211</sup> Between 2010 and 2013 there were between 161 and 173 non-natural deaths across the three detention estates each year; the vast majority of these in prisons and hospitals.<sup>212</sup>

124. The EHRC found a number of shortcomings in the implementation of the UK’s obligations to protect individuals in state detention whose lives are at risk, whether from the acts of others or from suicide.<sup>213</sup> These failures included inadequate risk assessments, lack of beds in psychiatric hospitals leading to a failure to provide timely and appropriate mental health treatment, inconsistent provision of mental health care in prisons, inadequate involvement of families in the treatment of prisoners, and the use of segregation for prisoners with mental health conditions.<sup>214</sup>

125. The EHRC found that it was often not possible to access reports of investigations into non-natural deaths of patients detained in hospital, and questioned the quality of initial investigations by hospitals in the absence of an independent body tasked with carrying out these investigations. In this regard,

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389202/S135\\_and\\_S136\\_of\\_the\\_Mental\\_Health\\_Act\\_-\\_full\\_outcome.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389202/S135_and_S136_of_the_Mental_Health_Act_-_full_outcome.pdf)

<sup>209</sup> HM Government, Mental Health Care Crisis Concordat: improving outcomes for people experiencing mental health crisis, 2014, available at: [http://www.crisiscareconcordat.org.uk/wp-content/uploads/2014/04/36353\\_Mental\\_Health\\_Crisis\\_accessible.pdf](http://www.crisiscareconcordat.org.uk/wp-content/uploads/2014/04/36353_Mental_Health_Crisis_accessible.pdf)

<sup>210</sup> Theresa May, Home Secretary’s Police Federation 2015 speech, 20 May 2015, available at: <https://www.gov.uk/government/speeches/home-secretarys-police-federation-2015-speech>

<sup>211</sup> EHRC, Preventing deaths in detention of adults with mental health conditions, February 2015, (Adult Death Inquiry) available at: [http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/Adult%20Deaths%20in%20Detention%20Inquiry%20Report.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Adult%20Deaths%20in%20Detention%20Inquiry%20Report.pdf)

<sup>212</sup> Taken from table in Adult Death Inquiry, p. 14, based on information from IPCC, MOJ Safety in Custody Statistics and the CQC, available at: [http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14\\_FINAL\\_web.pdf](http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14_FINAL_web.pdf)

<sup>213</sup> Adult death inquiry, p. 25, available at: [http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14\\_FINAL\\_web.pdf](http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14_FINAL_web.pdf)

<sup>214</sup> Adult death inquiry, pp. 35 and 47-49. See also: Chief Coroner, Summary of reports to prevent future deaths, April - September 2013, available at: <https://www.judiciary.gov.uk/related-offices-and-bodies/office-chief-coroner/summary-of-reports-to-pfds/>; Prisons and Probation Ombudsman, Annual Report 2013-14, available at: [http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14\\_FINAL\\_web.pdf](http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14_FINAL_web.pdf)

the duty of candour set out in Regulation 20 of the HSCA Regulations 2014, which requires care providers to act transparently, has the potential to drive significant improvement.

126. The shortcomings in the care of individuals with mental health conditions in detention suggests that the UK Government is not fulfilling its obligations to respect the right to health of all individuals, including prisoners or detainees, as set out by CESCR.<sup>215</sup> The failure to investigate these deaths adequately makes it difficult to deal effectively with the causes of suicide, as called for by CESCR.<sup>216</sup>

#### 4.5.5 Recommendations

127. In order to deal effectively with the causes of suicide, as recommended by CESCR, and to protect the right to health of prisoners, as required by Article 12 ICESCR, the UK Government should implement the recommendations of the EHRC's inquiry into preventing deaths in detention of adults with mental health conditions, in particular by:
- establishing structured approaches for learning lessons from deaths in detention
  - taking steps to increase transparency to ensure adequate scrutiny, including by monitoring the implementation of the duty of candour, and
  - adopting the EHRC's Human Rights Framework as a practical tool to reduce non-natural deaths in detention.

#### 4.6 Health care for children with mental health problems

128. The EHRC's submission on the CRC sets out the situation with regards to children's access to mental health services in some detail. In particular, it highlights:
- the findings of the House of Commons Health Committee regarding serious and ingrained problems with the commissioning and provision of children's and adolescents' mental health services<sup>217</sup>

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<sup>215</sup> CESCR, General Comment No. 14: right to health, para 34

<sup>216</sup> CESCR, Concluding observations on the UK, 2009, para 35

<sup>217</sup> House of Commons Health Committee, Third Report of Session 2014-15: Children and adolescents' mental health and CAMHS, p. 98, available at:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhealth/342/342.pdf>

- the Mental Health (Wales) Measure 2010 which aimed to ensure there is appropriate care in place across Wales and focus on people's mental health needs, regardless of age<sup>218</sup>
- some additional funding allocated for children's mental health services, but frozen or reduced budgets for CCGs who provide these services, and
- continued but reduced instances of police detention of children under the Mental Health Act 1983 236 in 2013/14,<sup>219</sup> and the UK Government commitment to allocate funding to deliver health-based places of safety in England.<sup>220</sup>

#### 4.6.1 Recommendations

129. In order to fulfil children's right to enjoy the highest attainable standard of mental health, as required by Article 12 International Covenant of Economic, Social and Cultural Rights (ICESCR), the Equality and Human Rights Commission (EHRC) recommends that the UK Government:

- ensures that funding for Clinical Commissioning Groups (CCGs) to provide Child and Adolescent Mental Health Services matches rising demands
- considers how to implement the recommendations of the House of Commons Health Committee, including on the availability of data on children's mental health, the prioritisation of early intervention, and improving outpatient services, and
- amends the Mental Health Act 1983 so that it is no longer possible to detain children in police cells under Section 135 or Section 136 of that Act.

#### 4.7 Violence against women and girls (VAWG) and the right to health

130. In 2010, the report of the Taskforce on the Health Aspects of Violence against Women and Children set out 23 recommendations to enable the NHS to effectively address VAWG as a public health issue.<sup>221</sup> The UK Government

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<sup>218</sup> Welsh Government, Mental Health (Wales) Measure 2010, available at:

<http://gov.wales/topics/health/nhswales/healthservice/mental-health-services/measure/?lang=en>

<sup>219</sup> Health and Social Care Information Centre, Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2013-2014, Annual figures, available at: <http://www.hscic.gov.uk/catalogue/PUB15812>

<sup>220</sup> Theresa May, Home Secretary's Police Federation 2015 speech, 20 May 2015, available at:

<https://www.gov.uk/government/speeches/home-secretarys-police-federation-2015-speech>

<sup>221</sup> The report of the Taskforce on the Health Aspects of Violence Against Women and Children: Responding to violence against women and children – the role of the NHS, March 2010, available at:

has since initiated its action plan to tackle violence against women and girls.<sup>222</sup>

#### 4.7.1 Recommendations

131. As part of the UK Government's efforts to strengthen the protection of women's right to health as protected by Article 12 ICESCR, the EHRC considers that the UK Government should implement the recommendations of the Taskforce on the Health Aspects of Violence against Women and Children. In particular, NHS England should prioritise and provide greater investment in tackling violence against women and girls.

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[http://www.health.org.uk/sites/default/files/RespondingtoViolenceAgainstWomenAndChildrenTheRoleofTheNHS\\_guide.pdf](http://www.health.org.uk/sites/default/files/RespondingtoViolenceAgainstWomenAndChildrenTheRoleofTheNHS_guide.pdf)

<sup>222</sup> The current iteration is from 2014, available at: <https://www.gov.uk/government/publications/a-call-to-end-violence-against-women-and-girls-action-plan-2014>. See also pp.86-88 of this submission.

## Section 5.

# Access to work and working conditions – Articles 6 and 7

132. Data from the Office for National Statistics (ONS) show significant improvements in the employment rate in the UK, which stood at 73.5% as of March 2015, “the highest since comparable records began in 1971.”<sup>223</sup> While this progress is clearly welcome, some discrepancies in terms of employment rates of young people, disabled people and some ethnic minorities remain,<sup>224</sup> as well as a number of concerns regarding conditions of work which are discussed below.

### 5.1 Migrant workers

133. There are currently 2.64 million migrant workers who are legally allowed to work in the UK.<sup>225</sup> There is a growing concentration of migrant workers in low wage, low skill sectors such as food processing, transport and cleaning. Research from the Migration Advisory Committee<sup>226</sup> reveals that low skilled occupations account for 45% of all employment in the UK, with migrants accounting for approximately 16% of all those in low skilled work (2.1 million).<sup>227</sup>

134. The EHRC’s evidence reveals that migrant workers in the cleaning sector are often not aware of their employment rights and do not have employment documentation (such as contracts or pay slips) in a language they understand, which can make them more vulnerable to exploitation and mistreatment than

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<sup>223</sup> ONS, Statistical bulletin: UK Labour Market, May 2015, available at: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/may-2015/statistical-bulletin.html>

<sup>224</sup> For full evidence of these trends, see EHRC, forthcoming, Is Britain Fairer?

<sup>225</sup> EHRC, August 2014, Mid Term Universal Periodic Review Report, p. 33, available at:

<http://www.equalityhumanrights.com/publication/universal-periodic-review-mid-term-report-0>

<sup>226</sup> The Migration Advisory Committee (MAC) is an independent, non-statutory, non-time limited, non-departmental public body that advises the government on migration issues.

<sup>227</sup> MAC, 2014, Migrants in low-skilled work, p.32, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf)

other workers.<sup>228</sup> A significant number of workers were told by cleaning firms that they were not entitled to sick or holiday pay despite being permanent employees. Migrant workers in particular did not query this as they were unaware of their holiday or sick pay entitlements.<sup>229</sup> Furthermore, EHRC evidence suggests the sources of support migrant workers use, such as migrant groups and specific migrant worker outreach programmes, have suffered cuts in funding and may no longer exist.<sup>230</sup>

135. Where migrant workers are aware of their rights, they are often afraid of complaining for fear of losing their job or being victimised. This risk could be exacerbated in the meat and poultry processing sector where gangmasters also provide accommodation and transport for migrant workers at an additional cost. Our inquiry into the meat and poultry processing sector revealed that many agency workers were paying high prices for substandard accommodation and transport, unaware that they did not have to use the services provided by the labour provider.<sup>231</sup>

### 5.1.1 Overseas Domestic Workers (ODWs)

136. In its recent submission to the Human Rights Committee, the EHRC noted the UK Government's changes to the ODW visa had significantly increased the potential for ODWs to be exploited as it tied them to a single employer.<sup>232</sup> These changes could present serious issues in terms of the UK's compliance with Article 7 ICESCR, as ODWs who are not enjoying just and favourable conditions of work would not be able to change employers.
137. The Modern Slavery Act 2015<sup>233</sup> has introduced provisions allowing for an extension of an ODW's visa for a minimum of six months where there is a conclusive decision by the UK's National Referral Mechanism (NRM) that they

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<sup>228</sup> EHRC, 2014, The Invisible Workforce, p.19, available at:

<http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>229</sup> EHRC, 2014, The Invisible Workforce, p.28, available at:

<http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>230</sup> EHRC, 2012, Meat and Poultry Processing Inquiry Review, p. 51, available at:

[http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat\\_and\\_poultry\\_processing\\_review\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_and_poultry_processing_review_report.pdf)

<sup>231</sup> EHRC, 2012, Meat and Poultry Processing Inquiry Review, p. 15, available at:

[http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat\\_and\\_poultry\\_processing\\_review\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_and_poultry_processing_review_report.pdf)

<sup>232</sup> EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 28, available at:

<http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/Civil%20and%20Political%20Rights%20in%20the%20UK%20-%20ICCPR%20Submission.pdf>

<sup>233</sup> Available at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

are a victim of trafficking.<sup>234</sup> These provisions also now extend to workers who the NRM concludes have been enslaved and exploited. In such cases, the worker will be able to change employer for that six-month period and will not be subject to immigration enforcement action.

138. The EHRC welcomes these provisions. However, we await the outcome of the independent review of the impact of the changes to the ODW visas<sup>235</sup> to assess what additional measures may be required. Instilling confidence in exploited ODWs to come forward is key to ensuring these new provisions work effectively, therefore the EHRC considers that it is fundamental that the recommendations of the NRM review, in particular with regards to providing support to victims based on an assessment of their individual needs and to improving the collection and collation of data are implemented.<sup>236</sup> It is also crucial that steps are taken to provide legal aid to potential victims at the point of identification.
139. Recent case law<sup>237</sup> has led to a change in the position so that migrant workers employed by diplomats and embassies may now be excluded under rules of diplomatic immunity from access to redress and compensation for breaches of employment rights. The Special Rapporteur on the Human Rights of Migrants has recommended that the UK afford the same level of protection to migrant workers who accompany diplomats as is afforded to other migrant and domestic workers.<sup>238</sup>

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<sup>234</sup> The NRM is a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support. The NRM is also the mechanism through which the UKHTC collects data about victims. This information contributes to building a clearer picture about the scope of human trafficking in the UK. The NRM was introduced in 2009 to meet the UK's obligations under the Council of European Convention on Action against Trafficking in Human Beings. (available at: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>)

<sup>235</sup> House of Commons Hansard Debates, 9 February 2015, available at: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150209/debtext/150209-0001.htm#1502093000556>

<sup>236</sup> Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014, available at: <http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

<sup>237</sup> *Al-Malki v Reyes and another*, [2015] EWCA Civ 32 and *Benkharbouche v Embassy of Sudan and Janah v Libya* [2015] EWCA Civ 33

<sup>238</sup> Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/14/30/Add.3, para 76(a), available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.30.Add.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.30.Add.3_en.pdf)

### 5.1.2 Recommendations

140. In order to fulfil its duty to protect workers from third parties which may cause adverse impacts on their right to just and favourable conditions of work under Article 7 ICESCR, the EHRC recommends that the UK Government:
- raises awareness among workers regarding their rights in terms of pay, holiday leave and sick leave, and discrimination, abuse or harassment, through developing a single, up-to-date source of information in the UK that covers broad employment rights issues, relevant to all sectors
  - ensures that the regulations to implement the Modern Slavery Act 2015 address the recommendations contained in its own review of the National Referral Mechanism, in particular by providing support to victims based on an assessment of their individual needs and by improving the collection and collation of data, and
  - commits to considering in a timely way the recommendations of the independent review of the impact of the changes to the Overseas Domestic Worker visa.

## 5.2 Low pay

141. The National Minimum Wage is the minimum pay per hour almost all workers in the UK are entitled to by law. The minimum wage rate depends on the worker's age and whether they are an apprentice.<sup>239</sup> In its 2015 Summer Budget, the UK Government announced welcome increases to the minimum wage for people over 25 years old.<sup>240</sup> However, concerns remain as to whether the current and proposed rates constitute a "living wage" sufficient to meet costs of living in the UK, particularly in London, and for people under 25 years old.<sup>241</sup>

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<sup>239</sup> HMG, National Minimum Wage Rates, available at: <https://www.gov.uk/national-minimum-wage-rates>

<sup>240</sup> HM Treasury, Summer Budget 2015: key announcements, 8 July 2015, available at: <https://www.gov.uk/government/news/summer-budget-2015-key-announcements>

<sup>241</sup> Living Wage Foundation, Living Wage Foundation response to budget 2015, 8 July 2015, available at: <http://www.livingwage.org.uk/news/living-wage-foundation-response-budget-2015>. The Living Wage is an informal, non-enforceable benchmark, which accounts for the amount an individual needs to earn to cover the basic costs of living. The national living wage is currently calculated by the Centre for Research in Social Policy (<http://www.lboro.ac.uk/research/crsp/mis/thelivingwage/>) while the London living wage is calculated by the Greater London Authority (<https://www.london.gov.uk/priorities/business-economy/vision-and-strategy/focus-areas/london-living-wage>). 1,375 employers have been accredited by the Living Wage Foundation, committing them to pay the living wage to employed and subcontracted staff (<http://www.livingwage.org.uk/employers>). These include some FTSE 100 companies, such as Aviva and Barclays, and some local authorities, such as

### 5.2.1 Low pay in the cleaning sector

142. The EHRC's inquiry into the cleaning sector in England showed that low pay is prevalent in that sector, with wages close to, or at, the National Minimum Wage.<sup>242</sup> Our research found that low pay was one of the key concerns for workers, the majority of whom were women.<sup>243</sup> Workers reported that they worked very long hours in order to make ends meet or had multiple jobs, and had little leeway or safety net after paying bills and other essential outgoings. Workers also reported worsening conditions of pay in an already low paid sector.<sup>244</sup>
143. A striking feature of the EHRC's evidence was the substantial number of complaints about the under-payment or non-payment of wages, which were time-consuming and stressful to resolve.<sup>245</sup> For low paid workers, a small under-payment could have a big impact on their ability to pay their rent, mortgage or utility bills.
144. Both workers and cleaning firms spoke of the benefits of the living wage. Cleaning firms told us that they benefited from reduced absenteeism and staff turnover. Firms reported, however, that unless the client covered the cost of paying the living wage in the contract value, the low profit margins made in cleaning contracts often made paying anything above the minimum wage difficult.<sup>246</sup>

### 5.2.2 Low pay in the home care sector

145. An EHRC inquiry into the home care sector in England found that care workers are low paid and may get little training and inadequate supervision and support. The workforce in this sector is predominantly female and part-

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Cardiff, Birmingham and Newcastle. The Greater London Authority also pays its employees the London living wage.

<sup>242</sup> EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, p. 30, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>243</sup> EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, p.31, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>244</sup> EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, p.30-33, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>245</sup> EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, p.36, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

<sup>246</sup> EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, p. 33, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

time, and there are no qualification requirements.<sup>247</sup> The Low Pay Commission has recognised the sector as one with a high proportion of minimum wage workers.<sup>248</sup>

146. The EHRC's research identified a practice of not paying for travel time between appointments, which in many cases meant care workers were being paid less than the national minimum wage.<sup>249</sup> Many local authorities identified the poor pay and conditions of home care workers as a key barrier to promoting human rights.<sup>250</sup> Increased financial constraints on local authorities have meant that homecare is sometimes commissioned at very low rates which impacts on workers' pay and conditions, as well as the quality of care that is delivered.<sup>251</sup>

### 5.3 Agency work in the meat and poultry processing sector

147. The EHRC's inquiry into the meat and poultry processing sector in 2010 revealed considerable use of agency workers and, depending on the company, between 10% and 50% of the workforce was made up of agency staff. Of these agency workers 70% were migrant workers. Almost without exception, workers in the meat and poultry processing sector would have preferred permanent work, if it had been available. Workers spoke about the insecurity of agency work and the impact this has on financial planning and family life. Agency workers also spoke of less favourable treatment in the workplace and lower pay rates, compared to permanent workers.<sup>252</sup>
148. The Agency Workers Regulations (AWR) came into force in October 2011 and entitle agency workers "to get the same basic pay and conditions as comparable employees after a 12-week qualifying period".<sup>253</sup> The EHRC

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<sup>247</sup> EHRC, Close to home: An inquiry into older people and human rights in home care, November 2011, pp. 73-74, available at: <http://www.equalityhumanrights.com/publication/close-home-inquiry-older-people-and-human-rights-home-care>

<sup>248</sup> Low Pay Commission, April 2011, National Minimum Wage, Low Pay Commission Report 2011, p.18.

<sup>249</sup> EHRC, Close to home: An inquiry into older people and human rights in home care, November 2011, p. 73, available at: <http://www.equalityhumanrights.com/publication/close-home-inquiry-older-people-and-human-rights-home-care>

<sup>250</sup> Ibid. pp .50 and 74.

<sup>251</sup> Ibid. pp.50 and 74.

<sup>252</sup> EHRC, 2012, Inquiry into recruitment and employment in the meat and poultry processing sector: report of the findings and recommendations, p.13, available at: [http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat\\_inquiry\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_inquiry_report.pdf)

<sup>253</sup> The Agency Workers Regulations 2010, available at: [http://www.legislation.gov.uk/ukxi/2010/93/pdfs/ukxi\\_20100093\\_en.pdf](http://www.legislation.gov.uk/ukxi/2010/93/pdfs/ukxi_20100093_en.pdf), and Acas, Understanding the Swedish Derogation, available at: <http://www.acas.org.uk/index.aspx?articleid=4162>

conducted a progress review of the meat and poultry processing sector in 2011. At that time, many agency workers were unaware of any changes in the legislation, had been given little information about it and had not felt the benefits. A study commissioned by Acas showed that numbers of agency workers actually increased after the implementation of the Regulations.<sup>254</sup>

### 5.3.1 Recommendations

149. To protect the rights of workers under Article 7 ICESCR, the EHRC recommends that the Governments of the UK, Wales and Scotland:
- set out the expectation that those cleaning firms that are capable seek accreditation with the Living Wage Foundation, and that clients who make use of the services of cleaning firms encourage firms to pay living wage rates by ensuring the contract value covers the cost of this<sup>255</sup>
  - consider whether to encourage the extension across the public sector of the good practice, established by some public bodies, of paying their directly employed staff the living wage, in line with the recommendation of the Living Wage Commission<sup>256</sup>
  - ensure that when public bodies commission services such as care or cleaning they:
    - fulfil their statutory responsibility under the Public Sector Equality Duty to pay due regard to eliminating discrimination and advancing equality when procuring goods and services
    - pay rates that reflect the living wage, and
    - execute contracts for purchasing goods and services with respect for human rights, as per the commitment made by the UK Government in its national action plan on business and human rights.<sup>257</sup>
  - consider how to implement the duty to protect individuals against acts of third parties which could have an adverse impact on the right to just and

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<sup>255</sup> CESCR, General discussion of the Draft General Comment on Article 7 of the ICESCR: Right to just and favourable conditions of work, January 2015, para 20, available at:

<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2015.aspx>

<sup>256</sup> Living Wage Commission, Work That Pays, June 2014, p.7, available at:

[http://livingwagecommission.org.uk/wp-content/uploads/2014/06/Work-that-pays\\_The-Final-Report-of-The-Living-Wage-Commission\\_w-3.pdf](http://livingwagecommission.org.uk/wp-content/uploads/2014/06/Work-that-pays_The-Final-Report-of-The-Living-Wage-Commission_w-3.pdf)

<sup>257</sup> HM Government, Good business: implementing the UN guiding principles on business and human rights, September 2013, p. 11, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)

- favourable working conditions by setting out a strategy for encouraging and monitoring private providers to ensure that workers receive the living wage
- provide clear guidance targeted at agency workers on the duties of their employers under the law, such as the Agency Workers Regulations 2010 and the EU Working Time Directive, and
  - review the Agency Workers Regulations to evaluate their effectiveness in protecting agency workers, particularly on pay parity.

## Section 6.

### Equal pay gaps - Articles 3, 6 and 7

150. In 2009, CESCR raised concerns about equal pay for work of equal value in relation to women and men, and in relation to people with disabilities.<sup>258</sup> The EHRC notes the progress the UK Government has made to address the pay gap between men and women, but considers that these efforts need to be revitalised.<sup>259</sup>
151. The full-time median gender pay gap stood at 9.4% in 2014; a decrease from 12.6% in 2008.<sup>260</sup> When part-time workers are also taken into account, the overall UK gender pay gap was 19.1% in 2014, although this figure also demonstrates a decrease in comparison to 2008.<sup>261</sup> There is a small pay gap between men and women in age groups below 40, however it widens sharply for those older than 40.<sup>262</sup> In this context, the EHRC welcomes the UK Government's renewed commitment to eliminating the gender pay gap in a generation.<sup>263</sup>
152. While the gender pay gap may in some cases be a result of pay discrimination, it is more likely to reflect wider social, economic and demographic factors which often shape the overall employment outcomes of women. The persistent gap suggests the UK has not yet succeeded in eliminating "the underlying causes of pay differentials, such as gender-biased

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<sup>258</sup> CESCR, Concluding observations on the UK, 2009, paras 18 and 20.

<sup>259</sup> EHRC, 2014, Mid-Term Universal Periodic Review Report, p 36, available at: [http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/UPR%20Mid-Term%20Report%20EHRCfinal210814\\_Web.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/UPR%20Mid-Term%20Report%20EHRCfinal210814_Web.pdf)

<sup>260</sup> These are provisional results for 2014 are based on median gross hourly earnings (excluding overtime) for all employees (full-time and part-time). ONS, 2014, Annual Survey of Hours and Earnings, 2014 Provisional Results, available at: [http://www.ons.gov.uk/ons/dcp171778\\_385428.pdf](http://www.ons.gov.uk/ons/dcp171778_385428.pdf)

<sup>261</sup> ONS, 2014, Annual Survey of Hours and Earnings, 2014 Provisional Results, p.10, available at: [http://www.ons.gov.uk/ons/dcp171778\\_385428.pdf](http://www.ons.gov.uk/ons/dcp171778_385428.pdf)

<sup>262</sup> With the exception of the 16-17 age group, Figure 9, available at: [http://www.ons.gov.uk/ons/dcp171778\\_385428.pdf](http://www.ons.gov.uk/ons/dcp171778_385428.pdf)

<sup>263</sup> Prime Minister's Office, Press release, My one nation Government will close the gender pay gap, 14 July 2015, available at: <https://www.gov.uk/government/news/prime-minister-my-one-nation-government-will-close-the-gender-pay-gap>

job evaluation or the perception that productivity differences between men and women exist.”<sup>264</sup>

153. Data suggest that one underlying cause of the gender pay gap is the impact of motherhood on women’s employment outcomes. This may arise as a result of:

- limited availability and high cost of suitable childcare<sup>265</sup>
- lower pay of many part-time jobs, which mothers often take during this period of their lives<sup>266</sup>
- unfair treatment and discrimination, which can occur when women announce their pregnancy, take maternity leave or return to employment<sup>267</sup>
- direct and indirect discrimination in pay policies and practices,<sup>268</sup> and
- continued lack of flexible working practices in more senior positions, which often inhibits many mothers from progressing in their careers.<sup>269</sup>

154. The EHRC has addressed the situation regarding childcare and flexible working arrangements in some detail in its submission on the CRC.<sup>270</sup> In particular it highlights:

- inadequate provision of childcare, with 43% of councils in England offering sufficient childcare<sup>271</sup>
- positive developments in early education – provision of 15 hours free education for an increasing number of two year olds, although with varied take-up of this entitlement<sup>272</sup>

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<sup>264</sup> CESCR, 2005, General comment No 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2005/4, para 24, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

<sup>265</sup> G Ellison et al., 2009, Work and care: a study of modern parents, Research Report 15, EHRC, pp. 14-15, available at:

[www.equalityhumanrights.com/sites/default/files/documents/research/15\\_work\\_and\\_care\\_modern\\_parents\\_15\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/15_work_and_care_modern_parents_15_report.pdf)

<sup>266</sup> Alakeson, V., The Resolution Foundation, 2012, The price of motherhood: women and part-time work, available at: <http://www.resolutionfoundation.org/publications/price-motherhood-women-part-time-work/>

<sup>267</sup> Joint work between the UK Government and the EHRC is now underway on this issue. See, for example: [www.gov.uk/government/news/1m-million-to-help-tackle-pregnancy-discrimination-in-the-workplace](http://www.gov.uk/government/news/1m-million-to-help-tackle-pregnancy-discrimination-in-the-workplace)

<sup>268</sup> Metcalf, H., 2009, Pay gaps across the equality strands: a review, Research Report 14, EHRC, p.26, available at:

[http://www.equalityhumanrights.com/sites/default/files/documents/research/14\\_pay\\_gaps\\_across\\_equalities\\_review.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/research/14_pay_gaps_across_equalities_review.pdf)

<sup>269</sup> Alakeson, V., The Resolution Foundation, 2012, The price of motherhood: women and part-time work, p 7, available at: <http://www.resolutionfoundation.org/publications/price-motherhood-women-part-time-work/>

<sup>270</sup> EHRC, Children’s Rights in the UK, August 2015, pp.36-39

<sup>271</sup> Rutter, J., Family and Childcare Trust, Childcare costs survey 2015, p. 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

- the recent UK Government commitment to increasing the provision of free childcare for three to four year olds from 15 to 30 hours per week<sup>273</sup>
- evidence that childcare is not affordable to many and costs continue to increase,<sup>274</sup> and
- the introduction of the Shared Parental Leave Regulations 2014.<sup>275</sup>

155. The Equality Act 2010 (Equal Pay Audit Regulations) took effect in October 2014. These Regulations require employment tribunals to order a respondent to carry out an equal pay audit in cases where there has been an equal pay breach.<sup>276</sup> The EHRC welcomes this change but notes that equal pay audits should not only be viewed as a penalty but also as a regular ‘business tool’.

156. The EHRC has supported the UK Government’s “Think, Act, Report” initiative to encourage companies to improve gender equality on a voluntary basis.<sup>277</sup> However, only 280 employers<sup>278</sup> are involved in this initiative, compared to 6,700 companies with over 250 employers in the UK.<sup>279</sup> Of those 280 employers, only five have published their gender pay gaps.<sup>280</sup> The need for

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<sup>272</sup> Department for Education, Equality Impact Assessment, April 2012, available at: <https://www.education.gov.uk/consultations/downloadableDocs/Equalities%20impact%20assessment%20two%20year%20old%20entitlement.pdf>

<sup>273</sup> Prime Minister’s Office, The Queen’s Speech 2015: Background briefing notes, p. 25, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/430149/QS\\_lobby\\_pack\\_FINAL\\_NEW\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf)

<sup>274</sup> Department for Education, Childcare and early years survey of parents: 2012 to 2013, available at <https://www.gov.uk/government/statistics/childcare-and-early-years-survey-of-parents-2012-to-2013>; Family and Childcare Trust, Childcare costs survey 2015, pp. 1 and 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

<sup>275</sup> Shared Parental Leave Regulations 2014, available at <http://www.legislation.gov.uk/ukdsi/2014/9780111118856> Parental leave is also governed by the Statutory Shared Parental Pay (General) Regulations 2014, available at: <http://www.legislation.gov.uk/uksi/2014/3051/contents/made>

<sup>276</sup> Equality Act 2010, s139A; The Equality Act 2010 (Equal Pay Audit) Regulations 2014. Employment tribunals must order the audit subject to exceptions in Regulations 3 and 4, available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>277</sup> Government Equalities Office, Think, Act, Report, available at: [www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/think-act-report](http://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/think-act-report)

<sup>278</sup> Swinson, J., House of Commons, Oral Answers to Questions, 26 February 2015, available at: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150226/debtext/150226-0001.htm#15022646000031>

<sup>279</sup> Department for Business Innovation and Skills, 2014, Business Population Estimates for the UK and Regions 2014, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/377934/bpe\\_2014\\_statistical\\_release.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf)

<sup>280</sup> House of Commons Hansard Debates, 16 December 2014, available at: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141216/debtext/141216-0002.htm#14121647000005>

greater transparency was highlighted in the EHRC's financial services inquiry follow-up report.<sup>281</sup>

157. Since this suggests that a voluntary approach, on its own, will not deliver the transparency needed to achieve a change in companies' behaviour, we welcome the UK Government's decision to make gender pay gap reporting mandatory for companies employing 250 people or more.<sup>282</sup> The Equality Act 2010 contains a clause, Section 78, which provides that regulations can be made to require mandatory gender pay gap reporting, however this power has not yet been used. The Small Business, Enterprise and Employment Act 2015 requires the Secretary of State to make regulations following appropriate consultation under Section 78 by March 2016.<sup>283</sup> The UK Government is currently consulting on the implementation of Section 78 and the EHRC will be responding, including on appropriate enforcement arrangements to promote compliance with the new requirement to publish information about differences in pay between women and men.
158. The EHRC is concerned that other changes, such as the introduction of fees for discriminatory pay claims and the repeal of Section 138 of the Equality Act 2010<sup>284</sup> may have adverse effects on people challenging discriminatory pay (also see section 10.20 Access to Civil Justice below).<sup>285</sup>
159. The EHRC also considers that the pay gaps for individuals who share other protected characteristics require more attention.<sup>286</sup> The EHRC has conducted research that demonstrates that discrimination is still a factor in relation to pay gaps by age, ethnicity, religion or belief, and disability.<sup>287</sup> However, as with the

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<sup>281</sup> EHRC, Financial Services Enquiry: follow up report, available at:

<http://www.equalityhumanrights.com/publication/financial-services-inquiry-follow-report>

<sup>282</sup> EHRC, Press release, 11 March 2015, Commission welcomes moves to make gender pay gap reporting law, available at: <http://www.equalityhumanrights.com/commission-welcomes-moves-make-gender-pay-gap-reporting-law>

<sup>283</sup> This is in accordance with s147 of the Small Business, Enterprise and Employment Act 2015 (SBEEA) which requires the Secretary of State to make the regulations within 12 months of the passage of the SBEEA (in March 2015) available at: <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

<sup>284</sup> s138 was a question and answer procedure which allowed employees to ask an employer for relevant information when the employee believed they had been discriminated against. A court or tribunal could take into account a failure to respond or an inadequate response to it in assessing whether an employer had discriminated unlawfully. This provision was helpful in resolving disputes between parties.

<sup>285</sup> In order to inform the Commission's future action and reporting, it has commissioned a literature review and stakeholder roundtables to fill an evidence gap on the potential and actual equality and human rights impacts of the recent changes that may have affected access to civil law justice.

<sup>286</sup> The protected groups under the Equality Act 2010: race, age, disability, sex, gender reassignment, religion or belief and sexual orientation, marriage and civil partnership, and pregnancy and maternity.

<sup>287</sup> For example, see Coleman, N. et al., 2013, Barriers to Employment and Unfair Treatment at Work: A Quantitative Analysis of Disabled People's Experiences, Research Report No. 88, EHRC, available at: [www.equalityhumanrights.com/uploaded\\_files/barriers\\_and\\_unfair\\_treatment\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/barriers_and_unfair_treatment_final.pdf)

gender pay gap, these other pay gaps are caused by a range of economic and social factors and a variety of approaches are necessary to tackle them effectively. The EHRC discusses these factors in more detail in its Universal Periodic Review Mid Term Report.<sup>288</sup>

160. Data collected through the ONS Labour Force Survey demonstrates that there has been no reduction in the pay gap between people with and without disabilities in the five years since 2008. In 2013, the pay gap remained at 9%.<sup>289</sup> Research suggests that the main reasons for the disability pay gap are that:

- on average, people with disabilities have fewer qualifications than people without disabilities<sup>290</sup>
- their impairment may limit the kind and type of paid work that they do,<sup>291</sup> and
- people with disabilities face particular barriers including:
  - a failure of employers to make reasonable adjustments
  - difficulties with transport and access to workplaces
  - attitudes of employers and colleagues, and
- unfair treatment, bullying and harassment at work and discrimination in job applications.<sup>292</sup>

161. Between 2008 and 2013, the pay gap on the basis of ethnicity remained the same with the White ethnic group being paid around 5% more on average in 2013.<sup>293</sup> Within this analysis there are concerns that particular ethnic groups are more impacted than others. For example, in 2013 the pay gap between Pakistani and Bangladeshi ethnic group and the White ethnic group was 21.2%, and this had not changed significantly from 2008.<sup>294</sup>

162. The causes of the pay gaps by ethnicity are complex and often reflect the timing and reason for migration of different ethnic groups, and the impact of living in particular geographic areas. Pay gaps may also reflect different

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<sup>288</sup> EHRC, 2014, Universal Periodic Review Annex, available at: <http://www.equalityhumanrights.com/publication/universal-periodic-review-mid-term-report-0> .

<sup>289</sup> ONS, Quarterly Labour Force Survey, 2008 - 2013, available at: <http://www.ons.gov.uk/ons/index.html>

<sup>290</sup> See Platt, L., 2011, Understanding Inequalities: Stratification and Difference, pp. 167-71, for a discussion of the causes of the disability pay gap.

<sup>291</sup> See Platt, L., 2011, Understanding Inequalities: Stratification and Difference, pp. 167-71, for a discussion of the causes of the disability pay gap.

<sup>292</sup> Coleman, N. et al., 2013, Barriers to Employment and Unfair Treatment at Work: A Quantitative Analysis of Disabled People's Experiences, Research Report No. 88, EHRC, available at: [www.equalityhumanrights.com/uploaded\\_files/barriers\\_and\\_unfair\\_treatment\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/barriers_and_unfair_treatment_final.pdf)

<sup>293</sup> ONS, Quarterly Labour Force Survey, 2008 - 2013, available at: <http://www.ons.gov.uk/ons/index.html>

<sup>294</sup> ONS, Quarterly Labour Force Survey, 2008 - 2013, available at: <http://www.ons.gov.uk/ons/index.html>

labour market experiences, which can be influenced by the qualifications and language skills of groups.<sup>295</sup> But there is also evidence of ongoing discrimination and unfair treatment.<sup>296</sup>

163. Unlike gender, there are no regular analyses by the UK Government on the pay gaps faced by those with other protected characteristics. This reduces public awareness of these pay gaps, and makes it difficult to monitor any changes over time and to create impetus for change. It also prevents the UK Government from fully understanding the nature of pay gaps and tackling their root causes.
164. Existing data sources can be used to provide an assessment of pay gaps for individuals with some protected characteristics (i.e. age<sup>297</sup> and ethnicity<sup>298</sup>), but current large scale surveys that include earning data still do not provide reliable means of understanding pay gaps for lesbian, gay, bisexual or transgender people and for people with different disabilities, as data is not disaggregated in these ways. In addition to this, the Labour Force Statistics rely on self-reporting with regards to hours worked so could lead to inaccuracies in calculation of pay gaps.
165. In Wales, there is already a requirement for public authorities to publish an equality objective to address any gender pay gap, or else publish the reasons why it has not done so.<sup>299</sup> The Welsh Government produces an Annual Equality Report that provides details of pay differences by gender, ethnicity and disability. The 2014 report noted that Welsh local authorities have made good progress in reducing the gender pay gap but recognised there was more work to be done, particularly by addressing external factors, such as those relating to childcare.<sup>300</sup>
166. In 2008, the disability pay gap was not significant in Wales; people without disabilities were paid 3.5% more than people with disabilities. In 2013, there

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<sup>295</sup> See Platt, L., 2011, *Understanding Inequalities: Stratification and Difference*, pp. 81-92.

<sup>296</sup> Wood, M. et al., 2009, *A test for racial discrimination in recruitment practice in British cities*, Department for Work and Pensions, Research Report No. 607, available at: <http://www.natcen.ac.uk/media/20541/test-for-racial-discrimination.pdf> The relevant results from the 2014 British Social Attitudes Survey can be downloaded from: [www.bsa-31.natcen.ac.uk/](http://www.bsa-31.natcen.ac.uk/)

<sup>297</sup> From the Annual Survey of Hours and Earnings, 2014 Provisional Results, available at: [http://www.ons.gov.uk/ons/dcp171778\\_385428.pdf](http://www.ons.gov.uk/ons/dcp171778_385428.pdf)

<sup>298</sup> From the Labour Force Survey, available at: <http://www.ons.gov.uk/ons/about-ons/get-involved/taking-part-in-a-survey/information-for-households/a-to-z-of-household-and-individual-surveys/labour-force-survey/index.html>

<sup>299</sup> Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, s11, available at: <http://www.legislation.gov.uk/wsi/2011/1064/contents/made>

<sup>300</sup> Welsh Government, 2014, *Welsh Ministers Report on Equality 2014*, available at: <http://gov.wales/docs/dsjlg/publications/equality/141218-ministers-report-equality-2014-en-v1.pdf>

remains no identifiable disability pay gap in Wales.<sup>301</sup> Between 2008 and 2013, pay declined for both men and women across Wales (and England and Scotland) which has resulted in a reduced pay gap. In Wales, the gender pay gap has reduced from 20.3% in 2008 to 16.5% in 2013.<sup>302</sup>

167. The Welsh Government's Strategic Equality Plan and Objectives 2012-2016 includes an objective to work with partners to identify and address the causes of the gender, ethnicity and disability pay and employment differences, which includes a number of specific actions towards that goal.<sup>303</sup> In Wales, the EHRC has also monitored the operation of the PSED in universities and found that every university has complied with the requirement to have an equality objective relating to gender pay differences.<sup>304</sup>

## 6.1 Recommendations

168. In order to guarantee access to just and favourable conditions of work on a non-discriminatory basis, as required by Article 7 ICESCR, and recommended by CESCR, the EHRC recommends that the UK and Welsh Governments take steps to:

- tackle the persistent gender pay gap, including by:
  - facilitating access to all jobs on a more flexible basis to allow all parents to share childcare on an equitable basis without compromising their future careers
  - monitoring and enforcing the new regulation requiring businesses to publish information on their gender pay gap, and
  - addressing problems in terms of the availability and affordability of childcare, including by:
    - collecting data (disaggregated by protected characteristic) about those children taking up free early education or childcare in England and feeding back on findings to schools
    - introducing a truly flexible parental leave scheme, and

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<sup>301</sup> ONS, Quarterly Labour Force Survey, 2008 - 2013, available at: <http://www.ons.gov.uk/ons/index.html>

<sup>302</sup> ONS, Annual Survey of Hours and Earnings, 2008 – 2013, available at <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/index.html>

<sup>303</sup> Welsh Government, 2012, Strategic Equality Plan and Objectives 2012-2016, available at: <http://gov.wales/docs/ds/jlg/publications/equality/120405sepfinal-en.pdf>

<sup>304</sup> EHRC, 2013, Progress report on gender pay difference duty in Universities, p.1, available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/psed\\_progress\\_universities.pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/psed_progress_universities.pdf)

- ensuring more equal access to parental leave, as set out in the EHRC's submission to the CRC<sup>305</sup>.
- improve data collection to understand the prevalence and causes of pay gaps in relation to disability and race
- review existing UK and Welsh Government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, for all the relevant protected characteristics in the Equality Act 2010, and
- review the impact of the recent introduction of fees for Employment Tribunals and of the repeal of Section 138 of the Equality Act 2010, to ensure that these changes do not bring about adverse impacts or obstruct access to civil justice.

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<sup>305</sup> EHRC, Children's Rights in the UK, August 2015, pp.91-92

## Section 7.

# Right to education– Articles 13 and 14

169. In 2009, CESCR recommended the UK Government “adopt all appropriate measures to reduce the achievement gap in terms of school performance between British pupils and pupils belonging to ethnic, religious or national minorities”.<sup>306</sup>
170. The Scottish education system was entirely separate from the rest of the UK prior to the establishment of the Scottish Parliament in 1999, and education (primary, secondary, further and higher) is a devolved matter under the Scotland Act 1998. Education at all levels has been devolved to the National Assembly for Wales since it was established by the Government of Wales Act 1998.

### 7.1 Recommendations

171. In its submission to the UN CRC, the EHRC made a number of recommendations that are also relevant to CESCR’s consideration of the UK’s compliance with Article 13 and 14 ICESCR, including:
- improved collection of data on the take-up of initiatives to improve access to education and attainment<sup>307</sup>
  - collaboration between schools and local authorities in England to collect, analyse and act upon data on in year admissions and placement delays, disaggregated by protected characteristic and by those on free school meals<sup>308</sup>
  - an evaluation and review of the Special Educational Needs and Disability Code of Practice, including its implementation in the youth justice system<sup>309</sup>

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<sup>306</sup> CESCR, Concluding Observations for the United Kingdom, June 2009, para 36, E/C.12/GBR/CO/5, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en)

<sup>307</sup> EHRC, Children’s Rights in the UK, August 2015, p.49

<sup>308</sup> EHRC, Children’s Rights in the UK, August 2015, pp.47-48

<sup>309</sup> EHRC, Children’s Rights in the UK, August 2015, p.54

- adoption of a national Roma integration strategy focussed on access to education, employment, healthcare and housing<sup>310</sup>
- the disciplinary measure of permanent or temporary exclusion should only be used as a means of “last resort” and this should be made explicit in any guidance issued<sup>311</sup>
- the right to be heard before exclusion and to appeal against both temporary and permanent exclusions for under-16 year olds<sup>312</sup>
- schools in England should be required to collect data on identity-based bullying across all the protected characteristics, to monitor progress and report to the local authority,<sup>313</sup> and
- Personal, Social and Health Education should be included as a statutory subject, part of the National Curriculum in England and Wales.<sup>314</sup>

This submission will focus on access to education for adults.

## 7.2 Access to further and higher education

172. Article 13(2) ICESCR requires the UK Government to make higher education “equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.” The Equality Act 2010 prohibits a provider of further education and of higher education from discriminating against a person based on protected characteristic in admissions, provision of education, access to benefits and facilities and any other detriment.
173. In 2013, 28.1% of 24-64 year olds had a degree level qualification, an increase of 6.7% compared to 2008. Between 2008 and 2013, the proportion of women with degree level qualifications has increased by 8%, whereas for men it has increased by 5.4%, narrowing the gender gap to 27.7% of men compared with 28.4% of women.
174. In 2002, CESCR noted “with concern” the introduction of tuition fees and loans, stating that this was inconsistent with Article 13(2) and would negatively impact on those already underrepresented in higher education, and in 2009,

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<sup>310</sup> EHRC, Children’s Rights in the UK, August 2015, pp.57-58, and 94-95

<sup>311</sup> EHRC, Children’s Rights in the UK, August 2015, p.59

<sup>312</sup> EHRC, Children’s Rights in the UK, August 2015, p.61

<sup>313</sup> EHRC, Children’s Rights in the UK, August 2015, p.62-64

<sup>314</sup> EHRC, Children’s Rights in the UK, August 2015, p.64-65

CESCR urged the UK to review its policy on tuition fees.<sup>315</sup> Since then, in England, the UK Government has:

- extended the tuition fee cap to part-time students and increased the interest rate on student loans under the Education Act 2011<sup>316</sup>
- allowed Higher Education Institutes (HEIs) to charge tuition fees of £6,000-9,000, with most HEIs opting for the higher fee so that in 2015/16 the average tuition fee is around £8,000,<sup>317</sup> and
- reformed postgraduate funding to introduce income-contingent loans for Masters and PhD students.<sup>318</sup>

175. The UK Government regulations implementing a rise in tuition fees in England were challenged in the Divisional Court in 2012.<sup>319</sup> The claimants argued that the fee increase constituted a limitation on access to education as protected by the ECHR and that the new funding arrangements were indirectly discriminatory against those from lower socio-economic backgrounds. They reinforced that argument relying on Article 13(2)(c) of the ICESCR regarding the progressive introduction of free education. They also argued the regulations were introduced in breach of the PSED. The Court dismissed all the grounds of complaint. It found that the rise in tuition fees constituted a restriction of the right to education, but that it was a proportionate means of achieving a legitimate aim. The legitimate aim was found to be the avoidance of excessive public expenditure, and the duty of progressive realisation was limited by according to the "maximum available resources" of the State.<sup>320</sup>

176. Access Agreements, to recruit and support students from poorer backgrounds, for example through "means tested bursaries, scholarships and outreach work", are a statutory requirement for HEIs that charge more than £6,000 and must be approved by the Office for Fair Access (OFFA).<sup>321</sup>

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<sup>315</sup> CESCR, Concluding Observations for the United Kingdom, June 2009, para 44, E/C.12/GBR/CO/5, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en)

<sup>316</sup> Education Act 2011, available at: <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>

<sup>317</sup> House of Commons Library, Tuition Fee Statistics, December 2014, available at: <http://www.parliament.uk/business/publications/research/briefing-papers/SN00917/tuition-fee-statistics>

<sup>318</sup> HM Treasury, Autumn Statement 2014, p.43, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/382327/44695\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382327/44695_Accessible.pdf)

<sup>319</sup> *R (on the application of Hurley and Moore) v Secretary of State for Business Innovation and Skills* [2012], available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/201.html>

<sup>320</sup> *R (on the application of Hurley and Moore) v Secretary of State for Business Innovation and Skills* [2012], para 65, available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/201.html>

<sup>321</sup> Office for Fair Access, Access Agreements, available at: <http://www.offa.org.uk/universities-and-colleges/introducing-access-agreements/>

Despite this provision, the SMCPD is concerned about the lack of progress on fair access, particularly among more selective universities.<sup>322</sup>

177. In April 2014, the UK Government announced that from 2015/16 it would be reducing the provision of support offered to English students with disabilities under the Disabled Students' Allowance (DSA), which provides up to £10,362 per year to students on a "designated course."<sup>323</sup> The UK Government stated that "the additional costs of specialist accommodation will no longer be met by DSAs, other than in exceptional circumstances". Instead, it placed the onus on higher education institutions to assess whether "strategies can be put in place to reduce the need for support workers and encourage greater independence and autonomy for their students." This means that HEIs will have to bear the costs of making reasonable adjustments for students with disabilities. The UK Government's equality analysis identified the impact of proposed changes on students with disabilities and found that "recipients from low income households could be more affected by the overall changes to the package of DSAs support."<sup>324</sup>
178. In September 2014, the Minister for Universities, Science and Cities announced that the changes would be delayed until 2016/17 to give more time to universities "to develop appropriate mechanisms to fully deliver their statutory duty to provide reasonable adjustments".<sup>325</sup> In February 2015, permission was granted for a judicial review of the proposals, on the basis that the consultation of people with disabilities was inadequate.<sup>326</sup> In July 2015, the UK Government launched a consultation on the proposal.
179. Responsibility for higher education is devolved to the Welsh Government. Students domiciled in Wales can be charged a maximum of £9,000 in tuition fees. A loan of £3,685 is available from the Welsh Government for Welsh students studying anywhere in the UK. They can also apply through Student

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<sup>322</sup> Social Mobility and Child Poverty Commission, Policy paper, Higher Education: the Fair Access Challenge, June 2013, available at: <https://www.gov.uk/government/publications/higher-education-the-fair-access-challenge>

<sup>323</sup> Department for Business, Innovation and Skills, Written Statement to Parliament, Higher education: student support - changes to Disabled Students' Allowances (DSA), 12 September 2014, available at: <https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa--2>

<sup>324</sup> Department for Business, Innovation and Skills, Disabled Students' Allowances: Equality Analysis, December 2014, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/392610/bis-14-1108-higher-education-disabled-students-allowances-equality-analysis-revised-16-12-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/392610/bis-14-1108-higher-education-disabled-students-allowances-equality-analysis-revised-16-12-2014.pdf)

<sup>325</sup> House of Commons Library, Changes to the Disabled Students' Allowance, Standard note SN/SP/6913, October 2014, available at: <http://researchbriefings.files.parliament.uk/documents/SN06913/SN06913.pdf>

<sup>326</sup> Irwin Mitchell Solicitors, Green Light For Judicial Review Into Cuts To Disabled Student Support, Press Statement, 27 February 2015, available at: <http://www.irwinmitchell.com/newsandmedia/2015/february/green-light-for-judicial-review-into-cuts-to-disabled-student-support>

Finance Wales for a non-repayable grant up to £5,315 to cover the difference.<sup>327</sup> The Welsh Government has prioritised widening access to higher education and the Higher Education Funding Council for Wales has highlighted key challenges, including the impact of changes to DSAs for students from England on access to appropriate provision.<sup>328</sup>

### 7.3 Recommendations

180. In order to guarantee the right to higher education to students with disabilities on a non-discriminatory basis, in line with Article 13(c) ICESCR, the UK Government should ensure that:
- any changes to the Disabled Students' Allowance (DSA) do not have a detrimental impact on the access, participation and attainment at universities of students with disabilities
  - it reviews the equality analysis it conducted in December 2014 and publishes an updated version, and
  - if changes to the DSA system are made, the impact of these changes is monitored, results are published and appropriate action is taken if negative impacts are identified.

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<sup>327</sup> House of Commons Library, Tuition Fee Statistics, December 2014, available at:

<http://www.parliament.uk/business/publications/research/briefing-papers/SN00917/tuition-fee-statistics>

<sup>328</sup> HEFCW, Higher Education for the Nation 2014, p.8, available at:

[http://www.hefcw.ac.uk/documents/publications/corporate\\_documents/Higher%20Education%20for%20the%20Nation%20-%20English.pdf](http://www.hefcw.ac.uk/documents/publications/corporate_documents/Higher%20Education%20for%20the%20Nation%20-%20English.pdf)

## Section 8.

# Access to civil law justice

181. Access to justice is an essential prerequisite for the protection and promotion of all human rights including ESCR.<sup>329</sup> Providing a system of legal aid is a significant part of how Britain ensures access to civil law justice and meets its obligations to ensure equality before the courts and tribunals for all persons. As part of measures to reduce the deficit, the UK Government has introduced a number of changes, including to the availability of legal aid, which have impacted on how individuals access civil law justice in England and Wales.
182. The EHRC welcomes the UK Government statement that it will undertake:
- a survey of organisations in the Not-for-Profit advice sector to enhance understanding of the current landscape of advice provision and future sustainability
  - a large-scale telephone survey of around 10,000 adults to measure the prevalence of civil law problems and the strategies people use to resolve their problems, and
  - in-depth qualitative interviews with around 120 people who have experienced civil, administrative and family justice problems.<sup>330</sup>
183. However, the EHRC notes the number of cases for both initial advice and assistance (Legal Help) and representation in court (Civil Representation) dropped significantly in the year following the introduction of the legal aid reforms under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. Legal Help cases fell from 782,000 in 2012/13 to 381,000 in 2013/14, and Civil Representation cases fell from 144,000 to 116,000.<sup>331</sup>

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<sup>329</sup> See, for example, Magdalena Sepulveda Carmona, Report by the Special Rapporteur on extreme poverty and human rights, Report to the Human Rights Council, 67<sup>th</sup> session, UN Doc A/67/278, 2012, para 9, available at: <http://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf>

<sup>330</sup> Supplementary written evidence from the Ministry of Justice, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/reducing-the-cost-of-civil-legal-aid/written/17616.html>

<sup>331</sup> Legal Aid Statistics in England and Wales: Legal Aid Agency 2013-2014, Figure 1, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366575/legal-aid-statistics-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf)

The EHRC considers the UK Government needs to do more to review the impact of these reforms, in particular:

- on children, which the EHRC has described in its submission on the CRC<sup>332</sup>
- on women, including victims of domestic violence, which the EHRC will be describing in an interim report to the Committee on the Elimination of Discrimination Against Women<sup>333</sup>
- on ethnic minorities, who will be disproportionately impacted by the removal of legal aid for most non-asylum immigration cases,<sup>334</sup> and
- on people with disabilities, which the UK's Independent Mechanism on the Convention on the Rights of Persons with Disabilities described in its interim report.<sup>335</sup>

184. In its recent review of the UK, the UN Human Rights Committee expressed concern “about the impact of reforms to the legal aid system on access to justice, [including] the shortcomings in the exceptional funding scheme introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, [and] plans to introduce a residence test for civil legal aid.”

## 8.1 The impact of reforms introduced by the LASPO Act 2012

### 8.1.1 Restricting the scope of legal aid

185. In April 2013, the LASPO Act 2012 narrowed the scope of civil legal aid in England and Wales in areas of law related to ESCR. The changes limit legal aid in **private family law** to cases where the client can provide evidence of domestic violence within the previous two years. The EHRC welcomes recent amendments to the Civil Legal Aid (Procedure) Regulations 2012<sup>336</sup> which

<sup>332</sup> EHRC, Children's Rights in the UK, August 2015, pp.12-15

<sup>333</sup> CEDAW, Concluding Observations for the United Kingdom, July 2013, CEDAW/C/GBR/CO/7, paras 22-23, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en)

<sup>334</sup> The UK Government estimated that 92% of clients who would be affected by these changes are likely to be ethnic minority groups. See Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, 21 June 2011, para 2,p.101, available at:

<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>

<sup>335</sup> EHRC, Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities, List of Issues Interim Report, December 2014, pp.16-17, available at:

<http://www.equalityhumanrights.com/publication/monitoring-implementation-un-convention-rights-persons-disabilities>

<sup>336</sup> Regulation 33 was amended by The Civil Legal Aid (Procedure) (Amendment) Regulations 2014, available at: [http://www.legislation.gov.uk/uksi/2015/898/pdfs/uksi\\_20150898\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/898/pdfs/uksi_20150898_en.pdf)

extend the types of evidence of domestic violence that will be accepted to include to the following, among others: domestic violence protection notices; medical evidence from practitioner psychologists; and evidence of a referral to a domestic violence support service.<sup>337</sup> It also welcomes the UK Government's commitment to keeping the evidence requirements under review.<sup>338</sup> The EHRC notes evidence that, six months after the range of acceptable means of proof had been expanded, 38% of women reported they did not have the prescribed forms of evidence to access family law legal aid.<sup>339</sup> This may force victims to represent themselves at a family court hearing in which the other party had previously perpetrated violence against them, or deter them from taking any legal action.<sup>340</sup>

186. Most **housing** cases have been excluded from civil legal aid. There are some limited exceptions, including cases involving housing disrepair where there is a risk of serious harm, or the risk of homelessness. This could have a disproportionate impact on women, ethnic minority groups and people with disabilities given the overrepresentation of these groups in social housing compared with the adult population as a whole.<sup>341</sup> Removing most housing disrepair cases from the scope of legal aid is likely to have an impact on tenants' ability to progress their rights to an adequate standard of living and continuous improvement of living conditions in Article 11 ICESCR.
187. **Non-asylum immigration** cases have been excluded from civil legal aid, other than in relation to detention and trafficking. The UK Government estimated that 92% of clients who would be affected by removing legal aid for most non-asylum immigration cases are likely to be ethnic minority groups but

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<sup>337</sup> House of Commons Justice Committee, Impact of changes to civil legal aid under Part 1 of the LASPO Act 2012, Eight Report of Session 2014-15, 2015, para 64, available at:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

<sup>338</sup> House of Commons Justice Committee, Impact of changes to civil legal aid under Part 1 of the LASPO Act 2012, Eight Report of Session 2014-15, 2015, para 67, available at:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

<sup>339</sup> See Welsh Women's Aid, Rights of Women, Women's Aid, Evidencing domestic violence: reviewing the amended regulations, 2014, available at: <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>. This report was based on an online survey completed by 182 respondents.

<sup>340</sup> See Welsh Women's Aid, Rights of Women, Women's Aid, Evidencing domestic violence: reviewing the amended regulations, 2014, available at: <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>. This report was based on an online survey completed by 182 respondents.

<sup>341</sup> For example, the UK Government's Equality Impact Assessment notes that housing clients are more likely to be women than the adult population as a whole (61% compared with 51% of the population), ethnic minorities are 32% compared to 11% of the population, and those who are ill or who have disabilities make up 29% of the housing population compared to 19% of the total population. See Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, 21 June 2011, paras 2.81-2.82, available at:

<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>

argued that, in general, individuals should be capable of dealing with their own immigration application and should not require a lawyer.<sup>342</sup> Alternate analysis has identified concerns about equality of arms in immigration cases arising from the disparity between the individual's resources and those of the State.<sup>343</sup> The Low Commission also received evidence about particular impacts on ethnic minorities as a result of the loss of immigration advice from legal aid.<sup>344</sup> The EHRC's analysis suggests the non-availability of legal aid for refugee family reunion cases, apart from the rare instances where exceptional funding is granted (see section 8.1.3 below), may raise issues under Article 10(1) ICESCR.

188. Most cases concerning **social security** benefits now fall outside the scope of legal aid. Although an exception may be made for appeals to the Upper Tribunal on a point of law, only 145 cases were funded by legal aid in 2013/14, compared to over 88,000 welfare benefits cases the previous year (i.e. before the LASPO Act 2012 reforms took effect).<sup>345</sup> The impact of these changes is likely to be particularly serious for people with disabilities, who made up 58% of the recipients of legally-aided advice for social security benefits in 2009/10.<sup>346</sup> Recent tribunal statistics show a marked reduction in social security appeals since the introduction of the LASPO reforms.<sup>347</sup> Between January and March 2013, the Social Security and Child Support Tribunal received around 155,600 appeals.<sup>348</sup> Over the same period in 2014, the number of appeals dropped to around 32,500. This may be partly

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<sup>342</sup> Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, 21 June 2011, paras 2.101 and 2.109, available at: <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>

<sup>343</sup> Meyler, F. and Woodhouse, S., 2013, 'Changing the immigration rules and withdrawing the 'currency' of legal aid: the impact of LASPO 2012 on migrants and their families', *Journal of Social Welfare and Family Law*, Vol 35 (1), London: Routledge.

<sup>344</sup> The Low Commission, Tackling the advice deficit: a strategy for access to advice and legal support on social welfare law in England and Wales, para 1.28, available at: <http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>

<sup>345</sup> Ministry of Justice, Legal Aid Statistics April 2013 to March 2014, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-april-2013-to-march-2014>

<sup>346</sup> Legal Services Commission, 2011, Memorandum Submitted to the Public Bill Committee LA 46 – Social Welfare Law Client Demographics 2009-2010, available at: <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la46.htm>

<sup>347</sup> Low Commission, 2014, Getting it right in social welfare law, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>348</sup> Ministry of Justice, Tribunals Statistics Quarterly: January to March 2013, available at <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-and-annual-jan-mar-2013-2012-13>

explained by the introduction, from October 2013, of a “mandatory reconsideration” stage before an appeal can be lodged.<sup>349</sup>

189. In addition to this, most **employment** cases have been removed from the scope of legal aid, except those involving discrimination, as have most **education** cases, other than those involving discrimination or special educational needs.

### 8.1.2 Mandatory telephone gateway

190. The UK Government has introduced a mandatory telephone advice gateway as the only route to legal aid for cases involving discrimination, debt and special educational needs. While the UK Government has given assurances that reasonable adjustments will be made for people with disabilities and those with urgent cases,<sup>350</sup> the EHRC’s analysis suggests the telephone gateway may not be sufficiently accessible.<sup>351</sup>
191. In December 2014, research into the accessibility and effectiveness of the mandatory telephone advice gateway commissioned by the Ministry of Justice (MOJ) found that awareness of the services and what they could provide was low, and some evidence of some refusals of requests for reasonable adjustments to facilitate contact (such as support for hearing impairments).<sup>352</sup> Shortly afterwards, independent research was published by the Public Law Project,<sup>353</sup> a civil society organisation which found that a significantly lower volume of cases received advice via the gateway than anticipated and some evidence of the service not accurately identifying people who should be diverted to face-to-face advice because of communication difficulties, mental health or mental capacity issues, or the complexity of their case.

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<sup>349</sup> Ministry of Justice, Tribunals Statistics Quarterly: January to March 2014, available at:

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2014>

<sup>350</sup> Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, 21 June 2011, paras 6.30, 6.57 and 6.86, available at:

<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>

<sup>351</sup> EHRC, Human Rights Review, 2012, p. 255, available at:

[http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/ehrc\\_hrr\\_full\\_v1.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/ehrc_hrr_full_v1.pdf)

<sup>352</sup> Civil Legal Advice mandatory gateway: research findings, 9 December 2014, available at:

<https://www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-research-findings>. The mandatory gateway has been introduced, initially, for advice on debt, discrimination and special educational needs.

<sup>353</sup> Public Law Project, 2015, Keys to the gateway – an independent review of the mandatory Civil Legal Advice Gateway, available at: <http://www.publiclawproject.org.uk/resources/199/an-independent-review-of-the-mandatory-civil-legal-advice-gateway>

192. The EHRC considers these findings suggest an adverse impact on the rights of people with disabilities and on those with limited English language skills. They also indicate barriers to legal advice for parents of children with special educational needs raising concerns about realisation of the right to education under Article 13 ICESCR.

### 8.1.3 Exceptional cases funding scheme (ECF)

193. ECF was designed to allow funding for areas of law normally excluded from legal aid, where a failure to provide funding would result in a breach of the individual's human rights under the ECHR or rights under European law. However, evidence suggests the scheme is not functioning as intended, because of its demanding application process and the strict interpretation of its eligibility criteria.<sup>354</sup> In 2013/14, 1,520 applications were made for exceptional funding; only 69 of these were granted, of which 53 were for inquest cases.<sup>355</sup>
194. The Lord Chancellor provides Guidance for the Legal Aid Agency to make decisions under the ECF scheme. The Court of Appeal of England and Wales has ruled this Guidance unlawful in relation to immigration cases, where it wrongly suggests Article 8 ECHR (the right to respect for private and family life) could not lead to a requirement to grant legal aid for immigration cases. Whether legal aid is required will depend on the particular facts and circumstances of each case.<sup>356</sup>
195. The High Court has held that, as currently operated, the ECF scheme is not providing the human rights safety net promised by Ministers and is therefore not in accordance with Section 10 of the LASPO Act 2012. For example, the application forms are too complicated for litigants in person to deal with and there is no process for dealing with urgent applications. There is a further

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<sup>354</sup> See the concerns of Joint Committee on Human Rights, *The Implications on access to justice of the UK Government's proposals to reform legal aid*, Seventh Report of Session 2013-2014, para 140, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm> and the House of Commons Justice Committee, para 45. See [www.justice.gov.uk/downloads/forms/legal-aid/civil-forms/ecf1.pdf](http://www.justice.gov.uk/downloads/forms/legal-aid/civil-forms/ecf1.pdf). The Public Law Project, which assists with exceptional funding applications, has concluded that the process is onerous and complex, and ill-suited to applications made in person. See response to Transforming Legal Aid proposals, *Judicial Review*, Vol 18, No. 3, July 2013, p. 80.

<sup>355</sup> Legal aid statistics in England and Wales, Legal Aid Agency, 2013-2014, June 2014, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/325921/legal-aid-statistics-2013-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf)

<sup>356</sup> *R (Gudanaviciene & Ors) v the Director of Legal Aid Casework and the Lord Chancellor (British Red Cross Society intervening)* [2014] EWCA Civ 1622. In another judicial review, the High Court in England and Wales held that the Lord Chancellor's Guidance on exceptional funding for inquests permitted unlawful decision-making by the Legal Aid Agency: *R (Letts) v Lord Chancellor* [2015] EWHC 402 (Admin), EHRC intervening

defect in having no right of appeal to a judicial body for refusal of ECF where the result would be denial of access to a court or tribunal for an individual lacking capacity.<sup>357</sup>

## 8.2 Impact of the proposed residence test

196. The UK Government plans to introduce a residence test for civil legal aid.<sup>358</sup> With certain exceptions, the test was designed to limit funding to people who are lawfully resident in the UK and who, at some point, have been lawfully resident for at least 12 months continuously.
197. Following a public consultation, the UK Government announced some further exceptions to the residence test. Nevertheless, there remain concerns that certain vulnerable groups would still be unable to prove that they satisfy the test, for example:
- those without documents to prove their immigration history
  - victims of trafficking whose status is disputed
  - refugees granted asylum within the previous 12 months, and
  - children who are age disputed or undocumented, or who cannot prove that they have been lawfully resident in the UK for more than one year.<sup>359</sup>
198. Although this is a test of residence rather than nationality, the EHRC has argued it could discriminate against certain non-UK nationals and amount to a violation of Article 6(1) ECHR (the right to a fair trial), read with Article 14 (freedom from discrimination in the enjoyment of other ECHR rights).<sup>360</sup> In July 2014, the High Court's ruling supported this analysis.<sup>361</sup> The UK Government has appealed this decision and the case is listed in the Court of

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<sup>357</sup> IS – v- (1) Director of Legal Aid Casework (2) Lord Chancellor [2015] EWHC 1965 (Admin)

<sup>358</sup> The proposal is contained in the Ministry of Justice consultation paper: Transforming legal aid: delivering a more credible and efficient system, 2013, available at: [https://consult.justice.gov.uk/digital-communications/transforming-legal-aid/supporting\\_documents/transforminglegalaid.pdf](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid/supporting_documents/transforminglegalaid.pdf)

<sup>359</sup> Joint Committee on Human Rights, The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm>

<sup>360</sup> The EHRC's response to the Joint Committee on Human Rights Inquiry into the implications for access to justice of the government's proposed judicial review reforms covers its analysis of the residence test, and is available at: <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/inquiry-into-the-implications-for-access-to-justice-of-the-government-s-proposed-judicial-review-reforms/> The UK Parliament's Joint Committee on Human Rights has suggested the UK Government may not have given consideration to its obligations under Article 2 of the UNCRC – Joint Committee on Human Rights, 2013.

<sup>361</sup> *R(Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin), available at: <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/plp-v-ssj-and-other.pdf>

Appeal in October 2015. Meanwhile, implementation of the residence test has been delayed. The residence test would present problems with ICESCR if its implementation prevented individuals from vulnerable groups from effectively accessing justice to enforce their ESCR. The potential impact on children's rights is set out in detail in the EHRC's submission on the CRC.<sup>362</sup>

### 8.3 Legal aid for judicial review

199. Judicial review enables judges to review the lawfulness of the decisions or actions of public bodies in England and Wales, providing an important check on their exercise of power. Judicial review may be used to challenge administrative decisions relating to rights protected by ICESCR, including those relating to education, housing, health care, social security and trade union rights. In 2014, new regulations<sup>363</sup> provided that legal aid was only available retrospectively for judicial review applications made by individuals and generally only if the court grants permission for the application to go ahead.<sup>364</sup> As a result of a successful judicial review challenge to the regulations,<sup>365</sup> the UK Government amended them to include further situations where funding may be granted.<sup>366</sup> However, legal aid practitioners still have to undertake judicial review applications "at risk". In the EHRC's analysis, this may well deter practitioners from taking on important cases that would have succeeded and could have a negative impact on access to justice, in particular challenging administrative decisions relating to rights protected by ICESCR.<sup>367</sup>

### 8.4 Impact of new tribunal fees

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200. In July 2013, the UK Government introduced fees of up to £950 for Employment Tribunal (ET) hearings, payable by the claimants in England,

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<sup>362</sup> EHRC, *Children's Rights in the UK*, August 2015, pp.15-17

<sup>363</sup> The Civil Legal Aid (Remuneration) Regulations 2013 were amended by the Civil Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2014, available at: <http://www.legislation.gov.uk/ukxi/2014/607/contents/made>

<sup>364</sup> Subject to discretion to grant funding where the case settles before reaching the permission stage.

<sup>365</sup> *R (Ben Hoare Bell and others) v Lord Chancellor* [2015] EWHC 523 (Admin)

<sup>366</sup> Civil Legal Aid (Remuneration) (Amendment) Regulations 2015, SI 2015/898, available at: [http://www.legislation.gov.uk/ukxi/2015/898/pdfs/ukxi\\_20150898\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/898/pdfs/ukxi_20150898_en.pdf)

<sup>367</sup> EHRC, *Submission to Joint Committee on Human Rights Inquiry into the implications for access to justice of the Government's proposed legal aid reforms*, September 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-to-joint-committee-on-human-rights-inquiry-into-access-to-legal-aid-reform>

Wales and Scotland.<sup>368</sup> This is in addition to a fee of up to £250 for issuing the claim.<sup>369</sup> All discrimination claims are subject to the higher level of fees. Depending on their financial circumstances, claimants may qualify for full or part remission of the fees.<sup>370</sup>

201. The EHRC has highlighted the potentially disproportionate impact of introducing ET fees on access to justice for women, ethnic minorities groups and people with disabilities.<sup>371</sup> A comparison of claims in quarter one of 2013/14 (before the introduction of the fees) and quarter three of 2014/15 indicates that there has been a substantial drop in ET applications.<sup>372</sup> For example, there has been:

- an 87% reduction for sex discrimination cases, from 6310 to 781
- a 54% reduction in disability discrimination cases, from 1801 to 818
- a 57% reduction in race discrimination cases, from 1089 to 466
- a 72% reduction for sexual orientation discrimination cases, from 158 to 44
- a 78% reduction in equal pay cases, from 8,091 to 1,759, and
- a 71% reduction in unfair dismissal cases, from 11,258 to 3,255 cases.

202. The EHRC's analysis therefore suggests the introduction of ET fees has had an indirectly discriminatory effect, which runs counter to the UK's obligations to protect the right to work of all individuals and groups.<sup>373</sup>

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<sup>368</sup> Since 1971, the UK provided a statutory tribunal (currently known as 'the Employment Tribunal') for resolving employment-related disputes, at no cost to the employer or worker, save in very limited cases. The tribunal is administrated by HM Courts and Tribunals Service, an executive agency of the Ministry of Justice.

<sup>369</sup> The Employment Tribunal and Employment Appeal Tribunal Fees Order 2013, available at: [www.legislation.gov.uk/ukdsi/2013/9780111538654/contents](http://www.legislation.gov.uk/ukdsi/2013/9780111538654/contents)

<sup>370</sup> Courts and Tribunals Fee Remission Order, 2013, (SI 2013 2302).

<sup>371</sup> See, for example, the EHRC response to consultation on charging fees in Employment Tribunals and Employment Appeals Tribunal, 2011, question 2, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-to-consultation-on-charging-fees-in-employment-tribunals-and-employment-appeal-tribunals>

<sup>372</sup> Tribunal and gender recognition statistics quarterly: October to December 2014, available at: <https://www.gov.uk/government/statistics/tribunal-and-gender-recognition-statistics-quarterly-october-to-december-2014>

<sup>373</sup> CESCR, General Comment No. 18: the right to work, para 12, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en)

## 8.5 Reduction in funding for non-governmental organisation (NGO) advice services

203. Budget reductions continue to have an impact on the provision of legal advice by NGOs, which complement the role of private practice law firms undertaking legal aid work. Nine law centres closed in the first year of implementation of the LASPO Act 2012 in April 2013.<sup>374</sup> Of 338 Citizens Advice Bureaux, only 21 now offer specialist civil legal aid advice, compared to 200 five years ago.<sup>375</sup> Similarly, Shelter, a national housing advice centre, had to close nine of its advice centres a result of £3 million cut in its legal aid funding.<sup>376</sup>

### 8.5.1 Recommendations

204. In line with its obligation under Article 2(1) ICESCR to achieve ESCR progressively by all appropriate means, the UK Government should ensure that changes impacting on access to civil justice, including to the legal aid system, do not undermine access to courts and effective redress for ESCR violations, including by:

- monitoring the impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 on access justice for rights protected by ICESCR, including for private family law, housing, non-asylum immigration and social security cases
- reviewing the operation of the mandatory telephone advice gateway to ensure its accessibility and effectiveness, particularly for people with disabilities, those with limited English language skills, and parents of children with special educational needs
- reviewing the operation of the exceptional cases funding scheme to address its shortcomings, including those identified by the High Court
- withdrawing proposals for a residence test for civil legal aid

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<sup>374</sup> Low Commission, Tackling the advice deficit: report of the Low Commission on the future of advice and legal support on social welfare law in England and Wales, January 2014, p. 20, available at:

<http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>

<sup>375</sup> Low Commission, Tackling the advice deficit: report of the Low Commission on the future of advice and legal support on social welfare law in England and Wales, January 2014, p. 20, available at:

<http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>

<sup>376</sup> Low Commission, Tackling the advice deficit: report of the Low Commission on the future of advice and legal support on social welfare law in England and Wales, January 2014, p. 7, available at:

<http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>

- monitoring the effect of changes to legal aid for judicial review to ensure that individuals are not being prevented from challenging unlawful administrative decisions relating to ESCR
- assessing the impact of new court and tribunal fees and taking steps to address any indirectly discriminatory effects arising from these changes, and
- reviewing the impact of budget reductions, together with the recent legal aid reforms, on provision of legal advice by non-governmental organisations, including law centres and Citizens Advice Bureaux.

## Section 9.

# Violence Against Women and Girls (VAWG) - Article 3

205. CESCR recommended that the UK reinforce measures to combat violence against women.<sup>377</sup> VAWG is dealt with principally in this submission in relation to the implementation of the right to adequate housing, health and access to justice.
206. The latest data from the Crime Survey of England and Wales show that in 2013/14:<sup>378</sup>
- 8.5% of women experienced some form of domestic abuse in the last year, equivalent to an estimated 1.4 million female victims<sup>379</sup>
  - 6.8% of women experienced partner abuse in the last year, equivalent to an estimated 1.1 million female victims
  - overall, 28.3% of women had experienced domestic abuse since the age of 16, equivalent to an estimated 4.6 million female victims, and
  - 2.2% of women experienced some form of sexual assault (including attempts) in the last year.
207. The House of Commons Library find that in the UK there is “significant under-reporting of domestic abuse by victims”, which makes it difficult to measure the extent and nature of domestic violence accurately.<sup>380</sup> The ONS have also recognised that “[t]he under-reporting of crime to the police is known to be

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<sup>377</sup> CESCR, Concluding observations on the UK, 2009, para 24

<sup>378</sup> ONS, 2015, Chapter 4: Violent Crime and Sexual Offences - Intimate Personal Violence and Serious Sexual Assault, p 1, available at: [www.ons.gov.uk/ons/dcp171776\\_394500.pdf](http://www.ons.gov.uk/ons/dcp171776_394500.pdf)

<sup>379</sup> This includes partner/ex-partner abuse (non-sexual), family abuse (non-sexual) and sexual assault or stalking carried out by a current or former partner or other family member.

<sup>380</sup> House of Commons Library, Standard Note: Domestic violence statistics, SN/SG/950, December 2013, available at: <http://researchbriefings.files.parliament.uk/documents/SN00950/SN00950.pdf>

particularly acute for intimate violence”, as well as sexual offences and domestic violence.<sup>381</sup>

## 9.1 Ratification of the Istanbul Convention

208. The CEDAW Committee states that gender-based violence “is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.<sup>382</sup> The EHRC, along with the Joint Committee on Human Rights,<sup>383</sup> has focused its attention on the ratification and implementation of the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence).<sup>384</sup> The Istanbul Convention is a dedicated framework that can help the UK Government to implement its human rights obligations to address VAWG, including by taking the necessary measures to ensure victims of VAWG have access to required support services.<sup>385</sup>
209. The UK has yet to ratify the Convention, however most, but not all, obligations under the Istanbul Convention are, or will soon be, implemented through national legislation.<sup>386</sup> For example, the EHRC welcomes the new domestic violence offence of coercive control in the Serious Crimes Act 2015<sup>387</sup> and the passage in Wales of the Gender-based Violence, Domestic Abuse and Sexual

<sup>381</sup> ONS, Focus on: Violent crime and sexual offences, 2011/12, pp. 3, 9 and 64, available at: [http://www.ons.gov.uk/ons/dcp171778\\_298904.pdf](http://www.ons.gov.uk/ons/dcp171778_298904.pdf)

<sup>382</sup> CEDAW, 1992, General Recommendation 19: Violence against women, para 1, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>383</sup> Joint Committee on Human Rights, 2015, Violence against women and girls: Sixth Report of Session 2014-15, p. 4, available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/>

<sup>384</sup> The Istanbul Convention, available at: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

<sup>385</sup> For further information see EHRC, 2014, Submission to the United Nations Committee Pre-Sessional Working Group on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights (PSWG Submission), pp. 55-57, available at:

<http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/EHRC%20Submission%20to%20UN%20Human%20Rights%20Committee%20Pre-Sessional%20Working%20Group%20on%20UK%20Implementation%20of%20the%20International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf> and EHRC, 2015, Submission to the United Nations Human Rights Committee on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights, pp.65-69, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/Civil%20and%20Political%20Rights%20in%20the%20UK%20-%20ICCPR%20Submission.pdf>

<sup>386</sup> For example, a prohibition on simulated rape pornography (Article 12) is now addressed through the Criminal Justice and Courts Act 2015, and the criminalisation of forced marriage (Article 37) is addressed through the Anti-social Behaviour, Crime and Policing Act 2014, available at:

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted/data.htm>

<sup>387</sup> Serious Crimes Act 2015, s 76, available at: <http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted>

Violence (Wales) Act 2015.<sup>388</sup> However, further actions are required to avoid potential legislative non-compliance with the Istanbul Convention and addressing VAWG in Great Britain.<sup>389</sup> For example:

- improvements to data collection and analysis on all forms of VAWG, alongside population surveys to determine the prevalence of such crimes<sup>390</sup>
- addressing the systematic problems in the training of professionals who deal with VAWG cases,<sup>391</sup> and
- the establishment of an adequately resourced full-time coordinating body with a UK-wide strategy and action plan.

210. The UK Government has adopted the “Call to end violence against women and girls” strategy to address VAWG in England and Wales, which is accompanied by an action plan. In March 2015, the UK Government published its progress report, outlining action that it has taken to implement the strategy.<sup>392</sup>

211. In the report of her recent visit to the UK, the UN Special Rapporteur on violence against women noted areas for improvement and recommended that the UK Government develop, in consultation with women’s organizations and experts, “implementation plans directed at key governmental departments”, in order to strengthen the VAWG strategy and related action plans.<sup>393</sup> In this context, the EHRC welcomes the announcement in the Summer Budget that the UK Government will allocate additional funding for victims of domestic violence and abuse and will “draw together evidence from frontline

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<sup>388</sup> Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, available at: <http://www.legislation.gov.uk/anaw/2015/3/contents/enacted>

<sup>389</sup> PSWG Submission, p. 55, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights>

<sup>390</sup> EHRC. Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights Inquiry into violence against women and girls, p. 5, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against>

<sup>391</sup> See, for example, HMIC, 2013, Essex Police’s Approach to Managing Cases of Domestic Abuse, available at: [www.hmic.gov.uk/publication/essex-polices-approach-to-managing-cases-of-domestic-abuse/](http://www.hmic.gov.uk/publication/essex-polices-approach-to-managing-cases-of-domestic-abuse/) and Government Equalities Office, 2010, A Report by Baroness Vivienne Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales, available at: [http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern\\_Review\\_acc\\_FINAL.pdf](http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf)

<sup>392</sup> HM Government, 2015, A Call to End Violence against Women and Girls Progress Report 2010 – 15, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/409510/VAWG\\_Progress\\_Report\\_2010-2015.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409510/VAWG_Progress_Report_2010-2015.pdf)

<sup>393</sup> Manjoo, R., 2015, Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para 107, available from: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

professionals to review how services for victims of violence against women and girls are funded and delivered and feed into a refreshed Violence Against Women and Girls strategy in the autumn”.<sup>394</sup> The Special Rapporteur also noted her concern with “power being devolved to local authorities on such issues as service provision, including changes to commissioning models which are detrimental to experienced community-based service providers”. While the role of local government is critical, it should not prevent holding the UK Government to account for implementing its human rights responsibilities.<sup>395</sup>

212. The EHRC notes that the Welsh<sup>396</sup> and Scottish<sup>397</sup> Governments have developed their own separate VAWG strategies, and the Welsh Government has passed the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Act 2015, but there remains a strong argument for a UK-wide strategy and coordinating body which brings together the different stakeholders and respects differing devolution contexts.<sup>398</sup>
213. The EHRC regards the existing international and domestic legal frameworks as being sufficient to tackle FGM. However, action to tackle this human rights abuse would be more effective if there were a comprehensive and co-ordinated UK-wide strategy in place which recognises the different legislation, policy, reporting and support systems across the countries. For more information on UK Government action to address FGM, please refer to the EHRC’s submission on CRC.<sup>399</sup>

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<sup>394</sup> Department for Communities and Local Government, Press release, £3.2 million funding to help victims of domestic violence and abuse, available at: <https://www.gov.uk/government/news/32-million-funding-to-help-victims-of-domestic-violence-and-abuse>

<sup>395</sup> Manjoo, R., 2015, Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para 107, available from: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

<sup>396</sup> Welsh Government, 2010, The Right to be Safe, available at: <http://gov.wales/topics/people-and-communities/communities/safety/domesticabuse/publications/besafe/?lang=en>

<sup>397</sup> The Scottish Government, 2014, Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls, available at: <http://www.gov.scot/Resource/0045/00454152.pdf>

<sup>398</sup> See, for example, EHRC, Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights inquiry into violence against women and girls (VAWG), March 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against> and Manjoo, R., 2015, Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para 107, available from: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

<sup>399</sup> EHRC, Children’s Rights in the UK, August 2015, pp.21-23

## 9.2 Recommendations

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214. In order to guarantee the equal enjoyment of men and women to ESCR in line with Article 3 ICESCR, the EHRC recommends that the UK Government continues to work towards ratification and implementation of the Istanbul Convention, including by:
- ensuring that victims of Violence Against Women and Girls (VAWG) have access to adequately funded support services and sufficient legal support
  - implementing the recommendations of the Joint Committee on Human Rights inquiry into VAWG, including by: establishing an adequately resourced full-time coordinating body with a UK-wide strategy, action plan and centralised budget to address VAWG, and
  - implementing a comprehensive, coordinated and properly funded female genital mutilation strategy, whereby relevant organisations are held to account.
215. There is also a need for the ongoing implementation of comprehensive and co-ordinated strategies by the UK Government and devolved administrations to prevent and combat VAWG, introducing robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensuring the provision of services for victims.<sup>400</sup>

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<sup>400</sup> See also EHRC, Oral statement on the Special Rapporteur on violence against women country report (video statement delivered by Baroness Onora O'Neill, Chair of the EHRC, for the 29th Session of the Human Rights Council, June 2015, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/united-nations/un-human-rights-council>

## Annex 1.

# Equality and Human Rights Commission recommendations to improve implementation of the International Covenant on Economic, Social and Cultural Rights in the UK

### **A.1 Financial decision making and the Public Sector Equality Duty (PSED)**

With a view to strengthening its fulfilment of Article 2 ICESCR, taken in conjunction with Articles 9 and 11, the EHRC recommends that the UK Government implement the recommendations contained in the EHRC's Future Fair Financial Decision Making Report, including by:

- taking steps to improve the coverage of evidence and analysis in the Equalities Impact Statement, published alongside Spending Reviews
- reviewing its approach to impact assessment by extending its impact analysis to include the cumulative impact of decisions on people sharing different protected characteristics, and
- monitoring the impact of Spending Review measures in order to better understand where mitigations are needed and to inform the next round of spending decisions.

### **A.2 Impact of social security reforms on people with disabilities**

In order to realise progressively the right to social security and the right to an adequate standard of living of people with disabilities, in line with the UK's obligations under Articles 9 and 11 ICESCR, the UK Government should:

- implement the National Audit Office recommendation to set out a clear plan for informing Personal Independent Payments (PIP) claimants about delays while plans to improve the performance of PIP take effect<sup>401</sup>
- collect and publish data, disaggregated by protected characteristic, on the reasons for the high rates of successful challenges to Work Capability Assessments, and
- monitor the impact of the closure of the Independent Living Fund (ILF) on people with disabilities, including:
  - whether those who previously received support from the ILF are moving into residential care due to inability of local authorities to fund the level of support they need to live independently, and
  - whether support has been withdrawn that previously enabled people with disabilities to participate in education, training or employment.

### **A.3 Impact of social security reforms on women**

In light of the UK Government's announcement to further reduce the household benefit cap, and in order to guarantee the protection of women's right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:

- conducts a further equality impact assessment which fully considers the impacts of this additional reduction to the benefits received by women and that it sets out comprehensive strategies to mitigate any projected disproportionate and unjustified impacts
- further analyses people's responses to the household benefit cap, in particular whether it prevents individuals from meeting their basic needs, including when it is further reduced, and
- continues to monitor the roll-out of Universal Credit and the impact that it is having on women, in particular whether it has resulted in the reduction of the amount of independent income received by women in poorer households.

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<sup>401</sup> See also recommendation made by the National Audit Office, *Personal independent payment: early progress*, February 2014, p. 10 available at: <http://www.nao.org.uk/wp-content/uploads/2014/02/Personal-independence-payment-early-progress.pdf>

## **A.4 Impact of social security reforms on children**

In order to guarantee the protection of children's right to social security and an adequate standard of living under Articles 9 and 11 ICESCR, the EHRC recommends that the UK Government:

- conduct a cumulative impact assessment of the full range of social security reforms introduced between 2010 and 2015 on children, including those who have a disability or are an ethnic minority, as necessary to determine how the UK Government is acting in compliance with Article 11 ICESCR, as well as Articles 3(1), 26 and 27 Convention of the Rights of the Child (CRC), and
- in all future financial decision making, the UK Government should consider the impacts of social security reforms on children carefully, as well as the recent UK Supreme Court case that found the household benefit cap to be in breach of Article 3(1) CRC.

## **A.5 Income poverty and child poverty**

In order to realise progressively the right of children to an adequate standard of living under Article 11 ICESCR, the UK Government should take steps to:

- ensure that any new measures of child poverty address relative and absolute income poverty, and material deprivation, as well as taking into account causal risks that contribute to the perpetuation of poverty, and
- in line with recommendations made by the Office of the Children's Commissioner and the Social Mobility and Child Poverty Commission, UK Government responses to child poverty should address the immediate effects of poverty on children, as well as addressing work poverty and the improvement of conditions of work.

## **A.6 Food Poverty**

With a view to respecting, protecting and fulfilling the right to adequate food as part of the right to an adequate standard of living under Article 11 ICESCR, the EHRC considers the UK Government should:

- improve data collection, and develop robust indicators to establish and monitor the extent of food poverty across the UK, which fully take into account documented links between social security reform and food bank use, and

- develop a comprehensive strategy for tackling food poverty in the UK, which includes specific provisions to address food poverty among children, including consideration of the universal provision of free school meals in primary schools.

## A.7 The right to adequate housing

In order to guarantee the right to adequate housing for everyone, as protected under Article 11 ICESCR, the UK Government should:

- examine the causes for the disparities in terms of different ethnic groups living in substandard housing and those in terms of age and ethnicity with regard to overcrowded housing, so that it can develop a strategy to address them in an effective way, and
- implement the EHRC's recommendations from its response to the Department for Communities and Local Government's consultation to:<sup>402</sup>
  - substitute the current Traveller definition in the Planning Policy for Traveller Sites for the more inclusive one in the Housing Act 2004, and
  - reintroduce the duty on local authorities to provide sites for Gypsies and Travellers, as was previously required under the Caravan Sites Act 1968, and as is required in Wales under the Housing (Wales) Act 2014.<sup>403</sup>
- work with local authorities to ensure that they avoid unlawful discrimination against Gypsies and Travellers, and ensure suitable provision is in place to meet their reasonable housing needs
- implement the recommendation of the Joint Committee on Human Rights and work with local authorities to collect and monitor data about the number of beds needed in refuges to meet the need of domestic violence victims and ensure appropriate funding and provision, including for those with disabilities.

In order to better fulfil the right to adequate housing, the Welsh Government should:

- prioritise the collection of data on substandard and overcrowded housing.

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<sup>402</sup> EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20To%20DCLG%20planning.pdf>

<sup>403</sup> The Housing (Wales) Act 2014, Part 3, places a duty on local authorities in Wales to provide sites where a need has been identified. Available at: <http://www.legislation.gov.uk/anaw/2014/7/contents/enacted>

## **A.8 Health – legal and regulatory framework**

In order to improve protections for the right to the enjoyment of the highest attainable standard of physical and mental health, as protected by Article 12 ICESCR, the UK Government should:

- ensure that NHS England and Clinical Commissioning Groups collect sufficient data disaggregated by protected characteristic in order to populate the NHS Outcomes Framework and thereby identify inequalities in health outcomes for particular groups
- monitor the application of the Equality Delivery System 2 carefully to ensure it does not affect compliance with the PSED, and
- include a reference to the Fundamental Standards in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to equality and human rights obligations under the Equality Act 2010, and European Convention on Human Rights and UN treaties, specifically Article 12 ICESCR.

## **A.9 Healthcare of people with disabilities**

In order to guarantee access to healthcare on a non-discriminatory basis for people with disabilities, in line with Article ICESCR, the UK Government should:

- provide an update on the steps taken to ensure the provision of information about health services in accessible and appropriate formats, on the availability of sign language interpreters, lip speakers and palantypists, and the steps being taken to increase availability
- demonstrate its plans for ensuring growth in high quality community services for people with learning disabilities as an alternative to treatment in large NHS mental health hospitals, and
- improve data collection on the population with learning disabilities so that their health needs can be met more effectively.

## **A.10 Healthcare of older people**

In order to ensure older people's dignity is protected and respected and improve compliance with Article 12 ICESCR and the Committee on Economic, Social and Cultural Rights (CESCR) General Comment 14, the EHRC recommends that the UK Government works with local authorities in England to implement the findings of the

EHRC's Home Care Inquiry and to ensure home care providers comply with the Human Rights Act 1998.

### **A.11 Access to healthcare by other vulnerable groups**

In order to guarantee the right of everyone to the highest attainable standard of mental and physical health in line with Article 12 ICESCR, the EHRC recommends that the UK Government restate its commitment to ensuring that healthcare is accessible to all in the UK without discrimination, and that it demonstrates the steps it has taken to improve health outcomes for Gypsies and Travellers, refugees, asylum seekers and migrants, and transgender people, in particular by:

- facilitating their registration at GPs
- collecting and maintaining data on their health outcomes and access to health services, and
- ensuring that healthcare professionals receive the necessary training in order to be able to offer them appropriate and effective care.

### **A.12 Healthcare for adults with mental health problems**

In order to deal effectively with the causes of suicide, as recommended by CESCR, and to protect the right to health of prisoners, as required by Article 12 ICESCR, the UK Government should implement the recommendations of the EHRC's inquiry into preventing deaths in detention of adults with mental health conditions, in particular by:

- establishing structured approaches for learning lessons from deaths in detention
- taking steps to increase transparency to ensure adequate scrutiny, including by monitoring the implementation of the duty of candour, and
- adopting the EHRC's Human Rights Framework as a practical tool to reduce non-natural deaths in detention.

### **A.13 Healthcare for children with mental health problems**

In order to fulfil children's right to enjoy the highest attainable standard of mental health, as required by Article 12 ICESCR, the EHRC recommends that the UK Government:

- ensures that funding for Clinical Commissioning Groups to provide Child and Adolescent Mental Health Services matches rising demands
- considers how to implement the recommendations of the House of Commons Health Committee, including on the availability of data on children's mental health, the prioritisation of early intervention, and improving outpatient services, and
- amends the Mental Health Act 1983 so that it is no longer possible to detain children in police cells under Section 135 or Section 136 of that Act.

#### **A.14 Violence against women and girls and the right to health**

As part of the UK Government's efforts to strengthen the protection of women's right to health as protected by Article 12 ICESCR, the EHRC considers that the UK Government should implement the recommendations of the Taskforce on the Health Aspects of Violence against Women and Children. In particular, NHS England should prioritise and provide greater investment in tackling violence against women and girls.

#### **A.15 Working conditions of migrant workers and overseas domestic workers**

In order to fulfil its duty to protect workers from third parties which may cause adverse impacts on their right to just and favourable conditions of work under Article 7 ICESCR, the EHRC recommends that the UK Government:

- raises awareness among workers regarding their rights in terms of pay, holiday leave and sick leave, and discrimination, abuse or harassment, through developing a single, up-to-date source of information in the UK that covers broad employment rights issues, relevant to all sectors
- ensures that the regulations to implement the Modern Slavery Act 2015 address the recommendations contained in its own review of the National Referral Mechanism, in particular by providing support to victims based on an assessment of their individual needs and by improving the collection and collation of data, and
- commits to considering in a timely way the recommendations of the independent review of the impact of the changes to the Overseas Domestic Worker visa.

## A.16 Working conditions - low pay and agency workers

To protect the rights of workers under Article 7 ICESCR, the EHRC recommends that the Governments of the UK, Wales and Scotland:

- set out the expectation that those cleaning firms that are capable seek accreditation with the Living Wage Foundation, and that clients who make use of the services of cleaning firms encourage firms to pay living wage rates by ensuring the contract value covers the cost of this<sup>404</sup>
- consider whether to encourage the extension across the public sector of the good practice, established by some public bodies, of paying their directly employed staff the living wage, in line with the recommendation of the Living Wage Commission<sup>405</sup>
- ensure that when public bodies commission services such as care or cleaning they:
  - fulfil their statutory responsibility under the PSED to pay due regard to eliminating discrimination and advancing equality when procuring goods and services
  - pay rates that reflect the living wage, and
  - execute contracts for purchasing goods and services with respect for human rights, as per the commitment made by the UK Government in its national action plan on business and human rights.<sup>406</sup>
- consider how to implement the duty to protect individuals against acts of third parties which could have an adverse impact on the right to just and favourable working conditions by setting out a strategy for encouraging and monitoring private providers to ensure that workers receive the living wage
- provide clear guidance targeted at agency workers on the duties of their employers under the law, such as the Agency Worker Regulations 2010 and the EU Working Time Directive, and

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<sup>404</sup> CESCR, Draft General Comment: Just and favourable conditions of work, January 2015, para 20, available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2015.aspx>

<sup>405</sup> Living Wage Commission, Work That Pays, June 2014, p.7, available at: [http://livingwagecommission.org.uk/wp-content/uploads/2014/06/Work-that-pays\\_The-Final-Report-of-The-Living-Wage-Commission\\_w-3.pdf](http://livingwagecommission.org.uk/wp-content/uploads/2014/06/Work-that-pays_The-Final-Report-of-The-Living-Wage-Commission_w-3.pdf)

<sup>406</sup> HM Government, Good business: implementing the UN guiding principles on business and human rights, September 2013, p. 11, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)

- review the Agency Workers Regulations to evaluate their effectiveness in protecting agency workers, particularly on pay parity.

## A.17 Equal pay

In order to guarantee access to just and favourable conditions of work on a non-discriminatory basis, as required by Article 7 ICESCR, and recommended by CESCR, the EHRC recommends that the UK and Welsh Governments take steps to:

- tackle the persistent gender pay gap, including by:
  - facilitating access to all jobs on a more flexible basis to allow all parents to share childcare on an equitable basis without compromising their future careers
  - monitoring and enforcing the new regulation requiring businesses to publish information on their gender pay gap, and
  - addressing problems in terms of the availability and affordability of childcare, including by:
    - collecting data (disaggregated by protected characteristic) about those children taking up free early education or childcare in England and feeding back on findings to schools
    - introducing a truly flexible parental leave scheme, and
    - ensuring more equal access to parental leave, as set out in the EHRC's submission to the CRC.
- improve data collection to understand the prevalence and causes of pay gaps in relation to disability and race
- review existing UK and Welsh Government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, for all the relevant protected characteristics in the Equality Act 2010, and
- review the impact of the recent introduction of fees for Employment Tribunals and of the repeal of Section 138 of the Equality Act 2010, to ensure that these changes do not bring about adverse impacts or obstruct access to civil justice.

## **A.18 Right to education**

In its submission to the UN CRC, the EHRC made a number of recommendations that are also relevant to CESCR's consideration of the UK's compliance with Article 13 and 14 ICESCR, including:

- improved collection of data on the take-up of initiatives to improve access to education and attainment
- collaboration between schools and local authorities in England to collect, analyse and act upon data on in-year admissions and placement delays, disaggregated by protected characteristic and by those on free school meals
- an evaluation and review of the Special Educational Needs and Disability Code of Practice, including its implementation in the youth justice system
- adoption of a national Roma integration strategy focussed on access to education, employment, healthcare and housing
- the disciplinary measure of permanent or temporary exclusion should only be used as a means of "last resort" and this should be made explicit in any guidance issued
- the right to be heard before exclusion and to appeal against both temporary and permanent exclusions for under-16 year olds
- schools in England should be required to collect data on identity-based bullying across all the protected characteristics, to monitor progress and report to the local authority, and
- Personal, Social and Health Education should be included as a statutory subject, part of the National Curriculum in England and Wales.

## **A.19 Access to further and higher education**

In order to guarantee the right to higher education to students with disabilities on a non-discriminatory basis, in line with Article 13(c) ICESCR, the UK Government should ensure that:

- any changes to the Disabled Students' Allowance (DSA) do not have a detrimental impact on the access, participation and attainment at universities of students with disabilities
- it reviews the equality analysis it conducted in December 2014 and publishes an updated version, and

- if changes to the DSA system are made, the impact of these changes is monitored, results are published and appropriate action is taken if negative impacts are identified.

## **A.20 Access to justice**

In line with its obligation under Article 2(1) ICESCR to achieve Economic, Social and Cultural Rights (ESCR) progressively by all appropriate means, the UK Government should ensure that changes impacting on access to civil justice, including to the legal aid system, do not undermine access to courts and effective redress for ESCR violations, including by:

- monitoring the impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on access justice for rights protected by ICESCR, including for private family law, housing, non-asylum immigration and social security cases
- reviewing the operation of the mandatory telephone advice gateway to ensure its accessibility and effectiveness, particularly for people with disabilities, those with limited English language skills, and parents of children with special educational needs
- reviewing the operation of the exceptional cases funding scheme to address its shortcomings, including those identified by the High Court
- withdrawing proposals for a residence test for civil legal aid
- monitoring the effect of changes to legal aid for judicial review to ensure that individuals are not being prevented from challenging unlawful administrative decisions relating to ESCR
- assessing the impact of new court and tribunal fees and taking steps to address any indirectly discriminatory effects arising from these changes, and
- reviewing the impact of budget reductions, together with the recent legal aid reforms, on provision of legal advice by non-governmental organisations, including law centres and Citizens Advice Bureaux.

## A.21 Violence against women and girls

In order to guarantee the equal enjoyment of men and women to ESCR in line with Article 3 ICESCR, the EHRC recommends that the UK Government continues to work towards ratification and implementation of the Istanbul Convention, including by:

- ensuring that victims of Violence Against Women and Girls (VAWG) have access to adequately funded support services and sufficient legal support
- implementing the recommendations of the Joint Committee on Human Rights inquiry into VAWG, including by:
  - establishing an adequately resourced full-time coordinating body with a UK-wide strategy, action plan and centralised budget to address VAWG, and
  - implementing a comprehensive, coordinated and properly funded female genital mutilation strategy, whereby relevant organisations are held to account.

There is also a need for the ongoing implementation of comprehensive and co-ordinated strategies by the UK Government and devolved administrations to prevent and combat VAWG, introducing robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensuring the provision of services for victims.<sup>407</sup>

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<sup>407</sup> See also: EHRC, Oral statement on the Special Rapporteur on violence against women country report (video statement delivered by Baroness Onora O'Neill, Chair of the EHRC, for the 29th Session of the Human Rights Council, June 2015, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/united-nations/un-human-rights-council>

## **Annex 2.**

# **Children's Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the Convention on the Rights of the Child**

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