

Equality and Human Rights Commission

Disability rights in England

Supplementary submission to
inform the CRPD List of Issues on
the UK

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Introduction

This submission has been produced by the Equality and Human Rights Commission (EHRC), a UN-accredited A-status National Human Rights Institution. The EHRC is also part of the UK Independent Mechanism and tasked under Article 33 of the UN Convention on the Rights of Persons with Disabilities (CRPD) to promote, protect and monitor implementation of CRPD in the UK.

UK constitutional arrangements – England

The UK Parliament has devolved various powers to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. England does not have its own separate devolved administration. The UK Parliament maintains responsibility for policy areas that have not been devolved ('reserved' powers) and for all policy areas in England.

How to read this document

This submission provides additional up to date information and suggested questions about disability rights in England to supplement the main UK report, *Disability Rights in the UK*. We have indicated the CRPD articles relevant to the issues raised within each sub-heading. These issues are specific to England, which is the most populous nation in the UK¹ and home to 83% of disabled people in the UK.² We therefore recommend that the CRPD Committee considers this submission alongside *Disability Rights in the UK* in its preparation of the List of Issues for the UK. Some information on non-devolved topics in this submission also applies to Wales.

We have also included an annex with recommendations of the measures the UK Government should take specifically to promote and protect disabled peoples' rights in

¹ England is home to 84% of the UK's population. See: Population Estimates for UK, England and Wales, Scotland and Northern Ireland: mid 2015, available [here](#) [accessed: 18 January 2017].

² DWP (2016) Family Resources Survey: financial year 2014/15 Disability data tables, available [here](#) [accessed: 18 January 2017].

England, in addition to those contained in *Disability Rights in the UK*. We will review these recommendations, at the same time as the recommendations in *Disability Rights in the UK*, ahead of the Committee's public examination of the UK. In doing so we will take into account the views of disabled people and information provided by the UK Government in response to the List of Issues.

Executive summary

Equality and non-discrimination (Article 5)

The Public Sector Equality Duty (the general duty) in the Equality Act 2010 is supported by specific duties, but the specific duties in England are less extensive than in Scotland and Wales, and do not include a duty to involve disabled people. These should be reviewed.

Accessibility (Articles 9, 21)

There are shortages of accessible housing in England, partly due to gaps in the legal and policy framework, which should be reviewed.

In 2016, NHS England adopted a standard to make information about health and social care more accessible to disabled people. The review of the Standard between January and March 2017 is an important opportunity to determine its effectiveness and any improvements required.

Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)

Emerging evidence shows that, following the transfer of the Independent Living Fund to local authorities in England in July 2015, some people have received much less support, and a 'postcode lottery' is developing. The UK Government must take steps to ensure compliance with Article 19.

Disability stakeholders have expressed concern that supported living arrangements are being undermined by local authority budget cuts, leading to a reduction in independence and autonomy for disabled people in their home lives. Some stakeholders have also noted concerns about the extent to which residential care and related settings are enabling disabled people to exercise certain rights related to choice and control.

There are pressures on the social care system because funding in England is decreasing while demand is rising. There is also evidence of increased social isolation among disabled people. The impact on disabled people's rights should be closely monitored.

Access to justice (Articles 13, 12)

Disabled people's access to justice in England and Wales has been negatively affected by the removal of most welfare benefits, private family law and housing cases from the scope of legal aid.

A telephone gateway service called Civil Legal Advice has been set up to give legal advice to individuals in England and Wales. However, there are concerns that the service is not always accessible for disabled people, and should be further reviewed.

Education (Articles 24, 7)

There are concerns about stalled progress towards the inclusion of disabled children in mainstream schools in England, and about inadequate support for children with special educational needs (SEN).

Guidance from the Department for Education recognises disproportionately high exclusion rates for pupils with SEN, and recommends that head teachers should avoid exclusion whenever possible. It is not clear how widely this guidance is promoted and adhered to.

The Children and Families Act 2014 introduced a new code of practice that has overhauled the system for identifying and supporting children with SEN and/or disabilities in England. Stakeholders have raised concerns about how well the new system is working, and the UK Government has acknowledged that more needs to be done.

Health and life (Articles 25, 10)

We welcome an investigation currently being carried out into the reasons why people with learning disabilities often die prematurely, and a recent review that examined how the deaths of people using learning disability or mental health services are investigated.

Access to and quality of mental healthcare services are a concern. A recent Independent Mental Health Taskforce concluded that there is underfunding and many people face long

waits for treatment, or are unable to access the appropriate support. The UK Government is yet to act upon some of the Taskforce's recommendations.

An inquiry covering England and Wales has identified a number of people with mental health conditions who die of non-natural causes while detained in psychiatric wards, police cells or prison. Further research shows that mental health is a significant factor in people dying within a month of being released from state custody. A number of recommendations have not been implemented.

Freedom from exploitation, violence and abuse (Article 16)

Recent approaches to reporting hate crime may prove useful for individuals experiencing disability-related harassment.

In 2013, the Criminal Justice Joint Inspection review of how the police, Crown Prosecution Service and probation trusts deal with disability hate crime recommended that the three organisations adopt and publish a single, clear definition of a disability hate crime. This has not been actioned.

The Criminal Prosecution Service has acknowledged the need to improve its performance in relation to conviction rate and sentence uplift.

Schools in England have a statutory duty to prevent all forms of bullying among pupils, and there is a general duty on local authorities to cooperate with different bodies to ensure that the physical and mental health and emotional wellbeing of children is protected. It is not clear how effective this framework is at protecting disabled pupils.

Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)

An EHRC inquiry found that physical restraint could be a direct or indirect cause of some non-natural deaths of adults with mental health conditions detained in prisons, police cells and hospitals, and some recommendations from the inquiry have not been acted upon.

In relation to mental health services, there are concerns about the use of restraint, and UK Government policy papers in England have set out the need to reduce its use. The recording of data on restraint incidents is incomplete. There has been no systematic review of chemical restraint across settings.

In relation to the criminal justice system in England and Wales, research indicates that prisoners with learning disabilities or difficulties are five times as likely to have been subject

to control and restraint. The EHRC has also raised concerns about physical restraint in the youth justice estate.

The Mental Capacity Act 2005 provides the legal framework for decisions relating to persons who lack mental capacity in the health and social care system in England and Wales, and deprivation of liberty safeguards (DoLS). In 2014, a Lords Select Committee concluded that some social workers, healthcare professionals and other relevant professionals are not aware of, or implementing, the Mental Capacity Act 2005.

Shortcomings have been uncovered in the application of Deprivation of Liberty Safeguards across England. The UK Government has asked the Law Commission to review the framework for mental capacity and DoLS provided by the Mental Capacity Act 2005.

Participation in political and public life (Article 29)

At local government level in England, equality legislation requires local authorities to ensure reasonable adjustments are made for disabled councillors. Evidence indicates that local authorities could do more to ensure disabled people can participate in local political life.

Disability rights in England: Supplementary submission to inform the CRPD List of Issues on the UK

Equality and non-discrimination (Article 5)

As noted in *Disability Rights in the UK*,³ further work is needed to ensure that the Equality Act 2010, applicable in England, effectively protects disabled people's rights. This section includes additional information and suggested questions in relation to Public Sector Equality Duty specific duties under the Equality Act in England.

Equality Act 2010, specific duties

The Public Sector Equality Duty (the general duty)⁴ – as applied to the protected characteristic of disability – requires that public authorities have due regard to the need to: eliminate disability discrimination, harassment and victimisation; advance equality of opportunity for disabled people and non-disabled people; and foster good relations between disabled people and non-disabled people. The general duty is supported by specific duties,⁵ which aim to enable public authorities⁶ to improve performance on the general duty.⁷

³ UK Independent Mechanism (2017) Disability Rights in the UK: submission to inform the list of issues in relation to the UK.

⁴ The general duty is set out in Section 149 of the EA2010. This general duty applies to all the functions of public authorities, including policy development, budget setting, procurement, service delivery and employment functions.

⁵ The Equality Act 2010 (Specific Duties) Regulations 2011 came into force on 10 September 2011 and apply to English and non-devolved public authorities – Statutory Instrument 2011/2260, available [here](#) [accessed: 10 January 2017]. For Wales, see The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 – Welsh Statutory Instruments 2011, No. 1064 (W.155), available [here](#) [accessed: 10 January 2017].

⁶ For England, all the public authorities that are listed in Schedule 1 and Schedule 2 of the Regulations must comply with the specific duties, and are referred to as 'listed authorities'. For Wales, the public bodies listed in Part 2 of Schedule 19 to the Act (as amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities Order 2011)) are subject also to specific duties found in the relevant Regulations.

⁷ For example, by requiring transparency in how the public authority is meeting the general duty, and focusing on achieving improved equality outcomes. EHRC (2014), Equality Act 2010, Technical Guidance on the Public Sector Equality Duty: England, pp. 68-70, available [here](#) [accessed: 3 June 2016] and EHRC (2014), Equality Act 2010, Technical Guidance on the Public Sector Equality Duty, Wales, pp. 69-72, available [here](#) [accessed: 10 January 2017].

These specific duties are different across Great Britain, and the specific duties in England⁸ are far less extensive than those in Wales and Scotland.⁹ A range of stakeholders have noted the positive outcomes from the specific duties in Scotland and Wales,¹⁰ and commented that England specific duties are weaker than the previous Disability Equality Duty under the Disability Discrimination Act 2006, because there is no longer a duty to involve disabled people.¹¹

The UK Government plans to conduct a review of the PSED in 2017.¹²

We recommend that the CRPD Committee asks:

- 1. How does the UK Government intend to address concerns that the Equality Act 2010 specific duties in England do not require the involvement of disabled people?**

Accessibility (Articles 9, 21)

As noted in *Disability Rights in the UK*,¹³ disabled people face continued challenges in accessing housing, the built environment, transport, and information.

This section provides additional information and suggested questions in relation to housing and information and communications in England.

⁸ The specific duties in England require public authorities to:

- publish information, updated annually, to demonstrate compliance with the general duty ('equality information'), and
- at least every four years, prepare and publish one or more objectives that the public authority thinks it needs to achieve to further any of the aims of the general equality duty ('equality objectives').

⁹ These require public authorities to set objectives and review them at least every four years; collect information about compliance, involve and engage with disabled people or their representatives; collect information on their employees; consider whether to include equality conditions in public procurement exercises, and report and publish information about compliance in an accessible form.

¹⁰ House of Lords Select Committee on the Equality Act 2010 and Disability (2016), *The Equality Act 2010: the impact on disabled people*, pp. 102-103, available [here](#) [accessed: 3 June 2016].

¹¹ House of Lords Select Committee on the Equality Act 2010 and Disability (2016), *The Equality Act 2010: the impact on disabled people*, pp. 100-101, available [here](#) [accessed: 3 June 2016].

¹² This was announced in a ministerial statement, available [here](#) [accessed: 3 June 2016].

¹³ UK Independent Mechanism (2017), *Disability Rights in the UK: submission to inform the list of issues in relation to the UK*.

Housing

We welcome the UK Government's statement that local planning authorities in England should 'plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community'.¹⁴ However, there are shortfalls in accessible housing in England.

In 2014, just 7% of homes in England were classed as visitable,¹⁵ i.e. had all four accessibility features¹⁶ that ensure that there is 'reasonable provision' for people 'including wheelchair users' to access 'habitable rooms and sanitary facilities on the entrance storey' of dwellings.¹⁷ Local planning authorities can also require two higher categories of accessibility.¹⁸ However, these categories may only be required by planning permission where 'they address a clearly evidenced need, and where their impact on viability has been considered'.¹⁹

These issues point to gaps in the legal and policy framework, including the fact that the duty in section 36 of the EA2010 to make reasonable adjustments to the physical features of the common parts of buildings²⁰ is not yet in force.²¹ The UK Government has delayed a decision in England and Wales on whether to commence the duty, pending a review.²² Furthermore, guidance on the building regulations on access (Approved Document M)²³ does not apply to existing buildings or to extensions.

The EHRC notes that the altered London Plan requires 90% of all new build housing to be built to the new optional building regulation standard M4(2) accessible and adaptable dwellings, and 10% to be built to be wheelchair accessible or wheelchair adaptable dwellings [M4(3)]. We agree with the House of Lords Select Committee on the Equality Act

¹⁴ Department for Communities and Local Government (March 2012), National Planning Policy Framework, p. 13, available [here](#) [accessed: 16 August 2016].

¹⁵ Department for Communities and Local Government (2016), English Housing Survey, 2014-2015: adaptability and accessibility of homes, available [here](#) [accessed: 16 August 2016].

¹⁶ The four accessibility features that provide visitability are: level access to the entrance, a flush threshold, sufficiently wide doorsets and circulation space, and a toilet at entrance level.

¹⁷ Her Majesty's Government (2016), The Buildings Regulations 2010, Approved Document M, Access to and Use of Buildings. Vol. 1, available [here](#) [accessed: 10 December 2016].

¹⁸ Accessible and adaptable dwellings and wheelchair user dwellings: As set out in: UK government (2016), The Building Regulations 2010, Approved Document M, Access and Use of Buildings, Vol 1.

¹⁹ Pickles, Eric, Secretary of State for Communities and Local Government (2015), Ministerial Statement, 25 March 2015, available [here](#) [accessed: 16 August 2016]. This statement must be taken into account in the planning process.

²⁰ i.e. shared areas of buildings, such as blocks of flats

²¹ Equality Act 2010, S36(1)(d), s36(5), s36(6), Sched 4, paras 5–7, para 8(1) in so far as it relates to a disabled person who is entitled to occupy premises other than as a tenant or a unit-holder. It would apply throughout Great Britain.

²² UK Government (July 2016), Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people, pp. 16-17, available [here](#) [accessed: 16 August 2016].

²³ The Department for Communities and Local Government publishes guidance called 'Approved Documents' on ways to meet building regulations, available [here](#) [accessed: 10 January 2017]. Note, the Welsh Government uses a different version of Approved Document M, available [here](#) [accessed: 10 January 2017].

2010 and Disability that other local authorities in England should use the optional Building Regulations to follow London's example.²⁴

We recommend that the CRPD Committee asks:

- 2. Can the UK Government outline how it is addressing the gaps in the legal and policy framework on accessible housing in England, and its implementation by local authorities?**

Information and communications

NHS England adopted a mandatory 'Accessible Information Standard' in 2016, which aims to 'make sure that people who have a disability, impairment or sensory loss are provided with information that they can easily read or understand with support so that they can communicate effectively with health and social care services'.²⁵ This has been generally well received by disabled stakeholders, although concerns about whether or not its implementation will be effective have been noted.²⁶ A review of implementation is being conducted between January and March 2017.²⁷

We recommend that the CRPD Committee asks:

- 3. Can the UK Government share the results of the review of the NHS England Accessible Information Standard?**
- 4. How will the UK Government take forward the outcomes of the review of the NHS England Accessible Information Standard, in relation to health and other sectors?**

Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)

As laid out in *Disability Rights in the UK*,²⁸ disabled people are more likely to face poverty and material deprivation than non-disabled people, and have been disproportionately affected by social security reforms since 2010. In England, there are also particular

²⁴ House of Lords Select Committee on the Equality Act 2010 and Disability, The Impact of the Equality Act 2010 on Disability, March 2016, para 496, available [here](#) [accessed: 6 September 2016].

²⁵ NHS England, Accessible information Standard, available [here](#) [accessed: 10 January 2017].

²⁶ House of Lords Select Committee on the Equality Act 2010 and Disability (2016), The Equality Act 2010: the impact on disabled people, pp. 52, available [here](#) [accessed: 3 June 2016].

²⁷ See <https://www.england.nhs.uk/ourwork/accessibleinfo/>.

²⁸ UK Independent Mechanism (2017), Disability Rights in the UK: submission to inform the list of issues in relation to the UK.

challenges in relation to funding for independent living and adult social care and support, on which this section provides additional information and suggested questions.

Independent living funding in England

Following the transfer of ILF funding to Local Authorities (LAs) in England on 1 July 2015,²⁹ evidence from LAs on transition arrangements indicated that most had not ring-fenced ILF funding and some were not planning to.³⁰ This suggests that some people who previously received ILF support to participate in education, training and employment may no longer receive similar support from LAs, which would be a regression in their enjoyment of the right to independent living under Article 19 CRPD. Research³¹ focused on London³² has revealed considerable inconsistency in how ILF recipients have been treated; while some LAs have decided to maintain pre-ILF closure support levels, others have made ‘substantial cuts indicative of a systematic approach of “levelling down” packages’. The research suggests the national picture is similar, and concludes that this is ‘a clear step backwards in independent living support for disabled people’.³³ Research conducted in Manchester concluded that ‘independent living for former ILF recipients is a postcode lottery...’³⁴ According to a 2016 Independent Living Survey, two out of five former ILF recipients in England reported that the amount of their support had decreased or decreased a lot, and one in three said that their quality of support had got worse or a lot worse.³⁵

The UK Government has not put in place a mechanism to monitor how the 152 LAs in England are supporting disabled people to live independently. Without this mechanism, it is difficult to see how the UK Government can demonstrate that it is fulfilling its responsibilities under UNCRPD Article 19.

²⁹ UK Government (6 March 2014), Decision on the future of the ILF (news story), available [here](#). [accessed: 3 June 2016].

³⁰ Disability Rights UK published the responses of 96 local authorities to three requests under the Freedom of Information Act about transitional measures in place prior to April 2015. See DRUK (8 April 2015) Most councils will not ring-fence ILF resources (news article), available [here](#) [accessed: 6 September 2016].

³¹ Inclusion London (2016), One year on: Evaluating the impact of the closure of the Independent Living Fund, p. 8, available [here](#) [accessed: 5 December 2016].

³² Home to 1.2 million disabled people, See [here](#) [accessed: 5 December 2015].

³³ Inclusion London (2016), One year on: Evaluating the impact of the closure of the Independent Living Fund, p. 9, available [here](#) [accessed: 5 December 2016].

³⁴ Greater Manchester Coalition of Disabled People, ILF – Postcode Lottery?, undated. A survey using Freedom of Information request was carried out by the Greater Manchester Coalition of Disabled People of the ten local authorities in the area. See also ‘Government’s failure to ring-fence ILF funding “is leading to postcode lottery”’, Disability News Service, 5 May 2016.

³⁵ Independent Living Strategy Group (2016), Independent Living Survey 2016, available [here](#) [accessed: 10 January 2017].

We recommend that the CRPD Committee asks:

- 5. How does the UK Government plan to respond to emerging evidence of a ‘postcode lottery’ following the transfer of ILF funding to Local Authorities in England?**

Supported living arrangements and rights in residential care

There is concern amongst some disability stakeholders³⁶ that supported living³⁷ arrangements are being undermined by local authority budget cuts, leading to a reduction in independence and autonomy for disabled people in their home lives. The EHRC is aware of these concerns and of at least one LA that is consulting on changes to the provision of supported living accommodation for people with learning disabilities, which may engage Article 19.

Some stakeholders have also noted concerns about the extent to which residential care and related settings are enabling disabled people to exercise certain rights, including those related to choice and control under Article 19.³⁸

We recommend that the CRPD Committee asks:

- 6. How is the UK Government monitoring emerging concerns that supported living arrangements are being undermined by local authority budget cuts, to ensure that disabled people’s Article 19 rights are protected?**
- 7. Can the UK Government provide information about measures in place to ensure residential care and related settings enable disabled people to exercise their rights, particularly under Article 19?**

³⁶ For example: The Guardian (14 October 2016), Clock turning back on rights for people with a learning disability; Community Care (30 September 2016), Learning disability cost savings plan sparks ‘institutionalisation’ fears, [here](#); Disability News Service (12 January 2017), More than 40 NHS organisations have ‘policies of concern’ on institutional care, [here](#).

³⁷ ‘Supported living’ here is understood to be a living arrangement that enables disabled people to own or rent their home and have control over the support they get, who they live with (if anyone) and how they live their lives. Supported living assumes that all disabled people, regardless of the level or type of disability, are able to make choices about how to live their lives even if the person does not make choices in conventional ways. See NDTi (2010), Supported Living – Making the Move: Developing Supported Living options for people with learning disabilities, p. 20, available [here](#) [accessed: 1 February 2017].

³⁸ Joseph Rowntree Foundation (November 2009), Older people’s vision for long-term care, available [here](#) [accessed 01 February 2017]; NDTi (2010), Supported Living – Making the Move: Developing Supported Living options for people with learning disabilities, available [here](#) [accessed: 1 February 2017]. Other rights that may be affected include CRPD Articles 22 and 26.

Adult social care and support

The Care Act 2014,³⁹ which came into force in April 2015, represents a wholesale reform of care and support in England. Among other things its purpose is to integrate health and social care services and give disabled people and carers more control over their care. The Care Act has introduced a general duty on local authorities to promote individual wellbeing in line with the Act's 'wellbeing principle'.⁴⁰

Data show that gross expenditure by Councils with Adult Social Services Responsibilities in England on adult social care decreased by 3% in real terms between 2013/14 and 2014/15.⁴¹

The Care Quality Commission (2016) has recognised that the sector is under pressure due to significant cuts to the amount of funding available for adult social care at a time of rising demand.⁴² Financial pressures on providers are causing care-providing businesses to close or withdraw from council contracts.⁴³

Evidence indicates that social isolation for some disabled people in England may be increasing,⁴⁴ with social opportunities diminishing in some areas.^{45 46}

³⁹ Most of the Act applies only to England although some sections also apply to Wales, for example cross-border placements, and some of the sections relating to the Human Rights Act apply to England, Scotland and Wales.

⁴⁰ Well-being in the Care Act 2014 is defined as follows: "Well-being", in relation to an individual, means that individual's well-being so far as relating to any of the following (a) personal dignity (including treatment of the individual with respect); (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided); (e) participation in work, education, training or recreation; (f) social and economic well-being; (g) domestic, family and personal relationships; (h) suitability of living accommodation; (i) the individual's contribution to society.'

⁴¹ Health and Social Care Information Centre (HSCIC) (2015), Personal Social Services: Expenditure and Unit Costs, England 2014-15, Final release, available [here](#) [accessed: 16 August 2016].

⁴² Care Quality Commission (2016), State of the nation 2014/15. Care Quality Commission, available [here](#) [accessed: 10 October 2016].

⁴³ In a survey of 492 homecare providers in the UK, 93% of providers trading with councils had faced a real-terms decrease in the price paid for their services in the last 12 months, and 74% said that they would reduce the amount of publicly funded care they delivered, estimated to affect 50% of all the service users they support. See: UKHCA (2015), UKHCA Briefing Market Stability Survey September 2015. First result, available [here](#) [accessed: 16 August 2016].

⁴⁴ Disabled people are finding it more and more difficult to establish and maintain a sense of connectedness with others. See: Copestake et al. (2014), Removing barriers, raising disabled people's living standards, available [here](#) [accessed: 3 September 2015].

⁴⁵ The percentage of disabled people who said they are limited in one or more areas of life, because of poor services, lack of help or assistance, or lack of special aids or equipment was higher (9.1%) than for non-disabled people (4.0%) in 2012-14. This was the case for all impairments, but those with a social or behavioural impairment were particularly likely to say they were limited in one or more areas of life (34.4%). Based on Wave 3 results from the Life Opportunities Survey, a large-scale longitudinal survey of disability in Britain.

⁴⁶ Resources are become scarcer and funding for specialist services for disabled people decreasing. In England, almost 1 in 3 local authorities had closed day services for people with a learning disability in 2012, and 6 in 10 local authorities said they had increased the charges that day service users had to pay to attend.

We recommend that the CRPD Committee asks:

- 8. In light of overall reductions in central government funding to local authorities, how is the UK Government ensuring the provision of adequate social care and support to enable disabled people to choose how and where their support is delivered in line with the requirements of the ‘wellbeing principle’ of the Care Act 2014?**
- 9. How is the UK Government ensuring the availability of services and opportunities for disabled people in England to remain socially connected within their communities?**

Access to justice (Articles 13, 12)

As laid out in *Disability Rights in the UK*,⁴⁷ civil legal aid is no longer available in England and Wales for certain cases as a result of changes under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and there are ‘advice deserts’ across England and Wales. In addition, evidence suggests that the introduction of Employment Tribunal fees is having a detrimental impact on disabled people, and education tribunals are not able to award financial compensation for disability discrimination or harassment.

This section provides additional information and suggested questions related to the impact of legal aid changes on disabled people, and the new telephone gateway service.

Legal aid for welfare benefits, family law and housing cases

Evidence indicates that removing welfare benefits (with some exceptions), private family law cases (such as contact or divorce)⁴⁸ and most housing cases from the scope of legal aid has had a negative impact on access to justice for disabled people in England and Wales. For example:

- The UK Government has recognised that individuals bringing welfare benefit cases are more likely to report being disabled than the civil legal aid client base as a whole.⁴⁹

See: Mencap (2012) *Stuck at home: the impact of day service cuts on people with a learning disability*, available [here](#) [accessed: 16 August 2016].

⁴⁷ UK Independent Mechanism (2017), *Disability Rights in the UK: submission to inform the list of issues in relation to the UK*.

⁴⁸ There is an exception where applicants can show they have experienced domestic violence.

⁴⁹ *Proposals for the reform of legal aid in England and Wales. Consultation Paper*. Ministry of Justice, 2010.

Following the changes, the number of debt, employment and welfare benefits advice cases fell by over 99 per cent.⁵⁰

- The reduction in legal aid support for private family law cases has reportedly had an impact on disabled people, because mental health conditions feature in a significant minority of family disputes.⁵¹
- The over-representation of disabled people in social housing compared with the adult population as a whole means they face a disproportionate impact from the exclusion of most housing cases. The UK Government's equality impact assessment included statistics that showed potential adverse impacts on disabled people.⁵²

A 2016 report by Amnesty International concluded that 'in human rights terms, the cuts have amounted to retrogressive measures which, as this report sets out, have restricted access to justice for some of the most marginalised and vulnerable people in society'.⁵³

We recommend that the CRPD Committee asks:

10. Can the UK Government outline its response to evidence that disabled people are disproportionately affected by the removal of many welfare benefits, family law and housing cases from the scope of legal aid in England and Wales?

Telephone gateway

In England and Wales, individuals seeking legal advice on discrimination, debt and special educational needs (SEN) must now use a telephone gateway service, called 'Civil Legal Advice' (CLA). The EHRC has recorded concerns about the impact of this service on disabled people's access to justice.⁵⁴ For example, people with mental health conditions may face additional barriers in using this service 'because of the communication difficulties associated with their condition...'.⁵⁵ There is also evidence of a failure to provide reasonable

⁵⁰ Between 2009/10 and 2015/16, the number of cases fell as follows: debt (143,858 to 691); employment (31,223 to 16) and welfare benefits (141,625 to 150). See: Ministry of Justice (2016) Legal Aid statistics, England and Wales tables: April to June 2016, available [here](#). Also see: MacInnes et al (2014) Monitoring poverty and social exclusion, available [here](#) [accessed: 31 January 2017].

⁵¹ Miles et al (2012) 'When exceptional is the rule: mental health, family problems and the reform of legal aid in England and Wales', in *Child and Family Law Quarterly*, Vol. 318, available [here](#) [accessed: 16 August 2016].

⁵² Ministry of Justice (2011) Reform of legal aid in England and Wales: Equality Impact assessment, available [here](#) [accessed: 16 August 2016].

⁵³ Amnesty International (2016), Cuts that hurt: the impact of legal aid cuts in England on access to justice, available [here](#), [accessed: 10 December 2016].

⁵⁴ EHRC (2015), Equality, human rights and access to civil law justice: a literature review, available [here](#) [accessed 16 August 2016]. EHRC (2015), Is Britain Fairer? Legal Security supporting evidence paper, available [here](#) [accessed 16 August 2016].

⁵⁵ Written evidence to the Justice Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Mind, 2014.

adjustments, as requested by service users.⁵⁶ While the Ministry of Justice did review the CLA,⁵⁷ a number of shortcomings in this review have been noted.⁵⁸

We recommend that the CRPD Committee asks:

11. How has the UK Government acted upon the findings of the Ministry of Justice review of Civil Legal Advice?

12. How does the UK Government intend to address evidence of gaps within the Ministry of Justice review of Civil Legal Advice?

Education (Articles 24, 7)

As noted in *Disability Rights in the UK*,⁵⁹ research indicates a reverse in the trend towards inclusive education in England, and shows that children with special educational needs (SEN) continue to perform worse than those without SEN. In addition, children with SEN are more likely to be excluded from school, and face problems transitioning from school to further education (which could be compounded by changes to Disabled Students' Allowance) or employment.

This section provides additional information and suggested questions relevant to England on inclusive education trends, guidance on school exclusion, and reforms to SEND provision.

Inclusive education

Research published in 2014⁶⁰ shows that the 30-year trend towards the inclusion of disabled children in mainstream schools in England has halted. From 2007 to 2013 there was in fact a very modest increase (0.04%) in the proportion of all children in special school placements, as well as large variation in inclusion versus segregation across local

⁵⁶ Ministry of Justice (2014) Civil Legal Aid mandatory gateway: findings from interviews with users, available [here](#) [accessed 10 September 2016].

⁵⁷ Ministry of Justice (2014) Civil Legal Aid mandatory gateway: research findings, available [here](#) [accessed: 10 September 2016].

⁵⁸ EHRC (2015), Equality, human rights and access to civil law justice: a literature review, pp. 62-64, available [here](#) [accessed 16 August 2016].

⁵⁹ UK Independent Mechanism (2017), Disability Rights in the UK: submission to inform the list of issues in relation to the UK.

⁶⁰ CSIE (2014), Contrasting responses to diversity: school placement trends 2007-2013 for all local authorities in England, available [here](#) [accessed 6 September 2016]. The report presents school placement trends (i.e. the proportion of children placed in special schools or other separate sections) for all local authorities in England for the years 2007 to 2013.

authorities (LAs) in England. More recent analysis from the Department for Education confirms that the trend towards inclusion has indeed been reversed, albeit slightly.⁶¹

A 2015 small-scale study found that English schools wanting to maintain their academic credibility were reluctant to take on pupils with SEN.⁶² School heads referred children with SEN to other schools or sought to limit their numbers in order not to fall down performance league tables or Ofsted inspectorate ratings.⁶³ The study also found that, despite the advantages of mainstream schools, some could not offer the expert help and support to enable SEN pupils to be fully included in school life.

A survey of 585 members of the Association of Teachers and Lecturers (ATL) found that education staff believe that children and young people with special educational needs and disabilities (SEND) are not getting the support they need. 83% of respondents did not believe the current system in England enables all children with SEND to be supported appropriately and 71% did not agree that the system enables all such children to be identified in a timely fashion.⁶⁴

An inquiry in England and Wales found that disabled children are facing numerous barriers to accessing mainstream play areas.⁶⁵

We recommend that the CRPD Committee asks:

13. Can the UK Government outline its response to: evidence of a slight regression in progress towards the inclusion of disabled pupils in mainstream schools; evidence of inconsistency across local authorities in England; and evidence of inadequate support for children with special educational needs and disabilities?

14. How does the UK Government ensure that disabled children are able to participate in a full range of educational activities, both curricular and extra-curricular?

⁶¹ Department for Education (January 2016): Special Educational Needs in England, available [here](#), [accessed: 16 August 2016]. It states that 'between 2010 and 2016 the percentage of children in England with a statement of special educational needs or Education Health and Care Plan attending maintained special schools increased from 38.2% to 42.9% while those attending State funded secondary schools declined from 28.8% to 23.5%'.

⁶² Galton, M. and MacBeath, J. (2015), 'Inclusion: Statements of Intent. A Report to the National Union of Teachers on the current state of special education needs and disability provision'. University of Cambridge and National Union of Teachers, available [here](#) [accessed: 16 August 2016].

⁶³ The research also cited moving children with SEN to other schools prior to Ofsted inspections.

⁶⁴ ATL (12 August 2016) Lack of funding means SEND pupils aren't adequately supported (press release), available [here](#) [accessed 6 September 2016].

⁶⁵ Sense (2016), 'The Case for Play', available [here](#) [accessed: 10 October 2016].

School exclusions

Guidance from the Department for Education recognises that pupils with SEN have 'disproportionately high rates of exclusion' and are 'particularly vulnerable to the impacts of exclusion', and advises that: 'Head teachers should, as far as possible, avoid excluding permanently any pupils with a statement of SEN...'⁶⁶

We recommend that the CRPD Committee asks:

15. What steps is the UK Government taking to promote and embed Department for Education Guidance on minimising the exclusion of pupils with SEN?

Reforms to SEND provision

The Children and Families Act (2014) introduced a new code of practice for children with special educational needs and disabilities (SEND). As a result the UK Government has overhauled the system for identifying and supporting children and young people in England with SEND. The key reform is the introduction of a single Education, Health and Care (EHC) plan covering birth to 25 years of age where appropriate.⁶⁷ The reformed system was introduced in September 2014 and the full transition is intended to be complete by April 2018.⁶⁸ (House of Commons Library, 2016).

Several disability and children's charities have raised concerns about the UK government's reforms to SEND provision whilst recognising good practice in some areas. They reported poor information and communication, waste, fragmentation of services and dissatisfaction on the part of parents.⁶⁹ An early DfE evaluation of the new system of EHC plans said there was much work to do to ensure adequate provision for all.⁷⁰

⁶⁶ Department for Education (2012), Exclusion from maintained schools, academies and pupil referral units in England, available [here](#) [accessed 16 August 2016].

⁶⁷ 2.8% of pupils currently have an EHC plan, also known as 'a statement'. 991,980 pupils receive SEN support - 11.6% of the total pupil population. DfE (2016), 'National Statistics: special educational needs in England: January 2016', available [here](#) [accessed: 10 December 2016].

⁶⁸ Long, R (2016) House of Commons Library, briefing paper number 07020, 21 December 2016 Special Educational Needs: support in England, available [here](#) [accessed: 10 January 2017].

⁶⁹ EHRC (2016), Children's Rights in the UK: updated submission to the UN Committee on the Rights of the Child in advance of the public examination of the UK's implementation of the Convention on the Rights of the Child, available [here](#) [accessed: 16 August 2016]. Concerns cited in reports produced in 2015 by the National Autistic Society, the Driver Youth Trust and the National Deaf Children's Society.

⁷⁰ DfE (2016), SEND pathfinder programme: final report, available [here](#) [accessed: 16 August 2016].

The UK Government has acknowledged that more needs to be done to improve educational outcomes for children in England with SEND.⁷¹ In January 2016, it allocated £80 million to charities and English LAs to better meet the needs of children with SEND.⁷² However, in a Department for Education strategy document the department acknowledged that more needs to be done to improve educational outcomes for children with SEND, which are typically poor. Those with SEND but without an EHC plan are far more numerous and may number as many as three or four out of an average class.⁷³ In May 2016, Ofsted and the Care Quality Commission began inspecting local area implementation of the EHC plans in England.⁷⁴

We recommend that the CRPD Committee asks:

16. Can the UK Government provide an update on the transition to the new code of practice introduced by the Children and Families Act (2014)?

17. Can the UK Government provide information about support provided in England to children with SEND who do not have an Education, Health and Care plan?

Health and life (Articles 25, 10)

As laid out in *Disability Rights in the UK*,⁷⁵ disabled people face a number of health inequalities, and mental healthcare provision requires improvement. In addition, many people with a learning disability or autism are inappropriately detained in psychiatric hospitals, and there is evidence of ‘Do Not Resuscitate’ orders being inappropriately applied to disabled people.

This section provides additional information and suggested questions in relation to inequalities in life expectancy for disabled people, mental healthcare provision, and non-natural deaths of people with mental health conditions in state detention.

⁷¹ DfE (2016), ‘DfE strategy 2015-2020 – World-class education and care’, available [here](#) [accessed: 16 August 2016].; DfE (2016), ‘Educational excellence everywhere’, available [here](#) [accessed: 16 August 2016].

⁷² DfE (29 January 2016), ‘£80 million to boost support for special educational needs’ (press release), available [here](#) [accessed: 16 August 2016].

⁷³ DfE (2016), DfE strategy 2015-2020: world-class education and care, available [here](#). [accessed: 16 August 2016].

⁷⁴ Ofsted (2015), ‘Ofsted and the Care Quality Commission want these inspections to act as a catalyst for improvement’ (press release) available [here](#) [accessed: 5 August 2016].

⁷⁵ UK Independent Mechanism (2017), Disability Rights in the UK: submission to inform the list of issues in relation to the UK.

Inequality in life expectancy

EHRC welcomes NHS England (NHSE)'s current learning disability mortality review.⁷⁶ We also welcome the publication of a review⁷⁷ undertaken by the Care Quality Commission in 2016 (CQC), which examined how NHS trusts in England investigate and learn from deaths of people using learning disability or mental health services.

We recommend that the CRPD Committee asks:

18. Can the UK Government provide an update on:

- NHS England's current learning disability mortality review, and
- how it is responding to the recommendations from the Care Quality Commission review of investigations into deaths of people using learning disability or mental health services?

Mental healthcare services

The UK government-sponsored, Independent Mental Health Taskforce concluded in 2016 that, in England:⁷⁸

- mental health hasn't been given equal priority to physical health, and there is underfunding and lack of qualified staff, contributing to three quarters of people with mental health problems receiving no or inadequate⁷⁹ support from health services
- many people with more severe mental health conditions experience very protracted waits for appropriate treatment and many never have access to appropriate treatment.

The CQC's 2015 review⁸⁰ of the quality and availability of support for people experiencing a mental health crisis found that many people are unable to get the help they need when they need it.⁸¹

⁷⁶ Aimed at identifying the reasons people with learning disabilities often die prematurely, and providing NHS commissioners with an evidence base for interventions. See NHS England (18 June 2015) NHS launches world's first national review of deaths of people with learning disabilities (news), available [here](#) [accessed: 5 August 2016].

⁷⁷ Care Quality Commission (2016), Learning, candour and accountability: A review of the way NHS trusts review and investigate the deaths of patients in England, available [here](#) [accessed: 27 January 2017].

⁷⁸ Independent Mental Health Taskforce to the NHS in England (February 2016) The Five Year Forward View For Mental Health, available [here](#) [accessed: 16 August 2016].

⁷⁹ Of those who do receive support, many don't get access to the full range of clinically recommended interventions such as psychological therapy and appropriately prescribed medication.

⁸⁰ Care Quality Commission (June 2015) Right here, right now: People's experiences of help, care and support during a mental health crisis, available [here](#) [accessed: 16 August 2016].

⁸¹ Only 14% of people surveyed felt the care they received was the right response to their needs and helped resolve their crisis; many services were failing to meet people's needs and lacked basic respect, warmth and compassion; and a wide variations in the help, care and support available, depending on where a person in crisis lived, and on what part of the system they came into contact with.

We recommend that the CRPD Committee asks:

19. Can the UK Government explain how it is acting upon the recommendations the Independent Mental Health Task Force made in 2016, and the Care Quality Commission's June 2015 review concerning mental health crises?

Non-natural deaths in detention and post-custody

An EHRC inquiry covering England and Wales found that over three years from 2010-13, 350 adults with mental health conditions died of non-natural causes while detained in psychiatric wards; 17 adults died in police cells; and another 295 adults died in prison, many of whom had mental health conditions.^{82 83} While there has been some progress,⁸⁴ a number of recommendations remain outstanding, including that data on the number of prisoners with mental health conditions should be collated and this should be routinely published.

Research in 2016⁸⁵ from the EHRC examined deaths within a month of release from state custody in England and Wales. Mental health is a significant factor in both post-police custody and prison deaths. Of the 60 people who took their own lives following police custody, 33 had known mental health conditions including depression, schizophrenia, or had previously attempted suicide. We are concerned that plans to implement a key recommendation, for health and mental care in police stations to be allocated to the NHS, appear to have been abandoned.⁸⁶ Other key recommendations require implementation.⁸⁷

⁸² EHRC (2015), 'Preventing Deaths in Detention of Adults with Mental Health Conditions', available [here](#) [accessed: 2 February 2016].

⁸³ In 2016, a record number of suicides in prison were recorded in England and Wales. See [here](#).

⁸⁴ EHRC (2016), Preventing deaths in detention of adults with mental health conditions: progress review, available [here](#) [accessed: 2 February 2016].

⁸⁵ In 2015-16, there were 60 apparent suicides within two days following police custody, 18 of which occurred on the day of release, 24 one day after release and 16 two days after release. EHRC (2016), Research report 106: Non-natural deaths following prison and police custody, available [here](#) [accessed: 20 January 2017].

⁸⁶ British Medical Association (15 September 2016), Concern for patients in custody after U-turn (press release), available [here](#) [accessed: 2 February 2017].

⁸⁷ Some key recommendations include:

- All apparent suicides within 2 days of release from police custody should be referred by the police to the IPCC, to assess whether to carry out an Article 2 compliant investigation.
- More training should be provided to support police custody staff in the identification and treatment of suspects who may be traumatised by the fact of arrest and investigation, and of others with mental health issues.
- More training should be provided for all probation staff (including those who work in Approved Premises) particularly in relation to inter-agency cooperation when working with those at risk of abusing illegal and prescription drugs.

We recommend that the CRPD Committee asks:

20. Can the UK Government provide an update on:

- **the steps it is taking to reduce the number of non-natural deaths of people with mental health conditions in detention and upon release from police custody?**
- **the extent to which it has implemented recommendations from the EHRC's inquiry into non-natural deaths in detention of adults with mental health conditions, and research into non-natural deaths following prison and police custody, including an update on its previously announced plans to ensure that health and mental care in police detention is commissioned by the NHS?**

Freedom from exploitation, violence and abuse (Article 16)

As noted in *Disability Rights in the UK*,⁸⁸ disability-motivated hate crime persists in England and is under-reported, and disabled children face bullying in schools. In addition, disabled women face disproportionate levels of violence and abuse.

This section provides additional information and suggested questions in relation to hate crime in England (and Wales) and bullying in England.

Disability-motivated hate crime, hostility and harassment

The legal framework for the protection of disabled people, including children, from hate crime and bullying is covered in a number of Acts in England and Wales.⁸⁹

Recent new approaches to reporting hate crime may prove useful for individuals experiencing disability-related harassment,⁹⁰ including:

- increased opportunity to report by text, online or through dedicated telephone helplines⁹¹

⁸⁸ UK Independent Mechanism (2017), *Disability Rights in the UK: submission to inform the list of issues in relation to the UK*.

⁸⁹ For example: Crime and Disorder Act 1998; Criminal Justice Act 2003; Children Act 1989; Care Act 2014; Children Act 2004. In addition Section 76 of the Serious Crime Act 2015, affords additional protection from domestic abuse by criminalising patterns of repeated or continuous coercive or controlling behaviour where perpetrated against an intimate partner or family member, causing victims to feel repeated fear of violence, or serious alarm or distress.

⁹⁰ Note: these are suggested examples from charities/third sector rather than government initiatives.

⁹¹ For example the Stop Hate Learning Disability Crime Line, available in selected regions of the country, has the option to Report Hate Crime in BSL using Interpreter Now. Stop Hate, Report Learning Disability Hate Crime, available [here](#) [accessed: 1 September 2016]. It should be noted, however, that telephone advice services may present specific barriers for a proportion of people with mental health impairments because of communication barriers associated with their impairment or lack of capacity to use the means available. Written evidence to the Justice Committee inquiry into the impact of changes to civil legal aid under the Legal

- an increase in Third Party Reporting Centres, often delivered through third sector providers
- changes to registration and inspections, increasing the opportunity for people living in residential care premises to report incidences.⁹²

In 2013, the Criminal Justice Joint Inspection produced a review of how the police, Crown Prosecution Service and probation trusts deal with disability hate crime. The review found a lack of clarity and understanding as to what constitutes a disability hate crime and confusion between policy definitions and the statutory sentencing provision contained within section 146 of the Criminal Justice Act 2003. It also made a priority recommendation that the three organisations should adopt and publish a single, clear and uncomplicated definition of a disability hate crime that is communicated effectively to the public and staff.⁹³

In England and Wales in 2015/16, 62,518 hate crimes were recorded by the police, an increase of 19% compared with the 52,465 hate crimes recorded in 2014/15, of which 3,629 (6%) of those recorded in 2015/16 were disability hate crimes.⁹⁴ This represents a 44% increase from 2014/15 (2,515). The report said that the likely factors in the increases in hate crime were improvements in recording and awareness of hate crimes and willingness of victims to come forward. The Crime Survey for England and Wales (CSEW), reflecting self-reported experiences of crime, showed that after race, disability was the most common motivating factor for hate crimes (estimated at 70,000 incidents per year).⁹⁵

The CPS has reported an increase in prosecutions and convictions for disability hate crime, reporting 941 completed prosecutions for disability hate crime in 2015/16, compared to 666 in the previous year. Convictions increased by a similar rate during this time from 503 to 707. The report acknowledged the need for the CPS to improve its performance in respect of the conviction rate and sentence uplift.⁹⁶

Aid, Sentencing and Punishment of Offenders Act 2012. Mind, 2014, available [here](#) [accessed: 18 October 2016].

⁹² However, the frequency of inspections (determined by the results of the last inspection), may not be sufficient to afford disabled people full protection from harassment or bullying.

⁹³ HM Crown Prosecution Service Inspectorate, HMIC and HM Inspectorate of Probation (2013). 'Living in a different world: A joint review of disability hate crime', available [here](#) [accessed: 17 November 2016].

⁹⁴ Corcoran, H. and Smith, K. (2016), Hate crime, England and Wales, 2015/16, available [here](#) [accessed: 25 January 2017].

⁹⁵ Corcoran, Lader and Smith (2015), Hate crime, England and Wales, 2014/15, available [here](#) [accessed: 19 August 2016].

⁹⁶ A sentence uplift will apply in any hate crime prosecution where the evidence of hostility has been accepted by the court and the defendant pleads or is found guilty. Crown Prosecution Service (CPS) (2016), Hate Crime Report 2014/15 and 2015/16, p. 4, available [here](#) [accessed: 19 August 2016].

We recommend that the CRPD Committee asks:

21. Can the UK Government outline:

- **how it ensures that effective methods for reporting disability-motivated hate crime are widely available and publicised?**
- **how it is responding to findings of the 2013 Criminal Justice Joint Inspection review, in particular the recommendation that the police, Crown Prosecution Service and probation trusts should adopt and communicate a single definition of disability hate crime?**

Bullying

Under the Education and Inspections Act 2006, schools in England have a statutory duty to prevent all forms of bullying among pupils, and head teachers can impose disciplinary sanctions to deal with unacceptable behaviour. There is a general duty on local authorities to cooperate with different bodies to ensure that the physical and mental health and emotional wellbeing of children is protected, under Section 10 of the Children Act 2004. This is a framework in which the child's welfare is central and schools must proactively deal with potential problems with bullying.⁹⁷

The UK Government's updated guidance states that schools should take into account a pupil's special educational needs and/or disability when administering punishment (in cases where a child with SEND is the perpetrator). Schools are also advised to invest in specialist skills for dealing with the needs of their pupils, including those with SEND.⁹⁸

We recommend that the CRPD Committee asks:

22. Can the UK Government provide evidence on how effectively the legal and policy framework on bullying is protecting disabled pupils in England?

Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)

As laid out in *Disability Rights in the UK*,⁹⁹ there are concerns around physical and chemical restraint of disabled people, abuse of disabled people in care homes, and the fact and conditions of immigration detention for disabled people. In addition, there are concerns

⁹⁷ Department for Education (2014), 'Preventing and tackling bullying: Advice for headteachers, staff and governing bodies', available [here](#) [accessed: 18 August 2015].

⁹⁸ Department for Education (2014a), Preventing bullying, available [here](#) [accessed 16 August 2016].

⁹⁹ UK Independent Mechanism (2017), Disability Rights in the UK: submission to inform the list of issues in relation to the UK.

about legislation providing for substitute decision-making, and inadequacies in deprivation of liberty safeguards.

This section provides additional information and suggested questions on the use of restraint, supported/substitute decision-making, and deprivation of liberty safeguards.

The use of restraint

An EHRC inquiry found that physical restraint could be a direct or indirect cause of some non-natural deaths of adults with mental health conditions in three state detention settings in England and Wales, namely prisons, police cells and hospitals.¹⁰⁰ While the EHRC has welcomed some progress across government and the public sector,¹⁰¹ some important recommendations in relation to restraint are outstanding, in particular that:

- data on the use of restraint should be routinely published about the prison setting by the Ministry of Justice, to aid transparency and accountability
- Independent Advisory Panel principles for safer restraint and EHRC Human Rights framework are fully acknowledged in the three settings and beyond, with a focus on the Youth Offending estate.¹⁰²

In relation to mental health services, The Care Quality Commission's Mental Health Act Monitoring Report for 2012-13 repeated earlier criticisms of restraint and called for cultures that support therapeutic practices instead.¹⁰³ Since then, the UK Government policy papers in England have set out the need for a reduction in the use of restraint,¹⁰⁴ and an end to 'planned or intentional restraint of a person in a prone/face down position' – while accepting that some prone restraint may still occur.¹⁰⁵ The recording of data on restraint incidents is, however, incomplete.¹⁰⁶ Without this, it is difficult to monitor practice, either locally or nationally.¹⁰⁷ However, from 2016, data on the use of restraint and other restrictive

¹⁰⁰ EHRC (February 2015), Preventing Deaths in Detention of Adults with Mental Health Conditions: An Inquiry by the Equality and Human Rights Commission, available [here](#) [accessed: 25 September 2016].

¹⁰¹ EHRC (2016), Preventing deaths in detention of adults with mental health conditions, progress review, pp. 35-35, available [here](#) [accessed: 2 February 2017].

¹⁰² EHRC (2016), Preventing deaths in detention of adults with mental health conditions, progress review, available [here](#) [accessed 25 September 2016]; and Independent Advisory Panel on deaths in Custody, Common Principles for Safer Restraint, available [here](#) [accessed: 25 September 2016].

¹⁰³ CQC (2014a), Monitoring the Mental Health Act in 2012/13, available [here](#) [accessed: 15 September 2015].

¹⁰⁴ DH (2014a), Closing the gap: priorities for essential change in mental health, available [here](#) [accessed: 15 September 2015].

¹⁰⁵ Department of Health (2014), Positive and Proactive Care: reducing the need for restrictive interventions, available [here](#) [accessed: 15 September 2015]; Department of Health (2015), Mental Health Act 1983: Code of Practice, available [here](#) [accessed: 15 September 2015].

¹⁰⁶ With only 46 out of 67 mental health organisations submitting returns in 2013/14. See: Health and Social Care Information Centre (2014), Measures from the Mental Health Minimum Dataset (MHMDS), England: 2012-13 physical restraint, available [here](#) [accessed: 15 September 2015].

¹⁰⁷ CQC (2015), Mental Health Act Annual Report 2013/14, available [here](#) [accessed: 15 September 2015].

interventions will be included in the Health and Social Care Information Centre's Mental Health and Learning Disability Minimum dataset. Additional work has focused on increasing the number of complete returns and improving definitions, in order to strengthen robustness and comparability between organisations.¹⁰⁸

In response to concerns about inappropriate use of anti-psychotic medication for people with learning disabilities, NHS England has issued guidance for General Practitioners working in the NHS.¹⁰⁹ However, there has been no systematic review of chemical restraint across settings.

It is unclear how many disabled people are affected by restraint in the criminal justice system as there is poor identification and collection of data on disabilities and the use of force.¹¹⁰ However, research indicates that prisoners with learning disabilities or difficulties are five times as likely to have been subject to control and restraint.¹¹¹ The Ministry of Justice estimates that 36% of prisoners have a physical or mental disability, compared with 19% of the general population.¹¹²

The EHRC highlighted concerns about physical restraint in the youth justice estate in England and Wales in its latest reports to the Committee Against Torture¹¹³ and UN CRC.¹¹⁴ The EHRC noted the use of physical restraint techniques, including deliberately inflicting pain, and the marked increase in the rate of restrictive physical interventions.¹¹⁵

We recommend that the CRPD Committee asks:

23. Can the UK Government provide details of how it is following up recommendations relating to restraint from the EHRC's inquiry into non-natural deaths of adults with mental health conditions in state detention?

¹⁰⁸ Department of Health (2014), Positive and safe champions' network. Newsletter (Issue 1). December, available [here](#) [accessed: 15 September 2015].

¹⁰⁹ NHS England (1 June 2016), 'Doctors urged to help stop "chemical restraint" as leading health professionals sign joint pledge' (press release), available [here](#) [accessed 6 September 2016].

¹¹⁰ See e.g. HMI Prisons and Probation (January 2014), A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system – phase one – from arrest to sentence; and HMI Prisons and Probation (March 2015) phase two in custody and the community available [here](#) [accessed: 16 August 2016].

¹¹¹ Talbot, J. (2008), Prisoners' Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties, London: Prison Reform Trust, available [here](#) [accessed: 16 August 2016].

¹¹² Ministry of Justice (2012), Estimating the prevalence of disability amongst prisoners: results from the Surveying Prisoner Crime Reduction (SPCR) survey, available [here](#) [accessed: 16 August 2016].

¹¹³ EHRC (March 2016), EHRC submission to the UN Committee Against Torture 57th session, available [here](#) [accessed: 16 August 2016].

¹¹⁴ EHRC (April 2016) Updated Submission to UN CRC in advance of the public examination of the UK's implementation of CRC, part 6.2, available [here](#) [accessed: 16 August 2016].

¹¹⁵ The Joint Committee on Human Rights has stated that authorised restraint techniques used in Young Offender Institutions and Secure Training Centres do not meet human rights standards and are in breach of the UN Convention on the Rights of the Child. EHRC (Autumn 2015), Is Britain Fairer? Evidence Paper Series Domain C Physical security, p. 15, available [here](#) [accessed: 16 August 2016].

24. Can the UK Government:

- provide evidence of the effectiveness of measures for reducing the use of restraint in healthcare settings?
- explain how it is addressing concerns over the use of restraint in the criminal justice system and youth justice estate?

Supported/substitute decision-making frameworks

The Mental Capacity Act 2005 provides the legal framework for decisions relating to persons who lack mental capacity in the health and social care system in England and Wales, and deprivation of liberty safeguards (DoLS). The Act promotes supported decision-making through a presumption of capacity, but permits substitute decision-making when it can be shown that a disabled person lacks capacity.¹¹⁶ In 2014, a Lords Select Committee concluded that ‘Social workers, healthcare professionals and others involved in the care of vulnerable adults are not aware of the Mental Capacity Act, and are failing to implement it’.¹¹⁷

Deprivation of liberty

The Deprivation of Liberty Safeguards (DoLS) only apply to hospitals and care homes. Deprivation of liberty in other contexts for care purposes must be authorised by the Court of Protection. Following the 2014 *Cheshire West* Supreme Court ruling it is clear that deprivation of liberty can occur in a significantly broader range of living arrangements than previously thought. This means that many disabled people may have been unlawfully deprived of their liberty,¹¹⁸ and local authorities across England have experienced a rapid growth in DoLS¹¹⁹ applications as a result. In 2016, the Care Quality Commission reported a variation in the effective application of Deprivation of Liberty Safeguards across England both between providers and within individual providers which could lead to individuals not receiving care that is in their best interests. The report also stated that not enough providers

¹¹⁶ Mental Capacity Act s1.2, available [here](#) [accessed: 16 August 2016].

¹¹⁷ House of Lords Select Committee on the Mental Capacity Act 2005: post legislative scrutiny (March 2014), available [here](#) [accessed: 16 August 2016].

¹¹⁸ (*P (By His Litigation Friend The Official Solicitor) (Appellant) V Cheshire West And Chester Council And Another (Respondents); P And Q (By Their Litigation Friend, The Official Solicitor) (Appellants) V Surrey County Council (Respondent) [2014] UKSC 19 On Appeal From [2011] EWCA Civ 1257; [2011] EWCA Civ 190*). A case summary with links to the judgment – including a video of it being delivered at the Supreme Court – can be accessed [here](#).

¹¹⁹ Deprivation of Liberty Safeguards aim to protect people in care homes or hospitals in England or Wales from being deprived of their liberty unless it is in their best interests to protect them from harm, or to provide treatment, and there is no other less restrictive alternative.

were applying capacity assessments effectively and many providers made assumptions that individuals lacked capacity without having carried out or documented assessments.¹²⁰

The UK Government has asked the Law Commission to review the framework for mental capacity and DoLS provided by the Mental Capacity Act 2005.¹²¹ In its interim statement,¹²² the Law Commission states: ‘there is a compelling case for replacing the DoLS. Most consultees perceived the DoLS ...to have failed to deliver improved outcomes’.

The EHRC has responded to the initial consultation from the Law Commission, which divided the new regime into two parts; this includes a restrictive care and treatment scheme (RCTS) where a disabled person may still be deprived of their liberty.¹²³ The proposals would require all RCTS cases to be subject to judicial oversight. The EHRC recommends non-means tested legal aid to ensure that disabled people affected are legally represented.

The review also proposes increasing the scope of supported decision-making but retaining some substitute decision-making. This supported decision-making framework includes safeguards, to replace a disabled person’s supporter with an Approved Mental Capacity Professional if that person is not acting according to the will and preferences of the disabled person in question.

The EHRC welcomes the proposal that the Section 4 of the Mental Capacity Act 2005 be amended to attach a level of primacy to the individual's wishes and preferences.

We recommend that the CRPD Committee asks:

25. Pending review of the framework for mental capacity and Deprivation of Liberty Safeguards in England and Wales, what steps has the UK Government taken to ensure that all professionals involved in the care of vulnerable adults are aware of and implementing the requirements of the Mental Capacity Act?

¹²⁰ Care Quality Commission (2016), ‘The state of health care and adult social care in England 2015/16’, available [here](#) [accessed: 10 December 2016].

¹²¹ The review and proposal for replacement legislation should be published in March 2017. See: The Law Commission, Mental Capacity and Deprivation of Liberty, Current Project Status, available [here](#) [accessed: 20 October 2016].

¹²² Law Commission (25 May 2016), Mental Capacity and Deprivation of Liberty Interim Statement, available [here](#) [accessed: 10 December 2016].

¹²³ EHRC (November 2015) Response to the Mental Capacity and Deprivation of Liberty Consultation, available [here](#) [accessed: 16 August 2016].

Participation in political and public life (Article 29)

As noted in *Disability Rights in the UK*,¹²⁴ disabled people experience barriers to exercising their right to vote, and are under-represented in political life across the UK, and on the boards of public bodies. This section provides additional information and a suggested question relating to participation at local government level in England.

Representation and participation in local government

At local government level in England disability data is collected, although response rates from councillors can be low. 13% of councillors in England declared they had a disability in 2013.¹²⁵ Equality legislation requires LAs to ensure reasonable adjustments are made for disabled councillors.

Article 29(b)(ii) requires the UK Government to enable people with disabilities to participate in non-governmental organisations and associations concerned with the public and political life of the country. Community participation and ‘civil society’ have been encouraged by the UK Government in England and Wales through Department for Communities and Local Government funded projects and the Localism Act 2011 which introduced new rights for communities to take greater control in their local areas.

Evidence indicates that LAs could do more to ensure disabled people can participate. In 2010, the Speaker’s Conference found that ‘many disabled people are deterred from any sort of involvement in politics or public life by problems at the most local level, with their councils. LAs play an important role along the pathway to politics, but they do not always make it easy for disabled people to get involved.’¹²⁶ Despite, at the time, being required to do so under the Disability Discrimination Act 1995, the Councillors Commission reported in 2007 that some LAs were failing to make sure that practical help for councillors with disabilities – such things as sign language interpretation at official meetings, induction loop systems and accessible meeting rooms – was available and publicised.¹²⁷

We recommend that the CRPD Committee asks:

26. How well are the measures in place supporting effective participation of disabled people in public and political life at the local level?

¹²⁴ UK Independent Mechanism (2017), *Disability Rights in the UK: submission to inform the list of issues in relation to the UK*.

¹²⁵ Kettlewell, K. and Phillips, L. (2014), *Census of Local Authority Councillors 2013*. National Foundation for Educational Research, available [here](#) [accessed: 16 August 2016].

¹²⁶ House of Commons (2009) *Speakers Conference on Parliamentary Representation*, para. 182, available [here](#) [accessed: 5 August 2016].

¹²⁷ Councillors Commission (December 2007) *Representing the future – The report of the Councillors Commission*, p. 90, available [here](#) [accessed: 5 August 2016].

Annex: Recommendations

The following recommendations are for the UK Government in relation to disabled people's rights in England, in addition to those recommendations included in *Disability Rights in the UK*. Some of these recommendations also apply to Wales where they cover topics reserved to the UK Government.

Equality and non-discrimination (Article 5)

Equality Act 2010, specific duties

1. As part of its review of the PSED, the UK Government should review the specific duties in England in light of the absence of a requirement to involve disabled people.

Accessibility (Articles 9, 21)

Housing

2. The UK Government should:
 - conduct a review of the current planning framework in England to ascertain whether it facilitates compliance with the CRPD obligation around housing accessibility, particularly in older housing stock.
 - encourage local authorities in England to follow the example of London and use optional Building Regulations to increase the provision of accessible and adaptable housing.

Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)

Independent living funding in England

3. The UK Government must take steps to ensure compliance with Article 19 where it has delegated responsibility for independent living funding to local authorities in England. These steps should include:
 - providing sufficient funding to each local authority to meet the independent living needs of disabled people in their area through mechanisms (such as ring-fencing) that ensure the funding is used for that purpose
 - providing guidance to local authorities to clarify what they must do to meet the minimum requirements of Article 19, and to provide examples of best practice
 - putting in place a monitoring mechanism so that each local authority reports on independent living funding and activities, and service-user experience, so the UK Government can assure itself that it is complying with Article 19.

Supported living arrangements

4. The UK Government should closely monitor the impact of local authority budget reductions on supported living arrangements to ensure there is no regression on disabled people's right to live independently within the community.

Adult social care and support

5. The UK Government should monitor the impact of reductions in the availability of English local authority funded adult social care support on the ability of disabled people to choose how and where their support is delivered as required by the 'wellbeing principle' of the Care Act 2014, and take immediate steps to address any adverse impacts identified.
6. The UK Government should monitor the impact of reductions of local services that enable disabled people to stay socially connected within their communities, and take steps to address adverse impacts identified.

Access to justice (Articles 13, 12)

Telephone gateway

7. The UK Government should further review the operation of the telephone gateway service (Civil Legal Advice) in England and Wales with regard to its accessibility and effectiveness, particularly for disabled people and parents of children with special educational needs, and mitigate any adverse impacts.

Education (Articles 24, 7)

Inclusive education

8. The UK Government should ensure that teachers are equipped to teach children with special educational needs and disabilities so that all children have the opportunity to progress and fulfil their potential
9. The UK Government should assess the extent to which disabled children are able to participate in the full range of school activities, both curricular and extra-curricular, and take steps to address any identified barriers to participation.

School exclusions

10. The UK Government should ensure teachers comply with their statutory duties in relation to pupils with SEN when administering exclusions; follow government guidance to avoid, as far as possible, permanently excluding pupils with SEN; and seek early interventions to address underlying causes of disruptive behaviour.

Reforms to SEND provision

11. The UK Government should conduct a review of England's SEND Code of Practice within five years of it coming into effect to evaluate whether improvements for disabled pupils are secured in practice.

Health and life (Articles 25, 10)

Inequality in life expectancy

12. The UK Government should ensure that NHS England undertakes a comprehensive mental health mortality review to identify the reasons why people with mental health

problems in England often die prematurely, and to identify clinical practice and wider support that protects the health of people with mental health problems.

Mental healthcare services

13. The UK Government should implement the recommendations of the Independent Mental Health Taskforce in full.

Non-natural deaths in detention and post-custody

14. The UK Government should implement all outstanding recommendations from the EHRC's inquiry into non-natural deaths of people with mental health conditions in detention and its research into deaths upon release from police custody. In particular, urgent changes need to be put in place by the Government to address the root causes leading to the high levels of non-natural deaths in prisons, including greater access to specialist mental healthcare.

Freedom from exploitation, violence and abuse (Article 16)

Disability-motivated hate crime, hostility and harassment

15. The UK Government should:

- conduct a review of the provision of third-party reporting of hate crime in England and Wales; evaluate the impact and sustainability of provision; highlight geographical and thematic gaps; and ensure third party and police recording systems are consistent.
- ensure evaluation and simplification of police and other statutory agencies' hate crime reporting and recording processes, is done in consultation with disabled people.
- ensure that the police, Crown Prosecution Service and probation trusts adopt and publish a single, clear definition of a disability hate crime and communicate it effectively to the public and staff.

Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)

The use of restraint

16. The UK Government should act upon all outstanding recommendations in relation to restraint from the EHRC's inquiry into the non-natural deaths of adults with mental health conditions in state detention, including:

- data on the use of restraint should be routinely published about the prison setting by the Ministry of Justice, to aid transparency and accountability
- Independent Advisory Principles for safer restraint and EHRC Human Rights framework are fully acknowledged in the three settings and beyond, with a focus on the Youth Offending estate.

17. The UK Government should evaluate the extent to which guidance from NHS England on chemical restraint is followed in practice.

Substitute/supported decision-making

18. The UK Government should increase the scope of supported decision-making in England and Wales, including in legislative reform of the Mental Capacity Act 2005 and its DoLS scheme, and put in place safeguards to enable the removal of a supporter if they are not acting in accordance with a disabled person's will and preferences.

Contacts

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