

Civil and political rights in Great Britain

—
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Glossary

AEOF	Access to Elected Office Fund
CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCE	Children's Commissioner for England
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CICA	Criminal Injuries Compensation Authority
CJA	Criminal Justice Act
CMP	Closed Material Procedure
CO	Concluding Observations
CoE	Council of Europe
CPS	Crown Prosecution Service
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CQC	Care Quality Commission
CSPL	Committee on Standards in Public Life
CTSA	Counter-Terrorism and Security Act
DoLS	Deprivation of Liberty Safeguards
ECF	Exceptional Case Funding scheme
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRC	Equality and Human Rights Commission
ELGCC	Equality, Local Government and Community Committee

EU	European Union
FGM	Female genital mutilation
GRT	Gypsy, Roma and Traveller
HMCTS	HM Courts and Tribunals Service
HMIC	HM Inspector of Constabulary
HMIP	HM Inspectorate of Prisons
HRA	Human Rights Act 1998
HSIB	Healthcare Safety Investigation Branch
HSSIB	Health Service Safety Investigations Body
IHAT	Iraq Historic Allegations Team
IICSA	Independent Inquiry into Child Sexual Abuse
IPCO	Investigatory Powers Commissioner's Office
IRC	Immigration Removal Centre
ISC	Intelligence and Security Committee
JCHR	Joint Committee on Human Rights
JSA	Justice and Security Act
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
LGBT	Lesbian, gay, bisexual and trans
MCA	Mental Capacity Act
MHA	Mental Health Act
MoJ	Ministry of Justice
MSA	Modern Slavery Act
NHRI	National human rights institution
NHS	National Health Service
NPCC	National Police Chiefs' Council

NRM	National Referral Mechanism
NRPF	No recourse to public funds
NTS	National Transfer Scheme
ONS	Office for National Statistics
SPLI	Service Police Legacy Investigations
STC	Secure Training Centre
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VAWDASV	Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015
VAWG	Violence against women and girls
YOI	Young Offender Institution

Introduction

This report represents the submission of the Equality and Human Rights Commission (the EHRC) to inform the UN Human Rights Committee's List of Issues Prior to Reporting, in relation to the eighth periodic review of the UK.

In this report, we focus on relevant developments and evidence since the UK's last review by the Human Rights Committee in 2015. We indicate where progress has been made and highlight the main concerns or challenges regarding the implementation of the International Covenant on Civil and Political Rights (ICCPR). Recognising the diversity of lived experiences, and the importance of equality and non-discrimination to the full realisation of all ICCPR rights,¹ we have sought to include information about the experience of those sharing particular protected characteristics, including an analysis of multiple disadvantage, where evidence allowed.

This report contains 12 sections, covering the following issues which we recommend as priorities for inclusion:

- enhancing the status of international human rights in domestic law
- accountability for human rights violations and complicity by British military abroad
- counter-terrorism measures
- equality and non-discrimination
- the right to an effective remedy and fair trial
- right to life, freedom from torture and ill-treatment, and conditions in detention
- violence against women and girls
- deprivation of liberty
- human trafficking and modern slavery
- right to privacy and freedom of expression
- rights of the child, and
- right to participate in public life.

¹ Articles 2 and 26 ICCPR; UN Human Rights Committee, [General Comment No. 18: Non-discrimination](#) [accessed: 9 December 2019].

Each section starts with a note highlighting the relevant ICCPR articles and the number of the relevant Human Rights Committee Concluding Observations (CO) from 2015. In the Annex, we have set out a list of our recommendations to the UK Government and/or Welsh Government, where relevant.

Our aim is to encourage the UK and Welsh governments to use the ICCPR reporting process to continue to strengthen their efforts to assess progress and improve compliance with their human rights obligations. To this end, our report includes specific recommendations, which we believe can support this important task.

Devolution and geographic scope of this report

The UK comprises four countries: England, Scotland, Wales and Northern Ireland.

The UK Parliament has devolved various powers to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and it maintains responsibility for matters that have not been devolved (known as 'reserved' matters) and for England. Responsibility for implementing the ICCPR therefore lies with the UK Government and the devolved governments.

In addition, there are three separate legal systems in the UK: England and Wales,

Scotland, and Northern Ireland. The Supreme Court is the UK's highest court of law. It is the final court of appeal for all UK civil cases. It also decides 'devolution issues' about whether the devolved authorities in Scotland, Wales and Northern Ireland have acted, or propose to act, within their powers.

This submission aims to cover England and Wales for all areas, and Scotland for issues that are reserved to the UK Parliament (although, in some cases, statistics and evidence for the UK or Great Britain as a whole are presented).

The recommendations presented in the Annex are addressed to the UK and Welsh governments only, though they may also be relevant to other devolved administrations. The separate submission of the Scottish Human Rights Commission will cover areas devolved to the Scottish Parliament, and the separate submission of the Northern Ireland Human Rights Commission will cover Northern Ireland. Cross-governmental working across the whole of the UK is needed to fully realise the rights set out in the ICCPR.

Role and remit of the Equality and Human Rights Commission

The EHRC was established by the UK Parliament, through the Equality Act 2006, as an independent body with a mandate covering equality and human rights. Among other human rights responsibilities, we are responsible for ‘encouraging good practice in relation to human rights’. Our geographic remit for human rights covers England, Wales and those issues in Scotland that are reserved to the UK Parliament.

The UK Parliament has also given us responsibilities to assess and report on the UK’s progress in realising the human rights in the treaties it has ratified, in line with the Paris Principles. We work in cooperation with other National Human Rights Institutions (NHRIs) in the UK – the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission – and liaise with government departments and agencies to fulfil this role. All three NHRIs hold ‘A status’ accreditation with the United Nations.

1. Enhancing the status of international human rights in domestic law

Relates to article 2 and 2015 concluding observations (CO) paragraphs 5.a, 5.c and 6

The Human Rights Act 1998 (HRA) gives effect to the majority of rights enshrined in the European Convention on Human Rights (ECHR) in UK domestic law,² and the scope of the ICCPR is similar to that of the ECHR in many respects. However, we have concerns regarding the current and future compliance of domestic law and policy with the ICCPR:

- Certain ICCPR rights are not covered by the HRA, including specific protection for the rights of minorities.
- The UK's departure from the EU has given rise to significant constitutional uncertainty, posing potential risks for the protection of human rights. In particular, the removal of the EU Charter of Fundamental Rights from domestic law through the EU Withdrawal Act may result in a loss or weakening of some rights protections.³ The UK's future extradition arrangements with the EU also remain uncertain, and there are concerns about the potential impact of the loss of EU funding for a large number of projects that have implications for human rights, including projects to prevent violence against groups at risk (including women and children) and for women's services.⁴

² The HRA incorporates the ECHR and makes it enforceable in UK courts. Human rights are also protected in the devolution statute of Wales (Government of Wales Act 2006).

³ For example, Article 1 on human dignity: Coppel, J. (2018), 'Opinion: European Union (Withdrawal Bill) - E.U. Charter of Fundamental Rights' [accessed: 7 March 2019].

⁴ European Commission (2017), 'Rights, equality and citizenship programme 2014-2020' [accessed: 17 March 2019]; EHRC (2019), 'The future of funding for equality and human rights in Britain' [accessed: 30 September 2019].

- Despite the UK Government's stated commitment to the ECHR,⁵ its ongoing commitment to the HRA remains unclear.⁶ Previous plans to bring forward proposals on a British Bill of Rights to replace the HRA continue to surface,⁷ and the UK Government recently announced its intention to establish a Constitution, Democracy and Rights Commission.⁸
- The UK Government announced in 2016 that it was considering derogating from the extra-territorial application of the HRA, particularly its applicability to the actions of British forces abroad.^{9 10}
- The Equality Act (EA) 2010¹¹ provides protection against various forms of discrimination across Great Britain. However, some provisions that would provide greater protection of ICCPR rights are not in force,¹² including those

⁵ The UK Government made a commitment to remain a party to the ECHR in a White Paper published in July 2018: HM Government (2018), '[The future relationship between the United Kingdom and the European Union](#)' [accessed: 7 March 2019].

⁶ UK Parliament (2019), '[Human Rights Act is not safe after Brexit](#)' [accessed: 7 March 2019].

⁷ Merrick, R. (2019), '[Conservative MPs turn on Theresa May over threat to scrap Human Rights Act after Brexit: 'A big mistake'](#)', The Independent, 19 January [accessed: 19 March 2019].

⁸ The composition and focus of the Commission is yet to be announced. However, the Conservative party manifesto included a commitment to 'update the Human Rights Act' and noted that a Constitution, Democracy and Rights Commission would be established to consider this issue, amongst others: The Conservative and Unionist Party (2019), '[Manifesto 2019](#)' [accessed: 6 January 2020]; Prime Minister's Office (2019), '[The Queen's Speech 2019](#)' [accessed: 6 January 2020].

⁹ HM Government (2016), '[Government to protect armed forces from persistent legal claims in future overseas operations](#)' [accessed: 7 March 2019].

¹⁰ The UK Government has stated that a derogation would be necessary (as above). The European Court of Human Rights has made the ECHR's extra-territorial jurisdiction clear: see *Al-Skeini v United Kingdom* (Application No. 55721/07); *Al-Saadoon and Mufdhi v United Kingdom* (Application No. 61498/08); *Al-Jedda v United Kingdom* (Application No. 27021/08); *Hassan v United Kingdom* (Application No. 29750/09).

¹¹ The EA 2010 provides a legislative framework to tackle discrimination and advance equality across Great Britain, and places an equality duty (the Public Sector Equality Duty) on public authorities. The 'protected characteristics' identified in the EA 2010 are sex, race, disability, gender reassignment, age, pregnancy and maternity, marriage and civil partnership, religion and belief, and sexual orientation. See: [Equality Act 2010](#) [accessed: 21 May 2018].

¹² Other provisions not yet in force, or repealed, include those relating to: caste discrimination (regulations under section 9(5)); the requirement for political parties to report on diversity of candidates (section 106); the employment tribunal power to make wider recommendations (repealed); third party harassment provisions (repealed); and discrimination and equal pay questionnaire procedure (repealed).

enabling dual discrimination claims¹³ and requiring political parties to report on the diversity of candidates.¹⁴

There has, however, been an increased political appetite in Wales to strengthen human rights protections post-Brexit and to consider further incorporation of UN human rights treaties. The Welsh Government has commissioned research and established a steering group on strengthening human rights protections, including potential treaty incorporation in Wales.¹⁵

The UK Government has not ratified the Optional Protocol to the ICCPR, having previously stated that it remains to be convinced of ‘the added practical value’¹⁶ of allowing individual complaints. We consider that this runs counter to a commitment to providing redress for breaches of human rights.

We also note with concern the number of reservations the UK Government maintains against the ICCPR,¹⁷ including a reservation to Article 10(2)(b) (which requires the separation of juvenile and adult defendants) in cases where there may be a lack of suitable prison facilities. The UK Parliament’s Joint Committee on Human Rights (JCHR) previously expressed concern over this reservation.¹⁸

¹³ Section 14.

¹⁴ Section 106.

¹⁵ Deputy Minister and Chief Whip, Oral Statement in the Siambr (June 2019), ‘An Update on Advancing Equality and Human Rights in Wales’ [accessed: 30 August 2019].

¹⁶ UN Human Rights Committee, Seventh periodic reports of States parties for the United Kingdom of Great Britain and Northern Ireland, 29 December 2012, para 192 [accessed: 29 October 2019].

¹⁷ See United Nations Treaty Collection, ‘Chapter IV, Human Rights: 4. International Covenant on Civil and Political Rights’ [accessed: 29 October 2019]. At the time of writing, the UK maintains the second highest number of reservations to the ICCPR among states parties.

¹⁸ Joint Committee on Human Rights (2005), ‘Review of International Human Rights Instruments: Seventeenth Report of Session 2004-05’, para 52 [accessed: 29 October 2019].

2. Accountability for human rights violations and complicity by British military abroad

Relates to articles 2, 6 and 7, and CO paragraphs 9.a-c

2.1 Allegations of abuse by British military abroad¹⁹

The scale of abuse of Iraqi citizens by British service personnel, between 2003-2009, remains unknown. The Iraq Historical Allegations Team (IHAT) opened over 3,000 cases concerning allegations of abuse, but these did not lead to any prosecutions.²⁰ Following IHAT's closure in 2017, the remaining cases were assigned to the Service Police Legacy Investigations (SPLI).²¹ As of 30 June 2019, the SPLI had closed, or was in the process of closing, 1153 allegations, and 127 allegations remained under consideration.²² Hundreds of civil claims of mistreatment of Iraqi citizens by British service personnel have also been made

¹⁹ On 23 August 2016, the UK submitted a written reply regarding its implementation of the Human Rights Committee's recommendations in paragraphs 8 and 9 of its Concluding Observations (CCPR/C/GBR/CO/7, 21 July 2015). The Committee published its assessment of the UK's reply on 18 April 2018, assessing that the UK's reply in relation to paragraph 9 (Accountability for human rights violations committed by British forces abroad) was not satisfactory: [Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/122/3, 18 April 2018](#) [accessed: 16 September 2019].

²⁰ UK Government (2017), ['IHAT table of work completed'](#) [accessed: 17 March 2019].

²¹ UK Government (2019), ['Service Police Legacy Investigations'](#) [accessed: 7 March 2019].

²² UK Government (2019), ['SPLI - quarterly update – 31 March to 30 June 2019'](#) [accessed: 16 September 2019].

in the British courts, with the Ministry of Defence reportedly paying over £20m in compensation to Iraqi claimants.²³

The lack of an overarching inquiry into the Iraq allegations means that potential systemic issues – such as shortcomings in policy, training or supervision – have not been investigated independently. Separately, we are also concerned by the UK Government’s proposals to introduce a ‘statutory presumption’ against the prosecution of current or former military personnel for alleged offences dating back more than ten years.²⁴

2.2 Complicity in mistreatment of detainees held by other governments

There has still not been a comprehensive independent investigation into allegations of torture or ill-treatment of detainees held by other governments, in which UK security and intelligence agencies have been implicated, including by means of complicity. Following the early closure of the Gibson inquiry in 2013, responsibility for investigating the allegations was handed to the Intelligence and Security Committee of the UK Parliament (ISC), whose slow progress was criticised by the Human Rights Committee in 2015.²⁵

In June 2018, the ISC finally published its findings.²⁶ The ISC noted that its inquiry was limited due to UK Government restrictions on questioning witnesses about specific cases. Based on available evidence, they provisionally concluded that UK security and intelligence personnel had either witnessed, or been informed of, mistreatment in hundreds of US-led interviews, yet had continued to

²³ Johnson, J. (2019), ‘Lawyers behind ‘witch hunt’ of British troops in Iraq paid £11m by Ministry of Defence’, [The Telegraph](#) [accessed: 10 October 2019]; Ruck Keene, D. (2017), ‘You win some, you lose some. Rahmatullah (No. 2) in the Supreme Court’, 24 January 2017 [accessed: 19 March 2019].

²⁴ Ministry of Defence (2019), ‘[Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom](#)’ [accessed: 10 October 2019]. In its May 2019 [Concluding Observations to the UK](#), the Committee against Torture recommended: ‘The State party should refrain from enacting legislation that would grant amnesty or pardon where torture is concerned. It should also ensure that all victims of such torture and ill-treatment obtain redress.’

²⁵ UN Human Rights Committee (2015), ‘[Concluding observations on the seventh periodic report of the United Kingdom](#)’ [accessed: 9 March 2019].

²⁶ ISC (2018), ‘[Detainee Mistreatment and Rendition: 2001–2010](#)’ [accessed: 9 March 2019].

cooperate with interrogators. They also found the UK had facilitated over 70 rendition operations from 2001–2010.²⁷ In spite of these findings, in July 2019, the UK Government announced that it would not hold an inquiry into UK involvement in rendition and torture.²⁸ In October 2019, a legal challenge was launched in relation to this decision.²⁹

2.3 Consolidated guidance

In its 2018 report on detainee mistreatment and rendition, the ISC echoed calls by the UN and domestic stakeholders for the UK Government to clarify aspects of its ‘Consolidated guidance to intelligence officers and service personnel on the detention and interviewing of detainees overseas’. In particular, it called to remove the ambiguity around the obligation to cease engagement with foreign security and intelligence services in any case where there is a risk of torture.³⁰

Then UK Prime Minister, Theresa May, responded by calling on the Investigatory Powers Commissioner’s Office (IPCO) to propose how to improve the consolidated guidance, ‘taking account of the ISC’s views and those of civil society’.³¹ The IPCO launched a consultation in August 2018 and received contributions from numerous stakeholders. In July 2019, the UK Government published a revised version of the consolidated guidance,³² reportedly accepting the IPCO’s proposed principles in full.³³ As the IPCO’s draft of the proposed principles was not published, it is not possible to verify whether any changes

²⁷ As above.

²⁸ Hansard (2019), ‘[Detainees: The Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office \(Mr David Lidington\)](#)’ [accessed: 10 October 2019].

²⁹ Reprieve (2019), ‘[MPs and Reprieve take Government to court over refusal to hold torture inquiry](#)’ [accessed: 10 October 2019].

³⁰ ISC (2018), ‘[Detainee Mistreatment and Rendition: 2001–2010](#)’ [accessed: 9 March 2019].

³¹ Hansard (2018), ‘[ISC detainee reports: written statement - HCWS808](#)’ [accessed: 7 March 2019].

³² HM Government (2019), ‘[The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees](#)’ [accessed: 15 October 2019].

³³ Hansard (2019), ‘[Review of Consolidated Guidance: written statement – HCWS1738](#)’ [accessed 4 August 2019].

were made to the draft.³⁴ However, the revisions introduced do not sufficiently address our concerns regarding the obligation to cease engagement where there is a risk of torture: the updated guidance contains only a ‘presumption’ against proceeding where there is a ‘real risk’ of torture, unlawful killing or extraordinary rendition.³⁵

³⁴ While a letter from the IPCO dated 12 June 2019 has been published, the IPCO’s ‘suggested revised Principles’ referred to in that letter were not annexed and have not been made publicly available: IPCO (2019), ‘[Letter to the Prime Minister on the proposals to review the Consolidated Guidance](#)’ [accessed: 4 August 2019].

³⁵ HM Government (2019), ‘[The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees](#)’ [accessed: 15 October 2019].

3. Counter-terrorism measures

Relates to articles 2, 6, 7, 9, 10, 12, 17 and 26, and CO paragraphs 11.c, 14, 15, 19 and 22.a

Several aspects of UK counter-terrorism law and policy have the potential to violate the UK's obligations under the ICCPR.

3.1 Port and border control powers

Schedule 7 of the Terrorism Act 2000 gave police the powers to stop, search and detain individuals at airports and ports, without a requirement to have reasonable grounds for suspicion.³⁶ The number of Asian people detained under Schedule 7 remains disproportionately high when compared to White people.³⁷ We have grave concerns about the UK Government's 2019 decision to expand police powers, to question and detain individuals suspected of 'hostile activity for or on behalf of another state', without introducing a reasonable suspicion threshold.³⁸

3.2 14-day pre-charge detention

The maximum period of pre-charge detention in terrorism cases with judicial authorisation continues to be 14 days, despite the Human Rights Committee's 2015 recommendation to reduce this time period.³⁹

³⁶ Schedule 7 of Terrorism Act 2000; EHRC (2015), '[Civil and Political Rights in the UK. EHRC Submission to the United Nations Human Rights Committee on the UK's Implementation of ICCPR](#)' [accessed: 8 July 2019].

³⁷ Home Office (2019), '[Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, financial year ending June 2019](#)' [accessed: 21 October 2019].

³⁸ JCHR (2018), '[Second Legislative Scrutiny Report: Counter-Terrorism and Border Security Bill](#)' [accessed: 8 March 2019]; Liberty (October 2018), '[Briefing on the Counter-Terrorism and Border Security Bill for Second Reading in the House of Lords](#)' [accessed: 8 March 2019].

³⁹ Protection of Freedoms Act 2012.

3.3 Use of closed material procedures

Following the extension of closed material procedures (CMPs) to civil proceedings involving sensitive material under the Justice and Security Act (JSA) 2013, UK courts have ordered CMPs in numerous cases, including where claimants have alleged ill-treatment and wrongful detention by British and US forces.⁴⁰ Information published by the UK Government on the use of CMPs is not sufficient to assess whether they are being used appropriately.⁴¹ The forthcoming five-year review of the JSA 2013, announced by the UK Government but not yet launched, presents an opportunity to consider whether CMPs are operating only when strictly necessary.⁴²

3.4 The Prevent duty

The Prevent duty, introduced in 2015, places a legal obligation on certain public bodies to report concerns about people who may be at risk of being drawn into terrorism.⁴³ The police may refer the individual to a 'Channel panel', which may provide support for the individual.⁴⁴ In 2019, the Prevent duty was extended to allow local authorities to refer individuals to a Channel panel.⁴⁵

The disproportionate number of referrals due to concerns about Islamist terrorism (as compared to, for example, right wing extremism),⁴⁶ coupled with the

⁴⁰ [Matrix Chambers \(2018\), 'Court orders a closed material procedure for two claimants within the Iraqi civilian group litigation' \[accessed: 8 March 2019\]](#); [Shaheen Rahman QC \(2017\), 'Secret evidence and closed hearings' \[accessed: 8 March 2019\]](#).

⁴¹ [Ministry of Justice \(2019\), 'Use of closed material procedure reports' \[accessed: 20 March 2019\]](#).

⁴² [Hansard \(2018\), 'Justice and Security Act 2013: Written question 152051' \[accessed: 8 March 2019\]](#).

⁴³ Section 26 of the Counter-Terrorism and Security Act 2015.

⁴⁴ [HM Government \(2015\), 'Revised Prevent Duty Guidance: for England and Wales' \[accessed: 8 March 2019\]](#).

⁴⁵ Section 20 of the Counter-Terrorism and Border Security Act 2019.

⁴⁶ [Home Office \(2018\), 'Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018' \[accessed: 10 October 2019\]](#).

low number of people referred who go on to receive Channel panel support,⁴⁷ give rise to concerns that Prevent is discriminatory and risks undermining freedom of speech, the right to private life and the right to manifest a religion.⁴⁸ Privacy concerns have been exacerbated by the recent discovery⁴⁹ of a previously undisclosed database containing information on every individual referred to the police under Prevent,⁵⁰ particularly given that it appears such information may have been stored without the knowledge or consent of the individuals in question.⁵¹

In January 2019, the UK Government announced an independent review of the Prevent strategy.⁵² However, the scope⁵³ and independence⁵⁴ of the review have been criticised. In particular, civil society organisations are concerned that the review does not consider the past delivery and impact of Prevent.⁵⁵

⁴⁷ In 2017/18, a total of 7,318 individuals were subject to a referral due to concerns that they were vulnerable to being drawn into terrorism; of those individuals, only 394 went on to receive support through the Channel programme: Home Office (2018), '[Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018](#)' [accessed: 8 March 2019].

⁴⁸ Open Society Justice Initiative (2016), '[Eroding Trust: The UK's Prevent Counter-Extremism Strategy in Health and Education](#)' [accessed: 8 March 2019].

⁴⁹ Through Freedom of Information requests made by the NGO Liberty: Liberty (2019), '[The Prevent database confirms our fears about the Government's 'counter-extremism' work](#)' [accessed: 14 October 2019].

⁵⁰ The National Police Prevent Case Management database: as above.

⁵¹ Grierson, J. (2019), '[Database 'reinforces worst fears' about Prevent, says Labour](#)', The Guardian, 7 October 2019; Liberty (2019), '[The Prevent database confirms our fears about the Government's 'counter-extremism' work](#)' [accessed: 14 October 2019].

⁵² Hansard (2019), '[Counter-Terrorism and Border Security Bill – 22 January 2019](#)' [accessed: 20 September 2019].

⁵³ HM Government (2019), '[Independent review of Prevent: terms of reference](#)' [accessed: 23 September 2019].

⁵⁴ Rights Watch (UK) (2019), '[Government removes Lord Carlile as Prevent Reviewer, conceding RWUK's legal challenge to his independence](#)' [accessed: 6 January 2020].

⁵⁵ Grierson, J. (2019), '[Prevent review branded 'superficial' as past decisions overlooked](#)', The Guardian, 16 September 2019 [accessed: 23 September 2019].

3.5 Deprivation of citizenship on terrorism grounds

Since 2016, there has been a rapid increase in the use of deprivation of citizenship orders to deal with terrorist suspects.⁵⁶ We are concerned that existing safeguards to ensure that citizenship deprivation will not render individuals stateless are insufficient. In particular, a naturalised British citizen can be deprived of citizenship if the Home Secretary has reasonable grounds to believe they are able to become a national of another country.⁵⁷ While individuals deprived of citizenship have a right to appeal the decision, a 2004 amendment to the British Nationality Act 1981 removed an important safeguard which suspended the effect of a deprivation order until appeal rights had been exercised.⁵⁸ This means individuals can be deprived of their British citizenship while overseas and denied re-entry to the UK before an appeal has been considered. The recent case of Shamima Begum exemplified the lack of adequate safeguards in this regard.⁵⁹

⁵⁶ HM Government (2018), '[Transparency Report 2018: Disruptive and Investigatory Powers](#)' [accessed: 20 September 2019].

⁵⁷ Where they have engaged in conduct 'seriously prejudicial to the UK's vital interests': section 40(4A) of the British Nationality Act 1981 (BNA) as amended by the Immigration Act 2014 section 66. The test for deprivation of citizenship in the BNA 1981 is different for naturalised and non-naturalised citizens, although the international human rights framework makes it clear that the same test should apply to all citizens.

⁵⁸ Section 40(A)(6) of the British Nationality Act 1981.

⁵⁹ The Home Office ordered the removal of Shamima Begum's citizenship on 19 February 2019. The Home Office believed she was entitled to apply for Bangladeshi citizenship, but this was later called into question: Addley E. and Ahmed, R. (2019), '[Shamima Behum will not be allowed here, says Bangladesh](#)', The Guardian, 20 February 2019 [accessed: 13 September 2019]; Rawlinson, K. and Dodd, V. (2019), '[Shamima Begum: Isis Briton faces move to revoke citizenship](#)', The Guardian, 19 February 2019 [accessed: 13 September 2019].

3.6 Use of diplomatic assurances when extending mutual legal assistance

In July 2018, the UK Government decided to extend mutual legal assistance to the United States over the possible prosecution of two British terrorist suspects, without seeking assurances that the death penalty would not be used.⁶⁰ This went against usual UK practice of seeking diplomatic assurances over the use of the death penalty, and the decision is subject to a legal challenge.⁶¹ It appears that the UK Government has failed to seek death penalty assurances on at least two other occasions since 2001.⁶² The Overseas Security and Justice Assistance guidance, adopted in 2011, permits the provision of legal assistance without seeking assurances 'where there are strong reasons for doing so.'^{63 64}

⁶⁰ Grierson, J. (2018), '[UK Government criticised over change in death penalty stance on Isis pair](#)', *The Guardian*, 23 July 2018 [accessed: 17 March 2019].

⁶¹ In January 2019, the UK High Court found that the Home Secretary's decision was not unlawful (*R (Maha El Gizouli) v Secretary of State for the Home Department* [2019] EWHC 60 (Admin)). The case was heard on appeal by the UK Supreme Court in July 2019, and judgment is pending.

⁶² Hansard (2018), '[Capital punishment Written question HL9890](#)' [accessed: 8 March 2019].

⁶³ HM Government (2011), '[Overseas Security and Justice Guidance \(OSJA\), Human Rights Guidance](#)' [accessed: 8 March 2019].

⁶⁴ For discussion of the use of diplomatic assurances in the context of asylum and migration procedures, see our recent report to the Committee against Torture: EHRC (2019), '[Torture in the UK: update report](#)' [accessed: 30 September 2019].

4. Equality and non-discrimination

Relates to articles 2, 3, 9, 19, 20, 26 and 27, and CO paragraphs 10 and 11.c

4.1 Hate crime and identity-based violence

The legal framework for hate crime in England and Wales protects the characteristics of race, religion, disability, sexual orientation and transgender identity.⁶⁵ Police forces are required to record hate crime for these characteristics,⁶⁶ although individual forces can monitor additional characteristics.⁶⁷

Police-recorded hate crime in England and Wales has increased year-on-year, and has more than doubled since 2012/13,⁶⁸ with the majority racially motivated.⁶⁹ Hate crime based on religion, disability, sexual orientation and

⁶⁵ Sections 28 to 32 of the Crime and Disorder Act 1998, sections 145 and 146 of the Criminal Justice Act 2003, and Parts III and 3A of the Public Order Act 1986.

⁶⁶ The police and Crown Prosecution Service (CPS) have agreed the following definition for identifying and flagging hate crimes: “Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity”: see CPS, ‘[Hate crime](#)’ [accessed: 8 January 2020].

⁶⁷ For example, a number of police forces in England have piloted recording incidents of misogyny hate crime (Mullany, L. and Trickett, L. (2018), ‘[Misogyny hate crime evaluation report](#)’ [accessed: 8 March 2019]), and in North Wales, police have recorded incidents of English / Welsh language-related hate crimes: North Wales Police (2017), ‘[2017/579 – Hate Crimes](#)’ [accessed: 11 October 2019].

⁶⁸ Rising from 42,255 offences in 2012/13 to 103,379 in 2018/19: Home Office (2019), ‘[Hate Crime, England and Wales, 2018/19](#)’ [accessed: 21 October 2019].

⁶⁹ Accounting for 76% of all police-recorded hate crime in 2018/19: Home Office (2019), ‘[Hate Crime, England and Wales, 2018/19](#)’ [accessed: 21 October 2019].

transgender identity have seen steep increases.⁷⁰ Action by police to improve recording practices, and greater awareness and willingness among victims to come forward, are likely to be factors in the increase.⁷¹ However, hate crime continues to be significantly under-reported,⁷² and some individuals who have made a report have reported feeling unsupported by the police.⁷³

A recent inspection highlighted inaccuracies in the recording of hate crime data by the police, with serious potential impacts on their understanding and response.⁷⁴ A significant number of hate crime cases drop out of the criminal justice process.⁷⁵ Based on 2015-16 data, it is estimated that only 4% of all hate crimes result in a successful conviction with a recorded uplift in the sentence to recognise that the offence is motivated by hostility on the basis of a protected characteristic.⁷⁶

In 2016, the UK Government published an action plan on hate crime for England and Wales.⁷⁷ While its aims were commendable, it failed to specify how progress

⁷⁰ For example, the level of recorded transgender hate crime increased by more than 7.4 times between 2011/12 and 2018/19, with a percentage change of 37% from 2017/18 to 2018/19: as above.

⁷¹ However, there have also been spikes in hate crime following events such as the EU Referendum in 2016, and terrorist attacks in 2017, and the Home Office has stated that '[p]art of the increase over the last year may reflect a real rise in hate crimes recorded by the police': Home Office (2019), '[Hate Crime, England and Wales, 2018/19](#)' [accessed: 21 October 2019].

⁷² Research estimates that hate crime is underreported: Walters, M.A., Wiedlitzka, S., Owusu-Bempah, A. and Goodall, K. (2017), '[Hate crime and the legal process: options for law reform](#)' [accessed: 9 March 2019].

⁷³ For example, research by Stonewall found that four in five transgender people surveyed who had experienced a hate crime did not report it to the police, and some of those who did make a report felt unsupported by the police or experienced further discrimination: Stonewall (2018), '[LGBT in Britain: Trans report](#)' [accessed: 8 March 2019].

⁷⁴ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2018), '[Understanding the difference: the initial police response to hate crime](#)' [accessed: 8 March 2019].

⁷⁵ Walters, M. A., Wiedlitzka, S and Owusu-Bempah, A. (2017), '[Hate crime and the legal process: options for law reform: Project Report](#)' [accessed: 8 March 2019].

⁷⁶ As above.

⁷⁷ Home Office (2016), '[Action against hate: the UK Government's plan for tackling hate crime](#)'. [accessed: 8 March 2019].

would be achieved and evaluated.⁷⁸ A 2018 update to the action plan highlighted areas of progress, including funding for community projects and new guidance for victims.⁷⁹

In Wales, there is a commitment to addressing hate crime through the work of regional community cohesion coordinators,⁸⁰ the funding of a national Hate Crime Report and Support Centre,⁸¹ and a separate framework for action.⁸² A 2016/17 progress report on the implementation of the framework for action identified an increase in the use of sentence uplifts, and suggested there had been progress on increasing awareness about reporting.⁸³ The Welsh Government has not published a comprehensive long-term strategy for reducing hate crime in Wales.

The complexity of the legal framework, and lack of parity in its protection of different groups,⁸⁴ impedes effective investigation, prosecution and sentencing of hate crimes.⁸⁵ In 2018, the UK Government announced that it would ask the Law

⁷⁸ Walters, M. and Brown, R. (2016), '[Preventing hate crime: emerging practices and recommendations for the improved management of criminal justice interventions](#)' [accessed: 9 March 2019].

⁷⁹ HM Government (2018), '[Action against hate: the UK Government's plan for tackling hate crime: two years on](#)' [accessed: 8 March 2019].

⁸⁰ Welsh Government, '[Community cohesion](#)' [accessed: 15 October 2019].

⁸¹ [All Wales Hate Crime Report and Support Centre](#).

⁸² The Welsh Government's hate crime framework sets out how public and partner agencies will tackle hate incidents and crime. The framework was launched in 2014 and the 2017/18 framework for action focused on preventable measures to tackle hate crime, including training and awareness-raising across the protected characteristics with the aim of improving reporting levels. The framework also prioritised better data, victim support and restorative approaches.

⁸³ Particularly among groups in which under-reporting is common, including transgender people, disabled people, and people from Gypsy and Traveller communities: Welsh Government (2017), '[Tackling hate crimes and incidents: framework for action. 2016–17 progress report](#)' [accessed: 7 March 2019].

⁸⁴ The current framework does not provide parity of protection and remedy in respect of the protected characteristics. Whereas enhanced sentencing powers exist for crimes involving hostility based on a person's actual or perceived race, religion, sexual orientation, disability or transgender identity, the law only provides for specific 'aggravated' offences on grounds of race or religion, and 'stirring up hatred' offences for race, religion or sexual orientation.

⁸⁵ Law Commission (2014), '[Hate Crime: Should the Current Offences be Extended?](#)' [accessed: 8 March 2019]; and Walters, M. A., Wiedlitzka, S and Owusu-Bempah, A. (2017), '[Hate crime and the legal process: options for law reform: Project Report](#)' [accessed: 8 March 2019].

Commission to complete a full review of hate crime legislation in England and Wales.⁸⁶ The Law Commission review, which commenced in March 2019, will consider how to make the current legislation more effective, and whether protections should be extended to additional protected characteristics such as sex and age.⁸⁷

4.2 Racial inequality in policing and disproportionate detention

In the year ending March 2019, there were 383,629 stops and searches by police in England and Wales.⁸⁸ Black people were 9.7 times more likely to be stopped and searched than White people, a disparity that has increased in recent years.⁸⁹ Racial disparity is particularly pronounced for ‘suspicionless’ stops,⁹⁰ with 37% carried out on Black or Black British individuals.⁹¹ In August 2019, the Government lifted a number of conditions on the use of certain stop

⁸⁶ The Law Commission is an independent statutory body set up by Parliament to keep the law of England and Wales under review and to recommend reform where it is needed.

⁸⁷ Law Commission (2018), ‘[Law Commission review into hate crime announced](#)’ [accessed: 8 March 2019].

⁸⁸ Compared to 282,380 stops and searches in the year ending 31 March 2018. This was the first increase following a downward trend between 2010/11 and 2017/18: see Home Office (2019), ‘[Stop and search statistics data tables: police powers and procedures year ending 31 March 2019](#)’, Table SS_01 [accessed: 29 October 2019].

⁸⁹ Home Office (2019), ‘[Police powers and procedures, England and Wales, year ending 31 March 2019](#)’ [accessed: 29 October 2019].

⁹⁰ Under section 60 of the Criminal Justice and Public Order Act 1994, the police have the power to stop and search persons and/or vehicles in anticipation of violence through the use of offensive weapons or dangerous instruments. The use of these powers increased significantly between 2017/18 and 2018/19: in the year ending March 2019, there were 13,175 stops and searches under section 60, which was more than five times the number of searches under this power in the year ending March 2018. Only 5% of section 60 stop and searches resulted in arrest: Home Office (2019), ‘[Police powers and procedures, England and Wales, year ending 31 March 2019](#)’ [accessed: 29 October 2019].

⁹¹ Home Office (2019), ‘[Stop and search statistics data tables: police powers and procedures year ending 31 March 2019](#)’, table SS:16 [accessed: 29 October 2019]. Ethnicity was not stated in 22% of cases.

and search powers,⁹² as set out in the Best Use of Stop and Search Scheme,⁹³ thus making it easier for police to stop and search individuals without suspicion.⁹⁴

A review by the Mayor's Office for Policing and Crime found that young Black African-Caribbean men were significantly over-represented in the Metropolitan Police Service Gangs Matrix, a tool used to identify and risk-assess gang members in London.⁹⁵ An investigation by the Information Commissioner's Office found that the Gangs Matrix had also led to multiple and serious breaches of data protection laws.⁹⁶

Research by the Traveller Movement suggests that Gypsy, Roma and Traveller (GRT) ethnicities are treated as a 'risk factor' by police.⁹⁷ Particular concerns were raised about the use of 'liaison' or 'engagement' roles, which often actively emphasise enforcement of crimes perceived to be associated with GRT communities, including anti-social behaviour, gangs and violence.⁹⁸

⁹² Under section 60 of the Criminal Justice and Public Order Act.

⁹³ The Best Use of Stop & Search Scheme (BUSSS) was introduced in 2014 and, while it is not binding in law, forces signed up to the scheme are expected to adhere to its components, subject to exceptional circumstances.

⁹⁴ Including by removing the requirement in the BUSSS for authorisation from a senior officer and lowering the threshold from a reasonable belief that violence 'will' occur to a belief that it 'may' occur: Home Office (2019), '[Government lifts emergency stop and search restrictions](#)', 11 August 2019 [accessed: 29 October 2019].

⁹⁵ The Gangs Matrix is used to identify potential victims and perpetrators of gang violence. 80% of individuals on the matrix are Black African-Caribbean. See Mayor's Office for Policing and Crime (2018), '[Review of the Metropolitan Police Service Gangs Matrix](#)' [accessed: 29 October 2019].

⁹⁶ Information Commissioner's Office (2018), '[ICO finds MPS's Gangs Matrix breached data protection laws](#)' [accessed: 29 October 2019].

⁹⁷ For example, more police may arrive to address an incident involving GRT people than if non-GRT people were involved: see The Traveller Movement (2018), '[Policing by consent: understanding and improving relations between Gypsies, Roma and Irish Travellers](#)' [accessed: 29 October 2019].

⁹⁸ As above.

As of June 2019, ethnic minority detainees made up 27% of the prison population⁹⁹ compared with 13% of the general population.¹⁰⁰ This over-representation is attributed to a number of factors, including discriminatory sentencing.¹⁰¹ The proportion of the youth custody population from Black ethnic groups doubled between 2005/06 and 2017/18, while the number of children in custody decreased overall.¹⁰² The 2017 Lammy Review highlighted a lack of trust in the criminal justice system in England and Wales among people from ethnic minority backgrounds.¹⁰³

In 2017/18, people from Black or Black British ethnic groups were more than four times more likely to be detained under the Mental Health Act 1983 (MHA) than people from White ethnic groups.¹⁰⁴ Evidence suggests these groups are more likely to be subject to restraint and other restrictive practices while detained.¹⁰⁵ Data from 2016/17 shows that ethnic minority women are also disproportionately at risk of being detained compared with the general population.¹⁰⁶ Following an independent review of the MHA, the UK Government has committed to a number

⁹⁹ Ministry of Justice (2019), 'Offender Management statistics quarterly: January to March 2019' [accessed: 22 October 2019].

¹⁰⁰ House of Commons (2019), 'UK prisons population statistics, number CBP-04334, 23 July 2019' [accessed: 22 October 2019]. General population figures from 2011 Census of England and Wales.

¹⁰¹ David Lammy (2017), 'Treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system' [accessed: 22 October 2019].

¹⁰² Ministry of Justice (2019), 'Young people in custody' [accessed: 29 October 2019].

¹⁰³ The Lammy Review, covering England and Wales, highlighted that defendants from ethnic minorities less likely to trust the legal advice they receive and more likely to plead not guilty than White defendants, owing to a lack of trust in the system. As a result, they are more likely to lose the potential benefits of early guilty pleas in criminal proceedings: David Lammy (2017), 'Treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system' [accessed: 22 October 2019].

¹⁰⁴ Office for National Statistics (2019), 'Detentions under the Mental Health Act: ethnicity facts and figures' [accessed: 29 October 2019].

¹⁰⁵ NHS Digital (2018), 'Mental health bulletin 2017-18 annual report', reference table 7.2 [accessed: 29 October 2019]. Note this is the first publication of annual figures on the use of restrictive interventions in these settings. The statistics are classified 'experimental', indicating that there may be issues with the quality of the data.

¹⁰⁶ Agenda (2018), 'Women in crisis: how women and girls are being failed by the Mental Health Act' [accessed: 5 December 2018]. Figures reported by Agenda show that ethnic minority women made up around 9% of detained patients, while they make up an estimated 7% of the general population.

of reforms, including introducing a race equality framework to improve people's access to, and experience of, treatment.¹⁰⁷

¹⁰⁷ Prime Minister's Office, press release (17 June 2019), 'Measures to end unequal mental health treatment kickstarted by PM' [accessed: 29 October 2019].

5. The right to an effective remedy and fair trial

Relates to articles 2, 9, 13, 14 and 24(3), and CO paragraphs 21.b and 22.c

5.1 Legal aid reforms

We remain concerned that changes to the civil legal aid regime in England and Wales, introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO),¹⁰⁸ have restricted access to justice, including for people seeking redress for human rights breaches, with a disproportionate negative impact on people sharing certain protected characteristics.¹⁰⁹ Our particular concerns include:

- The Exceptional Case Funding (ECF) scheme was intended to provide a ‘safety net’ for cases where a failure to provide legal aid could result in a breach of an individual’s rights. However, the number of successful ECF applications has been significantly lower than expected, the application process is onerous and complex, and the process for dealing with urgent cases requires improvement.¹¹⁰
- Changes to cost-recovery rules for privately-paying claimants may discourage people from funding their own cases, due to the risk of having to pay the defendant’s full costs if they lose.¹¹¹ LASPO removed the right of a successful privately-paying claimant to recover certain legal costs from the defendant, with ‘qualified one way cost shifting’ introduced to provide costs protection for claimants in certain types of case. However,

¹⁰⁸ The changes removed legal aid for most private family, housing, debt, welfare benefits, immigration and employment matters, and for initial legal advice in many areas of law: [Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1](#).

¹⁰⁹ EHRC (2018), ‘[Response of the Equality and Human Rights Commission to the post implementation review of LASPO 2012](#)’ [accessed: 8 August 2019].

¹¹⁰ As above.

¹¹¹ EHRC (2018), ‘[Response of the Equality and Human Rights Commission to the Post-Implementation Review of Part 2 of LASPO 2012](#)’ [accessed: 8 August 2019].

this does not include discrimination claims or civil proceedings under section 7 of the HRA.

- Following changes to the financial eligibility criteria for legal aid,¹¹² research shows that some people living below the poverty line are not financially eligible for legal aid,¹¹³ and that evidence requirements for financial eligibility are complex and onerous.¹¹⁴

In June 2019, we published the findings of an inquiry into legal aid for discrimination cases, which found a number of flaws preventing access to justice.¹¹⁵ For example, LASPO introduced a mandatory telephone gateway for debt, discrimination and special educational needs cases, with the intention that face-to-face advice would be offered to those for whom remote advice is not suitable; however, we found that very few people received face-to-face advice. We also found that legal aid applications for discrimination cases are significantly less likely to be granted than other areas of law.¹¹⁶ We suspect this may be a result of misinterpretation of the guidance¹¹⁷ by decision-makers and recommend that the guidance be amended to address this.¹¹⁸

The UK Government published a review of LASPO in February 2019, committing to a number of steps to improve access to legal aid, including removing the mandatory element of the telephone gateway for debt, discrimination and special educational needs cases; reviewing the financial eligibility thresholds and the

¹¹² Changes to the financial eligibility criteria for legal aid increased the amounts that people have to contribute from their income, and removed automatic eligibility for people on means-tested benefits under The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. See also Ministry of Justice (2017), 'Legal Aid, Sentencing and Punishment of Offenders Act 2012: post-legislative memorandum', paras 17 and 28 [accessed: 8 August 2019].

¹¹³ Law Society (2018), 'Priced out of justice? Means testing legal aid and making ends meet' [accessed: 14 June 2019].

¹¹⁴ EHRC (2019), 'Access to legal aid for discrimination cases' [accessed: 28 August 2019].

¹¹⁵ As above.

¹¹⁶ Between 2013/14 and 2017/18, just 0.5% of gateway 'discrimination' cases received funding for representation at court: as above.

¹¹⁷ HM Government (2018), 'Lord Chancellor's Guidance under Section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012' [accessed: 19 September 2019].

¹¹⁸ EHRC (2019), 'Access to legal aid for discrimination cases' [accessed: 28 August 2019].

ECF scheme; and piloting the reintroduction of early legal advice in a specific area of social welfare law.¹¹⁹

5.2 Court reform and modernisation

Between January and March 2018, Her Majesty's Courts and Tribunals Service consulted on its proposed future strategy for court and tribunal estate reform and modernisation in England and Wales.¹²⁰ The reform programme has progressed at pace, including the expansion of video-link hearings and online pleading for certain offences.¹²¹

We recognise that modernising the court system may provide opportunities to improve access to justice; however, we have concerns about the reform programme.¹²² In particular, we are concerned about the lack of comprehensive evidence and impact assessments to underpin decision-making and ensure that the reforms do not disproportionately disadvantage groups with protected characteristics or undermine access to justice.¹²³ We are also concerned about the potential detrimental implications of online and digital processes, including the expansion of video-link hearings and online court procedures, on access to justice and fair trial rights. The UK Government has committed to take steps to improve the evidence base for aspects of the reform programme, including through research and user testing.¹²⁴

¹¹⁹ HM Government (2019), [Post-Implementation Review of Part 1 of LASPO](#) [accessed: 20 September 2019].

¹²⁰ Her Majesty's Courts and Tribunals Service (HMCTS) (2018), ['Fit for the future: transforming the court and tribunal estate'](#) [accessed: 8 August 2019].

¹²¹ Provisions for online procedures in civil and family courts and employment tribunals were set out in the [Courts and Tribunals \(Online Procedure\) Bill](#), which did not complete its passage through the UK Parliament before the end of the session on 8 October 2019.

¹²² EHRC (2018), ['Response of the Equality and Human Rights Commission to the consultation:](#)

[Fit for the future: transforming the court and tribunal estate'](#) [accessed: 8 August 2019].

¹²³ HMCTS has acknowledged that it does not hold comprehensive data on court users on which to assess the impact of court closures or other changes. See MOJ and HMCTS (2018), ['Proposal on the future of Northallerton Magistrates' Court'](#) [accessed: 8 August 2019].

¹²⁴ See HMCTS (2019), ['Putting people at the heart of reform: Response to PAC recommendation 2'](#) [accessed: 9 January 2020].

In March 2019, we launched an inquiry to examine the experience of disabled defendants across Great Britain with cognitive impairments, mental health conditions and neuro-diverse conditions.¹²⁵ We are concerned that the court reforms may have disproportionate impacts on this group, particularly regarding their participation in criminal justice processes. Existing evidence, while incomplete, suggests there may be a high prevalence of impairments of this type among defendants, and that it may be more difficult to identify a defendant's impairments and support needs on digital platforms.¹²⁶

5.3 Fast-track rules in immigration detention

The detained fast-track rules (which provided for appeals by immigration detainees to be expedited) were suspended, following a 2015 Court of Appeal ruling that the tight time limits for appeals made the scheme 'structurally unfair and unjust'.¹²⁷ After consulting on the development of new detained fast-track rules,¹²⁸ the UK Government published proposals, in 2017, for a new expedited process.¹²⁹ The Tribunal Procedures Committee also consulted on this matter in 2018; in 2019, it decided not to introduce specific rules in cases where an appellant is detained, but committed to keeping the rules under review.¹³⁰

¹²⁵ For more information see EHRC (2019), '[Inquiry: Does the criminal justice system treat disabled people fairly?](#)' [accessed: 8 August 2019].

¹²⁶ EHRC (March 2019), '[Written evidence from Equality and Human Rights Commission](#)' submitted to the Justice Select Committee' [accessed: 19 September 2019].

¹²⁷ R (Detention Action) v First-tier Tribunal [2015] EWCA Civ 840.

¹²⁸ Ministry of Justice (2016), '[Immigration and asylum appeals: consultation on proposals to expedite appeals by immigration detainees](#)' [accessed: 20 September 2019].

¹²⁹ It was proposed that rules be created to provide for a time limit of 25-28 days for determination of a detained immigration and asylum appeal by the First-tier Tribunal, with an additional 20 working days for determination of permission to appeal to the Upper Tribunal: see Ministry of Justice (2017), '[Immigration & asylum appeals: the Government's response to its consultation on proposals to expedite appeals by immigration detainees](#)' [accessed: 8 March 2019].

¹³⁰ Tribunal Procedures Committee (2019), '[Response to the consultation on Tribunal Procedure \(First-tier Tribunal\) \(Immigration and Asylum Chamber\) Rules 2014 and Tribunal Procedure \(Upper Tribunal\) Rules 2008 in relation to detained appellants: Reply from the Tribunal Procedure Committee](#)' [accessed: 1 August 2019].

We have previously advised against the re-introduction of an expedited procedure.¹³¹ We are concerned that it might disproportionately disadvantage groups with certain protected characteristics, in particular people with mental health conditions or cognitive impairments, who may face additional difficulties in preparing an appeal in detention within a tightened timescale.

5.4 Procedures for identifying and determining statelessness

In 2013, the UK introduced a procedure for identifying and determining statelessness.¹³² A growing body of evidence has since emerged of problems associated with the procedure, including long delays in the determination of applications (more than three years in some cases, some involving children)¹³³ and the use of administrative detention without a defined time limit in the case of many applicants.¹³⁴ Furthermore, individuals applying to be recognised as stateless have neither a right to free legal assistance nor a right to appeal decisions at an immigration tribunal.¹³⁵

¹³¹ EHRC (2016), [‘Response to the Ministry of Justice consultation on proposals for an expedited appeals process for detained immigration and asylum appellants’](#) [accessed: 8 March 2019].

¹³² [UK’s Immigration Rules, Part 14](#) [accessed: 10 October 2018].

¹³³ [Migrants Resource Centre \(2016\), ‘Joint Submission to the Human Rights Council at the 27th Session of the Universal Periodic Review – United Kingdom’](#) [accessed: 11 October 2018].

¹³⁴ [European Network on Statelessness \(2016\), ‘Protecting stateless persons from arbitrary detention in the United Kingdom’](#) [accessed: 8 March 2019].

¹³⁵ As above. The only possibility to appeal a decision is through an internal administrative review, which is limited in scope and is not in line with the procedural guarantees recommended by the UNHCR.

6. Right to life, freedom from torture and ill-treatment, and conditions in detention

Relates to articles 2, 6, 7, 10 and 24, and CO paragraphs 16, 20 and 23.b

6.1 Prisons, the youth custodial estate and policing

We have particular concerns regarding the following issues in relation to conditions and treatment in adult prisons in England and Wales:

- Overcrowding,¹³⁶ poor and insanitary conditions,¹³⁷ high imprisonment rates, particularly in Wales,¹³⁸ and lack of time prisoners spend out of cells.¹³⁹

¹³⁶ Ministry of Justice (2019), 'HMPPS Annual Digest 2018/19' [accessed: 26 July 2019]: 'In the year ending March 2019, 22.5% of prisoners were held in crowded conditions, lower than in the previous year. During the last ten years, crowding levels have fluctuated between 22.5% in the latest year and 25.5% in 2015'.

¹³⁷ Including reports of inadequate furniture, exposed wiring, graffiti, litter and vermin. The lack of in-cell sanitation is a recurrent problem: HM Inspectorate of Prisons (2017), 'Life in prisons: living conditions' [accessed: 8 March 2019] and HM Inspectorate of Prisons (2019), 'Annual Report 2018-19' [accessed: 8 August 2019].

¹³⁸ Wales has been found to have the highest imprisonment rate in Western Europe. Furthermore, the lack of a prison estate for women in Wales means that women sentenced to custody in Wales must serve their sentence in prisons in England, far from their homes: Wales Governance Centre (2019), 'Sentencing and immediate custody in Wales: A factfile' [accessed: 17 March 2019].

¹³⁹ HM Inspectorate of Prisons (2019), 'Annual Report 2018-19', p. 33 [accessed: 8 August 2019]: 'We expect prisoners to be unlocked for at least 10 hours a day, but in our survey only 10% of prisoners said that they were unlocked for this length of time, and nearly a quarter said they spent less than two hours out of their cells on a weekday.'

- A rise in levels of self-harm¹⁴⁰ and assaults¹⁴¹ in recent years, and persistent concerns about the number of non-natural / self-inflicted deaths in custody.¹⁴²
¹⁴³
- High levels of force used on prisoners.¹⁴⁴
- Plans to introduce PAVA spray¹⁴⁵ for use by all officers in adult male prisons in England and Wales, and the risk that it will be used inappropriately rather than as a measure of last resort.¹⁴⁶ ¹⁴⁷
- Inadequate pregnancy and maternity care¹⁴⁸ ¹⁴⁹ and mental health care in the secure estate, including a failure to tailor mental health care to the needs of

¹⁴⁰ In England and Wales, recorded self-harm in prisons reached a record high in the 12 months to June 2019, at 60,594 incidents: Ministry of Justice (2019), 'Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to September 2019 Assaults and Self-harm to June 2019' [accessed: 31 October 2019].

¹⁴¹ Recorded assaults rose to 34,112 in the year to June 2019, including 24,139 prisoner-on-prisoner assaults and 10,424 assaults on staff: as above.

¹⁴² Committee of Public Accounts (2017), 'Mental health in prisons: eighth report of session 2017-19' [accessed: 8 March 2019].

¹⁴³ In the year to September 2019, there were 90 recorded apparent self-inflicted deaths in prisons in England and Wales, following a rise from 59 in 2011 to a peak of 111 in 2016: Ministry of Justice (2019), 'Safety in custody summary tables to June 2019' [accessed: 31 October 2019].

¹⁴⁴ HM Inspectorate of Prisons (2019), 'Annual Report 2018-19', p. 24 [accessed: 8 August 2019]: 'Recorded use of force had increased in 28 prisons. Its governance remained weak at many establishments.'

¹⁴⁵ PAVA (pelargonyl vanillylamide) spray is an 'incapacitant' spray, also known as a 'pepper spray', which is dispensed from hand-held canisters and has irritant effects.

¹⁴⁶ The UK Government made this announcement in October 2018. Ministry of Justice (2018), 'Prison officer safety equipment rolled out' [accessed: 17 March 2019].

¹⁴⁷ This disregards the recommendations of the European Committee for the Prevention of Torture, which recommended that 'PAVA should not form part of the standard equipment of custodial staff': European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 30 March to 12 April 2016', p. 20 [accessed: 8 March 2019].

¹⁴⁸ JCHR (2019), 'The right to family life: children whose mothers are in prison' [accessed: 11 October 2019]; Abbott, L. (2018), 'The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons' [accessed: 11 October 2019].

¹⁴⁹ In October 2019, it was reported that a newborn baby had died at HMP Bronzefield in England on 27 September 2019, after the mother gave birth alone in her cell: JCHR (2019), 'Letter to Minister of State for Prisons and Probation regarding the tragic death

particular groups,¹⁵⁰ especially ethnic minority groups,¹⁵¹ women (particularly ethnic minority women)¹⁵² and trans people.¹⁵³

There have, however, been positive commitments and measures taken by governments:

- The UK Government has committed to creating more prison places, which could reduce over-crowding,¹⁵⁴ and investing in more widespread use of liaison and diversion services in England.¹⁵⁵ However, there are concerns about how effectively these measures will address the root causes of the issues highlighted above.¹⁵⁶

of a baby in HMP Bronzefield' [accessed: 23 October 2019]; BBC News (2019), 'HMP Bronzefield: Newborn baby dies at women's prison' [accessed: 11 October 2019].

¹⁵⁰ EHRC (2016), 'Preventing deaths in detention of adults with mental health conditions: progress review' [accessed: 17 March 2019].

¹⁵¹ There is evidence that individuals from ethnic minority groups in prisons are less likely than their White counterparts to be identified as having learning difficulties or mental health conditions: Lammy, D. (2017), 'Treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system' [accessed: 8 March 2019].

¹⁵² There is evidence that women from ethnic minority groups in prison have less access to mental health support than White women in prison: Prison Reform Trust (2017), 'Counted Out: Black, Asian and minority ethnic women in the criminal justice system' [accessed: 8 March 2019].

¹⁵³ The Prison and Probation Ombudsman (PPO) has also drawn attention to adaptations needed to improve the treatment of transgender prisoners: PPO (2017), 'Learning Lessons Bulletin: Transgender prisoners, PPO Investigations' [accessed: 8 March 2019].

¹⁵⁴ Hansard (2018), 'Prisons: Overcrowding: Written question HL11934' [accessed: 8 March 2019].

¹⁵⁵ NHS England (2018), 'About liaison and diversion' [accessed: 8 March 2019].

¹⁵⁶ An evaluation of the pilot of the UK Government's network of liaison and diversion services reported positive impacts, including better identification of the needs of people in custody, particularly mental health needs. However, there is no data on the number of individuals who have been diverted from the criminal justice system as a result of this engagement: EHRC (2018), 'Is Britain Fairer? The state of equality and human rights in 2018' [accessed: 8 March 2019].

- The UK Government published a female offender strategy in June 2018.¹⁵⁷
¹⁵⁸ However, we have a number of concerns about the strategy, including how it will be resourced¹⁵⁹ and evaluated.¹⁶⁰
- Following a legal challenge, the UK Government introduced strengthened guidance on the use of PAVA spray, and prisons will be required to demonstrate that they understand the trends in the use of force at their establishment before being signed off for use of PAVA.¹⁶¹ We remain concerned about how effective these safeguards will be in practice.
- The Welsh Government introduced a ‘Framework to support positive change for those at risk of offending in Wales’,¹⁶² and published a Partnership Agreement for Prison Health in Wales in September 2019.¹⁶³

Our particular concerns regarding conditions and treatment in the youth estate in England and Wales include:

¹⁵⁷ Which sets out measures to enhance mental health services for women in prisons, promote alternative sentencing and ensure that that treatment of women in the criminal justice system takes account of gender and sexual violence: Ministry of Justice (2018), ‘[Female Offender Strategy](#)’ [accessed: 20 March 2019].

¹⁵⁸ The need for special measures to promote alternative sentencing for women is highlighted by the fact that women are more likely to receive short-term custodial sentences than men. Between 2010 and 2017, 78.6% of women sentenced to immediate custody in Wales were handed sentences of less than 12 months, compared to 67% of male offenders: Cardiff University (2019), ‘[Sentencing and immediate custody in Wales: A factfile](#)’ [accessed: 17 March 2019].

¹⁵⁹ Resources allocated to community services – £5 million – are limited and substantially smaller than the estimated £50 million that the UK Government will save as a result of cancelling its plans to build five women’s prisons: Agenda (2018), ‘[Open Letter from the Justice Secretary](#)’ [accessed: 20 March 2019].

¹⁶⁰ Drinkwater, N. (2018), ‘[Ensuring a distinct approach: the Ministry of Justice launch their Female Offender Strategy](#)’ [accessed: 8 March 2019]; EHRC (2019), ‘[Women’s rights and gender equality in 2018: update report to the UN Committee on the Elimination of All Forms of Discrimination Against Women](#)’ [accessed: 30 September 2019].

¹⁶¹ EHRC (20 August 2019), [Ministry of Justice to give prisoners greater protection during roll-out of PAVA spray](#) [accessed: 30 August 2019].

¹⁶² The Framework seeks to improve services for people already in the criminal justice system or at risk of re-entering prison: Welsh Government (2017), ‘[A framework to support positive change for those at risk of offending in Wales](#)’ [accessed: 8 March 2019].

¹⁶³ The Partnership Agreement outlines agreed priorities between Her Majesty’s Prison and Probation Service in Wales, the Welsh Government, Local Health Boards and Public Health Wales to drive improvements in the health and wellbeing of those held in Welsh prisons: Welsh Government (2019), ‘[Partnership agreement for prison health in Wales](#)’ [accessed: 11 October 2019].

- Poor perceptions among children of their safety,¹⁶⁴ ¹⁶⁵ a rise in self-harm incidents,¹⁶⁶ and failures to keep children in Secure Training Centres (STC) and Young Offender Institutions (YOI) safe from physical or sexual abuse.¹⁶⁷
- Many children being deprived of adequate time outside their cells, despite some improvements,¹⁶⁸ and increasing use of segregation.¹⁶⁹ ¹⁷⁰
- A substantial rise in the use of restraint – including pain-inducing restraint – in the last decade,¹⁷¹ including serious concerns in relation to Medway STC,¹⁷² and Feltham A YOI.¹⁷³ An independent inquiry has found a strong link

¹⁶⁴ '35% of children said they had felt unsafe in their current YOI': HM Inspectorate of Prisons (2019), '[Annual Report 2018-19](#)', p. 55 [accessed: 8 August 2019].

¹⁶⁵ Note that there have been improvements in safety according to the most recent annual report: HM Inspectorate of Prisons (2019), '[Annual Report 2018-19](#)', p. 13 [accessed: 8 August 2019].

¹⁶⁶ From 5.1 per hundred young people in 2011/12 to 12.5 per hundred in 2017/18: Youth Justice Board / Ministry of Justice (2019), '[Youth Justice Statistics 2017-2018 – England and Wales](#)' [accessed: 17 March 2019]. Between 2007 and 2018, there were five deaths among 15- to 17-year-olds in youth custody, four of which were self-inflicted: Ministry of Justice (2019), '[Safety in Custody quarterly: update to September 2018](#)' [accessed: 8 March 2019].

¹⁶⁷ IICSA (2019) '[Sexual abuse of children in custodial institutions 2009-2017 investigation report](#)' [accessed: 9 August 2019]. The report notes that '[t]he culture of these institutions, particularly their closed nature and focus on containment and control, has not provided an environment that protects children from either physical or sexual abuse'.

¹⁶⁸ HM Inspectorate of Prisons' Annual Report for 2018-19 noted that only two YOIs achieved its expectation of 10 hours a day out of cell, and this was not the case for every child in their care: HM Inspectorate of Prisons (2019), '[Annual Report 2018-19](#)', pp. 58-59 [accessed: 8 August 2019].

¹⁶⁹ Especially in YOIs where children have been segregated for 22 hours or more a day, for periods extending up to 100 days: Children's Commissioner for England (2018), '[A report on the use of segregation in youth custody in England](#)' [accessed: 8 March 2019].

¹⁷⁰ General Assembly (2011), '[Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice](#)' [accessed: 8 March 2019].

¹⁷¹ UK Parliament Joint Committee on Human Rights (2018), '[Oral evidence inquiry into the use of restraint and solitary confinement in youth custody](#)' [accessed: 9 March 2019] and HMIP (2018), '[HM Chief Inspector of Prisons for England and Wales: annual report 2017-18](#)' [accessed: 8 March 2019].

¹⁷² Evidence shows ongoing widespread and unlawful use of painful restraint at Medway Secure Training Centre: Walters, A. (2019) '[Learning for organisations arising from incidents at Medway Secure Training Centre](#)' [accessed: 8 March 2019].

¹⁷³ On 24 July 2019, HMIP issued an Urgent Notification after rapid deterioration in the conditions at Feltham A YOI, compromising the safety of children held there. 74% of

between the use of restraint and child sexual abuse in youth detention,¹⁷⁴ and recommended prohibiting the use of pain-compliance techniques.¹⁷⁵

- 45% of Welsh children in custody in 2017 were being held in England far from their families.¹⁷⁶ Research has suggested that distant placement can add to the problems that Welsh-speaking children face when held in an ‘unfamiliar linguistic environment’.¹⁷⁷

Certain measures have been taken in relation to some of these issues, including:

- In May 2016, the Youth Justice Board announced that it had developed a more robust system of monitoring for all STCs¹⁷⁸ and, in August 2019, the Ministry of Justice announced plans to address the concerns at Feltham A YOI.¹⁷⁹
- The UK Government’s vision of replacing STCs with therapeutic and child-focused secure schools, supported by a specialised workforce, is a positive step.¹⁸⁰ However, the decision to trial this at Medway STC, with its problematic history and prison-like dimensions, raises concerns about its chances of success.¹⁸¹

children reported they had been physically restrained, and there had been over 700 incidents in the last six months: HMIP (2019), ‘[HMYOI Feltham A Urgent Notification](#)’ [accessed: 9 August 2019].

¹⁷⁴ IICSA (2019) ‘[Sexual abuse of children in custodial institutions 2009-2017 investigation report](#)’ [accessed: 9 August 2019].

¹⁷⁵ The report recommended that: ‘the Ministry of Justice prohibits the use of pain compliance techniques by withdrawing all policy permitting its use, and setting out that this practice is prohibited by way of regulation’: as above, p. 102.

¹⁷⁶ Wales Governance Centre (2018), ‘[Imprisonment in Wales: A factfile](#)’ [accessed: 8 March 2019].

¹⁷⁷ Hughes, C. and Madoc-Jones, I. (2005), ‘Meeting the needs of Welsh speaking young offenders’. *Howard Journal of Criminal Justice*, 44(4) pp. 374-386.

¹⁷⁸ Youth Justice Board for England and Wales (2016), ‘[YJB response to Medway Improvement Board report](#)’ [accessed: 8 March 2019].

¹⁷⁹ The Ministry of Justice published an Action Plan which includes a number of specific actions in relation to the Use of Force in Feltham A YOI: see Ministry of Justice (2019), ‘[HMYOI Feltham 'A' Urgent Notification: Initial Response Action Plan](#)’ [accessed: 14 October 2019]; Ministry of Justice (2019), ‘[Lord Chancellor and Secretary of State for Justice response to the HMYOI Feltham 'A' urgent notification](#)’ [accessed: 14 October 2019].

¹⁸⁰ Ministry of Justice (2019), ‘[Our Secure Schools Vision](#)’ [accessed: 8 March 2019].

¹⁸¹ Standing Committee for Youth Justice (2018), ‘[SCYJ responds to Secure School Pilot announcement](#)’ [accessed: 8 March 2019].

- The UK Government announced a review of the use of pain-inducing restraint across the youth custodial estate, which was due to report in summer 2019.¹⁸²

In relation to policing and police custody, we also note with concern:

- That around 40% of children brought into police custody in nine boroughs of London were held in police cells overnight¹⁸³ in the year ending 31 May 2017.¹⁸⁴ In 2017, a ‘concordat’ committing to reducing this number was signed by police forces and local authorities in England.¹⁸⁵ The Welsh Government has separately published guidance to avoid the overnight detention of children and young people in police custody.¹⁸⁶
- The use of Tasers on children in England and Wales,¹⁸⁷ and the use of spit hoods on children in police custody,¹⁸⁸ without adequate risk assessments.¹⁸⁹

¹⁸² Ministry of Justice (2018), ‘[The use of pain-inducing techniques in the youth secure estate](#)’ [accessed: 8 March 2019].

¹⁸³ In breach of section 38(6) of the Police and Criminal Evidence Act 1984, which requires that children charged with a criminal offence should be bailed or transferred to local authority accommodation until they are brought to court, except in very limited exceptional circumstances.

¹⁸⁴ HM Inspectorate of Constabulary and Fire and Rescue Services. (2017), ‘[Report on an unannounced inspection visit to police custody suites in Metropolitan Police Service North and North East clusters](#)’ [accessed: 8 March 2019].

¹⁸⁵ Home Office (2017), ‘[Concordat on children in custody](#)’ [accessed: 8 March 2019].

¹⁸⁶ Welsh Government (2017), ‘[Written Statement - Children in Police Custody in Wales](#)’ [accessed: 11 October 2019].

¹⁸⁷ In 2017/18, there were 16 incidents involving the use of Tasers on children appearing to be under the age of 11, including five occasions on which the Taser was fired at the child: Home Office (2018), ‘[Police use of force statistics, England and Wales: April 2017 to March 2018](#)’ [accessed: 9 January 2019].

¹⁸⁸ According to the latest police use of force statistics for England and Wales, in 2017/18 there were 165 incidents of spit and bite guards being used on children aged 11-17, and one incident for a child under 11. See Home Office (2018), ‘[Police use of force statistics, England and Wales: April 2017 to March 2018](#)’ [accessed: 11 October 2019].

¹⁸⁹ Child Rights Alliance England (2016), ‘[Briefing on Policing and Criminal Justice](#)’ [accessed: 8 March 2019].

6.2 Health and social care services

Following a high profile inquiry into failings in care in England in 2013,¹⁹⁰ a number of measures were put in place:

- A statutory duty of candour, adopted in 2014,¹⁹¹ to ensure health and social care providers in England are transparent about where harm has occurred.
- A requirement for NHS trusts in England to appoint a Freedom to Speak Up Guardian to support staff who report concerns about patient care and safety.¹⁹²
- A requirement – set out in National Guidance in March 2017¹⁹³ – for NHS trusts in England to report on the number of deaths that occur due to failures of care in their premises and steps taken to investigate, in response to evidence that the duty of candour is not working as intended.¹⁹⁴

However, a number of concerns remain, including the fact that the duty on NHS trusts in England to report on numbers of deaths does not require collection of data by protected characteristic, which would help identify any disproportionality.¹⁹⁵ We welcome the stated intention to build data collection by

¹⁹⁰ The 2013 Francis Inquiry report examined the causes of the failings in care at Mid Staffordshire NHS Foundation Trust between 2005 and 2009: Mid Staffordshire NHS Foundation Trust Public Inquiry (2013), 'Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry' [accessed: 8 March 2019]. In June 2018, another high-profile public inquiry found that hundreds of older people had died prematurely between 1988 and 2000 at Gosport War Memorial Hospital as a result of the 'almost routine use of opiates' without medical justification: Matthews-King, A. (2018), 'Gosport hospital scandal', Independent, 19 June [accessed: 17 March 2019].

¹⁹¹ CQC (2017), 'Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20' [accessed: 8 March 2019]. The duty of candour is a legal requirement on health and adult social care providers in England to be open and transparent with patients, families and carers when a patient has suffered harm from their care or treatment.

¹⁹² Nearly 4,000 members of staff spoke to their Freedom to Speak Up Guardian up to June 2017, raising more than a thousand patient safety incidents: CQC (2017), 'National Guardian Annual Report' [accessed: 8 March 2019].

¹⁹³ National Quality Board (2017), National Guidance on Learning from Deaths: A Framework for NHS Trusts and NHS Foundation Trusts on Identifying, Reporting, Investigating and Learning from Deaths in Care [accessed: 8 March 2019].

¹⁹⁴ CQC (2016), 'Learning, candour and accountability: A review of the way NHS trusts review and investigate the deaths of patients in England' [accessed: 8 March 2019].

¹⁹⁵ EHRC (2018), 'Written evidence to the draft Health Service Safety Investigations Bill committee' [accessed: 8 March 2019].

protected characteristic, albeit non-mandatory, into a new digital system to support patient safety learning.¹⁹⁶

In April 2017, the Healthcare Safety Investigation Branch (HSIB) was set up to investigate patient safety incidents in all NHS settings in England.¹⁹⁷ However, we are concerned about the inadequate number of investigations the HSIB can take on annually.^{198 199}

There are proposals to create a separate body (the Health Service Safety Investigations Body (HSSIB)) which will place the HSIB on a statutory footing.²⁰⁰ While we welcome this proposal, we are concerned that the body will still only be able to take on a limited number of investigations annually. We are also concerned that, contrary to the requirements of Article 3 ECHR and Article 7 ICCPR, it will not cover incidents where there are clear indications of serious ill-treatment, even if they do not result in death.²⁰¹

In Wales, the Health and Social Care (Quality and Engagement) (Wales) Bill was introduced to the National Assembly for Wales in June 2019. The aims of the Bill include strengthening the duty of quality on NHS bodies and establishing a duty of candour on providers of NHS services.²⁰² While the Bill will strengthen existing

¹⁹⁶ NHS England and NHS Improvement (July 2019), '[Annex 2: NHS Patient Safety Strategy equality impact assessment](#)', pp. 5-6 [accessed: 9 August 2019]. Making the provision of protected characteristic information mandatory in response to incidents.

¹⁹⁷ [Healthcare Safety Investigation Branch website](#) [accessed: 17 March 2019].

¹⁹⁸ The body can only take on 30 investigations annually, despite the large number of safety incidents that take place each year, which result in 12,000 avoidable deaths and 24,000 serious patient safety incidents: Hansard (2018), '[Parliamentary briefing: Draft Health Service Safety Investigations Bill - A new capability for investigating patient safety incidents](#)' [accessed: 8 March 2019].

¹⁹⁹ In one study, the CQC identified 58,664 reported safety incidents in 54 mental health trusts between April and June 2017: CQC (2018), '[Sexual safety on mental health wards](#)' [accessed: 8 March 2019].

²⁰⁰ [Draft Health Services Safety Investigations Bill, September 2017](#).

²⁰¹ See our advice on the Health and Safety Investigations Bill, which makes a number of specific recommendations to ensure that the provisions of the Bill meet the UK Government's equalities and human rights obligations: EHRC (2019), '[Our advice to parliament: Health Service Safety Investigations Bill](#)' [accessed: 1 November 2019].

²⁰² The duty will 'require NHS bodies, including providers of primary care services, to follow a prescribed process whenever someone suffers an adverse outcome, which has or could result in more than minimal harm and whenever healthcare was or may have been a factor': see Welsh Government (2019), '[Written Statement: Introduction of the Health and Social Care \(Quality and Engagement\) \(Wales\) Bill](#)' [accessed: 15 October 2019].

processes for raising concerns,²⁰³ we are concerned that there is no requirement for NHS trusts in Wales to appoint a Freedom to Speak Up Guardian, and that there remains no independent body to investigate patient safety incidents in Wales.²⁰⁴

Growing numbers of older or disabled people in England and Wales are not receiving the care services they require in their homes or in residential settings.²⁰⁵ ²⁰⁶ This may also amount, in extreme cases,²⁰⁷ to inhuman and degrading treatment.²⁰⁸ There has been a substantial increase in the number of reports of abuse and neglect of older people in care homes in England,²⁰⁹ and

²⁰³ [The Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017](#).

²⁰⁴ [The establishment of an independent investigatory unit was one of the main recommendations in our 'Preventing Deaths in Detention of Adults with Mental Health Conditions' report: EHRC \(2015\), 'Preventing Deaths in Detention of Adults with Mental Health Conditions' \[accessed: 8 March 2019\]](#).

²⁰⁵ [Due to substantial reductions in government funding to local authorities since 2010-11, combined with growth in the adult population: CQC \(2018\), 'The state of health care and adult social care in England 2017/18' pp. 20-21 \[accessed: 9 August 2019\]](#). Similar concerns have been raised in Wales, where there has been a real terms reduction in budgets for social care services of over 12% due to increasing need for services: [Luchinskaya, D., Ogle, J. and Trickey, M. \(2017\), 'A delicate balance? Health and social care spending in Wales' \[accessed: 7 March 2019\]](#).

²⁰⁶ [The UN Committee on the Rights of Persons with Disabilities found that this was undermining disabled people's right to live independently and be part of their community: UNCRPD \(2017\), 'Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland' \[accessed: 8 March 2019\]](#). See also [UK Independent Mechanism \(2017\), 'Disability rights in the UK: Updated submission to the UN Committee on the Rights of Persons with Disabilities in advance of the public examination of the UK's implementation of the UN CRPD' \[accessed: 10 October 2019\]](#).

²⁰⁷ [For example, those affecting the ability of people to access basic needs such as eating, washing and going to the toilet.](#)

²⁰⁸ [Care and Support Alliance \(2018\), 'Voices from the social care crisis: An opportunity to end a broken system, once and for all' \[accessed: 8 March 2019\]](#).

²⁰⁹ [Data obtained from the CQC by the Sunday Times newspaper show a 40% increase in notifications of serious injury of residents in care homes in England between 2012 and 2016, from 26,779 to 38,676: Ungood-Thomas, J. and Lawrence, S. \(2017\), 'CQC: 100 elderly people a day hurt in homes', Sunday Times, 15 October \[accessed: 8 March 2019\]](#).

concerns and recommendations for change have been raised by the Older People's Commissioner for Wales²¹⁰ and the Welsh Care Inspectorate.²¹¹

6.3 Use of force

Mental health units

Evidence indicates a range of concerns in mental health settings, including:

- Concerns about the use of force, long-term segregation and night-time confinement of patients in high secure hospitals in England.²¹²
- 'Oppressive and intimidating' behaviour by staff, as well as concerns about 'excessive' use and duration of restraint by one facility in Wales.²¹³ There were 48 uses of facedown restraint in Wales in 2017/18.²¹⁴
- Recent reports of serious abuse of people with learning disabilities at Whorlton Hall, a secure inpatient unit in England.²¹⁵ The abuse mirrors past reports and we are considering whether the Department of Health and Social Care and the Care Quality Commission (CQC) have fulfilled their obligations to protect the human rights of people with learning disabilities and autism.

We also note the following developments:

²¹⁰ Older People's Commissioner for Wales (2017), '[A Place to call home: impact and analysis](#)' [accessed: 8 March 2019]. The Commissioner recommended improvements in inspection frameworks and training provided to social care workers, but found that significant action is still required so that older people can have a good quality of life.

²¹¹ Care Inspectorate Wales and Health Inspectorate Wales (2016), '[National inspection of care and support for people with learning disabilities: overview](#)' [accessed: 8 March 2019]. In 2016, the Welsh Care Inspectorate expressed concerns about the leadership and governance of safeguarding for adults with learning disabilities.

²¹² This includes patients from Wales, who are all accommodated in England: CPT (2017), '[Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 30 March to 12 April 2016 \(20\)](#)' [accessed: 8 March 2019].

²¹³ Healthcare Inspectorate Wales (2019), '[Mental Health, Learning Disability Hospitals and Mental Health Act Monitoring: Annual Report 2017-2018](#)' [accessed: 30 September 2019].

²¹⁴ As above.

²¹⁵ Panorama (2019), '[Undercover hospital abuse scandal](#)' [accessed: 19 July 2019].

- The recent introduction of the Mental Health Units (Use of Force) Act 2018 in England, which requires mental health units to train staff on how to reduce the use of restraint, providing patients with information about their rights and improving monitoring.²¹⁶
- Recommendations made by the Independent Review of the Mental Health Act 1983, published in December 2018, including promoting greater use of therapeutic environments.²¹⁷
- A review into the use of restraint, prolonged seclusion and segregation in England for people with mental health conditions, learning disabilities and / or autism, currently being conducted by the CQC.²¹⁸ An interim report was published in May 2019,²¹⁹ with the full findings due to be published in March 2020.

Schools

We are concerned that UK Government guidance on the use of force in schools in England²²⁰ does not provide sufficient safeguards.²²¹ The UN Committee on the Rights of the Child²²² and the Children’s Commissioner for England²²³ have

²¹⁶ [Mental Health Units \(Use of Force\) Act 2018](#) (‘Seni’s Law’).

²¹⁷ [Independent Review of the Mental Health Act \(2018\), ‘Modernising the Mental Health Act: increasing choice, reducing compulsion’](#) [accessed: 9 March 2019].

²¹⁸ [CQC \(2018\), ‘Thematic review of the use of restraint, prolonged seclusion and segregation for people with mental health problems, learning disabilities and/or autism’](#) [accessed: 9 March 2019].

²¹⁹ [CQC \(2019\), ‘Interim report: Review of restraint, prolonged seclusion and segregation for people with a mental health problem, a learning disability and or autism’](#) [accessed: 10 October 2019].

²²⁰ [DfE \(2013\), ‘Guidance. Use of Reasonable Force in Schools’](#) [accessed: 9 March 2019].

²²¹ For example, it does not spell out the principle that certain forms of restraint should be used only as a last resort: [DfE \(2013\), ‘Use of reasonable force: advice for headteachers, staff and governing bodies’](#) [accessed: 9 March 2019].

²²² In 2016, the UN Committee on the Rights of the Child (UNCRC) criticised the use of restraint and seclusion on children with psychosocial disabilities, including children with autism, in schools: [UNCRC \(2016\), ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’](#) [accessed: 9 March 2019].

²²³ The Children’s Commissioner for England (CCE) recommended that existing standards for residential schools should be revised to ensure stricter rules around the use of restraint, including better recording practices and monitoring: [CCE \(2014\), ‘The views and experiences of children in special residential school’](#) [accessed: 9 March 2019].

both criticised restraint practices in schools and recommended improvement. Recent evidence indicates continued issues with ill-treatment of children with special educational needs in schools.^{224 225}

6.4 Corporal punishment

In England, parents, and those acting ‘in loco parentis’, charged with the common assault of a child can still seek to rely on the common law defence of ‘reasonable punishment’.²²⁶ This means that children do not have the same level of protection from violence as adults.

In 2018, a Welsh Government consultation came out narrowly in favour of the view that removal of the defence of reasonable punishment will protect children’s rights. The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill was passed by the National Assembly for Wales on 28 January 2020.²²⁷

6.5 The Grenfell Tower disaster

On 14 June 2017, a fire in a 24-storey residential building in West London spread throughout the building, as a result of cladding on the outside of the

²²⁴ Morrison Beth (2019) ‘Reducing Restrictive Intervention of Children and Young People: case studies and survey results’ [accessed: 3 April 2019] and Titheradge, N (2018), ‘Hundreds of pupils spend week in school isolation booths’, BBC News [accessed: 9 January 2019].

²²⁵ A Freedom of Information request to local authorities across Britain revealed 13,000 physical restraints in special schools between 2014 and 2017, resulting in 731 injuries: BBC (2017), ‘Hundreds of restraint injuries at special schools’ [accessed: 9 March 2019]. Over 80% of local authorities subject to the request said that they did not have the relevant information requested, suggesting the actual figure may be much higher.

²²⁶ Also known as ‘reasonable chastisement’: section 58, Children Act 2004.

²²⁷ See National Assembly for Wales, ‘Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill’ [accessed: 10 February 2020].

building, leading to the loss of 72 lives. Following this, an independent public inquiry was launched.²²⁸ The inquiry is currently running behind schedule.²²⁹

Having reviewed the evidence available,²³⁰ we consider that there has been a systemic, and ongoing, breach of the UK's obligation to protect the right to life.²³¹ In particular, evidence suggests that, prior to the fire, the UK Government either knew, or ought to have known, of the real and immediate risk to life posed by the cladding, and that it failed to take reasonable steps to avoid that risk.²³² There are a substantial number of residential (and other) buildings across England that remain fitted with cladding material likely to present a fire hazard, and we do not consider the remedial steps taken to date to be sufficient. Furthermore, during and following the fire, there were insufficient protective measures to meet the needs of people in the most vulnerable situations.²³³ A number of individuals and groups have faced difficulties in participating in the inquiry effectively.²³⁴

²²⁸ Phase 1 of the inquiry focuses on what happened on the day of the fire and Phase 2 will examine the circumstances and causes of the fire. The Phase 1 report was published on 30 October 2019: Grenfell Tower Inquiry (2019), '[Grenfell Tower Inquiry: Phase 1 Report](#)' [accessed: 30 October 2019].

²²⁹ Phase 2 of the inquiry is not due to begin until 2020, and the inquiry is not expected to complete its work until 2022.

²³⁰ In December 2017, we launched our own initiative – 'Following Grenfell: The Human Rights and Equality Dimension'. It aims to ensure that the public inquiry is properly informed about the human rights and equality dimensions of the disaster, and to consider whether the state is meeting its human rights duties. As part of this initiative, we have reviewed the transcripts of the Phase 1 hearings, the summaries of the expert reports, and important documents and witness statements. We have also spoken to relevant stakeholders, including survivors, bereaved and former residents of Grenfell Tower and surrounding blocks.

²³¹ For our detailed findings on the UK's breach of its obligation to protect the right to life, see EHRC (2018), '[Following Grenfell: the right to life](#)' [accessed: 30 September 2019].

²³² By reason of: (a) its failure to put in place an appropriate regulatory framework to prohibit the use of cladding in residential blocks, and / or its failure to ensure that the regulatory framework was effectively monitored and enforced; and (b) its failure to grant residents the right to access information about the dangers posed by the cladding.

²³³ Such as children, pregnant women, older people, disabled people and those not fluent in English.

²³⁴ EHRC (2019), '[Following Grenfell: Grenfell residents' access to services and support](#)' [accessed: 11 October 2019].

7. Violence against women and girls (VAWG)

Relates to articles 2, 3, 6, 7 and 26, and CO paragraphs 13.b-d

7.1 Overarching framework to tackle VAWG

As highlighted in our recent reports to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee),²³⁵ sexual violence and domestic abuse are a persistent and growing concern.²³⁶ The UK has signed, but still not ratified, the Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention),²³⁷ but is taking steps towards compliance.²³⁸

The UK Government's strategy²³⁹ to eliminate VAWG in England and Wales aims to prevent and reduce all forms of VAWG, with a 'key strategic aim' being to maintain and promote effective services for survivors.²⁴⁰ There are serious concerns about insufficient funding for VAWG services,²⁴¹ particularly specialist

²³⁵ EHRC (2018), 'Pressing for progress: women's rights and gender equality in 2018' [accessed: 30 September 2019]; EHRC (2019), 'Women's rights and gender equality in 2018: update report to the UN Committee on the Elimination of All Forms of Discrimination Against Women' [accessed: 30 September 2019].

²³⁶ EHRC (2018), 'Is Britain Fairer? 2018' [accessed: 13 September 2019].

²³⁷ Preventing and Combating Violence Against Women and Domestic Violence (Ratification of the Convention) Act (2017) [accessed: 13 September 2019].

²³⁸ The decision to include provisions on extra-territorial jurisdiction in the Domestic Abuse Bill is a step in the right direction in ensuring the UK meets the requirements of the Istanbul Convention, but concerns remain about compliance with other crucial provisions.

²³⁹ The cross-government strategy was published in 2016 and updated in 2019: HM Government (March 2019), 'Ending Violence against Women and Girls 2016-2020: Strategy Refresh' [accessed: 13 September 2019].

²⁴⁰ As above.

²⁴¹ Women's Aid (2019), 'The Domestic Abuse Report 2019: The Annual Audit' [accessed: 11 October 2019].

provision for Black and ethnic minority women, disabled people (including those with learning disabilities), LGBT survivors, and individuals with complex needs.²⁴² The CEDAW Committee recently expressed concerns about the impact of shifts towards commissioning large and generic service providers.²⁴³ We are also concerned about protection gaps for survivors with insecure immigration status and no recourse to public funds (NRPF).²⁴⁴

In Wales, the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (VAWDASV) introduced provisions to improve the prevention of VAWG and the protection and support of survivors, including a requirement to establish national indicators to measure progress. VAWDASV has been seen as ground-breaking, although concerns have been raised about the inconsistency of services being delivered, insufficient coordination across Welsh Government departments and local authorities, and a lack of sustainable funding for specialist support services.²⁴⁵

7.2 Justice system responses to VAWG

The UK Government has adopted a number of legislative and policy measures to improve the criminal justice response to VAWG in England and Wales, including:

- The Serious Crime Act 2015, which introduced the offence of controlling or coercive behaviour in intimate or familial relationships. It also strengthened the legal framework for female genital mutilation (FGM) including by introducing FGM protection orders, a mandatory reporting

²⁴² EHRC (2018), 'Pressing for progress: women's rights and gender equality in 2018' [accessed: 30 September 2019]; Women's Aid (2019), 'The Domestic Abuse Report 2019: The Annual Audit', [accessed: 11 October 2019]; Sisters for Change (2017), 'Unequal regard, unequal protection. Public authority responses to violence against BME women in England' [accessed: 13 September 2019].

²⁴³ Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (2019), 'Concluding observations on the eight periodic report of the United Kingdom of Great Britain and Northern Ireland', paras 29-30 [accessed: 13 September 2019].

²⁴⁴ Women's Aid (2017), 'Nowhere To Turn Report' [accessed: 11 October 2019].

²⁴⁵ National Assembly for Wales (2019), 'National Advisors Annual Report 2018-19: Violence Against Women Domestic Abuse And Sexual Violence' [accessed: 23 September 2019]; National Assembly for Wales (2018), 'National Advisors Annual Report 2018: Violence Against Women Domestic Abuse And Sexual Violence' [accessed: 23 September 2019].

duty for known cases in girls under 18, and an offence of failing to protect a girl from FGM.²⁴⁶

- A Domestic Abuse Bill,²⁴⁷ which proposes a number of measures including the creation of a Domestic Abuse Commissioner, a statutory definition of domestic abuse, a new domestic abuse protection notice and order, and measures to strengthen safeguards for victims of domestic abuse in family and criminal judicial proceedings. We have recommended a number of improvements, including the need for a duty on the UK Government to fund support services adequately and ensure they are available to all, regardless of immigration status, and to strengthen safeguards for survivors in family and civil law proceedings.²⁴⁸

However, concerns about justice system responses to VAWG remain.

To date, only one person has been convicted of FGM in the UK.²⁴⁹ The Welsh Government funded the development of an FGM toolkit for professionals and parents in 2011,²⁵⁰ provided training to frontline staff and, in 2018, the first clinic in Wales was opened to provide medical and psychological help to FGM survivors.²⁵¹

In March 2019, the UK Government announced a cross-government review of the criminal justice response to rape and serious sexual offences.²⁵² Crown

²⁴⁶ Serious Crime Act 2015, sections 70-76 [accessed: 3 December 2018].

²⁴⁷ The draft Domestic Abuse Bill was introduced for pre-legislative scrutiny in January 2019: HM Government (January 2019), 'Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill' [accessed: 13 September 2019]. The current status of the Bill is available online: UK Parliament, 'Domestic Abuse Bill 2017-19 to 2019-20' [accessed: 15 October 2019].

²⁴⁸ EHRC (April 2019), 'Written evidence submitted by the Equality and Human Rights Commission on the draft Domestic Abuse Bill' [accessed: 13 September 2019]; EHRC (October 2019), 'Briefing: Domestic Abuse Bill House of Commons, Second Reading' [accessed: 15 October 2019].

²⁴⁹ Crown Prosecution Service (CPS) (2019), 'Violence Against Women and Girls Report 2018-19' [accessed: 11 October 2019].

²⁵⁰ Welsh Government (2013), 'Written statement - female genital mutilation' [accessed: 8 March 2019].

²⁵¹ Royal College of Midwives (2018), 'A major step in the campaign to stop FGM in Wales' says RCM on opening of first specialist FGM clinic in Wales' [accessed: 8 March 2019].

²⁵² Ministry of Justice, Letter from Edward Argar MP, Parliamentary Under-Secretary of State for Justice to Bob Neill MP, Chair of the Justice Select Committee (5 March 2019),

Prosecution Service (CPS) data published for 2018/19²⁵³ showed the number of police referrals, charges, prosecutions and convictions for rape had declined sharply, with the number of prosecutions dropping by 33%, from 4,517 in 2017-2018 to 3,034 in 2018-19.²⁵⁴

We are concerned about the impact on rape complainants of a disclosure policy, issued in April 2019 by the National Police Chiefs' Council, requiring victims to give blanket consent for the police and prosecution to access data on their mobile phones.²⁵⁵ The Victims' Commissioner for England and Wales has cited 'disclosure privacy concerns' as one of the main reasons for victim withdrawal of sexual offence complaints.²⁵⁶

We are also concerned that the threat of information sharing by a range of public service providers for the purposes of immigration control may prevent survivors from seeking protection and support, including from the police.²⁵⁷

'Announcement of Sub-Group to the Criminal Justice Board and Review of the Criminal Justice Response to Rape and Serious Sexual Assault' [accessed: 13 September 2019].

²⁵³ The CPS records 'rape flagged' cases, which means it includes cases which followed an allegation of rape, but which may have resulted in another offence, such as sexual assault, being charged and / or convicted: see CPS (2019), Violence Against Women and Girls Report 2018–19, p. 13 [accessed: 13 September 2019].

²⁵⁴ CPS (2019), Violence Against Women and Girls Report 2018–19 [accessed: 13 September 2019].

²⁵⁵ Centre for Women's Justice (April 2019), 'CWJ Press Statement: New Police Policy On Disclosure Of Personal Data Will Deter Rape Complaints' [accessed: 13 September 2019].

²⁵⁶ Victims' Commissioner for England and Wales (August 2019), 'VC analysis of victims' reasons for withdrawing sexual offence complaints' [accessed: 13 September 2019].

²⁵⁷ EHRC (April 2019), 'Written evidence submitted by the Equality and Human Rights Commission on the draft Domestic Abuse Bill' [accessed: 13 September 2019].

8. Deprivation of liberty

Relates to articles 7, 9, 10 and 26, and CO paragraphs 21.a-b

8.1 Immigration detention

The practice of indefinite immigration detention has drawn criticism from HM Inspector of Prisons and a range of civil society organisations.²⁵⁸ In the year ending June 2019, 24,052 individuals entered the immigration detention estate.²⁵⁹ Almost 30% of those who left detention during this period had been held for over 28 days, with 3% detained for over six months.²⁶⁰ 174 people leaving detention during this period had been held for over a year.²⁶¹

We are concerned that, for individuals at heightened risk of being harmed by the experience of detention, the lack of a time limit on immigration detention may contribute to violations of the prohibition on torture, inhuman and degrading treatment.²⁶² We have supported amendments to the Immigration and Social

²⁵⁸ HM Chief Inspector of Prisons (2019), 'Report on an unannounced inspection of Brook House Immigration Removal Centre' [accessed: 8 March 2018]; HMIP (2018), 'Report on an unannounced inspection of Heathrow Immigration Removal Centre Harmondsworth Site' [accessed: 8 March 2019]; Amnesty International UK (2019), '100,000 demand an end to indefinite immigration detention' [accessed: 11 October 2019]; Liberty (2019), 'Economic impacts of immigration detention reform' [accessed: 11 October 2019]; British Medical Association (2017), 'Locked up, locked out: health and human rights in immigration detention' [accessed: 8 March 2019]; Lindley, A. (2017), 'Injustice in Immigration Detention Perspectives from legal professionals' [accessed: 20 March 2019].

²⁵⁹ Home Office (August 2019), 'National Statistics: How many people are detained or returned?' [accessed: 23 December 2019].

²⁶⁰ As above. Of the 24,467 people leaving detention in the year ending June 2019, 6,868 were held for longer than 28 days, 3,392 for more than 2 months.

²⁶¹ As above.

²⁶² All Party Parliamentary Group on Refugees & All Party Parliamentary Group on Migration (2015), 'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom' [accessed: 8 March 2019].

Security Co-ordination (EU Withdrawal) Bill,²⁶³ which would provide for a 28 day time-limit on immigration detention.

A series of recent judgments have highlighted the lack of Home Office policies or procedures to ensure that immigration detainees with serious mental health conditions can assert their right to challenge the decision to detain them.²⁶⁴ The courts have also found several violations of Article 3 ECHR in the immigration detention estate,²⁶⁵ which largely relate to failures to identify or respond to the needs of people with serious mental health conditions.²⁶⁶

The UK Government's Adults at Risk policy, introduced in September 2016, includes statutory guidance designed to enhance protections for individuals at particular risk of harm in immigration detention;²⁶⁷ however, this guidance has been criticised for weakening safeguards.²⁶⁸ In particular, the initial definition of torture in the policy was subject to successful legal challenge.²⁶⁹ The latest definition provided by the Home Office includes a criterion of 'powerlessness',²⁷⁰

²⁶³ The Immigration and Social Security Co-ordination (EU Withdrawal) Bill was introduced in the House of Commons on 20 December 2018, but failed to complete its passage through Parliament before the end of the parliamentary session on 8 October 2019. However, the Bill has since been reintroduced in the Queen's Speech.

²⁶⁴ *R (VC) v SSHD* [2018] EWCA Civ 57 (EHRC intervening), *MDA and ASK v SSHD* [2019] EWCA Civ 1239 (EHRC intervening).

²⁶⁵ See, for example, *R (on the Application of MD) v SSHD* [2014] EWHC 2249 (Admin); *R (on the Application of HA (Nigeria)) v SSHD* [2012] EWHC 979 (Admin); *ARF v SSHD* [2017] EWHC 10 (QB).

²⁶⁶ Typically cases where mental health deteriorated severely in detention.

²⁶⁷ UK Visas and Immigration and Immigration Enforcement (2016), 'Adults at risk in immigration detention' [accessed: 8 March 2019]; Home Office (2019), 'Adults at risk in immigration detention: 5.0' (accompanying policy guidance) [accessed: 17 March 2019].

²⁶⁸ Shaw, S. (2018), 'Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: a follow-up report to the Home Office' [accessed: 8 March 2019].

²⁶⁹ *Medical Justice & 7 Others v SSHD* [2017] EWHC 2461 (Admin). A second legal action to a revised definition resulted in a stay. The Secretary of State said they would make a change to the wording and revisit it in a review of Removal Centre Rules. The definition of torture in this context serves to identify those at particular risk of psychological deterioration in detention.

²⁷⁰ Home Office (2019), Draft Removal Centre Rules. Rule 35 (6) For the purposes of this rule, 'torture' means any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which (a) the perpetrator has control (whether mental or physical) over the victim; and (b) as a result of that control, the victim is in a situation of powerlessness.

which we do not consider an appropriate criterion for determining whether a detainee has experienced torture for the purpose of detention policy.²⁷¹

Recent parliamentary inquiries have raised serious concerns regarding prison-like conditions in Immigration Removal Centres (IRCs),²⁷² and failure by the Home Office 'in its responsibilities to oversee and monitor the safe and humane detention of individuals.'^{273 274}

Undercover footage at Brook House IRC, aired in 2017,²⁷⁵ showed abusive treatment that arguably reaches the threshold for torture and cruel, inhuman or degrading treatment.²⁷⁶ In October 2018, the Home Office agreed to commission the Prisons and Probation Ombudsman to conduct an investigation into the issues arising from the footage.²⁷⁷ In June 2019, the High Court held the investigation did not meet the requirements of the investigative duty in Article 3 ECHR.²⁷⁸

²⁷¹ EHRC (2019), Response of the Equality and Human Rights Commission to the Home Office Consultation on Revised Detention Centre Rules.

²⁷² Including the extended time periods that individuals spend locked in their rooms; the disproportionate use of handcuffs and other restrictive measures; and the inappropriate mixing of detainees, including ex-foreign national offenders (awaiting deportation at the end of a prison sentence) with other detainees: JCHR (2019), '[Immigration Detention Inquiry](#)' [accessed: 8 March 2019].

²⁷³ Home Affairs Select Committee (2019), '[Immigration detention: - Fourteenth Report of Session 2017-19](#)', p. 4 [accessed: 9 August 2019].

²⁷⁴ We raised concerns about a lack of safeguards to protect people in detention from violations of the right to be free from torture and cruel, inhuman or degrading treatment: UK Parliament (2018), '[Written evidence from the Equality and Human Rights Commission \(IMD0019\)](#)' [accessed: 8 March 2019].

²⁷⁵ The footage was shown as part of a BBC Panorama programme.

²⁷⁶ Panorama (2017), '[Undercover: Britain's Immigration Secrets](#)' [accessed: 8 March 2019].

²⁷⁷ Taylor, D. (2018), '[Home Office agrees to inquiry into immigrant abuse allegations](#)', The Guardian, 11 October [accessed: 8 March 2019].

²⁷⁸ MA, BB v Secretary of State for the Home Department (The Equality and Human Rights Commission intervening) [2019] EWHC 1523.

The number of children in immigration detention has fallen significantly since the UK Government announced its intention to end the practice in 2010.²⁷⁹ However, children continue to be detained in short-term holding facilities and at IRCs.²⁸⁰

8.2 Mental health and capacity

Inappropriate and / or long-term detention of disabled people

The UK Government failed in its aim of developing appropriate community services to support people with learning disabilities and / or autism.²⁸¹ In 2014, there were 2,577 people with learning disabilities / autism in psychiatric hospitals in England.²⁸² As at the end of August 2019, there were 2,255 inpatients with learning disabilities and / or autism in hospitals.²⁸³

The report of a UK Government commissioned independent review of the MHA, published in December 2018, reflected several key recommendations we made.²⁸⁴ This included a call for more community-based mental health services

²⁷⁹ 85 children entered immigration detention in 2018, compared to 1,119 in 2009: Home Office (2019), 'Detention data tables immigration statistics year ending June 2019', Table dt_02 [accessed: 22 October 2019].

²⁸⁰ Refugee Council Information (May 2019), 'Detention of Children' [accessed: 2 September 2019]. 85 children entered immigration detention in 2018: Home Office (2019), 'Detention data tables immigration statistics year ending June 2019', Table dt_02 [accessed: 22 October 2019].

²⁸¹ Department of Health (2012), 'Transforming care: A national response to Winterbourne View Hospital' [accessed: 17 March 2019].

²⁸² This number includes compulsory / involuntary detentions and people with voluntary status under the MHA. NHS England (2014), 'NHS England publishes data on transfer dates for people with learning disabilities, autism and behaviour that challenges' [accessed: 11 October 2019].

²⁸³ NHS Digital (2019), Learning Disability Services Monthly Statistics [accessed: 30 September 2019].

²⁸⁴ Department of Health and Social Care (2017), 'Terms of Reference - Independent Review of the Mental Health Act 1983' [accessed: 8 March 2019]. EHRC (2018), 'Response to the consultation on the Independent Review of the Mental Health Act' [accessed: 8 March 2019].

to prevent people from reaching crisis point.²⁸⁵ The UK Government has committed to introducing new legislation to reform the MHA.²⁸⁶

There are specific concerns about the inappropriate detention of children and young people with learning disabilities in mental health hospitals, which was the subject of a parliamentary inquiry.²⁸⁷

Health and social care are devolved in Wales, which results in differences in implementation and data gathering. At the end of March 2018, there were 117 people with learning disabilities in NHS-run mental health hospitals and units in Wales;²⁸⁸ however, this figure does not include people in independent hospitals or placed out of area in English hospitals. There is no official data on the length of hospital admission for people with learning disabilities in Wales.

Unauthorised detention of people lacking capacity

Following a widening of the interpretation of ‘deprivation of liberty’ in 2014,²⁸⁹ there was a dramatic increase in applications under the Deprivation of Liberty Safeguards (DoLS) scheme in England. The DoLS is a procedure for the deprivation of liberty for the purpose of care and treatment of people in care homes or hospitals who are deemed to lack capacity.

Since then, the number of applications for DoLS has continued to rise, although the rate of increase is slowing. In 2018-19, there were 240,455 applications, representing a 5.7% increase compared to the previous year.²⁹⁰ Applications for

²⁸⁵ Department of Health and Social Care (2018), ‘[Modernising the Mental Health Act: Increasing choice, reducing compulsion](#)’ [accessed 9 March 2019].

²⁸⁶ Department of Health and Social Care (2018), ‘[Government commits to reform the Mental Health Act](#)’ [accessed: 28 October 2019]. The Queen’s Speech on 19 December 2019 reiterated the UK Government’s commitment to reform the MHA ‘to ensure people have greater control over their treatment and receive the dignity and respect they deserve’: Prime Minister’s Office (2019), ‘[The Queen’s Speech 2019](#)’ [accessed: 6 January 2020].

²⁸⁷ JCHR (2019), [Inquiry into the detention of children and young people with learning disabilities and/or autism](#) [accessed: 19 July 2019].

²⁸⁸ StatsWales (2018), ‘[Patients in mental health hospitals and units in Wales with a learning disability](#)’ [accessed: 13 September 2019].

²⁸⁹ A Supreme Court judgment held that ‘deprivation of liberty’ may occur in care placements for disabled people who lack capacity: *P (by his litigation friend the Official Solicitor) v Cheshire West & Others* [2014] UKSC 19.

²⁹⁰ NHS Digital (2019), ‘[Mental Capacity Act 2005, Deprivation of Liberty Safeguards, England, 2018-19](#)’ [accessed: 8 January 2020].

authorisations of deprivation of liberty in Wales are increasing, with a 9% increase recorded between 2015/16 and 2016/17,²⁹¹ and an 8% rise between 2016/17 and 2017/18.²⁹² In 2017-18, there were 14,743 new DoLS applications across Wales.²⁹³ The large number of applications, combined with a complex application procedure, has resulted in a substantial backlog of applications before local authorities.²⁹⁴

We are concerned that depriving people of liberty, without robust independent scrutiny and authorisation of care and treatment arrangements, not only violates their right to liberty and security, it also increases the risk of inhuman and degrading treatment. Moreover, reports suggest that health and social care professionals often make deprivation of liberty decisions without sufficiently trying to ascertain individuals' wishes and feelings.²⁹⁵

DoLS are set to be replaced by Liberty Protection Safeguards, following commencement of relevant provisions of the Mental Capacity (Amendment) Act 2019. We are concerned that the UK Government has, at the time of writing, failed to establish sufficient safeguards against unlawful deprivation of liberty.

²⁹¹ [Care Inspectorate Wales & Healthcare Inspectorate Wales \(2018\), Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2016/17](#) [accessed: 30 July 2019]

²⁹² [Care Inspectorate Wales & Healthcare Inspectorate Wales \(2019\) Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care 2017/18](#) [accessed: 30 July 2019]

²⁹³ As above.

²⁹⁴ [NHS Digital \(2019\), 'Mental Capacity Act 2005, Deprivation of Liberty Safeguards, England, 2018-19'](#) [accessed: 8 January 2020]. The number of applications completed in 2018-19 was 216,005. The proportion of standard applications completed within the statutory timeframe of 21 days was 22%, and the average length of time for all completed applications was 147 days. 131,350 cases were not completed as at year end (31 March 2019).

²⁹⁵ [Law Commission \(2017\), 'Mental Capacity and Deprivation of Liberty'](#) [accessed: 9 March, 2019].

9. Human trafficking and modern slavery

Relates to article 8

The Modern Slavery Act (MSA) came into force in 2015.²⁹⁶ The National Referral Mechanism (NRM) – through which victims are identified and receive support – has received a growing number of referrals of potential victims of trafficking or modern slavery.²⁹⁷ While referrals to the NRM have increased,²⁹⁸ the number of referrals remains low²⁹⁹ given Home Office estimates that there are 10,000-13,000 victims in the UK,³⁰⁰ with the National Crime Agency stating that the referrals represent ‘a snapshot of the true scale of slavery and trafficking in the UK’.³⁰¹ In July 2019, the UK Government announced the creation of a research centre to uncover the true scale of modern slavery and further strengthen the UK’s response.³⁰²

²⁹⁶ [Modern Slavery Act 2015](#) [accessed: 9 March 2019]. The majority of the provisions extend to England and Wales only, although certain provisions – such as those relating to the Independent Anti-Slavery Commissioner – extent to Scotland and Northern Ireland.

²⁹⁷ [National Crime Agency \(2019\), ‘National Referral Mechanism Statistics – End of Year Summary 2018’](#) [accessed: 29 August 2019].

²⁹⁸ [Between 1 July and 30 September 2019, 2,808 potential victims of modern slavery were referred to the NRM, a 21% increase from the previous quarter and a 61% increase from the same quarter in 2018: Home Office \(2019\), ‘National Referral Mechanism Statistics UK, Quarter 3 2019 – July to September’](#) [accessed: 8 January 2020].

²⁹⁹ [6,993 potential victims were submitted to the National Referral Mechanism in 2018: National Crime Agency \(2019\), ‘National Referral Mechanism Statistics – End of Year Summary 2018’](#) [accessed: 29 August 2019].

³⁰⁰ [HM Government \(Oct 2019\), ‘2019 Annual Report on Modern Slavery’](#) [accessed: 22 October 2019].

³⁰¹ [National Crime Agency \(2019\), ‘Nearly 7,000 potential victims of slavery and trafficking reported in 2018’](#) [accessed: 29 August 2019].

³⁰² [Home Office \(2019\), ‘Government to launch new modern slavery research centre’](#) [accessed: 20 August 2019].

9.1 Shortcomings in the Modern Slavery Act

We have repeatedly identified weaknesses in the MSA that hinder its effectiveness,³⁰³ including that it does not fully incorporate all the requirements of the EU Anti Trafficking Directive.³⁰⁴ Withdrawal from the EU, and from the obligation to uphold the EU Anti Trafficking Directive, may weaken victims' right to support.³⁰⁵

The MSA introduced reparation orders to compensate victims. However, very few reparation orders have been awarded to date,³⁰⁶ as these rely on convictions for trafficking offences, of which there have been very few.³⁰⁷

Constraints on the definition of 'violent crime' mean that victims of trafficking may not be eligible to receive compensation through the Criminal Injuries Compensation Scheme.³⁰⁸ While victims may pursue a civil remedy, there is no specific remedy for trafficking so they must rely on other causes of action.³⁰⁹

³⁰³ EHRC (2015), '[Briefing on amendments to clarify trafficking and slavery offences published in the Marshalled List of Amendments on 20 February 2015](#)' [accessed: 8 March 2019].

³⁰⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

³⁰⁵ Anti-Trafficking Monitoring Group (2017), '[Brexit and the UK's fight against modern slavery](#)' [accessed: 8 March 2019].

³⁰⁶ The Final Report of the Independent Review of the MSA noted that the latest available data indicated that there had been no reparation orders issued up to the end of 2017: [Independent Review of the Modern Slavery Act 2015: Final Report \(May 2019\)](#) [accessed: 30 August 2019]. However, the CPS' [Modern Slavery Report 2017-18](#) mentions one case in Newcastle in which £10,000 in reparation orders were made: CPS (2018), '[Modern Slavery Report 2017-18](#)' [accessed: 8 January 2020].

³⁰⁷ UK Parliament (2018) '[Slavery and Trafficking Reparation Orders: Written question 194087](#)' [accessed: 8 March 2019].

³⁰⁸ Anti-Slavery International et al (2019), '[Joint submission to the Committee on the Elimination of all forms of Discrimination against Women, 72nd Session \(18 February – 8 March 2019\)](#)' [accessed: 14 October 2019].

³⁰⁹ Ainhoa Barrenechea (2016), '[FLEX Working Paper: Access to compensation for victims of human trafficking](#)' [accessed: 17 March 2019]. The Supreme Court in [Taiwo \(Appellant\) v Olaigbe and another \(Respondents\)](#) [2016] UKSC 31 suggested Parliament might wish to consider addressing this lacuna.

The May 2019 Final Report of the Independent Review of the MSA³¹⁰ made several recommendations that mirrored our concerns.³¹¹ These included calls for the UK Government to commence provisions regarding Independent Child Trafficking Advocates, and to fully roll out its revised model of support (though the review stopped short of extending this to all unaccompanied children),³¹² and a recommendation to amend the MSA to make it clear that children cannot consent to their trafficking or slavery.

The UK Government accepted a number of these recommendations, some subject to further consultation. We are disappointed, however, that it rejected recommendations to clarify that children cannot consent to their exploitation.³¹³

9.2 Strengthening the NRM

Following a 2014 review,³¹⁴ the UK Government announced a number of reforms to the NRM, including the creation of an expert unit to handle all cases referred from frontline staff, an independent panel of experts to review negative decisions, and a new digital system to capture and analyse data.³¹⁵ The reforms are due to be completed by March 2020.³¹⁶

³¹⁰ In July 2018, the UK Government commissioned an independent review of the Modern Slavery Act 2015.

³¹¹ [Independent Review of the Modern Slavery Act 2015: Final Report \(May 2019\)](#) [accessed: 30 August 2019].

³¹² [ECPAT UK \(2019\), 'Modern slavery legislation review misses opportunity to expand support for children'](#) [accessed: 30 August 2019].

³¹³ [HM Government \(2019\), 'UK Government response to the Independent Review of the Modern Slavery Act 2015'](#) [accessed: 30 August 2019].

³¹⁴ [Home Office \(2014\), 'Review of the National Referral Mechanism for victims of human trafficking'](#) [accessed: 8 March 2019].

³¹⁵ [Home Office \(2017\), 'Modern Slavery Taskforce agrees new measures to support victims'](#) [accessed: 21 March 2019].

³¹⁶ [Home Office \(2018\), Letter from Sir Philip Rutnam, Permanent Secretary to Meg Hillier MP 'Follow-up to Public Accounts Committee Hearing of 27 June', 23 July](#) [accessed: 8 March 2019].

9.3 Tackling modern slavery in Wales

Tackling slavery is not a devolved responsibility, but much of the support for survivors falls to devolved services. The Welsh Government appointed an Anti-Slavery Co-ordinator in 2011 and established the Wales Anti-Slavery Leadership Group, to provide support for survivors and strategic leadership on tackling slavery. We are concerned that, to date, there has been no assessment or evaluation of the effectiveness of these initiatives, in particular, in terms of their impact on survivors and access to specialist support services.

10. Right to privacy and freedom of expression

Relates to articles 2, 17 and 19, and CO paragraph 24

The HRA 1998 gives protection in domestic law, enforceable in UK courts, to the rights to privacy and free expression. Privacy is further protected through the General Data Protection Regulation, EU legislation which is supplemented by the UK Data Protection Act 2018 (DPA 2018). New digital technologies, data use and data sharing pose particular challenges to these rights,³¹⁷ particularly given the scale and pace of technological change. We highlight examples of concerns regarding the legal and policy framework below.

10.1 Privacy rights

Surveillance powers and mass data retention

Until 2016, the interception of communications and communications data³¹⁸ in the UK was governed by the Regulation of Investigatory Powers Act 2000 (RIPA), which had long been criticised as unclear and lacking in safeguards.³¹⁹ Following a legal challenge launched in 2013, the European Court of Human Rights (ECtHR) ruled, on 13 September 2018, that the regime under RIPA violated the right to privacy under Article 8 ECHR and breached the right to free

³¹⁷ As noted by the Special Rapporteur on privacy, following his UK visit in 2018: UN Office of the High Commissioner for Human Rights (2018), 'End of Mission Statement of the Special Rapporteur on the Right to Privacy at the Conclusion Of his Mission to the United Kingdom of Great Britain and Northern Ireland' [accessed: 30 September 2019].

³¹⁸ 'Communications data' is often referred to as the 'who', 'when', 'where', and 'how' of a communication but not the content, that is, what was said or written. Communications data relating to telecommunication services can include the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device from which the communication was made.

³¹⁹ As noted in the Human Rights Committee during the UK's seventh periodic review: UN Human Rights Committee (2015), 'Concluding observations on the seventh periodic report of the United Kingdom' [accessed: 9 March 2019].

expression under Article 10 ECHR.³²⁰ The case was referred to the ECtHR Grand Chamber in February 2019 and is awaiting judgment.³²¹

The Investigatory Powers Act 2016 (IPA), which replaced parts of RIPA, introduced a new statutory framework for UK law enforcement and intelligence agencies to conduct targeted interception of communications for ‘equipment interference’ and the acquisition and retention of communications data and bulk personal datasets.³²² The IPA includes provisions about the treatment of material held following such actions, and establishes the Investigatory Powers Commissioner’s Office (IPCO) to provide oversight arrangements.

While the IPA introduced certain new safeguards, significant concerns remain regarding various aspects of the UK’s surveillance and data retention framework. The UK High Court has recently declared Part 4 IPA to be incompatible with fundamental rights under EU law, because access to retained data was (a) not subject to prior review by an independent administrative body or court, and (b) not limited to the purpose of combating ‘serious crime’.³²³ Amending legislation was passed by the court-imposed deadline of 1 November 2018.³²⁴ However, one aspect remains partly outside of judicial control: the targeted acquisition and disclosure of communications data.

Furthermore, the continued parallel operation of the IPA and parts of RIPA³²⁵ is problematic, with different procedures and requirements under the two Acts leading to complexity and potential confusion.

³²⁰ *Big Brother Watch v. UK*, nos. 58170/13, 62322/14, 24960/15. It is worth noting, however, that the judgment was not a resounding victory for privacy rights; in particular, the ECtHR did not conclude that prior judicial authorisation was indispensable for the legality of bulk interception, instead describing it as ‘best practice’ (see paragraphs 316-320). The judgment also arguably normalised mass surveillance programmes by emphasising the importance of bulk interception as a tool for addressing serious criminality (see, for example, paragraphs 314 and 384-386 of the judgment).

³²¹ The hearing took place on 10 July 2019: ‘Grand Chamber hearing *Big Brother Watch and Others v. United Kingdom*’ [accessed: 14 October 2019].

³²² These are discussed in detail in a report produced by the independent reviewer of *Terrorism Legislation*, published in August 2016 [accessed: 23 December 2019].

³²³ *R (National Council for Civil Liberties) v Secretary of State for the Home Department and Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 975 (Admin), para. 186. Judgment [accessed: 23 December 2019].

³²⁴ Data Retention and Acquisition Regulations 2018 (SI 2018/1123) reg 1(4) read with Investigatory Powers Act 2016 (Commencement No 11) Regulations 2019 (SI 2019/174) reg 2(c), which bring IPA s. 61(1) fully into force.

³²⁵ For example, the continued operation of Chapter 2 of Part 1 of RIPA (which concerns the acquisition and disclosure of communications data), which is due to be repealed by

The use of new technologies in policing

The use of automated facial recognition (AFR)³²⁶ in policing has become an increasing concern in England and Wales over recent years.³²⁷ Firstly, the legal framework authorising and regulating the use of AFR is insufficient – it is based solely on common law powers and has no express statutory basis.³²⁸ There are questions about whether the technology is inherently disproportionate,³²⁹ leading to concerns as to whether it complies with the requirement that any interference with privacy rights under Article 17 ICCPR is both necessary and proportionate.³³⁰ Furthermore, there are concerns over the technology's accuracy: Freedom of Information requests made by the NGO Big Brother Watch have shown that, since 2016, the Metropolitan Police's live facial recognition

IPA Schedule 10 para 54, currently remains in force, despite the court-imposed deadline of 1 November 2018 for amending the legislation: see *R (National Council for Civil Liberties) v Secretary of State for the Home Department* [2018] EWHC 975 (Admin). The UK Government has stated that Chapter 2 of Part 1 of RIPA has not yet been repealed 'because the practical complexities and difficulty of setting up a system of independent authorisation for a multitude of different public authorities and types of [communications data] under the Act have meant that [the Office for Communications Data Authorisation] is not yet fully operational': see the UK Government's skeleton argument in *R (National Council for Civil Liberties (Liberty)) v Secretary of State for the Home Department* [2019] EWHC 2057 (Admin).

³²⁶ AFR allows live scanning and cross-checking of people against a data-set, such as a 'watch list'. For example, the police use AFR to scan public places to identify people of interest.

³²⁷ Issues have been raised over the use of AFR by the Metropolitan Police and South Wales Police. It has also been used by Greater Manchester Police, Leicester Police and Humberside Police. For further detail of the use of this technology across England and Wales, including funding for the technology, see: Big Brother Watch (2019), 'Briefing on Facial Recognition and the biometrics strategy on 1st May 2019', p. 7 [accessed: 4 September 2019].

³²⁸ The Protection of Freedoms Act 2012 and the Data Protection Act 1998 do not make explicit reference to the use of AFR or provide any absolute legal basis for its use. While police forces are developing policies on the use of AFR technology, these are not legally binding, and there is no national-level coordination or oversight to ensure that AFR complies with the HRA and relevant equality and data protection laws.

³²⁹ In the UK, police use technology called NeoFace Watch, which is able to scan and identify up to 300 faces per second and compare them to a database of images. See: Cardiff University (2018), 'Evaluating the Use of Automated Facial Recognition Technology in Major Policing Operations' [accessed: 23 December 2019].

³³⁰ Human Rights Committee, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 6.

surveillance has been 96% inaccurate.³³¹ Evidence indicates that many AFR algorithms disproportionately misidentify Black people and women, and therefore operate in a potentially discriminatory manner.³³²

The use of AFR by South Wales Police was recently subject to a legal challenge, with the UK High Court ruling, in September 2019, that the current legal framework governing the use of AFR was adequate.³³³ The court held that, while the use of AFR technology engages the right to privacy under Article 8 ECHR, there had been no violation.³³⁴ The court did note, however, the need to conduct further investigations into whether AFR may produce discriminatory impacts.³³⁵ The judgment is currently being appealed.³³⁶ The Metropolitan Police Service subsequently announced on 24 January 2020 that it would begin using live facial recognition technology operationally in specific locations in London.³³⁷

Research shows that 14 UK police forces are already using, or planning to use, predictive policing technologies, including the use of algorithms to analyse data and identify patterns.³³⁸ Such technologies also raise concerns, including that

³³¹ As at April 2019, Freedom of Information requests by Big Brother Watch showed that the technology had resulted in only three arrests, with 120 incorrect matches made: Big Brother Watch (2019), 'Briefing on Facial Recognition and the biometrics strategy on 1st May 2019' [accessed: 21 October 2019].

³³² See, for example: Biometrics and Forensics Ethnicity Group (February 2019), 'Interim Report – Ethical issues arising from the police use of live facial recognition technology' [accessed: 23 December 2019]. This report notes and references 'high-profile scientific concerns that there is intrinsic potential racial and gender bias within [live facial recognition] systems'. See also: Big Brother Watch (2019), 'Briefing on Facial Recognition and the biometrics strategy on 1st May 2019', pp 11-12 [accessed: 23 December 2019].

³³³ Bridges, R (On Application of) v The Chief Constable of South Wales Police [2019] EWHC 2341 (Admin).

³³⁴ As above.

³³⁵ As above, para 156.

³³⁶ Liberty (2019), 'Liberty fights for facial recognition ban following court ruling' [accessed: 20 September 2019]; Law Gazette (2019), 'Court of Appeal to hear facial recognition technology challenge' [accessed: 10 February 2020].

³³⁷ Metropolitan Police (2020), 'Met begins operational use of Live Facial Recognition (LFR) technology' [accessed 10 February 2020].

³³⁸ Predictive mapping programmes use data about past crimes to predict high risk locations, while individual risk assessment programmes predict how people are likely to behave based on machine learning, using a dataset which includes a person's criminal history, as well as personal data such as postal / area code as well as many other data sources.

predictive policing replicates and magnifies patterns of discrimination in policing,³³⁹ while lending legitimacy to biased processes.³⁴⁰ A reliance on ‘big data’ encompassing large amounts of personal information may also infringe upon privacy rights and result in self-censorship, with a consequent chilling effect on freedom of expression and association.³⁴¹

10.2 Freedom of expression

Threats to free speech at universities

As discussed in section three (see page 18), the Prevent duty places a legal obligation on certain bodies – including universities – to have due regard to the need to prevent people from being drawn into terrorism.³⁴² Statutory guidance on the implementation of the Prevent duty in higher education institutions was issued in March 2015, which includes guidance on the hosting of speakers and events at universities.³⁴³

The guidance was challenged in 2017, on grounds that it failed to comply with the duty to have ‘particular regard’ to free speech in higher education institutions, among other things.³⁴⁴ The UK High Court refused the claim, despite explaining the need to balance Prevent requirements against the duty to secure freedom of speech.³⁴⁵ In March 2019, the Court of Appeal held that the guidance was ‘expressed in trenchant terms’ and that it was insufficiently balanced and

³³⁹ Including over-policing of Black people, ethnic minorities and people of low socio-economic status.

³⁴⁰ Liberty (2019), ‘[Policing by Machine](#)’ [accessed: 4 September 2019].

³⁴¹ As above.

³⁴² Counter-Terrorism and Security Act 2015, s. 26 and Schedule 6.

³⁴³ HM Government (March 2015), ‘[Prevent Duty Guidance: for higher education institutions in England and Wales](#)’, and HM Government (March 2015), ‘[Prevent Duty Guidance: for higher education institutions in Scotland](#)’ [both accessed: 4 September 2015].

³⁴⁴ *Butt v Secretary of State for the Home Department* [2017] EWHC 1930 (Admin) (26 July 2017).

³⁴⁵ As above.

accurate to assist decision-makers in reaching a proper conclusion on whether to host a particular speaker.³⁴⁶

In 2017, the JCHR held an inquiry into the state of free speech in UK universities, and found that the Prevent duty (among other factors) was inhibiting free speech,³⁴⁷ despite the importance of free speech in universities being enshrined in the domestic legal framework.³⁴⁸ The report noted that a lack of clarity about the scope of the Prevent duty, fears of being reported, and concerns about the levels of bureaucracy arising from the duty, resulted in self-censorship among both students and staff.³⁴⁹

Regulation of online content and platforms

The UK Government intends to improve online safety by creating a statutory duty of care, requiring companies to take reasonable steps to keep users safe and address illegal and harmful activity on their services.³⁵⁰ While we recognise the importance of the aims of the Government's proposals – the improvement of online safety, particularly for children and other at risk groups – we are concerned that the proposals risk infringing individuals' freedom of expression.³⁵¹ We have particular concerns about the lack of clarity over the definition of 'harms' – which could be interpreted to include political and religious views, and expressions of sexuality – and the broad scope of application of the proposed regulatory framework.³⁵²

³⁴⁶ *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 256, paras 176-177.

³⁴⁷ Joint Committee on Human Rights (2018), '[Freedom of Speech in Universities](#)' [accessed: 4 September 2019].

³⁴⁸ Section 43 of the Education (No 2) Act 1986 places a legal duty on universities and other higher education providers (HEPs) to take 'reasonably practicable' steps to ensure freedom of speech within the law for their members, students, employees and visiting speakers.

³⁴⁹ Joint Committee on Human Rights (2018), '[Freedom of Speech in Universities](#)' [accessed: 4 September 2019].

³⁵⁰ Department for Digital, Culture, Media & Sport and Home Office (April 2019), '[Online Harms White Paper](#)' [accessed: 6 September 2019].

³⁵¹ For example, see Privacy International (July 2019), '[Privacy International's Response to the Open Consultation on the Online Harms White Paper](#)' [accessed: 6 September 2019].

³⁵² At present, it is envisaged the statutory duty would apply to any companies that 'allow users to share or discover user-generated content, or interact with each other online', and would therefore encompass discussion forums, comments sections, reviews, online news sites and more. See Department for Digital, Culture, Media & Sport and Home Office (April 2019), '[Online Harms White Paper](#)', Part 4: Companies in scope of the regulatory framework [accessed: 6 September 2019].

11. Rights of the child

Relates to article 24 and CO paragraphs 23.a-b

11.1 Asylum of children

In 2018, there were 3,063 asylum applications by unaccompanied children, a 39% increase from 2017.³⁵³ Civil society research indicates that there have been ‘systemic delays’ in processing asylum applications by unaccompanied children,³⁵⁴ with a detrimental impact on children’s education and mental health.³⁵⁵

We have raised concerns that the Home Office’s guidance on conducting age assessments, to determine the age of young people seeking asylum, is inherently unreliable, and risks asylum-seeking children being wrongly assessed as adults.³⁵⁶ In May 2019, the Court of Appeal found the guidance to be unlawful.³⁵⁷ Following the judgment, the Home Office published amended guidance, advising frontline staff that where no documents or other evidence are available, and an age assessment is carried out on the basis of ‘physical appearance and demeanour’ alone, a person’s physical appearance and demeanour ‘must very strongly suggest that they are 25 years of age or over’ for them to be assessed as an adult.³⁵⁸ However, the guidance states that this is an ‘interim policy position’ and is without prejudice to the ongoing legal

³⁵³ Home Office (2019), ‘Asylum and resettlement summary tables, year ending June 2019 second edition’, Table Asy_01a [accessed: 31 October 2019].

³⁵⁴ Elder Rahimi Solicitors (2018), ‘Systemic Delays in the Processing of the Claims for asylum made in the UK by Unaccompanied Asylum Seeking Children (UASC)’ [accessed: 2 September 2019].

³⁵⁵ Children’s Rights Alliance for England (2019), ‘State of Children’s Rights in England 2018: Immigration, Asylum and Trafficking’ [accessed: 2 September 2019].

³⁵⁶ See our intervention in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872 (23 May 2019).

³⁵⁷ As above.

³⁵⁸ Home Office (May 2019), ‘Assessing Age’, p. 13 [accessed: 10 October 2019].

proceedings³⁵⁹ or any position that is reached following any consultation undertaken in relation to the guidance.³⁶⁰ The Home Office has been granted permission to appeal to the Supreme Court.

Unaccompanied children in Europe with relatives in the UK can currently apply to join them under the Dublin III Regulation.³⁶¹ However, the UK has reportedly been criticised by the United Nations High Commissioner for Refugees (UNHCR) for delays in the reunification process.³⁶² The UK's obligations regarding family reunification post-Brexit are currently unclear,³⁶³ and the UK remains one of the only EU states not to allow child refugees to sponsor close relatives to join them in the UK.³⁶⁴

11.2 Fees for children to register British citizenship

While the number of undocumented children in the UK is unknown, it has previously been estimated that there are over 100,000 such children in the UK.³⁶⁵ Under certain circumstances, some of these children are entitled to

³⁵⁹ The Home Office has applied for permission to appeal the judgment in *BF (Eritrea)* to the Supreme Court, and the decision on permission is pending.

³⁶⁰ The guidance states: 'this interim policy position is without prejudice to any position which the Home Office maintains in on-going legal proceedings and/or reaches following any consultation carried out': Home Office (May 2019), '[Assessing Age](#)', p. 13 [accessed: 10 October 2019].

³⁶¹ Children's Rights Alliance for England (2019), '[State of Children's Rights in England 2018: Immigration, Asylum and Trafficking](#)' [accessed: 2 September 2019].

³⁶² Grierson, J. (2019), '[Calais child refugees went on hunger strike after UK transfer delays](#)', *The Guardian* [accessed: 2 September 2019].

³⁶³ A previous version of the EU Withdrawal Agreement Bill guaranteed the right of unaccompanied children to be reunited with relatives in the UK after Brexit. However, this guarantee was removed from the Bill following the general election in December 2019, and attempts to reintroduce the guarantee were unsuccessful: Walker, P. (2020), '[Brexit bill passes parliament as Johnson overturns Lords amendments](#)', *The Guardian*, 22 January 2020 [accessed: 6 February 2020].

³⁶⁴ The UK has not opted in to the European Family Reunification Directive. See also Children's Rights Alliance for England (2019), '[State of Children's Rights in England 2018: Immigration, Asylum and Trafficking](#)' [accessed: 2 September 2019].

³⁶⁵ A research study published in 2012 estimated that 120,000 irregular migrant children live in the UK: Sigona, N. and Hughes, V. (2012), '[No Way Out, No Way In. Irregular](#)

register as British citizens.³⁶⁶ However, the registration fee has more than doubled over the last decade, standing at £1,012 in April 2018, of which £640 represents profit to the Home Office.³⁶⁷ There is no waiver or reduction for children unable to pay the fee, meaning the fee poses a barrier to children who are entitled to citizenship but cannot afford to register.³⁶⁸ A legal challenge of the fee regime was launched in July 2018,³⁶⁹ with the UK High Court finding in December 2019 that the fee regime is unlawful.³⁷⁰

11.3 Minimum age of criminal responsibility

In England and Wales, the age of criminal responsibility is 10,³⁷¹ which is significantly lower than many European countries.³⁷² In Scotland, the Scottish Government has recently raised the minimum age of criminal responsibility to 12.³⁷³

Migrant Children and Families in the UK' [accessed: 11 October 2019]. This estimate has not since been updated.

³⁶⁶ Joint briefing by the Project for the Registration of Children as British Citizens and Amnesty International UK (2018), 'Briefing on Fees for the Registration of Children as British Citizens' [accessed: 30 August 2019].

³⁶⁷ As above; House of Commons (August 2018), 'Debate pack: Fees for registering children as British citizens' [accessed: 2 September 2019].

³⁶⁸ Project for the Registration of Children as British Citizens and Amnesty International UK (2019), 'Briefing on Fees for the Registration of Children as British citizens' [accessed: 23 August 2019].

³⁶⁹ Amnesty International UK (July 2018), 'Legal case launched in High Court against the UK Government against unaffordable and profit-making citizenship fees' [accessed: 2 September 2019].

³⁷⁰ *PRCBC & Ors v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin). The High Court found that the Secretary of State had failed to assess and give primary consideration to the best interests of children when setting the fee for children to register as British citizens. The Secretary of State has been granted permission to appeal.

³⁷¹ Section 50 of the Children and Young Person's Act 1933 (as amended).

³⁷² Child Rights International Network, *Minimum Ages of Criminal Responsibility in Europe* [accessed: 4 August 2019].

³⁷³ Scottish Government (2019), *Age of Criminal Responsibility bill passed*, News, 7 May [accessed: 9 July 2019].

This low age of criminal responsibility is inconsistent with accepted international standards,³⁷⁴ especially in view of the UN Committee on the Rights of the Child's recent recommendation for states to increase the age to at least 14.³⁷⁵ It also runs counter to mounting evidence that criminalisation makes children more likely to reoffend as adults.³⁷⁶

The UK Government has continued to resist plans to raise the age of criminal responsibility in England and Wales,³⁷⁷ despite calls to do so from organisations and experts in the UK³⁷⁸ and numerous international human rights bodies.^{379 380}

Any increase in the age of criminal responsibility would need to be accompanied by the development of a welfare-based system, including early intervention and therapeutic services for dealing with the harmful behaviour of children.

³⁷⁴ UN (1989), Convention on the Rights of the Child, Article 40(3)(a); UNCRC General Comment no. 10 addressing Article 40 UNCRC; UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985.

³⁷⁵ [UNCRC, General Comment No. 24 \(2019\) on children's rights in the child justice system](#), 18 September 2019 [accessed: 23 September 2019].

³⁷⁶ Houses of Parliament (2018), 'Age of Criminal Responsibility'. POSTNOTE, no. 577, June 2018 [accessed: 8 March 2019].

³⁷⁷ UK Government (2019), CRC Draft General Comment No. 24 replacing General Comment No. 10 (2007) on Children's Rights in Juvenile Justice – 'Comments of the Government of the United Kingdom of Great Britain and Northern Ireland', 8 January [accessed: 9 July 2019].

³⁷⁸ [The Age of Criminal Responsibility Bill 2017](#) [accessed: 8 March 2019]; [Child Rights Alliance for England and Just for Kids Law \(2017\), 'Age of Criminal Responsibility Bill House of Lords Second Reading briefing'](#) [accessed: 8 March 2019]; [EHRC \(2019\), 'Torture in the UK: update report'](#) [accessed: 30 September 2019].

³⁷⁹ Human Rights Committee (2015), Concluding Observations on the UK; Committee against Torture (2019), Concluding Observations on the UK; Committee on the Rights of the Child (2016), Concluding Observations on the UK.

³⁸⁰ A Private Members Bill on raising the age of criminal responsibility from 10 to 12 in England and Wales was introduced in the House of Lord in October 2019.

12. Right to participate in public life

Relates to articles 3, 10(3), 25 and 26, and CO paragraph 25

12.1 Prisoner voting

In *Hirst v United Kingdom (No 2)*,³⁸¹ the ECtHR ruled that the UK's blanket ban³⁸² on prisoner voting was disproportionate and indiscriminate, in violation of the right to free elections under the ECHR.³⁸³ Since the UK's last review by the Human Rights Committee, limited progress has been made to address this.

In November 2017, the UK Government published proposals in response to calls for progress from the Council of Europe's (CoE) Committee of Ministers,³⁸⁴ with the main change being to allow prisoners on temporary license to vote.³⁸⁵ The CoE Committee of Ministers accepted this as compliant with the *Hirst*

³⁸¹ *Hirst v the United Kingdom (No. 2)* (application no. [74025/01](#)), 6 October 2005.

³⁸² As set out in the Representation of the People Act 1983, as amended by the Representation of the People Act 2000.

³⁸³ For full background on the case, see: House of Commons Library (2019), '[Prisoners' voting rights: development since May 2015](#)' [accessed: 11 October 2019].

³⁸⁴ Communication from the United Kingdom concerning the case of *HIRST (No. 2) v. the United Kingdom* Application No. [74025/01](#), 2 November 2017 [accessed: 23 December 2019].

³⁸⁵ Which was more restrictive than the previous options set out in 2012 in the Voting Eligibility (Prisoners) Draft Bill. The options were (1) a ban for prisoners sentenced to 4 years or more, (2) a ban for prisoners sentenced to more than 6 months, or (3) a ban for all convicted prisoners (reiterating the existing ban). The draft bill was not taken forward, and no further action was taken on a recommendation of the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill that all prisoners serving sentences of 12 months or less be given the right to vote. For further background information, see: House of Commons Library (2019), '[Prisoners' voting rights: development since May 2015](#)' [accessed: 11 October 2019]; and Joint Committee on the Voting Eligibility (Prisoners) Draft Bill (2013), '[Joint Committee on the Draft Voting Eligibility \(Prisoners\) Bill - First Report](#)' [accessed: 14 October 2019].

judgment.³⁸⁶ The UK Government confirmed, in July 2018, that it had issued guidance about the policy change to prisons in England and Wales³⁸⁷ and, in September 2018, the CoE confirmed the Hirst case was closed.³⁸⁸

Commentators have queried the extent to which this approach addresses the Hirst judgment,³⁸⁹ and we are concerned about whether it meets the UK's obligations to ensure the right to vote under Article 25 ICCPR, when read in conjunction with Article 10(3) ICCPR.³⁹⁰

Responsibility for local elections and National Assembly for Wales elections is devolved. In 2017, the Welsh Government consulted on prisoner voting in local elections in Wales, with opinion split among respondents.³⁹¹ Following a 2018 inquiry,³⁹² the National Assembly's Equality, Local Government and Community Committee (ELGCC) published a report, in June 2019, recommending the introduction of legislation to give Welsh prisoners serving custodial sentences of less than four years the right to vote in devolved Welsh elections.³⁹³ This recommendation was accepted by the Welsh Government.³⁹⁴

³⁸⁶ Council of Europe, Committee of Ministers 1302nd meeting, 5-7 December 2017 [accessed: 23 December 2019].

³⁸⁷ UK Parliament (2018), 'Prisoners: Voting Rights: Written question – 157787' [accessed: 27 December 2019].

³⁸⁸ Council of Europe, Committee of Ministers 1324th meeting, 7 September 2018 [accessed: 23 December 2019].

³⁸⁹ For example, see: von Staden, A. (2018), 'Minimalist Compliance in the UK Prisoner Voting Rights Cases' [accessed: 14 October 2019]; Adams, E. (2019), 'Prisoners' Voting Rights: Case Closed?', UK Constitutional Law Blog [accessed: 14 October 2019].

³⁹⁰ Article 10(3) emphasises that the essential aim of the penitentiary system shall be the 'reformation and social rehabilitation' of prisoners.

³⁹¹ This was part of its consultation on 'Electoral Reforms in Local Government in Wales': Welsh Government (2017), 'Consultation Document: Electoral Reform in Local Government in Wales' [accessed: 9 August 2019].

³⁹² National Assembly for Wales, 'Inquiry into voting rights for prisoners' [accessed: 9 August 2019].

³⁹³ National Assembly for Wales Equality, Local Government and Communities Committee (2019), 'Voting rights for prisoners' [accessed: 9 August 2019].

³⁹⁴ Welsh Government (2019), 'Response to the Committee's report on Voting rights for prisoners' [accessed: 22 October 2019]. On 25 September 2019, the Minister for Housing and Local Government stated that the Welsh Government would work to introduce legislation in the current Assembly to enable prisoners and young people in custody from Wales who are serving a custodial sentence of less than four years to vote in local government elections: see National Assembly for Wales (2019), 'Plenary: 25 September 2019' [accessed: 8 January 2020].

12.2 Diversity of representation

Evidence shows that the main political parties are making some progress towards a more diverse group of candidates.³⁹⁵ However, lack of diversity in political representation remains a concern:

- Women³⁹⁶ and ethnic minorities³⁹⁷ continue to be under-represented among parliamentary electoral candidates and MPs. Women's representation at the local council level is also unequal: following the May 2019 local government elections, only 35% of local councillors in England are women;³⁹⁸ in Wales, in 2017, 33% of Welsh local councillors and 18% of council leaders were women.³⁹⁹
- Available data indicates that disabled people are under-represented, although the data is not sufficient to enable comparison across all levels of elected office.⁴⁰⁰

³⁹⁵ Lamprinakou et al. (2019), 'Diversity of candidates and elected officials in Great Britain: EHRC research report 124' [accessed: 9 August 2019].

³⁹⁶ As above, p. 40: 'In terms of sex, data confirmed that women remain under-represented at all levels of government. Women candidates and elected officials comprised around one third (30%) of all elected representatives in the House of Commons, the Scottish Parliament and the local level elections. There were more women elected in the National Assembly for Wales (43%). There was some variation by party, yet there is a long way to go before the number of women selected or elected in office is representative of the population.'

³⁹⁷ As above: 'The pattern of under-representation was replicated with respect to race. Some parties had a percentage of ethnic minority candidates or elected officials approximately equivalent to the percentage in the population. Overall, however, the number of ethnic minority elected officials remained lower than in the population.'

³⁹⁸ Fawcett Society (2017), 'Does local government work for women?' [accessed: 11 October 2019].

³⁹⁹ Murphy, J. and Jones, K. (2018), Local Government Candidates Survey 2017, Cardiff: Welsh Government, GSR report number 25/2018 [accessed: 18 May 2018].

⁴⁰⁰ Lamprinakou et al. (2019), 'Diversity of candidates and elected officials in Great Britain: EHRC research report 124', p. 42 [accessed: 9 August 2019]: 'The percentage of disabled candidates who were selected to run for UK parliament in 2017 by all parties, and elected MPs, was below the percentage in the population. The same applies to disabled candidates and elected representatives at the national and local level elections (where data are available for the latter).'

There are also serious data gaps, as data on the diversity of MPs is not collected systematically.⁴⁰¹ Section 106 of the EA 2010, if implemented, would require political parties to report on the diversity of their candidates.⁴⁰²

We have repeatedly encouraged the UK Government to commit to reinstating or replacing the Access to Elected Office Fund (AEOF)⁴⁰³ for disabled people. While we welcome the establishment of the EnAble Fund,⁴⁰⁴ we are concerned that it is an interim measure, and that the UK Government's view⁴⁰⁵ that the 'prime responsibility' for support to disabled candidates lies with political parties⁴⁰⁶ is unlikely to create a level playing field.

Following the further devolution of election powers and processes, in April 2018,⁴⁰⁷ the Welsh Government now has the ability to establish a scheme similar to the AEOF; however, no such scheme has yet been implemented. A 2019 report of the Welsh National Assembly's ELGCC on Diversity in Local Government recommended improving data collection and establishing an AEOF.⁴⁰⁸ The Welsh Government accepted, or accepted in principle, 20 of the 22 recommendations made.⁴⁰⁹

⁴⁰¹ Lamprinakou et al. (2019), 'Diversity of candidates and elected officials in Great Britain: EHRC research report 124', p. 42 [accessed: 9 August 2019]; House of Commons Library (2017), 'Diversity in the 2017 Parliament' [accessed: 29 April 2018].

⁴⁰² Available at: 'Equality Act 2010' [accessed: 29 April 2018]. See section one (pages 11-12) of this report.

⁴⁰³ The fund provided financial assistance to disabled people who wished to stand for elected office.

⁴⁰⁴ In May 2018, the Minister for Women and Equalities announced funding of £250,000 available until March 2020 (called the EnAble Fund for Elected Office) to provide similar support: Government Equalities Office (2018), 'Fund launched to support disabled candidates stand for office' [accessed: 8 January 2020].

⁴⁰⁵ UK Parliament (2018), Access to Elected Office for Disabled People Fund: Written question – 160175 [accessed: 6 December 2018].

⁴⁰⁶ Note: political parties have a responsibility under section 20 of the EA 2010 to make reasonable adjustments.

⁴⁰⁷ National Assembly for Wales, Reserved powers model [accessed: 6 December 2018].

⁴⁰⁸ Equality, Local Government and Communities Committee (2019), 'Diversity in local government' [accessed: 9 August 2019].

⁴⁰⁹ Welsh Government (2019), 'Written Response by the Welsh Government to the report of the Equality, Local Government and Communities Committee entitled Diversity in Local Government – April 2019' [accessed: 9 August 2019].

12.3 Intimidation of parliamentary candidates

An inquiry by the UK Parliament's Committee on Standards in Public Life (CSPL) found that women candidates are disproportionately subjected to intimidation.⁴¹⁰ There is evidence that, in the six weeks before the 2017 election, almost half of all abusive tweets to women MPs in the UK were directed towards Diane Abbott, a prominent Black Labour MP. Excluding Diane Abbott, Black and Asian women MPs received 35% more abuse than White women MPs.⁴¹¹ The 2016 EU referendum campaign also saw the first murder of a sitting MP since 1990.⁴¹²

The UK Government recently published a response to the CPSL's inquiry,⁴¹³ setting out some actions taken to address the issue of intimidation and undue influence in the democratic process, including:

- new secondary legislation, in force from 2 May 2019, under which local councillors will not have to have their home addresses published on the ballot paper,
- the publication of an Online Harms White Paper (see section 10.2, page 66),⁴¹⁴ and
- the intention to develop 'a new electoral offence of intimidation of candidates and campaigners by the means of applying electoral sanctions to existing offences of intimidatory behaviour'.⁴¹⁵

⁴¹⁰ Committee on Standards in Public Life (2017), '[Intimidation in public life](#)' [accessed: 29 April 2018].

⁴¹¹ Amnesty Global Insights (2017), '[Unsocial media: tracking Twitter abuse against women MPs](#)' [accessed: 29 April 2018].

⁴¹² BBC News (2016), '[Jo Cox: Man jailed for 'terrorist' murder of MP](#)' [accessed: 29 April 2018].

⁴¹³ UK Government (2019), '[Protecting the Debate: Intimidation, Influence and Information – Government Response](#)' [accessed: 23 December 2019].

⁴¹⁴ As above, pp. 11-12.

⁴¹⁵ As above, p. 16.

Annex: Recommendations

1. Enhancing the status of international human rights in domestic law

The UK and Welsh governments, where relevant, should:

- Incorporate all provisions of the ICCPR not currently covered by the Human Rights Act 1998 into domestic law.
- Ensure that any proposed changes to the human rights legal framework do not lead to any reduction in the respect, protection and fulfilment of human rights.
- Ensure that the loss of EU funding does not undermine the UK's equality and human rights infrastructure, including the already scarce funding available to specialist services, such as those that support women survivors of violence and domestic abuse.
- In any future consideration of the territorial application of the Human Rights Act 1998, ensure their obligations in international law under the ICCPR extend to the operations of British forces overseas, and to foreign nationals when they are under de facto UK jurisdiction.
- Reinstate all original, and commence any outstanding, provisions of the Equality Act 2010, including provisions on dual discrimination and requiring political parties to report on candidates' diversity.

The UK Government should:

- Ratify the Optional Protocol to the ICCPR to provide the right to individual petition.
- Keep the reservations to ICCPR under regular review, publishing comprehensive explanations of their necessity.

2. Accountability for human rights violations and complicity by British military abroad

Allegations of abuse by British military abroad and complicity in mistreatment of detainees held by other governments

The UK Government should:

- Refrain from legislating to introduce a statutory presumption against the prosecution of current or former military personnel, in cases involving allegations of torture or ill-treatment.
- Reconsider its decision not to set up full, independent judge-led inquiries into allegations of torture committed by British military personnel in Iraq between 2003 and 2009, and into allegations of British involvement, including by means of complicity, in the mistreatment of detainees held by other governments. Any inquiries should be able to secure relevant evidence to hold alleged perpetrators to account, and they should examine systemic issues so that lessons learned can inform future practice.

Consolidated guidance

The UK Government should:

- Publish the Investigatory Powers Commissioner's Office's draft proposed principles to improve the consolidated guidance.
- Amend the revised guidance to ensure that British intelligence and security personnel cease any engagement with detainees in the custody of foreign intelligence services, in any case where there is a risk of torture or ill-treatment.

3. Counter-terrorism measures

Port and border control powers

The UK Government should introduce a threshold for reasonable suspicion for arresting individuals at airports and ports, and any new powers introduced in this area.

14-day pre-charge detention

The UK Government should reduce the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales.

Use of closed material procedures

The UK Government should use the forthcoming review of the Justice and Security Act 2013 to consider whether closed material procedures are operating appropriately and, if retained, consider ways to strengthen transparency around their use to ensure they are used sparingly and only when strictly necessary.

The Prevent duty

The UK Government should ensure a full, independent evaluation of the impact of the Prevent strategy, including on equality, good relations and human rights, and ensure that people responsible for Prevent in public bodies are trained in their equality and human rights obligations.

Deprivation of citizenship on terrorism grounds

The UK Government should strengthen existing safeguards against statelessness by re-introducing the suspensive effect of lodging an appeal against a deprivation of citizenship order.

Use of diplomatic assurances when extending mutual legal assistance

The UK Government should:

- Ensure there is no deviation from the UK practice of seeking diplomatic assurances that the death penalty will not be used when extending mutual legal assistance.
- Revise the relevant provisions in Overseas Security and Justice Assistance guidance.

4. Equality and non-discrimination

Hate crime and identity-based violence

The UK and Welsh governments, where relevant, should:

- Improve the reporting of hate crime in England and Wales, including by strengthening the initial handling and recording of hate crime reports, improving the quality of support to victims and improving the effectiveness of hate crime training for police forces.
- Ensure its forthcoming review of hate crime law in England and Wales results in reforms that provide equal and adequate protection to different protected groups, and that improve the ability of criminal justice agencies to understand and enforce the law effectively in response to hate crime.

The Welsh Government should conduct and publish an analysis of the impact of the national Hate Crime Report and Support Centre, and its framework for action on hate crime, and use those findings to develop and publish a long-term strategy for reducing hate crime in Wales.

Racial inequality in policing and disproportionate detention

The UK and Welsh governments, where relevant, should:

- Hold police forces to account for their use of all stop and search powers, to make sure they are used in a lawful, non-discriminatory manner and only on the basis of reasonable suspicion.
- Ensure the Metropolitan Police Service comprehensively reforms the Gangs Matrix, to ensure that racial disproportionality in the Matrix is addressed and that its use complies with data protection laws, and carries out regular reviews of its approach and content.

- Develop and implement a comprehensive, coordinated, long-term strategy to address the disadvantages that Gypsy, Roma and Traveller communities face in the criminal justice system and across other areas of life.
- Prioritise implementation of the recommendations set out in the Lammy Review, to increase the confidence of ethnic minorities in the criminal justice system in England and Wales.
- Collect, analyse and publish disaggregated data on the experience of people sharing protected characteristics in all mental health settings, with a particular emphasis on people from ethnic minority groups, to understand who is being detained and treated and in what circumstances, and take action to tackle inequalities.

5. The right to an effective remedy and fair trial

Legal aid reforms

The UK and Welsh governments, where relevant, should:

- Identify where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has had a disproportionately negative impact on people sharing certain protected characteristics and take mitigating action, including bringing areas of law back in scope where necessary, including by reinstating legal aid for initial advice in, at least, family and housing cases.
- Ensure that financial eligibility thresholds for legal aid exclude only those who can genuinely afford to pay for their own legal representation and that contributions are affordable.
- When reviewing Exceptional Case Funding, ensure that it works effectively to protect people's rights under the Human Rights Act 1998 and EU law, including by issuing specific guidance on the factors to be taken into account by decision makers when considering ECF applications for discrimination cases.
- Extend 'qualified one way cost shifting' protection to discrimination claims brought under section 114 of the Equality Act 2010 and breaches of the Human Rights Act 1998.

- Amend the Lord Chancellor's guidance for civil legal aid to improve the availability of funding for representation in discrimination cases.

Court reform and modernisation

The UK Government should:

- Collect, analyse and publish disaggregated data about the protected characteristics of court users in the criminal and civil justice systems.
- Establish a clear evidence base and conduct a comprehensive assessment of the impact of the ongoing court reform programme (including court closures, virtual hearings and online court processes), including the potential impact on those with protected characteristics, and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.
- Improve the treatment of disabled people in the criminal justice system, including by implementing any recommendations resulting from our inquiry into access to justice for defendants with mental health conditions, cognitive impairments and neuro-diverse conditions.

Fast-track rules in immigration detention

The UK Government should ensure all immigration detainees have effective access to fair and accessible procedures to challenge the decision to detain or deport.

Procedures for identifying and determining statelessness

The UK Government should:

- Adapt Home Office policies and procedures for administrative detention, by obliging immigration officers to refer a person who may be stateless, or at risk of statelessness, to the statelessness determination procedure, at the point of the decision to detain and at regular intervals during the detention period.
- Improve the speed and quality of the statelessness determination procedure by increasing the number of staff involved in processing applications and improving the training they receive, and by providing applicants with free legal aid and an effective right to appeal decisions in the event of refusal.

6. Right to life, freedom from torture and ill-treatment, and conditions in detention

Prisons, the youth custodial estate and policing

The UK and Welsh governments, where relevant, should:

- Address overcrowding in adult prisons, including by investing in appropriate alternatives to imprisonment and widening access to liaison and diversion services.
- Improve the provision and availability of healthcare in the adult and youth custodial estate, including pregnancy and maternity care and mental health services – recognising the different issues women, including trans women, children and people belonging to ethnic minority groups, experience in detention – to prevent suicide and self-harm and to facilitate resettlement.
- Ensure effective oversight and monitoring of safeguards surrounding the use of PAVA spray, including monitoring the efficacy of the new guidance and training for prison officers.
- Introduce a statutory obligation on prisons and youth custodial institutions to respond to recommendations from investigations into deaths in custody by publishing an action plan.
- Ensure that children are detained only as a measure of last resort and for the shortest possible time. Children should not be held in prison-like settings, but in safe and appropriate environments, in close proximity to their families, and should be supported by a sufficient number of highly skilled and specialist staff who are able to meet their needs.

Health and social care services

The UK Government should:

- Clarify and strengthen the role of the Healthcare Safety Investigation Branch in conducting investigations compatible with the requirements of Article 3 of the European Convention on Human Rights and Article 7 ICCPR into patient safety incidents in all healthcare settings.
- Ensure effective oversight and monitoring of the measures in place to prevent failures of care in health and social care services, including the duty of

candour across NHS trusts in England and the Freedom to Speak Up Guardians.

- Introduce a requirement for NHS trusts to ensure the data they collect on the number of deaths caused by failures of care in England is disaggregated by protected characteristic, analysed and published.

The Welsh Government should:

- Establish an independent body to investigate patient safety incidents in all healthcare settings in Wales.
- Set up a Welsh equivalent to the Freedom to Speak Up Guardians, ensuring that any such measure is subject to effective oversight and monitoring.

The UK and Welsh governments should:

- Monitor the impact of any reductions in the availability of adult social care on the dignity and wellbeing of older and disabled people, including their right to live independently.
- Monitor the extent of unmet needs, and develop plans to progressively close gaps in meeting needs.

Use of force

The UK and Welsh governments, where relevant, should:

- Promote consistent legal and policy approaches to the use of restraint, based on human rights principles, with cross-sector learning, in line with our human rights framework for restraint. This should include a ban on any technique that deliberately inflicts pain on children.
- Harmonise approaches to recording incidents of restraint, to allow for improved monitoring, evaluation and learning, and more comprehensive and comparable data, and ensure that information on the protected characteristics of people who are restrained is collected and monitored locally and nationally, analysed and published. This will help build a robust evidence base to underpin efforts to tackle restraint, particularly its disproportionate use on groups of people who share certain protected characteristics.

Corporal punishment

The UK Government should prohibit all forms of physical punishment of children, including through the abolition of the ‘reasonable punishment’ defence.

The Welsh Government should ensure the effective implementation of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill, following the Bill’s enactment.

The Grenfell Tower disaster

The UK Government should take steps to fulfil its positive duty to protect life, including by:

- Removing combustible cladding from hundreds of other buildings and improving fire safety measures, including by implementing training for firefighters on combatting cladding fires and providing residents with sufficient fire safety advice.
- Providing additional protective measures to meet the needs of people in the most vulnerable situations, in relation to evacuation policies and housing allocation.
- Improving participation of survivors, bereaved families and others affected by the disaster in the inquiry.

7. Violence against women and girls (VAWG)

Overarching framework to tackle VAWG

The UK and Welsh governments, where relevant, should:

- Fully implement and resource their strategies to tackle VAWG, ensuring effective mechanisms for coordinated cross-government action and accountability for delivery.
- Ensure sustainable and sufficient ring-fenced funding for support services that address all forms of VAWG, including specialist provision for Black and ethnic minority women, disabled people, LGBT people and individuals with complex needs, as well as single-sex services, and ensure such services are available and accessible to all survivors, regardless of immigration status.

- Ensure VAWG strategies comprehensively address the needs of all survivors, including the needs of people who share different protected characteristics and those with insecure immigration status.
- Put in place the changes to law, policy and practice needed to enable ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

The Welsh Government should ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

Justice system responses to VAWG

The UK and Welsh governments, where relevant, should:

- Improve the reporting and recording of all forms of violence against women and girls – ensuring that the data collected is disaggregated by protected characteristic, analysed and published – and increase prosecution and conviction rates, ensuring a victim-centred approach.
- Ensure specialist support organisations, independent experts and survivors' groups are closely consulted when reviewing and identifying steps to improve the criminal justice response to rape and serious sexual offences in England and Wales, including when reviewing the reasons for victims' withdrawal of complaints.
- Ensure the Draft Domestic Abuse Bill reflects our recommendations and the Draft Domestic Abuse Bill Committee report of 2019, including by: introducing a duty on central Government to adequately fund support services and ensure they are available and accessible to all, regardless of immigration status; strengthening safeguards for survivors in family and civil law proceedings in all cases where domestic abuse is raised; and recognising that domestic abuse has a disproportionate impact on women.
- Prohibit police, as well as providers of healthcare and other support services, from sharing information about an individual's immigration status for the purpose of immigration control.

8. Deprivation of liberty

Immigration detention

The UK Government should:

- Introduce a 28-day time limit on immigration detention, in line with the recommendations of the UN High Commissioner for Refugees,⁴¹⁶ and ensure that detention is used only as an administrative measure of last resort.
- Introduce independent processes, both when a decision to detain is made and during detention, for the identification of individuals who may face a particular risk of harm in detention, and review detention policies and rules to ensure they are detained only in exceptional circumstances.
- Remove reference to ‘powerlessness’ from the definition of torture in the statutory guidance used to determine whether an individual will be at particular risk of harm in detention. The screening process should extend beyond torture to include all those who, as a result of a mental health condition or traumatic experiences, are particularly at risk of mental deterioration in detention.
- Ensure that independent advocacy services are automatically available and accessible to individuals who lack capacity, or have a mental health condition or language barriers, and need help to understand, make representations in relation to, or challenge decisions to detain, segregate or deport.
- Ensure effective oversight, monitoring and complaints policies and procedures in the immigration detention estate to ensure that any ill-treatment is immediately identified, and ensure the effectiveness of investigations into allegations of ill-treatment.
- Implement the recent judgment of the UK High Court regarding the investigation into abuse at Brooke House IRC (MA, BB v Secretary of State for the Home Department), including by ensuring the investigating body has the power to compel the attendance of witnesses and can hold public hearings.
- Renew and fulfil its commitment to ending the immigration detention of all children.

⁴¹⁶ United Nations High Commissioner for Refugees (2015), ‘Immigration Bill 2015: Parliamentary Briefing for House of Commons’ [accessed: 8 March 2019].

Mental health and capacity

The UK and Welsh governments, where relevant, should:

- Ensure there are sufficiently and sustainably funded appropriate, high-quality mental health services in the community, to support the needs of all adults and children, including those with learning disabilities and / or autistic spectrum disorder, to reduce the need to resort to involuntary admission and treatment.
- Strengthen the criteria for detaining people under the Mental Health Act to ensure that the least restrictive intervention is used, and improve the ability of people detained to obtain a timely and meaningful review of the decision to detain or prolong detention. In the case of people whose liberty is restricted under the Mental Capacity Act, ensure that they are supported and enabled to appeal to the Court of Protection and have access to an independent advocate.

The Welsh Government should collect, analyse and publish disaggregated data on the number of people with learning difficulties in both NHS-run and independent mental health hospitals and units in Wales, and those placed out of area in English hospitals, including data on the length of hospital admissions.

9. Human trafficking and modern slavery

The UK Government should:

- Set out a detailed plan and timeframe for implementing the recommendations of the Independent Review of the Modern Slavery Act, alongside the proposed changes to the National Referral Mechanism and other relevant remaining concerns, such as in relation to victim support entitlements.
- Accept and implement the recommendation of the Independent Review of the Modern Slavery Act regarding the need to make it clear that children cannot consent to their exploitation.
- Ensure that effective remedies are available and accessible, in law and in practice, for all victims of trafficking and exploitation, whatever their legal status, and review and amend the eligibility criteria under the Criminal Injuries Compensation Scheme to ensure that compensation is available and accessible for victims.

The Welsh Government should conduct and publish an evaluation of the Wales Anti-Slavery Leadership Group, to establish the impact it has had on survivors.

10. Right to privacy and freedom of expression

Privacy rights

The UK Government should:

- Review and assess the changes brought about by the Investigatory Powers Act 2016 (IPA) for compliance with human rights law, bearing in mind concerns raised by the recent decision of the UK High Court,⁴¹⁷ as well as the ongoing litigation before the ECtHR.⁴¹⁸
- Revise the legal regime and oversight mechanisms governing the interception of communications and communications data, to ensure that they are clear, transparent and efficient, including by implementing IPA Schedule 10 para 54 (which requires the repeal of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000) without further delay.
- Scrutinise the impact of any new policing technologies on human rights through an independent equality and human rights impact assessment, including a detailed privacy impact assessment under the GDPR, and a thorough process of public and parliamentary consultation. The UK Government should ensure that decisions regarding the use of such technologies are informed by the impact assessment and consultation outcomes, and that appropriate mitigating action is taken, including the development of a rights-respecting legal and policy framework.
- In light of evidence regarding their inaccuracy and potentially discriminatory impacts, suspend the use of automated facial recognition and predictive programmes in policing, pending completion of the above independent impact assessments and consultation process, and the adoption of appropriate mitigating action.

⁴¹⁷ R (National Council for Civil Liberties) v Secretary of State for the Home Department and Secretary of State for Foreign and Commonwealth Affairs [2018] EWHC 975 (Admin).

⁴¹⁸ Big Brother Watch v. UK, nos. 58170/13, 62322/14, 24960/15.

Freedom of expression

The UK Government should:

- Amend the statutory guidance on the implementation of the Prevent duty in higher education institutions, in light of the UK court judgments in *Butt v Secretary of State for the Home Department*.
- Ensure that its proposals to address ‘online harms’ clearly, narrowly and precisely define what constitutes ‘harms’ and ‘harmful content’; include explicit measures to protect freedom of expression; and ensure that any restrictions on freedom of expression are rigorously justified according to the framework set out in international human rights law, including Article 19 ICCPR.

11. Rights of the child

Asylum of children

The UK Government should:

- Improve the speed of processing asylum applications by unaccompanied children, ensuring that disaggregated data on processing times is collected and published.
- Amend the Home Office’s guidance on conducting age assessments to introduce a presumption that, where the age of a young person seeking asylum is uncertain, they must be treated as a child until their age has been assessed objectively by an independent expert.
- Ensure that arrangements are put in place to allow unaccompanied asylum-seeking children to join relatives in the UK under the same terms as the Dublin III Regulation, following the UK’s withdrawal from the EU, and review its immigration policy to enable child refugees to sponsor close relatives to join them in the UK.

Fees for children to register British citizenship

The UK Government should review the fee regime for children to register as British citizens, including removing the profit element of the fee and introducing a

fee waiver, or reduction mechanism, for children who are unable to afford the fee to register.

Minimum age of criminal responsibility

The UK Government should:

- Develop a holistic, therapeutic, welfare-based system for dealing with the harmful behaviour of children; and raise the age of criminal responsibility to at least 14 years of age, in line with international human rights standards.
- Where children need to be detained within this system, because they are a risk to themselves or others, ensure that there are robust, due process protections in place.

12. Right to participate in public life

Prisoner voting

The UK Government should put its policy changes, following the Hirst judgment, on a statutory footing, and review those changes within five years to assess whether they can be expanded further, including to all prisoners serving sentences of 12 months or less, as recommended by the Joint Committee on the Voting Eligibility (Prisoners) Draft Bill.

The Welsh Government should act on the evidence and recommendations presented by the National Assembly's Equality, Local Government and Community Committee, including legislating to allow certain convicted prisoners the right to vote in local and National Assembly elections.

Diversity of representation

The UK and Welsh governments, where relevant, should:

- Implement the statutory requirement for political parties to publish their parliamentary candidate diversity data for general elections, as set out in section 106 of the Equality Act 2010 and, in the interim, encourage political parties to publish voluntary diversity data via an independent third party.
- Actively encourage under-represented groups to participate in democracy and politics through outreach initiatives; work with political parties to ensure

funding for the additional disability-related costs of disabled candidates, and make these costs exempt from campaign costs; and continue to investigate ways of reducing barriers to participation.

The Welsh Government should implement the recommendations it has accepted from the 2018/19 inquiry into Diversity in Local Government, before the next round of local government elections.

Intimidation of parliamentary candidates

The UK Government should:

- Invest in further research into online abuse marked by misogyny, violence against women and girls, and institutional racism, as well as other bias-motivated hostility, including disability, religion or belief, age, sexual orientation and transgender status, and develop effective mechanisms and interventions for tackling it, with due regard to the right to freedom of expression.
- Improve support for victims and witnesses to report online and offline hostility and intimidation, and develop effective mechanisms for tackling these.

Contacts

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