

Equality and Human Rights Commission

Race rights in the UK

Submission to the UN Committee
on the Elimination of Racial
Discrimination in accordance
with the Committee's procedures
to follow up on Concluding
Observations

August 2017

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1. Introduction

1.1 Scope of report

In August 2016, the United Nations Committee on the Elimination of Racial Discrimination (UN CERD) examined the UK's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Concluding Observations of UN CERD¹ covered a wide range of areas in which the UK, Scottish and Welsh Governments are required to make improvements in order to better fulfil their obligation to condemn racial discrimination and to pursue by all appropriate means a policy of eliminating racial discrimination.²

In its Concluding Observations, UN CERD requested an update from the UK on three of its recommendations: those on **racist hate speech and hate crimes, counter-terrorism measures, and health**.³ This report provides the independent perspective of the Equality and Human Rights Commission (EHRC), one of the UK's National Human Rights Institutions (NHRIs), on developments since August 2016 in England, Scotland and Wales in relation to those three recommendations.

The EHRC agreed with the Scottish Human Rights Commission (SHRC) that the EHRC would take the lead covering reserved and devolved issues in Scotland for this report, and that SHRC would review the content and add additional evidence from their own research.

¹ UN CERD (2016), 'Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom'. Available at: https://www.equalityhumanrights.com/sites/default/files/icerd-concluding_observations.pdf [accessed: 16 August 2017] (Hereafter: 'UN CERD, Concluding Observations')

² Article 2, CERD

³ UN CERD, Concluding Observations, paras 16, 19 and 31

1.2 Key developments

Following the European Union (EU) referendum in June 2016, there continues to be significant uncertainty in the UK regarding what will happen to human rights protections that derive from EU law, including those in relation to racial discrimination.⁴ The EHRC considers that the UK's exit from the EU provides an opportunity to enhance the status in domestic law of international human rights treaties to which the UK is a party, such as CERD, but there has been no indication from the UK Government that this is under consideration.

In May 2017, the third Universal Periodic Review (UPR) of the UK took place. A significant number of recommendations were made in relation to hate crime, as well as recommendations on the incorporation of CERD into domestic law, and measures to address racial discrimination in the context of stop and search.⁵ At the time of writing, the UK Government had not responded to indicate which of the UPR recommendations it accepts.

In June 2017, the UK held a general election which returned the Conservative Party to power, although without a majority. Immigration continued to be a topic of public debate during the election and, in some instances, those discussions led to instances of hate speech.⁶

There has been limited progress on implementation of recent UN recommendations on the International Covenant on Economic, Social and Cultural Rights, and in relation to the Convention on the Rights of Persons with Disabilities. The Parliamentary Under Secretary of State for the School System made a welcome statement on measures that the UK Government Department for Education would take to implement the recommendations of the UN Committee on the Rights of the Child (UN CRC).⁷ However, specific action has been delayed following the change of Government and no response which addresses the detail of UN CRC's recommendations has been issued.

⁴ For example, Article 20 of the Charter of Fundamental Rights of the European Union on equality before the law, Article 21 on non-discrimination, and substantive rights relevant to this submission such as the rights to health care, freedom of expression, privacy, education and freedom of religion.

⁵ UN Human Rights Council (2017), 'Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland'. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/9 [accessed: 30 August]

⁶ Isaac, D. and Hilsenrath, R., Chair and CEO of EHRC (2016), 'A letter to all political parties in Westminster', 25 November. Available at: <https://www.equalityhumanrights.com/en/our-work/news/letter-all-political-parties-westminster> [accessed: 16 August 2017]

⁷ Lord Nash (2016), Commitment to UNCRC: Written Statement - HLWS197, 17 October. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-10-17/HLWS197/> [accessed: 16 August 2017]

Given the focus of the UK, Scottish and Welsh Governments on the implications of the EU referendum and the general election, the EHRC is concerned that the UK will not develop time-bound and specific plans to implement UPR and treaty body recommendations, including those from UN CERD.

Since August 2016, the UK, Scottish and Welsh Governments have made notable progress in some areas, namely:

- The announcement of the Race Disparity Audit by the UK Government to enable people to see how their race affects how they are treated by public services.
- The publication of the UK Government Hate Crime Action Plan.
- The gradual decline of racially-motivated hate crimes in Scotland and the publication of the recommendations of the Independent Advisory Group on Hate Crime.
- A range of Welsh Government initiatives to tackle hate crime, as demonstrated by its progress reports on the implementation of the hate crime framework for action.
- The announcement by the UK Government of a review of the Mental Health Act 1983.
- The introduction of the workforce race equality standard to improve race equality among NHS England staff.

Since August 2016, some challenges have also emerged or continue to persist:

- The lack of a coordinated UK-wide strategy to address race inequality and discrimination.
- Police-recorded incidents of hate crimes have increased in England and Wales, particularly following events of national significance such as the London Bridge and Manchester Arena terror attacks.
- Barriers to reporting hate crime and difficulties with recording hate crime continue to exist in Great Britain.
- Data collection on ethnicity and mental health in Great Britain does not support the effective planning of interventions to address poor outcomes and experiences by people from ethnic minorities.
- People from ethnic minorities are disproportionately likely to be compulsorily detained under mental health legislation.
- Poor health outcomes and unequal access to health services for Gypsies and Travellers across Great Britain.

- New charging measures have been introduced in England which may deter undocumented migrants and asylum seekers from accessing health services.
- The targeting of Muslims through the Channel programme, part of the Prevent counter terror strategy.
- Concerns regarding the impact on human rights of the Prevent strategy, including the rights to freedom of expression, privacy, education and freedom of religion.

1.3 Other EHRC reports on racial discrimination

In July 2016, the EHRC submitted a full report on the implementation of CERD in the UK to UN CERD, in advance of its examination of the UK.⁸ Our 2016 report covered the state of race rights in Great Britain in relation to:

- Access to justice
- Just and fair conditions at work
- Education
- Housing
- Health
- Representation in decision-making
- Hate crime
- Caste discrimination
- Stop and search
- Violence against women and girls
- Institutional detention

Since the examination of the UK, the EHRC published 'Healing a divided Britain: the need for a comprehensive race equality strategy', its biggest ever review into race inequality in Great Britain. The report provides a comprehensive analysis on whether our society lives up to its promise to be fair to all its citizens, and makes a recommendation for the UK, Scottish and Welsh Governments to address race

⁸ EHRC (2016), 'Race rights in the UK: submission to UN CERD in advance of the public examination of the UK's implementation of CERD'. Available at: https://www.equalityhumanrights.com/sites/default/files/race-rights-in-the-uk-july-2016_0.pdf [accessed: 16 August 2017] (Hereafter: 'Race rights in the UK')

inequality and discrimination experienced by people in Great Britain in a comprehensive and coordinated way.⁹

1.4 The role of the EHRC

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, the EHRC is responsible for 'encouraging good practice in relation to human rights.'¹⁰ The UK Parliament has also given the EHRC responsibilities to assess and report on Great Britain's progress in realising the human rights in the treaties it has ratified.¹¹ The EHRC works with other NHRIs in the UK and liaises with government departments and agencies to fulfil this role.

⁹ EHRC (2016), 'Healing a divided Britain'. Available at: <https://www.equalityhumanrights.com/en/publication-download/healing-divided-britain-need-comprehensive-race-equality-strategy> [accessed: 16 August 2017] (Hereafter: 'Healing a divided Britain')

¹⁰ Section 9(1)(b) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 16 August 2017]

¹¹ Section 9(2) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 16 August 2017]

2. Race Disparity Audit

Following the publication of 'Healing a Divided Britain', the UK Government announced that it would conduct a Race Disparity Audit, to enable people to see how their race affects how they are treated by public services on key issues including health, employment and education.¹² The Prime Minister directed Whitehall departments to identify and publish information showing how outcomes differ depending on ethnicity, taking into account intersections with other protected characteristics,¹³ geographic location and income. The intention is for the findings to influence UK Government policy to solve these problems. The first data was due to be published before summer 2017, and it is now expected that they will be published at some point in Autumn 2017.

The EHRC welcomes this Audit which will increase understanding of the inequalities experienced by people of different ethnicities in Great Britain, and hopes it will inform future policy and legislation, which aims to reduce and tackle racial discrimination, in particular the development of a comprehensive race equality strategy.

The EHRC notes that the Scottish Government is not participating in the UK Government Race Disparity Audit as it considers that its own data gathering systems will better reflect Scotland's circumstances and needs.¹⁴ The Scottish Government's Race Equality Framework for 2016-2030 covers all aspects of policy devolved to the Scottish Parliament, but does not address issues in relation to immigration, social security, counter terrorism and employment.¹⁵ While the Framework addresses a wide range of issues affecting minorities, the Scottish Human Rights Commission has noted a concern that 'invisible minorities' or individuals experiencing multiple forms of

¹² Prime Minister's Office *et al.* 2016, *Press release: Prime Minister orders government audit to tackle racial disparities in public service outcomes*. Available at: <https://www.gov.uk/government/news/prime-minister-orders-government-audit-to-tackle-racial-disparities-in-public-service-outcomes> [accessed 16: August 2017]

¹³ Protected characteristics are the prohibited grounds of discrimination listed in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

¹⁴ Email communication between EHRC and Scottish Government, 27 June 2017

¹⁵ Scottish Government (2016), 'Race equality framework for Scotland 2016-2030'. Available at: <http://www.gov.scot/Publications/2016/03/4084/downloads> [accessed: 16 August 2017]

discrimination are not adequately considered in the Framework.¹⁶ The Welsh Government's Strategic Equality Plan and Equality Objectives 2016-2020 set out a number of goals that aim to tackle racial discrimination, including:

- Putting the needs, rights and contributions of people with protected characteristics at the heart of the design and delivery of all public services.
- Identifying the causes of employment, skills and pay inequalities related to ethnicity.
- Reducing the incidence of all forms of harassment and abuse, including hate crime, and strengthening community cohesion.¹⁷

2.1 Recommendation

The UK Government should set out a clear timetable for publishing the analysis from its Race Disparity Audit. The Audit should be the immediate first step in developing a coordinated and long-term strategy to achieve race equality, with stretching new targets and concrete actions to improve opportunities and outcomes for ethnic minorities. The strategy should have clear governance arrangements in place across departments to ensure action to achieve race equality is coordinated effectively.

In order to maximise impact across Britain, the strategy should be coordinated with the Welsh and Scottish Governments, taking into account and building upon existing initiatives such as the Scottish Government's Race Equality Framework and the Welsh Government's Strategic Equality Plan and Equality Objectives.

The Scottish Government should take a participatory and inclusive approach to the implementation of its Race Equality Framework at local and national level, ensuring the full engagement of statutory and civil society stakeholders.

¹⁶ Scottish Human Rights Commission (2016), 'Submission to the UN Human Rights Council, NHRI report on the United Kingdom's Universal Periodic Review', p. 6. Available at: <http://www.scottishhumanrights.com/media/1525/shrc-upr-submission-22-sept-2016.pdf> [accessed: 17 August 2017]

¹⁷ Welsh Government (2016), 'Strategic Equality Plan and Equality Objectives 2016–2020'. Available at: <http://gov.wales/docs/dsjlg/publications/equality/161214-strategic-equality-plan-en.pdf> [accessed: 16 August 2017]

3. Hate crime

UN CERD, Concluding Observations, paragraphs 16(a) and 16(e):

'The Committee recommends that the State party, including the governments of Northern Ireland, Scotland, Wales, the British Overseas Territories and the Crown dependencies:

Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims; and

Take effective measures to combat racist media coverage, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed.'

3.1 Introduction

In 'Race rights in the UK',¹⁸ the EHRC raised concerns in relation to the implementation by the UK, Welsh and Scottish Governments of its obligations under Article 4 CERD to condemn all propaganda which attempts to justify or promote racial hatred and to adopt immediate and positive measures to eradicate hate crime.

In particular, the EHRC highlighted media reporting and stereotyping of some groups such as refugees and migrants; rates of hate crime in England, Scotland and Wales; actions taken by the UK, Welsh and Scottish Governments to tackle hate crime; reports on high levels of anti-Semitism and Islamophobia; and hate crime and aggravated offences.

We noted that enhanced sentencing powers exist for crimes involving hostility based on a person's actual or perceived race, religion, sexual orientation, disability or

¹⁸ EHRC (2016), 'Race rights in the UK', pp. 75-82

transgender identity, but that 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. The piecemeal approach to developing legislation has led to an unequal legal footing for addressing different bias-motivated hate crimes.

Since August 2016, a great deal of evidence has been published to support persistent concerns about the implementation of Article 4 CERD and of Article 6, the right to effective protection and remedies. In particular, police-recorded incidents of hate crimes have increased in England and Wales, particularly following events of national significance such as the London Bridge and Manchester Arena terror attacks. As will be seen below, EHRC also considers that barriers to reporting hate crime and difficulties with recording hate crime continue to exist in Great Britain, which may mean that available data from reported hate crimes does not accurately reflect the full extent of hate crime. While it is welcome that the UK Government has published a Hate Crime Action Plan, there is little publically available evidence of the impact of this plan or of coordination across departments and with similar initiatives in Scotland and Wales.

3.2 England and Wales

The UK Government's hate crime statistics for 2015/16 indicate that there has been a 19% increase in hate crime offences recorded by the police in England and Wales, from 52,465 offences in 2014/15 to 62,518 offences in 2015/16. Of these offences in 2015/16, 86% were hate crimes motivated by race or religion.¹⁹ Based on combined data from the 2012/13 to 2014/15 Crime Survey for England and Wales (CSEW), there were an estimated 222,000 hate crimes on average per year for the five monitored strands, with race the most commonly reported motivating factor. While police-recorded hate crime increased, in some part possibly due to improved recording practices among forces, the CSEW combined data indicated an overall fall in incidents compared with 2007/08 to 2009/10.²⁰ The Community Security Trust, which monitors anti-Semitic hate crime in Great Britain, reports a 36% increase in

¹⁹ Home Office (2016), 'Hate Crime, England and Wales, 2015/16, Statistical Bulletin 11/16'. Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2015-to-2016> [accessed: 16 August 2017]

²⁰ Home Office (2015), 'Hate Crime, England and Wales, 2014/15, Statistical Bulletin 05/15'. Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2014-to-2015> [accessed: 16 August 2017]

religiously-motivated attacks between 2015 and 2016.²¹ This is reinforced by official statistics which indicate a 29% increase in police recorded anti-Semitic hate crime in England and some parts of Wales, compared with a 9% increase in all hate crime categories.²²

Following recent terror attacks in England there have been a number of reports of increases in racially or religiously-motivated hate crime. Tell Mama, which monitors Islamophobic hate crime, reports that the prevalence and severity of online and offline anti-Muslim hate crimes are influenced by 'trigger' events of local, national and international significance.²³

Provisional statistics published by the Metropolitan Police Service demonstrate a 40% increase in the number of reported racist hate crime incidents in London, with a fivefold increase in anti-Muslim hate crime following the London Bridge terror attack.²⁴ This is echoed by figures released by Tell Mama, which indicated surges of 240% and 530% following the London Bridge and Manchester Arena attacks respectively.²⁵

3.2.1 Hate crime following the EU referendum

Following the EU referendum in June 2016, the National Police Chiefs' Council (NPCC) reported a 57% spike in hate crimes reported to the True Vision website.²⁶ In Wales, in the period July-September 2016, the number of hate crimes recorded by all four of Wales' police forces rose compared with figures from April-June 2016. A total of 444 offences were recorded in the period.²⁷

²¹ Community Security Trust (2017), 'Annual Review 2016', p. 9. Available at:

https://cst.org.uk/data/file/d/f/CST_Annual_Review_2016.1486995234.pdf [accessed: 16 August 2017]

²² Home Affairs Committee (2016), 'Antisemitism in the UK, 10th report of session 2016-17'. Available at:

<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/136.pdf> [accessed: 16 August 2017]

²³ Tell Mama (2015), 'We fear for our lives: Offline and Online Experiences of Anti-Muslim Hostility'. Available at:

<https://tellmamauk.org/wp-content/uploads/2017/05/We-Fear-For-Our-Lives.pdf> [accessed: 16 August 2017]

²⁴ Provisional statistics showed 54 incidents on 6 July 2017, compared with a daily average of 38 in 2017. The same statistics showed that 20 of these incidents were Islamophobic hate incidents compared with a daily average of 3.5 such incidents in 2017. Sadiq Khan, 2017, *Press release: Mayor: zero tolerance as hate crimes spikes after London Bridge attack*. Available at: <https://www.london.gov.uk/press-releases/mayoral/zero-tolerance-of-hate-crime-after-borough-attack> [accessed: 22 August 2017]

²⁵ Samuleson, K. (2017), 'Attack at London mosque comes as UK Muslims see surge of hatred', *TIME*, 19 June. Available at: <http://time.com/4823273/finsbury-park-mosque-attack-hate-crime/> [accessed: 16 August 2017]

²⁶ NPCC. 2016, *Press release: Hate crime is unacceptable in any circumstances say police*. Available at: <https://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police> [accessed: 16 August 2017]

²⁷ Sands, K. (2017), 'The number of hate crime offences in Wales has risen in the aftermath of the EU referendum', Wales Online, 15 February. Available at: <http://www.walesonline.co.uk/news/wales-news/number-hate-crime-offences-wales-12605544> [accessed: 16 August 2017]. Based on figures compiled by the Press Association, the number of hate crime offences reported to South Wales Police for July-September 2016 was 276, up 10% compared to April-June 2016. North Wales Police saw incidents for the same period total 56, up

In Autumn 2016, EHRC wrote to all political parties to request that they refrain from using racist, Islamophobic or anti-Semitic language or materials likely to generate prejudice or division, and to deal effectively with complaints of such behaviour made against their representatives.²⁸

In the months following the announcement of the results of the EU referendum, the Polish consular services in London, Manchester and Edinburgh have offered assistance with 35 individual incidents and instances of ongoing harassment reported by Polish nationals as hate crime. The most serious incidents included the killing of Arkadiusz Jóźwik in Harlow (Essex), 10 assaults, and eight violent vandal attacks on houses and businesses belonging to Polish people.

Members of Parliament have also been subjected to abuse and intimidation, particularly in the context of the general election that took place in June 2017. Much of this abuse has been motivated by racial or religious prejudice. In response to these concerns, the Prime Minister asked the Committee on Standards in Public Life to carry out a review of the intimidation experienced by parliamentary candidates, including those who stood to become Members of Parliament at the 2017 general election.²⁹

3.2.2 Online hate crime

Recent research by Demos, a cross-party think tank, into hate speech on Twitter following the EU referendum indicates that online hate speech tends to follow a period of heightened reported offline hate crime.³⁰ Their analysis revealed that there were 2,413 reports of online hate speech and racial abuse following 24 June 2016, and 13,236 tweets sent in the UK between 24 June and 1 July which expressed xenophobic or anti-immigrant attitudes.

In April 2017, the House of Commons Home Affairs Committee published the report of its inquiry into online hate crime.³¹ It noted that the main legal provisions in this

22%, Dyfed-Powys Police recorded 35 offences, up 52%, and Gwent Police recorded 77 hate crime offences, up 22%.

²⁸ Isaac, D. and Hilsenrath, R., Chair and CEO of EHRC (2016), 'A letter to all political parties in Westminster', 25 November. Available at: <https://www.equalityhumanrights.com/en/our-work/news/letter-all-political-parties-westminster> [accessed: 16 August 2017]

²⁹ House of Commons, Westminster Hall Debate: UK Elections: Abuse and intimidation, 12/07/17, Hansard, Volume 627, column 152WH. Available at: <http://hansard.parliament.uk/Commons/2017-07-12/debates/577970DD-1AEF-4071-8AE0-3E3FC6753C6A/UKElectonsAbuseAndIntimidation> [accessed: 16 August 2017]

³⁰ Demos (2016), 'Brexit: the digital aftermath'. Available at: <http://www.demos.co.uk/wp-content/uploads/2016/07/Dispatches-Brexit-Demos.pdf> [accessed: 16 August 2017]

³¹ House of Commons Home Affairs Committee (2017), 'Hate crime: abuse, hate and extremism online: fourteenth report of session 2016-17'. Available at: <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/609/609.pdf> [accessed: 16 August 2017]

field, in particular the Malicious Communications Act 1988 and the Communications Act 2003, predate the era of mass social media use. It recommended that the UK Government 'review the entire legislative framework governing online hate speech, harassment and extremism and ensure that the law is up to date'. The report also contained a number of recommendations for social media companies to take greater responsibility for preventing and responding to hate crime offences on their platforms.

In October 2016, the Home Affairs Committee highlighted the 'viscerally anti-Semitic nature and volume of tweets directed specifically at Members of Parliament' and recommended that Twitter expand its enforcement remit and devote more resources to identifying abusive users.³²

The emerging challenge of capturing and tackling the large number of online hate incidents ('cyber' hate) estimated to occur each day is a challenge for the law and law enforcement agencies. The boundary between the expression of intolerant or offensive views and hate speech is not always an easy one to draw. Any restrictions on freedom of expression must always be clearly set out in law, necessary in a democratic society for a legitimate aim, and proportionate. Subject to these conditions, freedom of expression may be limited in certain circumstances, including in order to protect others from violence, hatred and discrimination.

3.2.3 Barriers to reporting hate crime

Increases in reporting of hate crimes can be attributed to a number of factors including better awareness of what constitutes hate crime and greater willingness on the part of victims and bystanders to report, improved recording and responses from police forces, and more effective responses from partner organisations to support those who have been the victims of hate crime.

Systemic barriers exist within the criminal justice system which diminish confidence in reporting and impact adversely on victims' and witnesses' experiences of seeking legal remedy and cause high 'drop out' rates pre-sentencing, including:

³² House of Commons Home Affairs Committee (2016), 'Antisemitism in the UK: tenth report of session 2016-17', pp. 51-2. Available at: <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/136.pdf> [accessed: 16 August 2017]. See also UK Government response to the report, which focuses on recommendations made to Government: UK Government (2016), 'Government response to Home Affairs Committee Report: "Anti-Semitism in the UK"'. Available at: <https://www.parliament.uk/documents/commons-committees/home-affairs/CM9386-Select-Committee-Response-Antisemitism-in-UK.pdf> [accessed: 16 August 2017]

- a reluctance to report incidents to the police,³³ lack of satisfaction with the police response³⁴ or a perception that the police will not believe the complainant or treat them with respect³⁵
- a fear of reprisals³⁶
- reporting to other authorities rather than police,³⁷ and
- lack of follow-up by police once an incident has been reported, or lack of communication from police about the action they are taking.³⁸

There have been a number of measures to promote reporting rates including:

- online reporting portals, such as the True Vision police-funded website³⁹
- development of services for specific groups, for instance, commissioning hotlines for people with learning disabilities, such as the Stop Hate Learning Disability Crime Line⁴⁰
- the development of 'champions and ambassadors', to help people recognise hate crime and report it on behalf of victims, and
- the establishment of third-party reporting centres by local authorities and third sector organisations, which offer victims an alternative 'safe' place to report incidents.

³³ Chakraborti, N. and Hardy, S.J. (2015), 'LGB&T Hate Crime Reporting: Identifying Barriers and Solutions'. Available at: <https://www.equalityhumanrights.com/en/publication-download/lgb-hate-crime-reporting-identifying-barriers-and-solutions> [accessed: 16 August 2017]

³⁴ Wong, K. and Christmann, K. (2008), 'The Role of Decision-Making in Reporting Hate Crime', *Safer Communities*, vol. 7, no. 2, pp. 19-34. Available at: <http://www.emeraldinsight.com/doi/abs/10.1108/17578043200800015> [accessed: 16 August 2017]

³⁵ British Deaf Association Scotland and the Scottish Government Equality Unit (2015), *Access and Inclusion: A Report on Hate Crime in Scotland's Deaf Community*. Available at: http://old-bda.org.uk/uploads/BDA/files/BDA_Hate_Crime_Report-March_2015.pdf [accessed: 22 August 2017]. A respondent was questioned and resulted in the reports not being taken seriously.

³⁶ Home Office, Office for National Statistics and Ministry of Justice (2013), 'An Overview of Hate Crime in England and Wales: appendix tables'. Available at: <https://www.gov.uk/government/statistics/an-overview-of-hate-crime-in-england-and-wales> [accessed: 16 August 2017]

³⁷ Home Office, Office for National Statistics and Ministry of Justice (2013), *An Overview of Hate Crime in England and Wales: appendix tables*. Available at: <https://www.gov.uk/government/statistics/an-overview-of-hate-crime-in-england-and-wales> [accessed: 16 August 2017]

³⁸ Equality and Human Rights Commission (2015), 'LGB&T Hate Crime Reporting: Identifying Barriers and Solutions', p. 32. Available at: <https://www.equalityhumanrights.com/en/publication-download/lgb-hate-crime-reporting-identifying-barriers-and-solutions> [accessed: 16 August 2017]

³⁹ True Vision. 2017. *Reporting online*. Available at: www.report-it.org.uk/your_police_force [accessed: 16 August 2017].

⁴⁰ This is available in selected regions of the country and offers people the option to report hate crime in British Sign Language using 'Interpreter Now'. See: <http://www.stophateuk.org/report-learning-disability-hate-crime/> [accessed: 16 August 2017]

3.2.4 Difficulties with recording hate crime

Improvements are still needed to improve the recording, measurement and analysis of hate crime, in order to be able to tackle hate crime effectively. There are a number of difficulties in defining hate crime which make estimating how many incidents occur each year a difficult task.⁴¹ The complexities in determining what incidents should be recognised as hate crime are further complicated by the fact that many perpetrators have mixed motivations and hold multiple prejudices.

It is often only the most extreme manifestations of hate-motivated violence that capture the attention of the media. However, hate-motivated victimisation often involves 'low-level' and escalating acts of harassment, verbal abuse, general forms of intimidation and ongoing victimisation over protracted periods of time.⁴² These incidents are not always recorded by police or within victim surveys, meaning that data on hate crime does not necessarily capture the frequently routine nature of hate-motivated victimisation.

We welcome the UK Government's recent initiative to begin to break down data to better identify anti-Muslim hate crime trends and patterns.⁴³ However, disaggregated data is not available for other groups such as Gypsies and Travellers. Police forces across England are not currently mandated to include Gypsies and Irish Travellers in their ethnic monitoring systems. This has been common practice in Scotland for some years. Two of Wales' four police forces are able to record hate crimes

⁴¹ Coleman, N. and Sykes, W. (2016), 'Crime and disabled people: Measures of disability-related harassment, 2016 update'. Equality and Human Rights Commission, pp. 14-15. Available at:

<http://www.equalityhumanrights.com/sites/default/files/research-report-103-crime-and-disabled-people.pdf>
[accessed: 16 August 2017]

⁴² Bowling, B. (1998), *Violent racism: Victimization, policing, and social context*. Oxford: Oxford University Press; Chakraborti, N., Garland, J. and Hardy, S.-J. (2014), 'The Leicester Hate Crime Project: Findings and Conclusions'. University of Leicester, pp. 15–20. Available at:

<https://www2.le.ac.uk/departments/criminology/hate/documents/fc-full-report> [accessed: 22 August 2017];

Walters, M. A. and Paterson, J. (2015), 'Transphobic hate crime and perceptions of the criminal justice system'. Women and Equalities Committee. Available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19415.html> [accessed: 22 August 2017]; Williams, M. and Tregidga, J.

(2013), 'All Wales Hate Crime Project'. Race Equality First and Cardiff University. Available at:

<http://www.cardiff.ac.uk/socsci/research/publications/Time%20for%20Justice-All%20Wales%20Hate%20Crime%20Project.pdf> [accessed: 22 August 2017]

⁴³ Woodcock, A. (2015), 'Hate crimes aimed at Muslims to get own category, bringing Islamophobia in line with anti-Semitism', *The Independent*, 13 October. Available at: <http://www.independent.co.uk/news/uk/crime/anti-muslim-hate-crimes-to-get-own-category-bringing-islamophobia-in-line-with-anti-semitism-a6691811.html> [accessed: 16 August 2017].

committed against Gypsies and Travellers, and one more is awaiting pending changes to its IT systems.⁴⁴

3.2.5 UK Government Hate Crime Action Plan

In 2016, the UK Government published its new Hate Crime Action Plan for England and Wales.⁴⁵ The plan complemented the Welsh Government's (2015) 'Tackling Hate Crimes and Incidents: A Framework for Action' which covers hate crime incidents in Wales and is discussed below.⁴⁶

The Action Plan focuses on five key areas, aiming to tackle hate crime from beginning to end:

- Preventing hate crime by challenging the beliefs and attitudes that can underlie such crimes through tackling identity-based bullying in schools.
- Responding to hate crime in communities with the aim of reducing the number of hate crime incidents, including increased security measures in faith institutions, and measures to tackle online hate crime and hate crime on public transport.
- Increasing the reporting of hate crime, through improving the reporting process, encouraging the use of third-party reporting and working with groups who may under-report, and working with the Crown Prosecution Service to ensure punishment of perpetrators.
- Improving support for the victims of hate crime, in particular improving the use of Victim Personal Statements to ensure that victims of hate crime have their voices heard.
- Building understanding of hate crime through improved data, including the disaggregation of hate crimes records by religion.⁴⁷

The EHRC welcomes the UK Government's Hate Crime Action Plan and its recent commitment to a formal review of the plan that will take place in 2018.

⁴⁴ Welsh Government (2017), 'Tackling hate crimes and incidents: framework for action, 2016-17 Progress Report', para 4.20. Available at: <http://gov.wales/docs/ds/jlg/publications/equality/170710-progress-report-2016-17-en.pdf> [accessed: 16 August 2017]

⁴⁵ Home Office (2016), 'Action against hate: the UK Government's plan for tackling hate crime'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543679/Action_Against_Hate_-_UK_Government_s_Plan_to_Tackle_Hate_Crime_2016.pdf [accessed: 16 August 2017] (Hereafter, UK Government Hate Crime Action Plan)

⁴⁶ Welsh Government (2015), 'Tackling Hate Crimes and Incidents: A Framework for Action'. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/hate-crime/?lang=en> [accessed: 16 August 2017]

⁴⁷ UK Government Hate Crime Action Plan, para 4

3.2.6 Welsh Government Framework for Action on Hate Crime

In 2014, the Welsh Government developed a Framework for Action on Hate Crime to tackle hate crimes and incidents in respect of the protected characteristics under the Equality Act 2010.⁴⁸ The Framework also takes forward work in relation to tackling cyber hate and bullying, far right hate and 'mate crime'.⁴⁹ The Framework contains three strategic objectives which are supported by eight delivery areas:

1. Prevention – challenging attitudes, raising awareness, early intervention to prevent it escalating, training organisations and using specific equality objectives to work with public sector organisations.
2. Supporting victims – increasing reporting levels, encouraging the further development of third-party reporting, enhancing safety and wellbeing, and exploring quality support to victims.
3. Improving the multi-agency response – exploring relevant data and barriers to sharing information, increasing multi-agency working and tackling motivations of offenders.

The Welsh Government produces annual delivery plans which set out key actions it plans to take to achieve the objectives in the Framework, and annual progress reports to show what action has been taken.⁵⁰ The most recent report set out a number of initiatives across the three objectives, including work to increase the reporting of hate crimes through funding provided to Victim Support to run the Hate Crime Report and Support Centre, the BME and Sport Project, and action to tackle hate-related bullying and racist incidents in schools.⁵¹

3.3 Scotland

Efforts have been made to tackle both hate crime and sectarianism in Scotland.⁵² The Scottish Government's Race Equality Framework, published in May 2016, sets out its commitment to tackling hate crime through engaging with ethnic minorities to

⁴⁸ Welsh Government (2015), 'Tackling Hate Crimes and Incidents: A Framework for Action'. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/hate-crime/?lang=en> [accessed: 16 August 2017]

⁴⁹ Mate crime is defined as crimes for which 'a person is befriended for exploitation'. Ibid.

⁵⁰ Ibid.

⁵¹ Welsh Government (2017), 'Tackling hate crimes and incidents: framework for action, 2016-17 Progress Report', para 4.20. Available at: <http://gov.wales/docs/dsilg/publications/equality/170710-progress-report-2016-17-en.pdf> [accessed: 16 August 2017]

⁵² Advisory Group on Tackling Sectarianism in Scotland (2015), 'Tackling Sectarianism and its Consequences in Scotland: Final Report of The Advisory Group on Tackling Sectarianism in Scotland, Edinburgh: Scottish Government'. Available at: <http://www.gov.scot/Publications/2015/05/4296> [accessed: 17 August 2017]

consider what more can be done and identifying ways to encourage better reporting of hate crime.⁵³

There were 3,349 charges of racially-motivated hate crime in 2016-17, which shows a gradual decline in the numbers of charges, since a peak in 2003-04. At the same time, a 14% increase in religiously-aggravated charges was reported since 2015-16 (673 charges).⁵⁴ Current data collection methods do not provide an accurate measurement of hate crime in Scotland. This is in part due to the fact that statistics on complainants do not distinguish between victims and witnesses. The introduction of third-party reporting has not resulted in a marked increase in indirect reporting.⁵⁵

In September 2016, an independent advisory group on hate crime published its analysis of hate crime in Scotland and how it should be tackled.⁵⁶ The report made a number of recommendations for the Scottish Government and relevant public bodies including:

- Developing clearer terminology and definitions around hate crime.
- Considering whether the existing criminal law provides sufficient protections for those who may be at risk of hate crime, for example based on gender, age or membership of other groups such as refugees and asylum seekers.
- Improving monitoring and data collection in relation to hate crime.
- Encouraging a greater multi-agency strategic and operational approach towards tackling hate crime, eradicating prejudice and building community cohesion.
- Developing clear plans for taking forward the Public Sector Equality Duty to 'foster good relations', and encourage other public bodies to do likewise.

At the time of writing, the Scottish Government had not yet responded to the recommendations in full, although in January 2017 a review of hate crime legislation

⁵³ Scottish Government (2016), 'Race equality framework for Scotland 2016-2030', p. 33. Available at: <http://www.gov.scot/Publications/2016/03/4084/downloads> [accessed: 16 August 2017]

⁵⁴ Scotland Crown Office and Procurator Fiscal Service (2017), 'Hate crime in Scotland 2016-17'. Available at: http://www.copfs.gov.uk/images/Documents/Equality_Diversity/Hate%20Crimes/Hate%20Crime%20in%20Scotland%202016-17.pdf [accessed: 16 August 2017]

⁵⁵ Scottish Human Rights Commission (2016), 'Submission to the UN Human Rights Council, NHRI report on the United Kingdom's Universal Periodic Review', p. 7. Available at: <http://www.scottishhumanrights.com/media/1525/shrc-upr-submission-22-sept-2016.pdf> [accessed: 17 August 2017]

⁵⁶ Independent advisory group on hate crime, prejudice and community cohesion (2016), 'Report of the independent advisory group on hate crime, prejudice and community cohesion'. Available at: <http://www.gov.scot/Resource/0050/00506074.pdf> [accessed: 16 August 2017]

in Scotland was announced, to be led by Lord Bracadale, a senior member of the judiciary. The review is due to report in late 2017.⁵⁷

3.4 Recommendations

In order to fulfil their obligations under Articles 2, 4 and 6 of CERD, to prohibit racial discrimination by any persons, group or organization, to condemn all propaganda which attempts to justify or promote racial hatred, to adopt immediate and positive measures to eradicate hate crime, and to assure victims of hate crime have access to effective protection and remedies:

The UK Government should:

- Undertake a full-scale review of hate crime legislation in England and Wales, taking into account the findings of the 2014 review of hate crime legislation by the Law Commission. The review should include detailed consideration of legislation governing online hate speech, in particular whether existing legislation effectively balances sanctions for hate speech with the right to freedom of expression in private electronic communications.
- Carry out a full-scale review of aggravated offences and sentencing provision for hate crime in England and Wales, and monitor the use of the sentencing guidelines for hate crime in England and Wales to assess consistency of sentencing.
- Review the operation and effectiveness of the sentencing for hate crimes in England and Wales, including the ability to increase sentencing for crimes motivated by hate.
- Conduct a review of the provision of third-party reporting mechanisms, to evaluate their impact and sustainability, highlight geographical and thematic gaps, and ensure that data is recorded in a way that is consistent with police recording systems.
- Monitor and routinely publish data on hate crimes against Gypsies and Travellers, and mandate their police forces to include Gypsies and Travellers in their ethnic monitoring systems.

The UK, Scottish and Welsh Governments should:

⁵⁷ Scottish Government (2017), 'Hate crime legislation review'. Available at: <http://www.gov.scot/About/Review/Hate-Crime-Legislation> [accessed: 17 August 2017]

- Improve the way in which data is collected and shared so that robust analysis can be undertaken to understand the effectiveness of their approaches in dealing with hate crime. Data should be fully disaggregated on the basis of protected characteristics, including by race and religion, and data collection methods should be consistent across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis.
- Ensure that the police and other statutory agencies evaluate their reporting and recording processes in consultation with members of local communities, and take steps to simplify them.
- Ensure that public authorities in the criminal justice, housing, education, health and social care sectors and local authorities effectively coordinate their efforts to prevent and tackle hate crime.
- Ensure that police forces in England, Scotland and Wales refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, and be given regular updates on the progress of any investigation or prosecution.

The Scottish Government should:

- Develop a plan for implementing the remaining recommendations made by the independent advisory group on hate crime, and report annually on actions taken and progress achieved.
- Ensure that measures taken to combat hate crime and strengthen support services for victims are participatory and inclusive, engaging a wide range of local stakeholders (such as businesses, schools and community groups) to help identify the specific protective measures that individual groups may need.

4. Health

UN CERD Concluding Observations, paragraph 31:

'The State party should take effective measures to ensure the accessibility, availability and quality of health care services to persons belonging to ethnic minorities throughout its jurisdiction. The Committee stresses the particular importance of adopting measures to effectively address the overrepresentation of persons of African Caribbean descent treated in psychiatric institutions and the disproportionate use of restraint, seclusion and medication.'

4.1 Introduction

In 'Race rights in the UK', we raised concerns about the implementation of Article 5(e)(iv) of CERD which requires the UK, Welsh and Scottish Governments to ensure the right to public health and medical care without distinction as to race, colour, descent or national or ethnic origin. We highlighted evidence of health inequalities for marginalised groups including Gypsies and Travellers, asylum seekers and refugees.

Since our report, there have been some positive developments in this area related to implementation of Article 5(e)(iv), for example the introduction of the Workforce Race Equality Standard into all NHS England commissioning contracts and the announcement of a review of the Mental Health Act 1983.

We have continuing concerns, however, as to whether the UK, Scottish and Welsh Governments are taking all appropriate steps to eliminate racial discrimination, including special and concrete measures to ensure the adequate development and protection of certain racial groups.⁵⁸ We have focused here on the following issues, which are discussed in detail in the chapter that follows:

⁵⁸ Article 2 CERD, taken with Article 5(e)(iv) CERD

- Poor health outcomes and unequal access to health services for Gypsies and Travellers across Great Britain.
- Disproportionate representation of ethnic minorities among those compulsorily detained under mental health legislation.
- New charging measures in England which may deter undocumented migrants and asylum seekers from accessing health services.
- The inadequacy of data collection on ethnicity and mental health to plan effective mental health interventions for ethnic minorities.

4.2 Mental health

4.2.1 England

Data from 2014/15 shows that, excluding the 'Other' ethnic group, the Black or Black British ethnic group had the highest rate of access to mental health and learning disability services, at 4,799 people per 100,000 of the population. This was around a third higher than the national rate of access (3,617). The Black or Black British group also had the highest proportion of people in contact with mental health and learning disability services that had spent time in hospital in that year - 12.7 people per 100 - compared with the White ethnic group at 6.1 people per 100 people. This is higher than the figure for any of the other ethnic groups and more than double the figure for the White ethnic group.⁵⁹

In 2015, NHS England commissioned an independent taskforce to advise the NHS and its arm's length bodies on improving access and outcomes in mental health. Recommendations of the taskforce included for the Department of Health to appoint an Equalities Champion responsible for driving change in tackling mental health inequalities across the health and social care system. This would be achieved by coordinating cross-government action and advising the NHS on operational activities to reduce discrimination for people found to be at risk, including for ethnic minorities. The recommendations made by the taskforce were accepted by NHS England in full and endorsed by the UK Government, but this appointment has not yet been made.⁶⁰

⁵⁹ Health and Social Care Information Centre (2015), 'Mental Health Bulletin: Annual Statistics 2014–15'. Available at: <http://www.hscic.gov.uk/catalogue/PUB18808> [accessed: 16 August 2017]

⁶⁰ Independent mental health taskforce to the NHS in England (2016), 'The five year forward view for mental health'. Available at: <https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf> [accessed: 16 August 2017]. See also: HM Government (2017), 'The Government's response to the five year forward view for mental health'. Available at:

The five-year implementation plan set out by NHS England in 2016 to respond to the recommendations of the taskforce included a general objective to 'address variation in outcomes and access to services for different population groups including people from black and minority ethnic groups'.⁶¹ Beyond a reference to collection of data on access to psychological therapies for different population groups, there is very little detail in the plan on how this general objective will be met. The plan also does not include specific objectives to deal with how ethnic minorities access and experience mental health services, nor does it set out plans for appointing an Equalities Champion.

Since 2015, more funding has been allocated to improve access to and quality of mental health services by governments across Great Britain. Funding for mental health has not however been ring-fenced in England, and concerns have been raised that the money is not being used as intended and is frequently being diverted to fund other services.⁶²

In February 2016, the Commission on Acute Adult Psychiatric Care (CAAPC) acknowledged the significant differences between how ethnic minorities access and experience acute psychiatric care including crisis care, admissions, detentions, pathways into care, readmission and use of seclusion compared with the general population in England.⁶³ The CAAPC recommended that radical improvements be made to the collection, quality and use of data in relation to ethnicity in order to improve services, efficiency, and accountability, and to ensure delivery of evidence-based care. This recommendation was supported by the Mental Health Taskforce.⁶⁴

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582120/FYFV_mental_health_government_response.pdf [accessed: 16 August 2017]

⁶¹ NHS England (2016), 'Implementing the five year forward view for mental health', p. 17. Available at:

<https://www.england.nhs.uk/wp-content/uploads/2016/07/fyfv-mh.pdf> [accessed: 16 August 2017]

⁶² House of Commons Committee of Public Accounts (2016), 'Improving access to mental health services: sixteenth report of session 2016-17'. Available at:

<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/80/80.pdf> [accessed: 16 August 2017]

⁶³ The Independent Commission on Acute Adult Psychiatric Care (2016), 'Old Problems, New Solutions: Improving Acute Psychiatric Care for Adults in England'. Available at:

http://www.rcpsych.ac.uk/pdf/Old_Problems_New_Solutions_CAAPC_Report_England.pdf [accessed: 16 August 2017]

⁶⁴ Independent mental health taskforce to the NHS in England (2016), 'The five year forward view for mental health'. Available at: <https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf> [accessed: 16 August 2017]

4.2.2 Wales

In 2012, the Welsh Government published a 10-year strategy for improving mental health and wellbeing, and the care and treatment of people using mental health services in Wales.⁶⁵ Its delivery plan for 2016-19 includes a priority to ensure services meet the needs of the diverse population in Wales, such as provision of guidance and signposting information for Health Boards and local authorities on supporting service users who share protected characteristics, including people from the same ethnic minority.⁶⁶

Mental health funding continues to be ring-fenced in Wales, although there are concerns that mental health is still underfunded⁶⁷ and that 'the money is not used to respond to local needs nor linked to impact and outcomes'.⁶⁸

4.2.3 Scotland

Mental health conditions and suicide prevention are major public health challenges in Scotland. The Scottish Government's 2017 mental health strategy sets out the main areas of activity for the next 10 years.⁶⁹ None of the 40 actions set out in the plan specifically address ethnic minority mental health issues, although there is a general commitment to adopting 'a rights-based approach in the statutory guidance on the use of mental health legislation'.

Ethnic monitoring data in the NHS in Scotland has been slow to develop and there is little primary research or policy from NHS Scotland on ethnic minority health issues. Data on access to health services is poor – particularly on access to healthcare by ethnic minorities in secure settings in Scotland.

In March 2016, the Scottish Public Health Observatory (SPHO) stated that ethnicity was recorded in 82% of inpatient and day case records and 72% of new outpatient

⁶⁵ Welsh Government (2015), 'Together for mental health, a strategy for mental health and well-being in Wales'. Available at: <http://gov.wales/topics/health/nhswales/mental-health-services/policy/strategy/?lang=en> [accessed: 16 August 2017]

⁶⁶ Welsh Government (2016), 'Together for mental health, Delivery plan 2016-19'. Available at: <http://gov.wales/topics/health/nhswales/plans/mental-health/?lang=en> [accessed: 16 August 2017]

⁶⁷ Mind. 2016. *Mind responds to Welsh Government's Together for mental health delivery plan*. Available at: <https://www.mind.org.uk/news-campaigns/news/mind-responds-to-welsh-governments-together-for-mental-health-delivery-plan/#.WZRrv50yzk> [accessed: 16 August 2017]

⁶⁸ Parton, D. (2017), 'Mental health today Wales 2017: how to develop mental health services in Wales', *Pavilion*, 2 May. Available at: <https://www.pavpub.com/mental-health-today-wales-developing-services/> [accessed: 16 August 2017]. Quote by Ewan Hilton, Chief Executive of Gofal, a mental health charity which carried out a survey on patient outcomes in primary mental health services.

⁶⁹ Scottish Government (2017), 'Mental Health Strategy 2017-2027'. Available at: <http://www.gov.scot/Publications/2017/03/1750> [accessed: 16 August 2017]

appointment records.⁷⁰ Given Scotland's relatively small ethnic minority population (4%), such large gaps in data could mean that published statistics on ethnic minority access to services could be inaccurate. SPHO also comments that 'a number of periodic or ongoing surveys with national coverage have the potential to provide information about the health of minority ethnic groups. However, in many cases the numbers of people from minority ethnic groups included in the survey are too small to produce reliable information'. This absence of evidence from national sources, combined with poor monitoring of access to services by ethnicity, means that the NHS in Scotland does not have sufficient basic data on which to plan evidence-based interventions for ethnic minorities.

At the March 2016 Census, there were 3,578 inpatients with mental health conditions and learning disabilities aged over 18 being treated in NHS Scotland facilities. Of these, 2.3% were from ethnic minorities, the largest group being Asian, Asian Scottish or Asian British.⁷¹ As ethnic minorities make up around 4% of the Scottish population, they appear to be under-represented in psychiatric care in Scotland. In 2016 the Mental Welfare Commission stated that 'a small number of patients from an ethnic minority reported feeling that they felt discriminated against' during the course of treatment in an intensive psychiatric care unit.⁷²

4.3 Detention of people from ethnic minorities under the Mental Health Act 1983

4.3.1 England

In England, of people who used mental health and learning disability inpatient services in 2015/16, 34.3% were compulsorily detained under the Mental Health Act 1983 (MHA).⁷³ People from ethnic minorities were disproportionately likely to be

⁷⁰ NHS National Service Scotland (2016), 'Improving ethnic data collection for equality and diversity monitoring'. Available at: <https://www.isdscotland.org/Health-Topics/Equality-and-Diversity/Publications/2016-08-30/2016-08-30-EDIP-Report.pdf?93044680357> [accessed: 17 August 2017]

⁷¹ Scottish Government (2016), 'Inpatient Census, 2016 - Part 1: Mental Health & Learning Disability Inpatient Bed Census - Part 2: Out of Scotland NHS Placements'. Available at: <http://www.gov.scot/Publications/2016/09/9885/5> [accessed: 16 August 2017]

⁷² Mental Welfare Commission Scotland (2016), 'Intensive Psychiatric Care in Scotland', p. 3. Available at: http://www.mwscot.org.uk/media/315618/intensive_psychiatric_case_in_scotland_report_final.pdf [accessed: 16 August 2017]

⁷³ NHS Digital (2016), 'Mental Health Bulletin 2015-16, Annual report, National reference tables.' Available at: <http://www.content.digital.nhs.uk/catalogue/PUB22561> [accessed: 16 August 2017]. This represents a smaller proportion than in 2014/15, when 40.1% of people were compulsorily detained (Health and Social Care Information Centre (2015), 'Mental Health Bulletin: Annual Statistics 2014-15'. Available at: <http://www.hscic.gov.uk/catalogue/PUB18808> [accessed: 16 August 2017])

compulsorily detained: 48.9% of Black or Black British people and 45.3% of Asian or Asian British people were detained compared with 31.8% of White people.⁷⁴

In February 2017, NHS England reported that 'Black and Black British groups are four times more likely to be detained in secure mental health care than White British, and six times more likely in London.'⁷⁵ In 2014, the probability of Black African women being detained in England and Wales was more than seven times higher than for White British women. Black Caribbean and Black British women were four times more likely to be detained compared with White British women, and Mixed Black/White women were almost seven times more likely to be detained than White British women.⁷⁶

In June 2017, the UK Government announced that it will review the MHA and that it will publish 'recommendations on where new policy could provide greater rights for those experiencing mental health problems so they can live lives free from discrimination'.⁷⁷ This review will consider the disproportionate number of individuals from ethnic minorities who are detained, in particular Black people. It will also examine the use of Community Treatment Orders (CTOs) in England and Wales which set conditions for individuals to ensure their treatment in the community and can be imposed after someone has been detained under the MHA.⁷⁸ Several studies, including one published in November 2016, showed that CTOs are not effective in preventing relapse and readmission of patients with mental health conditions and called for their use to be urgently reconsidered.⁷⁹ The Care Quality Commission (CQC) which monitors the implementation of the MHA, called for better data to be collected on the experiences of different groups in mental health detention.⁸⁰

⁷⁴ NHS Digital (2016), 'Mental Health Bulletin 2015-16, Annual report, National reference tables.' Available at: <http://www.content.digital.nhs.uk/catalogue/PUB22561> [accessed: 16 August 2017]

⁷⁵ NHS England (2017), 'Five year forward view for mental health: one year on'. Available at: <https://www.england.nhs.uk/wp-content/uploads/2017/03/fyfv-mh-one-year-on.pdf> [accessed: 16 August 2017]

⁷⁶ The Independent Commission on Acute Adult Psychiatric Care (2016), 'Old Problems, New Solutions: Improving Acute Psychiatric Care for Adults in England'. Available at: http://www.rcpsych.ac.uk/pdf/Old_Problems_New_Solutions_CAAPC_Report_England.pdf [accessed: 16 August 2017]

⁷⁷ Cabinet Office and Prime Minister's Office (2017), 'Queen's Speech 2017: background briefing notes'. Available at <https://www.gov.uk/government/publications/queens-speech-2017-background-briefing-notes> [accessed: 16 August 2017]

⁷⁸ Ibid.

⁷⁹ Rugkåsa, J., Yeeles, K., Koshiaris, C. and Burns, T. (2016), 'Recall of patients on community treatment orders over three years in the OCTET CTO cohort', *BMC Psychiatry*, vol. 16, no. 392. Available at: <https://bmcp psychiatry.biomedcentral.com/track/pdf/10.1186/s12888-016-1102-4?site=bmcp psychiatry.biomedcentral.com> [accessed: 31 August 2017]

⁸⁰ Care Quality Commission (2016), 'Monitoring the Mental Health Act in 2015/16'. Available at: <http://www.cqc.org.uk/publications/major-report/monitoring-mental-health-act-report> [accessed: 16 August 2017]

The Mental Health Taskforce recommended that the use of the MHA is monitored, with a focus on ethnic minorities, and that NHS England and relevant partners take specific action to substantially reduce MHA detentions overall and to reduce the overrepresentation of ethnic minorities. In response to these recommendations, NHS England is now measuring the proportion of people detained under the Mental Health Act 1983 from ethnic minorities (see figures above).⁸¹

4.3.2 Scotland

Ethnic monitoring data for detentions under the Mental Health (Care and Treatment) (Scotland) Act 2003 show that on 31 March 2016 there were 53 people formally detained from ethnic minorities (3.4% of all those formally detained), and 29 voluntary patients from ethnic minorities (1.4% of all those in informal detention). This is below the proportion of individuals from ethnic minorities in the population as a whole (4%).⁸²

4.4 Diversity of staff working in the NHS

4.4.1 England

Almost one in five staff working in NHS in England is from an ethnic minority background.⁸³ Research summarised by the Equality and Diversity Council suggests that a diverse staff team has a significant and positive impact on the patient care, safety and satisfaction.⁸⁴ To improve race equality among staff, a Workforce Race Equality Standard (WRES) was introduced into the 2016/17 NHS standard contract used by commissioners for all contracts for healthcare services other than primary care. The WRES identifies a number of equality indicators for NHS commissioners and service providers to report on. It also requires organisations to develop action plans to narrow gaps between the treatment of their ethnic minority and White staff.

⁸¹ NHS England (2017), 'Mental health five year forward view dashboard, covering October to December 2016'. Available at: <https://www.england.nhs.uk/mental-health/taskforce/imp/mh-dashboard/> [accessed: 16 August 2017]

⁸² Email from Scottish Government to EHRC, 13/07/17

⁸³ NHS Equality and Diversity Council (2016), 'NHS Workforce Race Equality Standard: 2016 data analysis report for NHS Trusts'. Available at: <https://www.england.nhs.uk/wp-content/uploads/2017/03/workforce-race-equality-standard-data-report-2016.pdf> [accessed: 16 August 2017]

⁸⁴ NHS Equality and Diversity Council (2016), 'NHS workforce Race equality Standard 2016. Data analysis report for NHS Trusts.' Available at <https://www.england.nhs.uk/wp-content/uploads/2017/03/workforce-race-equality-standard-data-report-2016.pdf> [accessed: 16 August 2017]

Although the NHS published a progress report in March 2017, it is too early to see whether the WRES is having the desired impact.⁸⁵

4.4.2 Scotland

The Information Statistics Department of NHS Scotland reported in 2016 that 3.2% of NHS health employee respondents identified themselves as visible ethnic minorities. The data was compromised by high levels of 'not knows' (17.9%) and 'declined to says' (14%), as well as differing proportions of people refusing to disclose their ethnicity in various geographical areas of Scotland, suggesting that NHS Scotland does not have a clear picture of workforce diversity.⁸⁶

4.5 Gypsies and Travellers

4.5.1 England

The EHRC's submission to UN CERD from July 2016 highlighted the findings of the National Inclusion Health Board in England that 66% of Gypsies and Travellers reported poor, bad or very bad health, due in part to living conditions. It also included Scottish Government analysis showing that disadvantage in relation to health starts early, with Gypsies and Travellers aged 0-15 experiencing the highest rates of self-reported health problems or disabilities compared with all other ethnicities.⁸⁷

The EHRC reported in 2016 that Gypsies and Travellers experience poorer access to GPs and other primary care services, and often face discrimination when trying to access health services.⁸⁸

In November 2016, a parliamentary inquiry was launched by the Women and Equalities Committee of the UK Parliament to look at the progress made by the UK Government in achieving the commitments made to tackle inequalities faced by Gypsies and Travellers.⁸⁹ This inquiry was closed due to the general election on 8

⁸⁵ Ibid.

⁸⁶ NHS Scotland (2016), Information and Statistics Department. Available at: <http://www.isdscotland.org/> [accessed: 31 August 2017]

⁸⁷ EHRC (2016), 'Race rights in the UK', pp. 64-8

⁸⁸ EHRC (2016), 'Healing a divided Britain', p. 34

⁸⁹ House of Commons Women and Equalities Committee (2016), 'Tackling inequalities faced by Gypsy, Roma and Traveller communities'. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/gypsy-roma-and-traveller-communities-inquiry-launch-16-17/> [accessed: 16 August 2017]. For details of the commitments made, see: Department for Communities and Local Government (2012), 'Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers'. Available at:

June 2017. No report was published and there is no guarantee that a similar inquiry will be conducted in future.

In November 2016, the Department of Health stated that it expected all Clinical Commissioning Groups (CCGs) to use the national and local data provided by Public Health England and NHS England to support the planning and commissioning of health services, however data available does not cover Gypsies and Travellers.⁹⁰ This puts the responsibility on service commissioners and providers at the local level to decide what needs to be done to improve access to health services and health outcomes for Gypsies and Travellers in their areas.

The EHRC considers that this responsibility cannot be fully met without systematic data collection at the national level. The NHS Data Model and Dictionary for England includes ethnic category codes for Irish Travellers, Travellers and Gypsy/Romany, but data is not collected at the national level on these groups.⁹¹

According to the National Federation of Gypsy Liaison Groups, there is a lack of disaggregated data on the health of Gypsy, Travellers and Roma communities.⁹²

The general Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires public authorities, when exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. The Department of Health and NHS England are at risk of not fulfilling the PSED, particularly having due regard to the need to eliminate discrimination and advance equality of opportunity, without an understanding of the specific health needs and outcomes of all ethnic minorities including Gypsies and Travellers.

In March 2017, the CQC published its equality objectives for 2017-19, which include commitments to reducing barriers and improving access to primary care for migrants, asylum seekers, Gypsies and Travellers.⁹³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf [accessed: 16 August 2017]

⁹⁰ Lord Prior of Brampton (2016), Health Services: Travellers: Written question - HL3209, answered on 24 November 2016. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-11-15/HL3209/> [accessed: 16 August 2017]

⁹¹ NHS Data Model and Dictionary for England (2017), 'PDS Ethnic Category Codes'. Available at: http://www.datadictionary.nhs.uk/data_dictionary/data_field_notes/p/pds/pds_ethnic_category_code_de.asp?shownav=1?query=%22gypsy%22&rank=100&shownav=1 [accessed: 16 August 2017]. See also: NHS Data Model and Dictionary for England (2017), 'Ethnic Category Codes'. Available at: http://www.datadictionary.nhs.uk/data_dictionary/attributes/e/end/ethnic_category_code_de.asp?shownav=1 [accessed 16 August 2017]

⁹² Jones, A. (2016), 'Improving health outcomes for Gypsy, Roma and Traveller (GRT) communities. Available at: <http://bhamcrosscityccg.nhs.uk/publications1/equality-diversity/2852-improving-health-outcomes-for-gypsy-roma-and-traveller-grt-communities-presentation-adrian-jones/file> [accessed: 21 August 2017]

4.5.2 Wales

In guidance for healthcare practitioners on working effectively with Gypsies and Travellers, the Welsh Government acknowledges that there is a wealth of research and evidence which highlights the long-standing health inequalities experienced by Gypsies and Travellers.⁹⁴ Recent evidence includes a 2017 report by the Romani Cultural & Arts Company in Wales, which highlights health inequalities and difficulties in accessing health services including through GPs.⁹⁵

The Welsh Government notes that little quantitative data on access and health outcomes of Gypsies and Travellers is available, due to the exclusion of these groups from a range of monitoring data, and wide variation both within and between local Health Boards regarding how ethnicity data is collected.⁹⁶ It recognises that more needs to be done to update the list of ethnic categories to include Gypsies and Travellers.⁹⁷

4.5.3 Scotland

Scottish Gypsy/Travellers have the poorest outcomes of any group in terms of health.⁹⁸ In Scotland, the Information Services Division⁹⁹ collects health data on Gypsy/Travellers but not on Roma people. In its 2012 inquiry into the health and care needs of Scottish Gypsy/Travellers, the Equal Opportunities Committee of the Scottish Parliament noted a number of long-standing concerns with regards to health outcomes and access to health services for Gypsy/Travellers.¹⁰⁰ NHS Scotland has developed a series of actions to respond to these concerns,¹⁰¹ but there has been

⁹³ Care Quality Commission (2017), 'CQC's Equality Objectives for 2017-19'. Available at: https://www.cqc.org.uk/sites/default/files/20170321_equality_objectives_2017-19.pdf [accessed: 16 August 2017]

⁹⁴ Welsh Government (2015), 'Travelling to better health, Policy Implementation Guidance for Healthcare Practitioners on working effectively with Gypsies and Travellers' Available at: <http://gov.wales/docs/dhss/publications/150730guidanceen.pdf> [accessed: 16 August 2017]

⁹⁵ Romani cultural and arts company, (2017), 'Stories of health and wellness: Gypsy, Roma, Traveller Communities in Wales, 2017'. Available at: <http://www.romaniarts.co.uk/stories-of-health-and-wellness-gypsy-roma-traveller-communities-in-wales-2/> [accessed 16 August 2017]

⁹⁶ Welsh Government, (2015), 'Travelling to better health, Policy Implementation Guidance for Healthcare Practitioners on working effectively with Gypsies and Travellers' Available at: <http://gov.wales/docs/dhss/publications/150730guidanceen.pdf> [accessed 16 August 2017]

⁹⁷ Ibid.

⁹⁸ Scottish Human Rights Commission (2016), 'Submission to the UN Human Rights Council, NHRI report on the United Kingdom's Universal Periodic Review', p. 6. Available at: <http://www.scottishhumanrights.com/media/1525/shrc-upr-submission-22-sept-2016.pdf> [accessed: 17 August 2017]

⁹⁹ The Information Services Division (ISD) is a division of National Services Scotland, part of NHS Scotland. ISD provides health information, health intelligence, statistical services and advice that support the NHS.

¹⁰⁰ Scottish Parliament (2013), 'Gypsy/Travellers and care'. Available at: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/49020.aspx> [accessed: 31 August 2017]

¹⁰¹ Michael Matheson MSP, Minister for Public Health (2013), 'Progress update on recommendations'. Available at:

little progress in assessing the causes of Gypsy/Travellers poor health. The Scottish Government has committed to publishing a Gypsy/Travellers strategy for Scotland but discontinued work on this in 2015. The EHRC understands that the Scottish Government now intends to publish a 'workplan' in 2018.

4.6 Migrants, refugees and asylum seekers

In 'Healing a Divided Britain', the EHRC highlighted that evidence about the health of migrants, refugees and asylum seekers is relatively limited, but that vulnerable migrants had particularly poor health and many migrants faced barriers when seeking to register with GPs.¹⁰²

4.6.1 England

In January 2017, the Department of Health and NHS Digital signed a Memorandum of Understanding with the Home Office requiring NHS Digital to share patient information with the Home Office. This includes a patient's last known addresses, date of birth, and GP details, and allows Home Office staff to 'make requests to NHS Digital to establish if they hold certain non-clinical information in relation to immigration offenders'.¹⁰³ We note that concerns have been raised about the human rights implications of this data sharing agreement and its potential to deter people from accessing and receiving healthcare.¹⁰⁴ To date, there has been no engagement with clinicians or patients' and migrants' rights groups to establish potential impacts on patients, NHS staff and public health.

In February 2017, the UK Government announced its intention to introduce new measures requiring all hospitals from April 2017 to establish whether patients are eligible for free treatment at their first point of contact with the NHS, and to charge in advance those who are not eligible for any non-urgent, planned care. The measures would also require certain providers of NHS-funded care to identify and flag a patient's chargeable status, so that other parts of the NHS could more easily recoup

http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Gypsies_Travellers_response_to_EOC_recommendations_-_update_-_20_Feb_2013.pdf [accessed: 16 August 2017]

¹⁰² EHRC (2016), 'Healing a divided Britain', pp. 35-6

¹⁰³ Asylum Matters (2017), 'Barriers to healthcare for people seeking asylum in the UK: Briefing'. Available at: <https://health.cityofsanctuary.org/wp-content/uploads/sites/47/2015/09/Asylum-Matters-Healthcare-Access-Briefing-May-17-3.docx> [accessed: 23 August 2017]

¹⁰⁴ Just Fair and Doctors of the World (2017), 'Right to health for all'. Available at: http://docs.wixstatic.com/ugd/8a2436_dbec80f5004c42229e1e0a683c668f93.pdf [accessed: 23 August 2017]

costs from overseas visitors wherever charges apply.¹⁰⁵ Concerns have been raised that undocumented migrants and asylum seekers who have not been successful in their application may be less likely to seek health care following the introduction of these new charging measures, as they have very little money and may be wary of any public sector bodies that request information about immigration status.¹⁰⁶

The CQC has noted recently that asylum seekers and refugees are likely to have poor awareness of the NHS and to fear barriers to treatment that delay their access to care, and that there is much confusion and misinformation regarding the registration and treatment of this group.¹⁰⁷ The CQC's new guidance on the treatment of refugees and asylum seekers in GP practices makes it clear that 'no documentation should be required in order to register with a GP'.

According to evidence from Doctors of the World, a charity that is responsible for running clinics for undocumented migrants and asylum seekers in the UK, there has been an increase recently in the number of asylum seekers, trafficking victims and undocumented migrants expressing fear of being charged for treatment. The organisation has reported that over 20% of the patients it receives in its clinics have been wrongly turned away from either NHS GP surgeries or hospital due to inadequate identification and address documents.¹⁰⁸

4.6.2 Wales

The Welsh Government has committed to ensuring anyone who has made a formal application for asylum, whether pending or unsuccessful, is entitled to the same health services as any other citizen of Wales.¹⁰⁹

¹⁰⁵ Starting with NHS Trusts and Foundation Trusts

¹⁰⁶ Department of Health (2017), 'Making a fair contribution: Government response to the consultation on the extension of charging overseas visitors and migrants using the NHS in England'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590027/Cons_Response_cost_rec_overly.pdf [accessed: 23 August 2017]

¹⁰⁷ Care Quality Commission. 2017. *Nigel's surgery 36: Registration and treatment of refugees and asylum seekers*. [ONLINE]. Available at: <http://www.cqc.org.uk/guidance-providers/gp-services/nigels-surgery-36-registration-treatment-asylum-seekers-refugees> [accessed: 23 August 2017]

¹⁰⁸ Bulman, M. (2017), 'Thousands of asylum seekers and migrants wrongly denied NHS healthcare', *Independent*, 16 April. Available at: <http://www.independent.co.uk/news/uk/home-news/asylum-seekers-migrants-wrongly-denied-nhs-healthcare-cancer-doctors-phil-murwill-a7672686.html> [accessed: 23 August 2017]

¹⁰⁹ Wales Migration Partnership (2013), 'Asylum seekers and refugees in Wales'. Available at <http://www.wmp.org.uk/documents/wmp/News%20and%20Events/Migration%20Briefings/Asylum%20Seekers%20and%20Refugees%20in%20Wales.pdf> [accessed: 23 August 2017]

The Refugee and Asylum Seeker Delivery Plan of the Welsh Government acknowledges a range of improvements that are needed in terms of health outcomes for refugees and asylum seekers, including:

- Raising awareness among professionals about the mental health conditions refugees and asylum seekers may present with.
- Improving provision of adequate resources to enable awareness of and access to general medical services –including initial health assessments – for refugees and asylum seekers.
- Raising awareness of entitlements to health provision for refused asylum seekers.¹¹⁰

The Welsh Government is currently liaising with Health Boards and health specialists who work with asylum seekers and refugees to update its Asylum Seeker and Refugee Health Policy 2009 guidance.¹¹¹ A steering group of Health Board and third sector representatives has been established with a view to producing a consultation document for late Autumn 2017, and focus groups were held in May 2017 with asylum seekers and refugees resident in Wales to establish what health barriers they feel they have faced since coming to Wales.

In February 2017 the Welsh Government published a mental health pathway for refugee and asylum seekers who may have experienced trauma as a result of their experiences.¹¹²

4.6.3 Scotland

In Scotland little work has been done to examine the health of migrant communities. The Scottish Public Health Network has found that 'whilst there are issues with [migrants] accessing services, their general health is comparable with that of their

¹¹⁰ Welsh Government (2016), 'Refugee and asylum seeker delivery plan'. Available at: <http://gov.wales/docs/dsjlg/publications/equality/160316-refugee-asylum-seeker-delivery-plan-en.pdf> [accessed: 17 August 2017]

¹¹¹ National Public Health Service for Wales (2009), 'Guidance on healthcare issues for asylum seekers in Wales: 2009: Welsh Asylum Seeker and Refugee Health Advisory Group'. Available at: <http://www.wales.nhs.uk/sitesplus/888/news/14727> [accessed: 17 August 2017]

¹¹² Welsh Government (2017), 'Welsh Health Circular: Good Practice Guidance on the Provision of Mental Health Support for Asylum Seekers and Refugees Dispersed to Wales'. Available at: <http://gov.wales/docs/dhss/publications/170223whc009en.pdf> [accessed: 17 August 2017]

home populations'.¹¹³ As such they place fewer demands on the NHS in Scotland than other groups.

The Scottish Government has committed to ensuring that anyone who has made a formal application for asylum, whether pending or unsuccessful, is entitled to treatment on the same basis as a UK national who is ordinarily resident in Scotland while they remain in the country.¹¹⁴

While migrants' health in general terms may be comparable with the home population in Scotland, the mental health needs of asylum seekers are markedly different. The Scottish Refugee Council (2016) reports that many of the estimated 20,000 asylum seekers resident in Scotland have mental health issues related to their refugee status, including those related to the effects of seeking asylum and trauma experienced while living in or fleeing conflict.¹¹⁵ These findings are confirmed by the Scottish Public Health Network, which finds that relocation of asylum seekers 'can be a further cause of social dislocation and isolation [which can] perpetuate existing health needs'.

4.7 Recommendations

In order to fulfil their obligations under Article 5(e)(iv) CERD, to prohibit and eliminate racial discrimination and to guarantee the right to public health and medical care without distinction as to race, colour, or national or ethnic origin:

- The UK Government should appoint an Equalities Champion as soon as possible to drive changes in tackling mental health inequalities across the health and social care system, as recommended by the Mental Health taskforce.
- NHS England and the Department of Health should set out specific actions it will take to substantially reduce detentions under the Mental Health Act 1983 and to reduce the overrepresentation of ethnic minorities among those detained.
- The Department of Health and NHS Scotland and England should ensure that commissioners and providers systematically collect, analyse and publish disaggregated data on ethnicity for access and experience of patients in all mental health settings. This would enable them to better understand issues facing

¹¹³ Scottish Public Health Network (2016), 'Improving the health of migrants to Scotland: an update for Scottish directors of public health Available at: https://www.scotphn.net/wp.../04/2016_03_23-Migrant-Health-Report-FINAL-1.pdf [accessed: 23 August 2017]

¹¹⁴ Scottish Refugee Council (2016), 'Refugees, mental health and stigma in Scotland'. Available at: www.scottishrefugeecouncil.org.uk/assets/0001/.../Anti-stigma_briefing_FINAL.pdf [accessed: 23 August 2017]

¹¹⁵ Ibid.

ethnic minorities, assess progress over time, and to identify care pathways and actions that may be more effective to prevent and treat mental health conditions among different communities. The data analysis should explore potential intersectionality issues (for example, for Black young men) and should be used to evaluate impact of services and interventions as well as to inform the commissioning and the provision of services.

- In order to be able to plan effective interventions to improve the diversity of its workforce, NHS Scotland should collect comprehensive data on ethnic diversity.
- In order to assist with the Public Sector Equality Duty under section 149 of the Equality Act 2010, NHS England, NHS Wales and NHS Scotland should collect comprehensive data on Gypsies and Travellers' health outcomes and use of services across the NHS. This data should inform a comprehensive Gypsy and Traveller health improvement strategy for Great Britain.
- The Department of Health should take steps to ensure that there is a good understanding of the charging regulations and the requirement to assess eligibility among front-line staff likely to be in contact with undocumented migrants, asylum-seekers and refugees, particularly in GP practices and hospitals. In order to reinforce the rights of people with different immigration statuses to access emergency, primary, secondary and tertiary healthcare, the Department of Health should also work with relevant non-governmental organisations, charities and other support organisations to ensure that eligibility is understood by migrants, refugees and asylum seekers.
- The UK Government should consult fully and assess the impact on equality and human rights of the data sharing agreement between NHS Digital, the Home Office and the Department of Health as part of its planned review of the agreement on public health and health-seeking behaviour. This assessment should include consideration of whether the agreement is creating an actual or perceived barrier to the access to healthcare of refugees, asylum seekers and people with irregular immigration status.
- The Scottish Government should adopt a wide-ranging and well-resourced implementation plan, consistent with international human rights standards, to fulfil the right to health of Gypsy/Travellers.

5. Counter-terrorism measures

UN CERD Concluding Observations paragraph 19:

'The Committee urges the State party to review the implementation and evaluate the impact of existing counter-terrorism measures, and in particular the "Prevent duty" under the Counter-Terrorism and Security Act 2015 (CTSA), to ensure that there are effective monitoring mechanisms and sufficient safeguards against abuse, and that they are implemented in a manner that does not constitute profiling and discrimination on the

5.1 Introduction

Between March and June 2017, four terrorist attacks occurred in Westminster, Manchester, London Bridge and Finsbury Park. Following the London Bridge attack, the Prime Minister made a speech in which she highlighted the need to 'review Britain's counter-terrorism strategy to make sure the police and security services have all the powers they need', and raised the possibility of increasing custodial sentences for terrorist-related offences.¹¹⁶ The commitment to review Great Britain's counter-terrorism strategy and to establish a commission for countering extremism was confirmed in the Queen's speech, which set out the programme of the UK Government following the general election on 8 June 2017.¹¹⁷ It is not yet known what the review of Great Britain's counter-terrorism strategy will cover. An internal review into the handling by different agencies of the recent terrorist incidents will be carried out by MI5 and the National Counter-Terrorism Police Headquarters. David

¹¹⁶ Prime Minister's Office and The Rt. Honourable Theresa May MP. 2017. *PM statement following London terror attack*. 4 June. Available at: <https://www.gov.uk/government/speeches/pm-statement-following-london-terror-attack-4-june-2017> [accessed: 23 August 2017]

¹¹⁷ Cabinet Office and Prime Minister's Office (2017), 'Queen's speech 2017'. Available at: <https://www.gov.uk/government/speeches/queens-speech-2017> [accessed: 23 August 2017]

Anderson, the former Independent Reviewer of Terrorism Laws, will be providing independent assurance of this review, which is due to report in October 2017.¹¹⁸

The EHRC did not address counter-terror measures in 'Race rights in the UK', or in 'Healing a Divided Britain'. Those counter-terror measures are contained in several pieces of legislation dating from the Terrorism Act 2000 to CTSA. Proposals for further legal powers to tackle terrorism through the use of civil orders were mooted in a Counter-Extremism Bill which was not published in the previous parliament. These plans did not appear in the Queen's speech in part because an acceptable legal definition of what constitutes extremism could not be agreed upon and the proposed use of civil orders marked a significant departure from criminal law safeguards.

From 2006, the UK Government has had a counter-terrorism strategy called CONTEST, which was re-formulated in 2011. The four elements of this strategy are: Pursue, Prevent, Protect and Prepare.¹¹⁹ It reflects the first three pillars of the UN Global Counter-Terrorism Strategy¹²⁰ by addressing the conditions conducive to the spread of terrorism, measures to prevent and combat terrorism, and measures to build states' capacity to prevent and combat terrorism. However, there are questions about whether elements of the strategy are consistent with the fourth pillar of the UN strategy, to ensure respect for human rights and the rule of law.

In particular, the Prevent strategy raises concerns about compliance with the UK Government's duty under Article 2(a) CERD not to engage in any act or practice of racial discrimination, having been criticised for appearing to disproportionately target Muslims. As will be seen below, concerns about the way in which it has been implemented may indicate that the UK Government is not fulfilling its obligations under Article 5 to prohibit and eliminate racial discrimination in relation to the rights of ethnic minorities to equal treatment before the law, freedom of religion, freedom of expression, and education.

¹¹⁸ Home Secretary, Amber Rudd (2017), 'Letter to David Anderson: London and Manchester terror attacks: independent assurance of the MI5 and police reviews'. Available at: <https://www.gov.uk/government/publications/london-and-manchester-terror-attacks-independent-assurance-of-reviews> [accessed: 17 August 2017]

¹¹⁹ Secretary of State for the Home Department (2011), 'Contest: the United Kingdom's strategy for countering terrorism'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97995/strategy-contest.pdf [accessed: 17 August 2017]

¹²⁰ United Nations. 2006. *UN Global Counter-Terrorism Strategy*. Available at: <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy> [accessed: 17 August 2017]

5.2 Prevent

5.2.1 Background

The UK Government's Prevent strategy (which does not apply to Northern Ireland) aims to respond to the ideological challenge of terrorism, prevent people from being drawn into terrorism, and work with sectors and institutions where there are risks of radicalisation.¹²¹ A budget of around £40 million per year has been allocated by the UK Government for activities carried out under this strategy, which represents a tiny fraction of the total annual counter-terrorism budget.¹²²

As part of this strategy, the CTSA placed a legal duty on specified authorities to have due regard to the need to prevent people from being drawn into terrorism in the exercise of their functions.¹²³ Specified authorities under the CTSA include local authorities, schools, higher education providers,¹²⁴ prisons, police and health bodies in England, Wales and Scotland. The legal duty is supplemented by statutory guidance issued by the UK Government under section 29 of the CTSA.¹²⁵ While counter-terrorism is the responsibility of the UK Government, the duty applies to a number of public authorities that form part of the Scottish and Welsh Governments.

The Prevent strategy defines extremism as the 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs'.¹²⁶ It sets out the UK Government's commitment to 'challenging extremist (and non-violent) ideas that are also part of a terrorist ideology'.¹²⁷

Concerns have been raised that the definitions of 'fundamental British values' and 'extremist ideas' are not sufficiently clear to allow the Prevent strategy to be carried out effectively, and in a way that provides legal certainty and respects human rights.¹²⁸ The Joint Committee on Human Rights,¹²⁹ the Home Affairs Select

¹²¹ UK Government (2011), 'Prevent Strategy', p. 14. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf [accessed: 23 August 2017]

¹²² BBC News. 2017. Reality Check: What is the Prevent Strategy? [ONLINE]. Available at: <http://www.bbc.co.uk/news/election-2017-40151991> [accessed: 23 August 2017]

¹²³ S26 of the Counter-Terrorism and Security Act 2015. Available at: <http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted> [accessed: 23 August 2017]

¹²⁴ Note additional safeguards to protect freedom of speech and academic freedom in the further and higher education sector contained in section 31 of the CTSA

¹²⁵ Home Office (2015), 'Prevent duty guidance'. Available at: <https://www.gov.uk/government/publications/prevent-duty-guidance> [accessed: 23 August 2017]

¹²⁶ UK Government (2011), 'Prevent Strategy', p. 109

¹²⁷ Ibid., p.28

¹²⁸ See for example: Rights Watch UK (2016), 'Preventing education?', pp. 14-15, available at: <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> [accessed: 23 August 2017] and

Committee¹³⁰ and the former Independent Reviewer of Terrorism Laws¹³¹ have called for an independent review of the Prevent strategy, which neither the previous or present UK Government has acted upon.

There are other individuals and organisations who believe Prevent has been unfairly tarnished and that it serves a useful and necessary purpose. They consider there has been a good body of work carried out in identifying and helping people at risk of radicalisation.¹³²

5.2.2 Targeting of Muslims

The Channel programme, also part of the Prevent strategy, aims to identify individuals at risk of being drawn into terrorism, assess the nature and extent of that risk, and develop a tailored support plan for those individuals. It is a multi-agency programme coordinated by the police.

Data on numbers of referrals to the Channel Programme are available mainly as the result of Freedom of Information requests made to the NPCC. There is limited disaggregated data publicly available on which ethnic minorities are referred to the Channel programme and on the proportions of referrals from particular groups which result in people being adopted onto the Channel programme.

In 2015/16, 4,117 people were referred to the Channel Programme.¹³³ This is greater than the number of people referred in the previous seven-year period between April 2007 and March 2014, when a total of 3,934 people were referred to the Programme.¹³⁴ Of the 4,117 people referred in 2015/16, 68% were referred due to

Open Society Justice Initiative (2016), 'Eroding Trust', p. 4, available at: <https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education> [accessed: 23 August 2017]

¹²⁹ Joint Committee on Human Rights (2016), 'Counter Extremism: Second Report of Session 2016-17. Available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/105.pdf> [accessed: 23 August 2017]

¹³⁰ Home of Affairs Committee (2016), 'Radicalisation: the counter-narrative and identifying the tipping point: Eighth Report of Session 2016/17'. Available at:

<https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf> [accessed: 23 August 2017]

¹³¹ See supplementary evidence of David Anderson QC to the Home Affairs Select Committee inquiry on counter-extremism.

¹³² See, for example, evidence given to the Home Affairs Select Committee by Sara Khan, Director of Inspire: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/oral/24795.pdf> [accessed: 23 August 2017]

¹³³ National Police Chiefs' Council (2016), Freedom of information request, reference number: FOIA 43/2016 7 March 2016. Available at:

<http://www.npcc.police.uk/Publication/NPCC%20FOI/CT/043%2016%20NPCC%20response%20att%2001%20of%2001%2014042016.pdf#page=2> [accessed: 31 August 2017]

¹³⁴ National Police Chiefs' Council. 2017. *National Channel referral figures*. [ONLINE]. Available at: <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> [accessed: 23 August 2017]. For figures on the proportion of Muslims in the UK population, see: <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/census/2011->

concerns about Islamist extremism.¹³⁵ Data collected by ethnicity shows that between April 2012 and March 2014, 56% of the individuals referred were recorded as being Muslim. Muslims account for around 5% of the UK's population.¹³⁶

As an explanation for the high proportion of Muslims referred to Channel, the NPCC notes that the 'greatest threat the UK currently faces is from terrorists who claim to act in the name of Islam, and who specifically target Muslims. Therefore Prevent activity such as the support offered through Channel predominately takes place in and with Muslim communities'.¹³⁷

The lack of disaggregated data on referrals to Channel and on cases taken up by Channel makes it difficult to assess the proportionality of the targeting of Muslims by Prevent. However, it is important to note that some commentators hold the view that 'Prevent operates in a climate marked by Islamophobia',¹³⁸ as demonstrated by the section in this report on hate crime, which may partly explain the high proportion of Muslims referred to Channel in comparison with those of other religions, or those whose religion was not known. The Independent Reviewer of Terrorism Laws has also raised concerns about the increase in referrals to the Channel Programme due to concerns related to far-right extremism¹³⁹ (14% in 2015/16). At the time of writing, data were not available for 2016/17.

In addition to this, of the referrals from 2007– 14 to the Channel Programme, only around 20% of individuals were assessed as being vulnerable to being drawn into terrorism, suggesting that the other 80% were erroneously referred.¹⁴⁰ In 2015/16,

[census/detailed-characteristics-for-local-authorities-in-england-and-wales/sty-religion.html](https://www.npcc.police.uk/Information/LocalAuthorities/religion.html) [accessed: 23 August 2017]

¹³⁵ National Police Chiefs' Council (2016), 'Freedom of information request', reference number: FOIA 43/2016, 7 March 2017. Available at:

<http://www.npcc.police.uk/Publication/NPCC%20FOI/CT/043%2016%20NPCC%20response%20att%2001%20of%2001%2014042016.pdf#page=2> [accessed: 30 August 2017]

¹³⁶ Rights Watch UK (2016), 'Preventing Education?', p. 38. Available at: <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> [accessed: 23 August 2017]

¹³⁷ National Police Chiefs' Council. 2017. *National Channel referral figures*. [ONLINE]. Available at: <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> [accessed: 23 August 2017]

¹³⁸ Open Society Justice Initiative (2016), 'Eroding trust: the UK's prevent counter-extremism strategy in health and education', p. 5. Available at: <https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education> [accessed: 23 August 2017]

¹³⁹ Anderson, D. (2017), 'David Anderson QC: Prevent strategy can work against radicalisation... if it is trusted', *Evening Standard*, 15 February 2017. Available at: <http://www.standard.co.uk/news/uk/david-anderson-qc-prevent-strategy-can-work-against-radicalisation-if-it-is-trusted-a3467901.html> [accessed: 23 August 2017]

¹⁴⁰ National Police Chiefs' Council. 2017. *National Channel referral figures*. [ONLINE]. Available at: <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> [accessed: 23 August 2017]

40% of the total of those referred (1,641 people) were not adopted onto the Channel Programme.¹⁴¹

Public authorities have legal obligations to act consistently with equality and human rights law when taking action under the Prevent legal duty. The latter duty does not displace their obligations to prevent unlawful discrimination and act compatibly with human rights responsibilities when exercising public functions. While we are not aware of any legal cases where an individual has been found to have been discriminated against or to have had their human rights violated in this context, other organisations have highlighted concerns which are examined in the next section.

5.2.3 Concerns with Prevent's impact on human rights

Various organisations have highlighted concerns in relation to:

- **The right to freedom of expression:** Evidence suggests that Prevent may stifle debate in schools and universities on issues related to terrorism, due to fear shared by students and teachers of being referred to the Channel programme.¹⁴²
- **The right to privacy and protection of personal data:** The Open Society Foundation has noted that individuals are at risk of being 'intrusively questioned under intimidating conditions about their religious and/or political beliefs' by public officials working to identify and report on individuals at risk of being drawn into terrorism.¹⁴³ Evidence from Rights Watch UK also suggests that information is being gathered on people without their consent, and without clear direction on the type of information collected, the length of time information can be held, and who will have access to the information.¹⁴⁴
- **The right to education:** Article 29 of the Convention on the Rights of the Child (CRC) sets out that education of a child should be directed to the development of the child to their fullest potential and respect for human rights and fundamental freedoms. Concerns that Prevent is stifling debate and the free expressions of

¹⁴¹ National Police Chiefs' Council (2016), 'Freedom of information request', reference number: FOIA 43/2016, 7 March 2016. Available at: <http://www.npcc.police.uk/Publication/NPCC%20FOI/CT/043%2016%20NPCC%20response%20att%2001%20of%2001%2014042016.pdf#page=2> [accessed: 23 August 2017]

¹⁴² Rights Watch UK (2016), 'Preventing education? Human rights and UK counter-terrorism policy in schools'. Available at: <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> [accessed: 23 August 2017]. See also Open Society Justice Initiative, 'Eroding trust' (see footnote 138 for full reference)

¹⁴³ See footnote 138 for reference

¹⁴⁴ See footnote 142 for reference

views suggest that children's right to education is not being fulfilled as conceived in the CRC.¹⁴⁵

- **Best interests of the child:** The principle that the best interests of the child are taken as a primary consideration in all actions concerning children is not set out as a relevant consideration in the guidance produced to support implementation of the Prevent duty.¹⁴⁶

The EHRC has produced guidance on the implementation of the Prevent duty by higher education providers which highlights concerns raised by others that the duty is sometimes being realised in ways which could:

- undermine the fundamental rights and freedoms of staff and students
- stifle free speech and academic freedom
- lead to discrimination and other conduct prohibited by the Equality Act 2010, and
- stigmatise or alienate segments of staff and student populations.¹⁴⁷

5.2.4 Training and guidance

The Home Affairs Committee raised a concern about a 'lack of sufficient and appropriate training in an area that is complex and unfamiliar to many education and other professionals' and recommended that the Home Office appoint an independent panel to reassess the Prevent training and issue new guidance containing clear definitions of extremist behaviour.¹⁴⁸

In its report on the implementation of the Prevent duty by further education and skills providers, Ofsted found that 'the quality of staff training was ineffective in a third of the providers visited'.

These concerns are consistent with those raised by Rights Watch UK about the training of school staff on how to implement the Prevent duty. The training typically takes the form of a 90 minute video and online tutorials, and has been criticised as

¹⁴⁵ See footnote 142 for reference

¹⁴⁶ Article 3(1) Convention on the Rights of the Child

¹⁴⁷ EHRC (2017), 'Delivering the Prevent duty in a proportionate and fair way'. Available at: <https://www.equalityhumanrights.com/en/publication-download/delivering-prevent-duty-proportionate-and-fair-way> [accessed: 23 August 2017]

¹⁴⁸ Home Affairs Committee (2016), 'Radicalisation: the counter-narrative and identifying the tipping point, Eighth report of session 2016/17', p. 22. Available at: <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf> [accessed: 23 August 2017]

containing factually incorrect information and failing to address the relevant human rights framework in a systematic way.¹⁴⁹

5.2.5 Scotland

Although the Prevent duty extends to Scotland, the comparatively low number of referrals to Channel suggests a different approach by public authorities in Scotland compared with England and Wales. The *Times Educational Supplement* reported in April 2017 that, since its implementation in 2015, only 131 people in Scotland had been referred to the Channel programme. Of these, 16 referrals have come from Scottish schools and four from colleges or universities. These figures are based on information received from Police Scotland following a Freedom of Information request.¹⁵⁰

5.3 Recommendations

In order to fulfil its obligation under Articles 2 and 5 CERD to pursue a policy of eliminating racial discrimination, and to prohibit and eliminate racial discrimination with regards to the rights of ethnic minorities to equal treatment before the law, freedom of religion and expression and education, the UK Government's review of its counter-terrorism strategy should be independent and broadened to:

- assess the effectiveness of the current counter-terror strategy and whether any proposed changes to it could exacerbate racial discrimination
- consider concerns expressed about the potential impact on human rights of the Prevent strategy and associated legal duty, making recommendations on how the Prevent programme can be improved by addressing these concerns, and
- ensure that any proposed changes to Great Britain's counter-terror strategy or powers respect human rights as protected by existing domestic legislation, the European Convention on Human Rights and UN human rights treaties which the UK has signed and ratified.

In order to fulfil their obligations under Articles 2 and 5 of CERD, the UK, Scottish and Welsh Governments should:

¹⁴⁹ See footnote 142 for reference

¹⁵⁰ Seith, E. (2017), 'Counter terror scheme Prevent receives just 16 referrals from Scottish schools in two years', TES, 7 April 2017. Available at: <https://www.tes.com/news/school-news/breaking-news/counter-terror-scheme-prevent-receives-just-16-referrals-scottish> [accessed: 23 August 2017]

- Collect and publish data on referrals to the Channel Programme, individuals adopted and not adopted by the Programme, disaggregated by protected characteristic, including race and religion.
- Ensure that public authorities acting to fulfil the Prevent duty should assess the impact of their Prevent policies and practices against the requirements of the Public Sector Equality Duty and relevant human rights protected in the European Convention on Human Rights and UN human rights treaties, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination.
- Ensure that Prevent leads in public bodies confirm that the training received by staff on the Prevent duty covers relevant and applicable equality and human rights obligations, in particular the prohibition of racial discrimination under domestic and international law. They should also ensure that the training raises awareness of different cultural and religious practices and beliefs, and addresses the bases of prejudices and stereotyping.

Contacts

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