

Women's rights and gender equality in 2018: update report

Formal submission to the UN
Committee on the Elimination of
All Forms of Discrimination Against
Women, in response to the UK List
of Issues, **February 2019**



Contents

List of abbreviations	4
Introduction	6
1. Enhancing the status of international human rights in domestic law	9
Full implementation and incorporation of CEDAW.....	9
Data gaps	10
Full implementation of the Equality Act 2010.....	11
Implications of leaving the European Union	14
2. Participation in political and civic life	16
Political participation.....	16
Gender stereotypes	17
3. Gender-based violence, harassment and abuse	20
Background and context.....	20
Sexual violence and abuse.....	21
Domestic violence and abuse.....	22
Harmful practices.....	24
Hate crime, hate speech and identity-based harassment.....	26
4. Access to civil justice:	29
Legal aid.....	29
5. Human trafficking and modern slavery	32
Strengthening the National Referral Mechanism	32
6. Detention and asylum	35
Women in prison.....	35
Immigration detention	38
Asylum seekers' access to services	40
7. Adequate standard of living and social security	45

Cumulative impact of welfare and tax changes	45
Specific changes to the social security system.....	46
Changes to the state pension age	47
8. Just and fair conditions of work	49
Women in work.....	49
Discrimination and harassment in the workplace.....	51
Occupational segregation	53
Pay	54
9. Highest attainable standard of health	57
Mental and physical health	57
10. Equality in education	61
Personal, social, health and economic (PSHE), relationships education (ReIEd) and relationships and sex education (RSE).....	61
Contacts	64

List of abbreviations

AMs	Assembly Members
BIS	Department for Business, Energy and Industrial Strategy
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CO	Concluding Observation
CPS	Crown Prosecution Service
CQC	Care Quality Commission
CRC	Committee on the Rights of the Child
DfE	Department for Education
DWP	Department for Work and Pensions
EA	Equality Act
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
EU	European Union
FGM	female genital mutilation
GRA	Gender Recognition Act
GRC	gender recognition certificate
HASC	Home Affairs Select Committee
HMIC	HM Inspector of Constabulary
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services
HMI Prisons	HM Inspectorate of Prisons
HRA	Human Rights Act

IRC	immigration removal centre
JCHR	Joint Committee on Human Rights
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LGBT	lesbian, gay, bisexual and trans
LOI	List of Issues
MSA	Modern Slavery Act
NHRIs	National Human Rights Institutions
NICE	National Institute for Health and Care Excellence
NRM	National Referral Mechanism
ONS	Office for National Statistics
PSHE	personal, social and health education
RelEd	relationships education
RSE	relationships and sex education
SDG	Sustainable Development Goal
SPA	state pension age
SPL	shared parental leave
SR VAW	Special Rapporteur on violence against women
UC	Universal Credit
UK	United Kingdom
UN	United Nations
CRC	UN Convention on the Rights of the Child
WESC	Women and Equalities Select Committee
VAWG	violence against women and girls
WASPI	Women Against State Pension Inequality
WAVE	Women Adding Value to the Economy
YWT	Young Women's Trust

Introduction

How to read this report

This report represents the response of the Equality and Human Rights Commission (EHRC) to some of the issues raised by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) in its 'List of issues in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland', published in August 2018.¹

This report focuses on relevant developments or evidence to have emerged since our previous report was submitted, and should therefore be read in conjunction with 'Women's rights and gender equality in 2018', provided to the CEDAW Committee in June 2018.²

This detailed report is an annex to the shorter, formal submission to the CEDAW Committee. Also submitted as an annex is a full, merged list of recommendations taken from both the June 2018 and January 2019 EHRC submissions, which serves as a comprehensive statement of how we believe the State Party could improve implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Our aim is to encourage the UK and Welsh governments to use the CEDAW reporting process to continue, and to strengthen, their efforts to assess progress and improve compliance with their human rights obligations.

Devolution and the geographic scope of this report

The UK comprises four countries – England, Scotland, Wales and Northern Ireland. The UK Parliament has devolved various powers to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and it maintains responsibility for matters that have not been devolved ('reserved' matters) and for

¹ CEDAW Committee (2018), '[List of issues in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)' [accessed: 3 January 2019].

² EHRC (2018), '[Pressing for progress: women's rights and gender equality in 2018](#)' [accessed: 6 December 2018].

England. Responsibility for implementing CEDAW therefore lies with the UK and devolved governments.

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

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

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

This report contains 10 themes and 25 sub-themes. The start of each section includes a note highlighting the CEDAW articles, the CEDAW Committee's Concluding Observations (COs), the UK List of Issues (LoI) and the Sustainable Development Goals (SDGs) that particular theme relates to.

Role and remit of the Equality and Human Rights Commission

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

The EHRC's role as a National Human Rights Institution (NHRI) requires us to assess and report on the UK's progress in realising the human rights in the treaties it has ratified. The EHRC works with other NHRIs in the UK – the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission – and liaises with government departments and agencies to fulfil this role. All three NHRIs hold 'A status' accreditation with the United Nations.

Engagement with civil society

The UK previously had a separate Women's National Commission, an independent organisation to present the views of women to government; however this was abolished in 2010.³

As part of the EHRC's NHRI role in supporting the implementation of international human rights instruments, we conducted a competitive tender in 2017 and appointed Engender, the Women's Equality Network Wales and the Women's Resource Centre to independently submit a joint civil society shadow report to the CEDAW Committee.

Engender, the Women's Equality Network Wales and the Women's Resource Centre were also provided with EHRC funding to:

- produce three separately submitted reports on gender equality issues in Scotland, Wales and England respectively
- hold consultation events and conduct an online call for evidence on the major gender equality issues affecting women, and
- provide training for civil society organisations on how to engage with the CEDAW treaty reporting process.

This work came to an end in August 2018; however, our engagement with women's rights organisations across Great Britain continues. In 2019 we provided grant funding to a number of civil society groups to support their attendance and input at the CEDAW examination in Geneva.

³ Women's National Commission. 2010. [Closure of the Women's National Commission](#). [ONLINE] [accessed: 30 April 2018].

1. Enhancing the status of international human rights in domestic law⁴

Full implementation and incorporation of CEDAW

In November 2018, the UK Parliament's Women and Equalities Select Committee (WESC) held an oral evidence session on the UK Government's implementation of CEDAW.⁵ EHRC spoke at this session, and shared our concern that there is no coherent plan for achieving the full realisation of the Convention. To this end, we called for the UK Government to consider establishing a national mechanism for implementation, reporting and follow-up, in line with international best practice.⁶

A recent inquiry into human rights in Wales resulted in a recommendation by the Equality, Local Government and Communities Committee for the Welsh Government to consider further incorporation of international human rights treaties in Wales.⁷ While recognising that Wales is not the nation state, the Welsh Government is currently exploring how to embed further the provisions contained in CEDAW and the Council of Europe convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) where they relate to devolved powers.⁸

In April 2018, the First Minister commissioned a rapid review of gender equality⁹ in Wales to explore what is working well, what is not working and what lessons can be learned from international best practice. Phase one of the review found that the Welsh Government lacks a shared vision for gender equality. It recognised that while Wales has relevant legislation in place, implementation and integration is

⁴ relates to CEDAW List of Issues (LoI) paragraphs 2 and 5, articles 2 and 3, CEDAW Concluding Observations 2013 (COs) paragraphs 9, 11, 13, 17, 29, 66 and 67 and Sustainable Development Goal (SDG) 10

⁵ Parliamentlive.tv. 2018. [Women and Equalities Committee Wednesday 14 November 2018](#). [ONLINE] [accessed: 6 December 2018].

⁶ [National mechanisms allow states to coordinate their reporting to UN bodies and develop a more coherent response to their human rights obligations](#).

⁷ National Assembly for Wales. 2017. [Inquiry into Human Rights in Wales](#) [ONLINE] [accessed: 6 December 2018].

⁸ National Assembly for Wales. 2018. [Plenary 10/07/2018](#) [ONLINE] [accessed: 6 December 2018].

⁹ Welsh Government. 2018. [Review of gender equality](#). [ONLINE] [accessed: 6 December 2018].

inconsistent. The report called for the Welsh Government to be bolder and lead by example and for external scrutiny mechanisms to be strengthened.¹⁰ Phase two will recommend next steps.

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- consider establishing a national mechanism for implementation, reporting and follow-up to oversee all UN treaty obligations, which would ensure that implementation plans are published in follow-up to CEDAW, demonstrating a joined-up approach in relation to the UK's various human rights commitments, and
- incorporate CEDAW into domestic law, so that individuals can effectively challenge rights violations using the domestic legal system and access a domestic remedy for alleged breaches of CEDAW rights.

The EHRC recommends that the Welsh Government should:

- ensure phase two of the Welsh Government gender equality review builds on lessons learned from phase one, takes into account the outcome of the CEDAW examination and is sufficiently resourced.

Data gaps

In our 2018 'Is Britain Fairer?' report, we have been able to paint a comprehensive picture of equality and human rights for disabled people, people from ethnic minorities, women and men.¹¹ But gaps in the data available means that we do not know as much as we would like about the experiences of groups who share other protected characteristics.

Evidence is particularly scarce for lesbian, gay, bisexual and trans (LGBT) people, people with a religion or belief, and pregnant women and new mothers. It is also difficult to get a comprehensive understanding of intersectional data.

¹⁰ Chwarae Teg (2018), '[Rapid review of gender equality 2018: phase one June 2018](#)' [accessed: 6 December 2018].

¹¹ EHRC (2018), '[Is Britain Fairer? The state of equality and human rights 2018](#)' [accessed: 6 December 2018].

Our equality and human rights measurement framework has highlighted specific issues with data on women and girls relating to:

- harassment and unfair treatment in employment and education
- the marginalisation of disabled girls in education
- waiting times for health services
- police-recorded sexual assault
- urban–rural divides, and
- applications for legal aid.

Recommendations

The EHRC recommends that the UK and devolved governments should:

- institute national surveys, or extend existing surveys, to collect data by protected characteristic. Coverage should include all aspects of life, such as employment, transport, and access to public and private services
- identify where data is not collected on protected characteristics, take steps to address these gaps
- enable meaningful intersectional analysis.

Full implementation of the Equality Act 2010

Our 'Women's rights and gender equality in 2018' report raised concerns in relation to the full implementation of the Equality Act 2010 (EA 2010).¹² In July 2018, the UK Parliament's WESC launched an inquiry into how effectively individuals are able to enforce their EA 2010 rights.¹³ In EHRC's evidence to the inquiry,¹⁴ we raised a number of concerns about the difficulties individuals face in understanding their rights and accessing redress. For example, the complexity and expense of litigation and inadequate remedies can be prohibitive or create strong disincentives to bringing a claim.¹⁵

¹² The EA 2010 provides a [legislative framework](#) to tackle discrimination and advance equality across Great Britain, and places an equality duty (the Public Sector Equality Duty) on public authorities. The 'protected characteristics' identified in the EA 2010 are sex, race, disability, gender reassignment, age, pregnancy and maternity, marriage and civil partnership, religion and belief, and sexual orientation. [accessed: 21 May 2018].

¹³ Women and Equalities Committee. 2018. [Enforcing the Equality Act: the law and the role of the EHRC inquiry](#). [ONLINE] [accessed: 6 December 2018].

¹⁴ EHRC. 2018. [Written submission from Equality and Human Rights Commission](#) (EEA0254). [ONLINE] [accessed: 6 December 2018].

¹⁵ Numerous legal practitioners and experts have noted the complex nature of enforcing EA 2010 rights through the courts. The imbalance of power between the parties in a discrimination case makes

We also raised the inherent challenges in a model of protection for equality rights that relies predominantly on individuals bringing claims through courts, with the imbalance of power this entails. Greater consideration should be given to placing the onus on duty-bearers to root out discrimination and ensure respect for equality rights,¹⁶ for example by ensuring the Public Sector Equality Duty (PSED) reaches its potential for achieving wide-scale transformative change.¹⁷

In July 2018, the UK Government launched a consultation on reforming the Gender Recognition Act 2004 (GRA), proposing to simplify the process of legal gender recognition.^{18, 19} The interaction between the GRA and the EA 2010 is a complex area of law with implications for how the legal protections on the basis of sex and gender reassignment work in practice. Although we understand that the UK Government does not intend to make changes to the EA 2010, our consultation response sought to bring clarity to both the legal and practical issues at stake, and made recommendations on the best ways to respect the rights of all those affected by changes to the GRA.²⁰

Our consultation response recognised the unnecessary barriers to acquiring legal gender recognition under the present system, which amount to an additional burden for trans women, who already face a number of obstacles to full participation in wider society. We also note a related concern that the current process is medicalised, and perpetuates the false assumption that being trans is a mental health condition. At the same time, we called for processes to be in place to ensure that trans women seeking to change legal sex provide valid consent, and fully understand the legal, social and personal implications of doing so.

Our consultation response acknowledged concerns that removing barriers to acquiring legal gender recognition might affect women-only spaces and services provided under the single-sex and separate-sex service provisions in the EA 2010. Our engagement with stakeholders provided us with accounts of the lengths to which some people will go to gain access to single-sex spaces such as domestic violence

litigation unattractive for many people, and the stress and complexity of bringing a claim is heightened by the cost and the low level of compensation available in some cases. See paras 14 and 22–8 of our submission, *ibid*.

¹⁶ Another example includes introducing a mandatory duty on employers to protect employees from discrimination and harassment, enforceable by the EHRC.

¹⁷ Including those changes set out in the EHRC's '[Is Britain Fairer?](#)' 2018 report

¹⁸ UK Government. 2018. [Reform of the Gender Recognition Act 2004](#). [ONLINE] [accessed: 6 December 2018].

¹⁹ Transgender people are able to receive legal recognition of their acquired gender through a process set out in the Gender Recognition Act 2004.

²⁰ EHRC (2018), '[Response of the Equality and Human Rights Commission to the consultation](#)'. [accessed: 6 December 2018].

refuges.²¹ Our firm legal view is that reform of the GRA will not erode the special status of these important services and facilities.²² There is evidence that practical guidance and other forms of assistance are required to help trans women, single-sex and separate-sex service providers understand and navigate the complexities of sex-based exceptions in the EA 2010, without compromising the service provided to women in difficult and vulnerable situations.²³

Recommendations

The EHRC recommends that the UK and Welsh Governments, where relevant, should:

- reinstate all original, and commence any outstanding, provisions of the Equality Act 2010, including the socio-economic duty and dual discrimination provision, and introduce new measures to address gaps in protection
- commission a full examination of the options for improving access to redress for discrimination, ensuring any such examination should take full account of the PSED, and
- set equality objectives or outcomes and publish evidence of action and progress, and review how the PSED specific duties could be amended to focus public bodies on taking action to tackle key challenges.

The EHRC recommends that the UK Government should:

- in any reform of the process for obtaining legal gender recognition in England and Wales, remove unnecessary barriers in the process for acquiring a gender recognition certificate, ensure appropriate mechanisms to ensure that individuals fully understand the implications of changing legal sex, and clarify the operation of exceptions in the Equality Act 2010 that protect single-sex spaces and services.

²¹ A number of stakeholders raised this issue in stakeholder roundtable discussions held by the EHRC in August 2018.

²² The exceptions permitting different treatment on the basis of gender reassignment in the EA 2010 (for example the exceptions related to single-sex services and associations) do not hinge on whether or not an individual has a gender recognition certificate (GRC). Any use of the exceptions permitting different treatment must be objectively justified, meaning that it must be a proportionate means of achieving a legitimate aim, and will therefore depend on the particular circumstances. While an individual's possession, or not, of a GRC may be part of the evidence a court would consider in a gender reassignment discrimination case, it is unlikely to be a determining factor. (The one exception to this is the provision relating to solemnisation of marriage through religious ceremony in Part 6 of Schedule 3 of EA 2010).

²³ Ibid.

Implications of leaving the European Union

The removal of the EU Charter of Fundamental Rights from domestic law through the European Union (Withdrawal) Act 2018 may result in a loss of rights as a result following the UK's departure from the EU.²⁴ We welcome the UK Government's commitment, however, to remain a party to the European Convention on Human Rights (ECHR) in its White Paper, 'The future relationship between the United Kingdom and the European Union', published in July 2018.²⁵ We also note its further pledge in the draft political declaration with the EU of 'continued adherence and giving effect to the ECHR' (which can only be fully achieved by remaining a member of the ECHR and subject to the jurisdiction of the European Court of Human Rights).²⁶

There are underlying concerns about the potential impact of the loss of EU funding. Our report 'If not the EU, then who?'²⁷ demonstrates that there are a large number of projects across England and Wales in receipt of EU funding that aim to help women to develop their skills and support them in preparing to enter the labour market, for example the Women's Organisation based in Liverpool.²⁸

There has been a commitment from the UK Government to replace EU structural and investment funds with the UK Shared Prosperity Fund.²⁹ There has been no public commitment as yet to replace funding under the Rights, Equality and Citizenship Programme, which has specific objectives to promote equality between women and men and prevent violence against children, young people, women and other groups at risk.³⁰

The fiscal impact of Brexit on women is likely to go beyond just the loss of EU funding. Research suggests that the economic repercussions will have a greater impact on women as workers, as consumers and as users of public services.³¹

²⁴ These provisions will take effect after 'exit day' as defined in the EU Withdrawal Act and may be subject to any transitional period, and any change to the effect of the EU Withdrawal Act resulting from subsequent legislation.

²⁵ UK Government (2018), '[The future relationship between the United Kingdom and the European Union](#)'. [accessed: 6 December 2018].

²⁶ UK Government (2018), '[Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)' [accessed: 6 December 2018].

²⁷ EHRC (2019) 'If not the EU, then who?'.

²⁸ The Women's Organisation. No date given. [European funding](#). [ONLINE] [accessed: 6 December 2018].

²⁹ See [Conservative Party Manifesto 2017](#) [accessed: 19 September 2018].

³⁰ See '[Rights, Equality and Citizenship Programme 2014-2020](#)' [accessed: 29 April 2018].

³¹ Women's Budget Group (2018), '[Exploring the economic impact of Brexit on women](#)' [accessed: 19 September 2018].

Recommendations

The EHRC recommends that the UK Government should:

- ensure that there is no further regression in the respect, protection and fulfilment of human rights as a result of the changes introduced following the UK's withdrawal from the EU
- ensure that the loss of EU funding does not undermine the UK's equality and human rights infrastructure, including the already scarce funding available to specialist services, such as those that support women survivors of violence and domestic abuse. In particular, ensure that there is a domestic replacement for the funding currently provided by the Rights, Equality and Citizenship Programme covering the same priorities, and
- publish rigorous equality and human rights impact assessments in advance of proposed changes to laws protecting equality and human rights, including analysis of the impact on women, and if it intends to introduce a new domestic right to equality in UK legislation.

2. Participation in political and civic life³²

Political participation

Disabled women are under-represented in politics and public life. In the UK, just over one in five people has a disability, yet available data suggests that a much lower proportion of members of the House of Commons are disabled.^{33 34} However, there is no statutory requirement to collect consistent, standardised data on the protected characteristics of elected officials or electoral candidates, as section 106 of the EA 2010 is still not in force, and it may be that the number is actually greater. Forthcoming EHRC research suggests that the data collected is sometimes unreliable, is not consistent with definitions used in the EA 2010 or population statistics, and there are significant gaps.

The EHRC has repeatedly encouraged the UK Government to commit to reinstatement or replacement of the Access to Elected Office Fund (AEOF), which provided financial assistance to disabled people who wished to stand for elected office. In May 2018 the Minister for Women and Equalities announced funding of £250,000 available over 12 months (called the EnAble Fund for Elected Office) to provide similar support.³⁵

The EHRC remains concerned though that the EnAble Fund is an interim measure and that the UK Government considers it the 'prime responsibility' of political parties to provide support for disabled candidates.³⁶ While political parties have a responsibility under section 20 of the EA 2010 to make reasonable adjustments, we

³² relates to Lol paragraphs 6, 7, 13 and 14, articles 4, 7 and 8, CO paragraphs 31 and 43.a and SDGs 5, 9, 10, 11 and 16

³³ Department for Work and Pensions (2018), '[Family Resources Survey 2016/17](#)' [accessed: 6 December 2018].

³⁴ House of Commons Library. 2017. [Diversity in the 2017 Parliament](#). [ONLINE] [accessed: 6 December 2018].

³⁵ Committee on the Elimination of Discrimination against Women (2018), '[List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland. Addendum. Replies of the United Kingdom of Great Britain and Northern Ireland](#)'. [accessed: 6 December 2018].

³⁶ UK Parliament. 2018. [Access to Elected Office for Disabled People Fund: Written question – 160175](#) [ONLINE] [accessed: 6 December 2018].

are concerned that placing responsibility on parties to provide financial support may not create the level playing field required for disabled women to stand as candidates.

Further devolution of election powers and processes came into force in April 2018.³⁷ The Welsh Government accordingly now has the ability to establish an AEOF similar to those that have operated in England and Scotland. No such scheme, however, has been implemented.

The Assembly Commission has been given approval to introduce the Welsh Parliament and Elections (Wales) Bill.³⁸ This Bill proposes to lower the voting age to 16 for Assembly elections, and make other changes to electoral and internal arrangements. This presents an opportunity to involve a more diverse range of women and girls in decision-making in Wales.

Recommendations

The EHRC recommends that the UK and Welsh Governments, where relevant, should:

- implement the statutory requirement for political parties to publish their parliamentary candidate diversity data for general elections, as set out in section 106 of the Equality Act 2010, and in the interim, encourage political parties to publish voluntary diversity data via an independent third party
- encourage all women, particularly those sharing other protected characteristics, to participate in democracy and politics through outreach initiatives, and continue to investigate ways of reducing barriers to women's participation, and
- work with political parties and other stakeholders to improve the reliability of support available to disabled women candidates, and legislate to exempt costs arising from disabled candidates' impairments from statutory limits on campaign expenditure.

Gender stereotypes

Under article 5 of CEDAW, on modifying the social and cultural patterns of conduct of men and women, State Parties have an obligation to eliminate practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women.

³⁷ National Assembly for Wales. No date given. [Reserved powers model](#) [ONLINE] [accessed: 6 December 2018].

³⁸ National Assembly for Wales. 2018. [Assembly Members vote to introduce the Welsh Parliament and Elections Bill](#) [ONLINE] [accessed: 6 December 2018].

The EHRC has welcomed the proactive approach adopted by the Advertising Standards Authority (ASA), as the regulator for the advertising industry, in presenting the evidence base for tackling gender stereotyping in its 2017 report 'Depictions, perceptions and harm'.³⁹

The ASA's report described the weight of evidence from academics and in the form of public opinion that demonstrated gender stereotyping in the media 'can lead to mental, physical and social harm which can limit the potential of groups and individuals'. The ASA consulted on how to address the use of harmful gender stereotypes in advertising,⁴⁰ and issued new guidance in December 2018.⁴¹

In January 2018, the Welsh Government produced a multimedia campaign aimed at challenging gender stereotypes in Wales.⁴² The campaign recognised gender stereotyping as both a cause and a consequence of violence against women and girls. The campaign reports to have had a broad reach, with 7m 'views' through TV and radio advertisements. This is part of an ongoing communications campaign by the Welsh Government to increase awareness and challenge attitudes towards violence against women.

Evidence from our work to develop a national survey of prejudice and discrimination in Britain found that 22% of people said they had experienced discrimination on the basis of their sex in the past year. This was more common among women (30%) than men (13%). The survey also found that 10% of people felt that attempts to give equal opportunities to women had 'gone too far'.⁴³

Recommendations

The EHRC recommends that the UK Government should:

- work with the relevant authorities to ensure that any new guidance on advertising standards:
 - recognises the link between gender stereotyping and gender-based violence, and the consequent societal harm such stereotypes may cause

³⁹ Advertising Standards Authority (2017), '[Depictions, perceptions and harm](#)' [accessed: 6 December 2018].

⁴⁰ EHRC (2018), '[Response of the Equality and Human Rights Commission to a consultation on a proposed new rule and guidance to address the use of gender stereotypes in advertising](#)' [accessed: 3 January 2019].

⁴¹ Advertising Standards Authority (2018), '[Advertising guidance on depicting gender stereotypes likely to cause harm or serious or widespread offence](#)' [accessed: 2 January 2019].

⁴² Welsh Government. 2018. [This is me](#) [ONLINE] [accessed: 6 December 2018].

⁴³ Abrams, D., Swift, H. and Houston, D. (2018), '[Developing a national barometer of prejudice and discrimination in Britain](#)' EHRC [accessed: 6 December 2018].

- clarifies when adverts for the sex industry will fall under the new rule in light of the harm and offence they may cause, and
- sets out how the ASA will approach compliance with the Public Sector Equality Duty in its adjudication of complaints under the new rule.

The EHRC recommends that the Welsh Government should:

- evaluate, and publish the results of, the impact its multimedia campaign has had in changing attitudes on gender stereotypes.

3. Gender-based violence, harassment and abuse⁴⁴

Background and context

In October 2018, the UK Government published its second annual report on progress towards ratifying the Istanbul Convention.⁴⁵ It reaffirmed the UK Government's intention to take further steps in the context of the proposed Domestic Abuse Bill, and included a commitment to refresh the UK Government's violence against women and girls (VAWG) strategy.

In June 2018, the Welsh Government reported on progress⁴⁶ made towards achieving the aims of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and the objectives set out in the act's accompanying national strategy. The Welsh Government reported on a wide range of activities but the document does not contain evidence of impact. A delivery plan for 2018–21 was launched in July 2018 that sets out how the Welsh Government will achieve its objectives, although there are still no finalised national indicators. In November 2018, the Welsh Government announced a separate review into refuge provision and sexual violence services.⁴⁷

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- undertake joined-up, strategic cross-UK and cross-government action to tackle VAWG and raise awareness of the issue, and

⁴⁴ relates to Lol paragraphs 8, 9, 10 and 21, articles 1, 2, 5.a and 16, CO paragraphs 21, 35.a-d and 37 and SDGs 5 and 16

⁴⁵ Home Office (2018), '[Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence \(Istanbul Convention\) – 2018 report on progress](#)' [accessed: 6 December 2018].

⁴⁶ Welsh Government (2018), '[Violence against women, domestic abuse and sexual violence: Progress report for the period 1 April 2017 to 31 March 2018](#)' [accessed: 6 December 2018].

⁴⁷ Welsh Government. 2018. [First Minister takes steps to transform refuge provision and sexual violence services in Wales](#) [ONLINE] [accessed: 6 December 2018].

- take urgent steps to put in place the necessary law, policy and practice changes to be able to ratify the Istanbul Convention and, once it is ratified, dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation.

The EHRC recommends that the Welsh Government should:

- ensure the full implementation of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and deliver the national violence against women, domestic abuse and sexual violence strategy by November 2021, and publish national indicators to allow evaluation of impact, and
- raise awareness of the issue, including by implementing all outstanding actions from the National Assembly for Wales Equality, Local Government and Communities Committee post-legislative scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, and publish national indicators to allow evaluation of impact.

Sexual violence and abuse

In 2017, concerns were highlighted in the media about how the police and the Crown Prosecution Service (CPS) were sharing evidence with the defence. A number of high-profile criminal cases concerning rape and sexual assault collapsed in late 2017 and early 2018.⁴⁸ As a result, the House of Commons Justice Committee launched an inquiry to investigate this issue in January 2018. Although this inquiry looked into issues across the criminal justice system, the committee's conclusions and recommendations, if acted upon, could improve sexual violence survivors' access to justice.

The committee concluded that failures in disclosure have been widely acknowledged for years, but gone unresolved, partly as a result of 'insufficient focus and leadership by Ministers and senior officials'.⁴⁹ The committee pointed to the need for: a shift in culture so disclosure is seen as a core justice duty; the right skills and technology to be available, for reviewing police material, and clear guidelines on handling sensitive

⁴⁸ BBC News (2018), '[Evidence withheld in 47 rape and sexual assault cases, says CPS](#)' *BBC News*, 5 June [accessed: 6 December 2018].

⁴⁹ House of Commons Justice Committee (2018), '[Disclosure of evidence in criminal cases. Eleventh report of session 2017–19](#)' [accessed: 17 September 2018].

material.⁵⁰ The Attorney General is currently undertaking a wider review of disclosure.⁵¹

Progress has been made in recent months in relation to 'up-skirting' in England and Wales.⁵² ⁵³ A Voyeurism Bill currently being considered by the UK Parliament will create a new offence of up-skirting for a specified purpose: either obtaining sexual gratification or to humiliate, distress or alarm the victim.⁵⁴ The bill would also provide for certain offenders to be placed on the sex offenders register if they are convicted of up-skirting for sexual gratification.⁵⁵ The EHRC has welcomed the bill, and put forward proposed changes to further strengthen it.⁵⁶

Recommendations

The EHRC recommends that the UK Government should:

- ensure the Attorney General's review into disclosure of evidence addresses the concerns raised by the Justice Committee, and
- amend the Voyeurism Bill so that:
 - the motivation element of the offence is removed, or two further purposes are added: 'financial gain' and 'entertainment or amusement', and
 - it includes a new offence of 'disclosure or distribution of up-skirting images'.

Domestic violence and abuse

The UK Government is currently considering the responses to its spring 2018 consultation on addressing domestic violence and abuse in England and Wales, to which it received over 3,200 submissions.⁵⁷ It was expected to respond to the consultation in autumn 2018, and to publish a bill in spring 2019. One of the key

⁵⁰ Ibid.

⁵¹ Attorney General's Office. 2018. [Review of the efficiency and effectiveness of disclosure in the criminal justice system](#) [ONLINE] [accessed: 6 December 2018].

⁵² Up-skirting is the act of covertly photographing or using equipment to observe underneath someone's clothing without their consent, with the intention of viewing their genitals or buttocks, or the underwear covering them.

⁵³ House of Commons Library (2018), '[Briefing paper number 8356. Voyeurism \(Offences\) \(No. 2\) Bill 2017–19](#)' [accessed: 17 August 2018].

⁵⁴ UK Parliament (2018), '[Voyeurism \(Offences\) \(No. 2\) Bill \(HL Bill 30\)](#)' [accessed: 17 September 2018].

⁵⁵ House of Commons Library (2018), '[Briefing paper Number 8356. Voyeurism \(Offences\) \(No. 2\) Bill 2017–19](#)' [accessed: 17 August 2018].

⁵⁶ EHRC (2018), '[Voyeurism \(Offences\) \(No.2\) Bill. House of Lords second reading](#)' [accessed: 2 November 2018].

⁵⁷ UK Parliament. 2018. [Electronic tagging: written question – 160789](#) [ONLINE] [accessed: 6 December 2018].

proposals in the consultation was the establishment of a 'domestic abuse commissioner'. A number of respondents, including Women's Aid,⁵⁸ the End Violence against Women Coalition⁵⁹ and the EHRC,⁶⁰ urged the government to instead create a 'violence against women and girls (VAWG) commissioner'. This would cover issues beyond domestic abuse, and align with the existing policy framework, including the UK Government's own VAWG strategy. Another key area explored in the UK Government's consultation was the statutory definition of domestic abuse. Many respondents urged the UK Government to highlight the disproportionate impact of domestic abuse on women, within the definition.

In June 2018, the UK Parliament's Home Affairs Select Committee (HASC) launched a separate inquiry into domestic abuse.⁶¹ The EHRC submitted a response, reiterating many of the recommendations previously submitted to the CEDAW Committee and UK Government.⁶² The HASC published its report in October 2018,⁶³ endorsing a number of our calls, including for:

- a violence against women and girls and domestic abuse bill
- a prohibition on the cross-examination of a victim by a perpetrator of domestic abuse in the family court
- Universal Credit to be made as split payments as standard for all couples in England and Wales, and
- local authorities to be given a statutory responsibility to provide refuge places, with ring-fenced funding from central government, and for a comprehensive review of funding for survivors of domestic abuse and sexual violence to be carried out.

The Ministry of Housing, Communities and Local Government is currently reviewing how domestic abuse services are delivered across England, to understand what impact services are having and to identify any gaps.⁶⁴ The ministry has not yet

⁵⁸ Women's Aid (2018), '[Transforming the response to domestic abuse consultation: response from Women's Aid Federation of England](#)' [accessed: 17 September 2018].

⁵⁹ End Violence Against Women Coalition (2018), '[Submission to government consultation on the proposed domestic violence and abuse bill](#)' [accessed: 17 September 2018].

⁶⁰ EHRC (2018), '[Response of the Equality and Human Rights Commission to the consultation: transforming the response to domestic abuse](#)' [accessed: 17 September 2018].

⁶¹ Commons Select Committee. 2018. [Domestic abuse inquiry launched](#) [ONLINE] [accessed: 6 December 2018].

⁶² EHRC (2018), '[Response of the Equality and Human Rights Commission to the Home Affairs Committee inquiry on domestic abuse](#)' [accessed: 17 September 2018].

⁶³ House of Commons Home Affairs Committee (2018), '[Domestic abuse: ninth report of session 2017–19](#)' [accessed: 2 November 2018].

⁶⁴ Ministry of Housing, Communities and Local Government (2018), '[Bidding prospectus: 2018/20 fund for domestic abuse services, including refuge and other safe accommodation, to help local areas meet the priorities for domestic abuse services](#)' [accessed: 6 December 2018].

reported its findings. We previously reported our concerns over the UK Government's proposals that would have removed women's ability to pay for refuge accommodation with housing benefit.⁶⁵ The UK Government has since announced that it will not go ahead with the proposal.⁶⁶

Recommendations

The EHRC recommends that the UK Government should:

- in the context of its current domestic abuse work:
 - create a violence against women and girls commissioner, with sufficient resources and powers, and
 - introduce a violence against women and girls and domestic abuse bill that includes a statutory definition that highlights the disproportionate impact of domestic abuse on women.

Harmful practices

Female genital mutilation (FGM)

In September 2018, the Sentencing Council announced that new sentencing guidelines for the offence of failing to protect a girl from risk of FGM will come into force in courts in England and Wales on 1 January 2019.⁶⁷ These guidelines aim to promote consistency in sentencing when offenders are convicted. Meanwhile, the Crown Prosecution Service (CPS) brought its third attempted FGM prosecution in August 2018; this is currently ongoing.⁶⁸ None of its attempts has yet resulted in a conviction. The trial has been set for January 2019.

The first clinic in Wales to provide medical and psychological help to victims of FGM opened in April 2018.⁶⁹ The specialist Women's Wellbeing Clinic at Cardiff Royal Infirmary will offer individualised care, counselling and advice for victims. Between April 2017 and March 2018 there were 271 newly recorded cases of FGM reported in

⁶⁵ EHRC (2018), '[Pressing for progress: women's rights and gender equality in 2018](#)' [accessed: 6 December 2018].

⁶⁶ Ministry of Housing, Communities and Local Government. 2018. '[All supported housing funding to be retained in welfare system](#)' [ONLINE] [accessed: 17 September 2018].

⁶⁷ Sentencing Council (2018), '[Child cruelty definitive guideline](#)' [accessed: 6 December 2018].

⁶⁸ Dearden, L. (2018), '[Man and woman deny female genital mutilation of three-year-old girl in London](#)', *Independent*, 31 August [accessed: 6 December 2018].

⁶⁹ Royal College of Midwives. 2018. '[A major step in the campaign to stop FGM in Wales](#)' says RCM on opening of first specialist FGM clinic in Wales' [ONLINE] [accessed: 6 December 2018].

Wales, compared to 174 for the previous year.⁷⁰ Three-quarters of all cases relate to women or girls from Cardiff and Vale University Health Board. The type of FGM was reported for 89% of the 271 women and children; type 1 had the highest incidence (37%).⁷¹

Forced marriage

In November 2018, the UK Government launched a public consultation on whether it should bring in a new legal mandatory reporting duty, and how the current guidance on forced marriage could be improved.⁷² The consultation document notes the barriers to reporting, but recognises that it must 'strike the right balance between ensuring that professionals appropriately identify victims and potential victims and not creating a "risk averse" system where all cases of possible forced marriage are reported, which would adversely impact on the police's ability to prioritise cases, and potentially stigmatise whole communities'.

Corporal punishment

There is strong and consistent evidence of the harmful effects of physical punishment on children, and the risk of escalation into physical abuse.⁷³ Children should be afforded more, not less, protection from violence than adults. Legal reform to protect children from all forms of physical punishment in all settings is an obligation under international human rights law.

Many UN treaty bodies, including the UN Committee on the Rights of the Child, have found physical punishment to be a breach of children's rights, and stressed that a child's best interests must be interpreted consistently with the whole Convention on the Rights of the Child (CRC).⁷⁴ In England and Wales, parents and those 'in loco parentis' (for example sports coaches and babysitters) charged with the common assault of a child can seek to rely on the defence of 'reasonable punishment' under

⁷⁰ Public Health Wales (2018), '[Female genital mutilation \(FGM\) health leads report April 2017 – March 2018](#)' [accessed: 6 December 2018].

⁷¹ Type 1 FGM is defined as the removal of the fold of skin surrounding the clitoris or partial or total removal of the clitoris. See '[Female Genital Mutilation](#)' on NHS website.

⁷² Home Office (2018), '[Preventing and tackling forced marriage: a consultation](#)' [accessed: 6 December 2018].

⁷³ See, for example: Heilmann, A., Kelly, Y. and Watt, R.G. (2015), '[Equally protected? A review of the evidence on the physical punishment of children](#)' [accessed: 10 January 2019].

⁷⁴ The Committee on the Rights of the Child in 2016, the Human Rights Committee in 2015, the Committee Against Torture in 2013, and the Committee on the Elimination of Discrimination Against Women in 2012, have all put forward calls for legal reform in relation to the physical punishment of children in various Concluding Observations to the UK.

section 58 of the Children Act 2004.⁷⁵ This means that children do not have the same level of protection from violence as adults.

EHRC supports legal reform to ban the physical punishment of children in the family and in other settings. Removing the reasonable punishment and justifiable assault defences would create a full ban of the physical punishment of children, with the law applying equally to children and adults. However, it is unlikely to result in the blanket criminalisation of parents who physically punish their children, because prosecutors will need to consider in each case whether a prosecution is in the public interest.

Since the enactment of the Rights of Children and Young Persons (Wales) Measure 2011,⁷⁶ Welsh ministers have been obliged to have due regard to the CRC when making decisions. A Welsh Government consultation⁷⁷ came out narrowly in favour of the view that removal of the defence of reasonable punishment will protect children's rights. The First Minister has announced the Welsh Government will introduce a bill to remove the defence of reasonable punishment between September 2018 and July 2019.⁷⁸

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- take concrete steps to encourage successful prosecutions for FGM
- ensure any new mandatory reporting duty in relation to forced marriage is informed by an evaluation of the FGM reporting duty, and
- prohibit all forms of physical punishment of children, including through the repeal of the 'reasonable punishment' defence.

Hate crime, hate speech and identity-based harassment

The UK Government has recently announced a full review of hate crime law in England and Wales, 'including how sex and gender characteristics should be

⁷⁵ UK Parliament (2004), '[Children Act 2004](#)' [accessed: 6 December 2018].

⁷⁶ UK Parliament (2011), '[Rights of Children and Young Persons \(Wales\) Measure 2011](#)' [accessed: 6 December 2018].

⁷⁷ Welsh Government (2018), '[Legislative proposal to remove the defence of reasonable punishment: summary of responses](#)' [accessed: 7 November 2018].

⁷⁸ Welsh Government. 2018. [Written statement – Consultation on the legislative proposal to remove the defence of reasonable punishment – publication of summary of consultation responses report](#). [ONLINE] [accessed: 6 December 2018].

considered by new or existing hate crime law'.^{79 80} The review will commence in 2019.⁸¹

The evaluation of a police trial in Nottinghamshire to record misogyny as a hate crime identified 174 reports made between April 2016 and March 2018, of which 73 were classified as crimes although only one led to a prosecution.⁸² The evaluation findings suggested this behaviour was 'overwhelmingly normalised', which inhibited women from reporting it to the police.⁸³

The 2018 Girls' Attitudes Survey found 25% of girls and young women aged 11 to 21 years old had threatening things said about them on social media, an increase from 21% in 2013.⁸⁴ The UK Government is expected to bring forward proposals for legislation to address online safety, which may include a social media code of practice and mandatory transparency reporting.⁸⁵ In response to the UK Government's consultation on the proposed internet safety strategy, 60% of individual respondents who chose to complete the consultation survey (296 individuals) said they had seen inappropriate or harmful content online, of which half (50%) reported witnessing online misogyny.⁸⁶

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) has reported on the effectiveness of the initial police response to hate crime across all currently protected characteristics, including race, sexual orientation and gender reassignment. While the report did not identify specific issues in relation to women who are victims of these crimes, it raised a number of general concerns that are relevant, including the lack of information about how different groups are victimised, and insufficient assessment of the risk of repeat targeting.⁸⁷ The report highlighted

⁷⁹ House of Commons (Hansard). 2018. [Voyeurism \(Offences\) \(No. 2\) Bill. 5 September 2018, vol 646 c253](#). [ONLINE] [accessed: 19 September 2018].

⁸⁰ The review was announced in September following a proposed amendment to the Voyeurism Bill (subsequently withdrawn) that called for misogyny to be made an aggravating factor in so-called up-skirting offences.

⁸¹ Law Commission. 2018. [Law Commission review into hate crime announced](#) [ONLINE] [accessed: 7 November 2018].

⁸² Mullany, L. and Trickett, L. (2018), '[Misogyny hate crime evaluation report](#)' [accessed: 19 September 2018].

⁸³ Ibid, p. 14.

⁸⁴ Girlguiding (2018), '[Girls' Attitudes Survey 2018](#)' [accessed: 21 September 2018].

⁸⁵ Department for Digital, Culture, Media and Sport (2018), '[Government response to the internet safety strategy green paper](#)' [accessed: 21 September 2018].

⁸⁶ Ibid.

⁸⁷ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2018), '[Understanding the difference: the initial police response to hate crime](#)' [accessed: 19 September 2018]. The report noted: 'In the cases we looked at, 43 out of 180 (24 percent) had information missing about the victim that could have been used to help understand the nature of hate crime. We couldn't tell whether the information was missing because the victim didn't want to provide it, or whether the police had failed to ask the victim.'

the case of a trans woman who did not report an incident to the police because she had previous poor experiences, including being interviewed in detail about her trans status in a way she found inappropriate and offensive.⁸⁸

Recommendations

The EHRC recommends that the UK and devolved governments, where relevant, should:

- ensure the Law Commission's review of hate crime legislation considers whether the law provides adequate protection for women and fair and appropriate access to justice, and consider amending legislation if gaps are identified
- improve the way data is collected and shared so that robust analysis can be undertaken to inform effective approaches to deal with hate crime, ensuring that data is fully disaggregated on the basis of protected characteristics
- with due regard for the right to freedom of expression, invest in further research into online abuse marked by misogyny, violence against women and girls, and other bias-motivated hostility, and develop effective mechanisms and interventions for tackling it, and
- improve support for victims and witnesses to report online and offline hostility and intimidation, and develop effective mechanisms for tackling these.

⁸⁸ Ibid., p. 17.

4. Access to civil justice⁸⁹

Legal aid

The UK Government's review of changes to legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was expected to be published in December 2018.⁹⁰ However, this has since been delayed.

The EHRC made a full response to the UK Government's review, highlighting concerns about the impact of LASPO on access to justice and on access to redress for human rights breaches and discrimination.⁹¹ The submission drew attention to the likely disproportionate negative impact on women due to their over-representation in areas of law that were removed from the scope of legal aid, particularly housing and private family law.

Research we commissioned to support our response found that people who could not access legal aid also faced barriers in pursuing other routes to justice – for example, some women with family law problems did not find mediation to be effective but could not access funding to pay for a solicitor.⁹² The report highlighted the experience of a woman with a seemingly strong case of pregnancy discrimination against her former employer who did not know that legal aid may have been available to support her claim, as it is generally not available for other employment matters.

Campaigning and support charity Rights of Women, supported by the Law Society, has called for additional amendments to the evidence rules to access legal aid in

⁸⁹ relates to Lol paragraph 4, articles 2.c and 15, CO paragraphs 23.a-b and 47.e and SDG 16

⁹⁰ UK Parliament. 2018. [Legal Aid Scheme: written question – 169817](#). [ONLINE] [accessed: 19 September 2018]. The Ministry of Justice convened a number of consultative groups as part of the review process, and has published the agendas for these meetings but not the organisations that are represented. See [Ministry of Justice. 2018. Post-implementation review of LASPO](#) [ONLINE] [accessed: 19 September 2018]. The Parliamentary Under-Secretary of State for Justice confirmed there had been meetings with more than 70 organisations, including Women's Aid. See [Hansard 4 September 2018 vol. 646 col. 65WH](#) [accessed: 19 September 2018].

⁹¹ EHRC (2018), '[Response to the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)' [accessed: 19 September 2018].

⁹² Organ, J. and Sigafos, J. (2018), '[The impact of LASPO on routes to justice](#)' [accessed: 19 September 2018].

domestic abuse cases.⁹³ It has highlighted concerns about powers to withdraw legal aid in certain cases – for example, when a local authority assesses that there has not been domestic violence despite contrary evidence from a domestic violence support service.⁹⁴ The Joint Committee on Human Rights (JCHR) has recommended that the UK Government consider whether further amendments are needed to ensure survivors of domestic violence can access legal aid.⁹⁵

A Commission on Justice in Wales has been established by the First Minister to review the operation of the justice system in Wales and set a long-term vision for its future.⁹⁶ The Commission on Justice is currently consulting on how criminal justice, civil justice, and access to legal advice can be improved.⁹⁷ This offers an opportunity to address barriers to access to justice that women face.

Recommendations

The EHRC recommends that the UK Government should:

- use the full range of evidence available to assess the impact of LASPO on the ability of individuals to enjoy effective access to justice, commissioning further research and analysis where necessary, including an analysis of how and whether women can access justice when they cannot access legal aid
- ensure the LASPO review assesses whether further amendments are needed to ensure that legal aid is available for survivors of domestic violence so that they have access to justice, and
- identify where LASPO has had a disproportionately negative impact on people sharing certain protected characteristics, and take mitigating action, including bringing areas of law back into scope where necessary. Priority attention should be given to the impacts on disabled people, women and people from ethnic minorities.⁹⁸

The EHRC recommends that the Welsh Government should:

⁹³ Law Society (2018), '[Proposed amendments to the statutory instrument: Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulation 2017](#)' accessed: 29 October 2018].

⁹⁴ Ibid.

⁹⁵ Joint Committee on Human Rights (2018), '[Enforcing human rights: tenth report of session 2017–19](#)' [accessed: 29 October 2018].

⁹⁶ Welsh Government. 2017. [First Minister establishes a Commission on Justice in Wales](#) [ONLINE]. [accessed: 6 December 2018].

⁹⁷ Welsh Government. No date given. [The Commission on Justice in Wales](#) [ONLINE] [accessed: 6 December 2018].

⁹⁸ EHRC's full recommendations are included in EHRC (2018), '[Response to the post-implementation review of LASPO](#)'.

- implement any recommendations of the Commission on Justice in Wales, when published in 2019, including on the mitigation of UK legislation and policy on access to justice and legal aid.

5. Human trafficking and modern slavery⁹⁹

Strengthening the National Referral Mechanism

The timetable for implementing the UK Government's changes to the National Referral Mechanism (NRM), announced in October 2017, is still unclear.¹⁰⁰ The changes include the creation of: a single, expert unit in the Home Office to streamline the victim identification process, an independent panel of experts to review all negative decisions, and a new digital system to make it easier for frontline staff to refer victims for support.¹⁰¹ The EHRC is not aware of any formal consultation undertaken by the UK Government on the implementation of these planned reforms.¹⁰²

In August 2018, the UK Government announced it had commissioned an independent review of the operation and effectiveness of the Modern Slavery Act (MSA) 2015. The EHRC welcomes the terms of reference for this review, which will look at several key areas of concern that we have previously identified: the definition of modern slavery offences, access to legal remedies and compensation for victims, and whether existing safeguards against criminal prosecution for victims need to be strengthened. The review will also consider ways of strengthening support for child victims, but stops short of reviewing the MSA's provisions regarding adult support entitlements.¹⁰³

⁹⁹ relates to Lol paragraph 11, article 6, CO paragraphs 39.a-b and 55.e and SDGs 5, 8 and 16

¹⁰⁰ Shortly after announcing these reforms, the UK Government announced a further policy change, which was to reduce by almost 42% subsistence support payments provided to potential victims of trafficking who are also applying for asylum in the UK. The high court has now overturned this decision, ruling that the decision was discriminatory. See: Taylor, D. (2018), '[Home Office faces £1m bill for shortchanging victims of trafficking](#)', *The Guardian*, 8 November [accessed: 29 November 2018].

¹⁰¹ Home Office. 2018. [Modern Slavery Taskforce agrees new measures to support victims](#) [ONLINE]. [accessed: 6 December 2018].

¹⁰² EHRC. 2018. [Pressing for progress: women's rights and gender equality in 2018](#) [ONLINE]. [accessed: 7 December 2018].

¹⁰³ Home Office. 2018. [Review of the Modern Slavery Act 2015: terms of reference](#) [ONLINE]. accessed: 6 December 2018].

The EHRC remains concerned by the continuing absence of a specific legal duty to provide adult victims with support.¹⁰⁴ While the EHRC welcomed the UK Government's decision in October 2017 to increase the minimum period of 'move on' support for recognised victims of trafficking and modern slavery (from 14 to 45 days), stakeholders have stated that this support is still not sufficient to ensure that victims are adequately supported and protected from the risk of homelessness and re-trafficking.^{105 106}

Following the resignation of the Independent Anti-Slavery Commissioner in May 2018, citing government interference in the role,¹⁰⁷ the EHRC welcomes the decision to include in the review of the MSA 2015 ways of ensuring the commissioner's independence.¹⁰⁸

In March 2018 the Welsh Government launched its Code of Practice for Ethical Employment in Supply Chains in Wales, designed to improve the wellbeing of workers involved in public sector supply chains in Wales and across the world. In relation to modern slavery, the code goes further than existing UK Government legislation by including all sectors and not imposing a minimum turnover threshold. All businesses, public sector, charities and voluntary organisations in Wales in receipt of Welsh public sector funding will be expected to sign up to the code.¹⁰⁹

Recommendations

The EHRC recommends that the UK Government should:

- publish the timetable for implementing the National Referral Mechanism reforms
- commit to reviewing the impact of these reforms on the quality and timeliness of the identification process three years on from their implementation, and

¹⁰⁴ EHRC (2018), '[Pressing for progress: women's rights and gender equality in 2018](#)' [accessed: 6 December 2018].

¹⁰⁵ Home Office. 2017. [Modern slavery victims to receive longer period of support](#) [ONLINE] [accessed: 6 December 2018].

¹⁰⁶ See for example migrant domestic worker charity Kalayaan and Anti-Slavery International (2018), '[Kalayaan and Anti-Slavery International submission to the UN Special Rapporteur on contemporary forms of slavery](#)' [accessed: 6 December 2018].

¹⁰⁷ Prime Minister's Office, 2018. [Independent Anti-Slavery Commissioner: letter of resignation](#) [accessed: 6 December 2018].

¹⁰⁸ One of the matters dealt with by the Independent Anti-Slavery Commissioner, following the adoption of the MSA 2015, was to provide assistance and support to victims. However, the commissioner's ability to carry out this (and other functions) was affected by restrictions to the powers and resources of his office. See: EHRC (2015), '[Civil and political rights in the UK: Equality and Human Rights Commission submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights](#)' p. 30. [accessed: 11 January 2019].

¹⁰⁹ Welsh Government. 2017. [Written statement – a fair-work future for Wales](#) [accessed: 6 December 2018].

- in preparing for the outcome of the independent review of the Modern Slavery Act 2015, give adequate attention to adult support entitlements, which fall out of the review's terms of reference.

6. Detention and asylum¹¹⁰

Women in prison

In June 2018, the UK Government published its female offender strategy.¹¹¹ The strategy sets out the measures it will take to enhance mental health services for women in prisons, promote alternative sentencing and ensure that treatment of women in the criminal justice system takes account of gender and gender-based violence. It also includes a shift away from building new community prisons for women to encouraging the greater use of non-custodial sentences by increasing community-based support.

While the general direction of the policy has been praised, several organisations, including the Association of Police and Crime Commissioners and members of the female offender strategy advisory board, have expressed concerns about how effective the strategy is likely to be in practice.¹¹²

Resources allocated to community services – £5 million – are limited and substantially smaller than the estimated £50 million that the UK Government will save as a result of cancelling its plans to build five women's prisons.¹¹³ There are also concerns about plans for the delivery of the strategy and a lack of detail about how it will be evaluated.¹¹⁴ Instead, there are arrangements for local coordination

¹¹⁰ relates to Lol paragraphs 10, 21 and 22, articles 2 and 15, CO paragraphs 55.a-d, 57.a-b and 59.a and SDGs 3 and 16

¹¹¹ Ministry of Justice, (2018) '[Female offender strategy](#)' [accessed: 21 September 2018].

¹¹² Association of Police and Crime Commissioners (APCC) victims lead, Dame Vera Baird QC, welcomed the government's female offender strategy but said: 'However, for the strategy to achieve its intentions it needs to be properly funded. The Ministry of Justice have handed back £50m to the Treasury that was earmarked for new prisons for women, as this building work is now rightly not happening, the money should be invested in to this strategy – that will show a real commitment from government that it wants this strategy to succeed.' See [APCCS website, APCC victims lead Dame Vera Baird QC, welcomes the government's female offenders strategy](#). Members of the female offender strategy advisory board, including Katharine Sacks-Jones, director of Agenda, the alliance for women and girls at risk, Anne Fox, chief executive of prisons charity Clinks, Lord Bradley and Lady Edwina Grosvenor, have expressed the same concern over funding. See: [Agenda. 2018. Open letter to the Justice Secretary](#) [ONLINE] [accessed: 11 January 2019].

¹¹³ Ministry of Justice (2018), '[Publication of female offender strategy](#)' [accessed: 21 September 2018].

¹¹⁴ Clinks. 2018. [Ensuring a distinct approach: the Ministry of Justice launch their female offender strategy](#) [ONLINE] [accessed: 18 September 2018].

and further devolution of responsibility, along with a promise to work through a number of cross-Whitehall working groups.¹¹⁵

Details in the strategy on some policy areas remain vague. For example, a pilot to secure more community sentence treatment requirements for 'vulnerable' offenders with mental health, drug and alcohol problems is in the trial stage of development and therefore information is limited.¹¹⁶

While we welcome the emphasis that the UK Government places on providing appropriate treatment in this pilot scheme,¹¹⁷ ¹¹⁸ there is a risk that compulsory treatment in the community as an alternative to imprisonment might violate the human rights of disabled women.¹¹⁹ This type of sentence raises complex issues in relation to consent and forced treatment that must be taken into account by monitoring and evaluation.¹²⁰

The published material also does not mention specific gender issues, such as abuse and trauma linked to experiences of violence. For the strategy to be fully effective, and in line with the 'Bangkok Rules',¹²¹ the support women in prison receive must be informed by an understanding of gender-based violence.

Ethnic minority detainees in the adult prison estate are high in comparison with the general population, but the level of disproportionality is less in the women's estate than in the men's estate. As of September 2018, ethnic minority detainees made up 26.7% of the prison population compared with 13% of the general population.¹²² ¹²³ Ethnic minority women make up 11.9% of the women's population in England

¹¹⁵ Ministry of Justice (2018), '[Female offender strategy](#)', para 154. [accessed: 19 September 2018].

¹¹⁶ Ministry of Justice. 2018. '[Vulnerable offenders steered towards treatment](#)' [ONLINE] [accessed: 21 September 2018].

¹¹⁷ Ibid. See comments on parity of waiting times and minimum standards.

¹¹⁸ Joint Committee on Human Rights (2018), '[Annex: Community sentence treatment requirements](#)' [accessed: 21 September 2018].

¹¹⁹ Convention on the Rights of Persons with Disabilities (2014), '[General comment 1 para 31](#)'. Also paras. 21 and 42. [accessed: 1 November 2018]. See also [guidelines on Article 14, especially paras 15 and 22](#) [accessed: 1 November 2018].

¹²⁰ Secretary of State for Justice v. MM; Welsh Ministers v PJ [2017] EWCA Civ 194, concerning Article 5 ECHR. See [England and Wales Court of Appeal \(Civil Division\) Decisions](#) [accessed: 21 September 2018]. Here is a parallel issue about consent in relation to related ECHR rights. As the Mental Health Act code of practice reminds us, there is a danger in mental health specialist care that 'the threat of detention must not be used to coerce a patient to consent to admission to hospital or to treatment'. The code goes on to suggest that the threat of coercion 'is likely to invalidate any apparent consent' (see subsection 14.17 of the code): we agree. This case is currently subject to an appeal in the Supreme Court.

¹²¹ United Nations Office on Drugs and Crime (2011), '[The Bangkok Rules](#)' [accessed: 5 December 2018].

¹²² Ministry of Justice (2018), '[Offender management statistics quarterly: April to June 2018](#)' [accessed: 23 November 2018].

¹²³ House of Commons (2018), '[UK prisons population statistics, number CBP-04334, 23 July 2018](#)' [accessed: 16 November 2018]. General population figures from 2011 Census of England and Wales.

and Wales,¹²⁴ but account for 17.4% of the women's prison population.¹²⁵ Previous research has shown black women are more likely than other women to be remanded or sentenced to custody, and are 25% more likely than white women to receive a custodial sentence following a conviction.¹²⁶

Generally, the proportion of the prison population on remand in custody is declining for both men and women. However, there is a higher percentage of women in prison on remand than men, as a proportion of the entire prison population (14.3% versus 11.2%).¹²⁷ The principal reason for this is the lack of suitable alternative accommodation.^{128 129}

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- provide an increased and longer-term funding commitment for a network of women's centres to support liaison and diversion from the criminal justice system and enable rehabilitation, particularly for ethnic minority women
- implement the Corston Report recommendation relating to interdepartmental coordination and transfer of responsibility¹³⁰

¹²⁴ Prison Reform Trust (2017), '[Counted out: Black, Asian and minority ethnic women in the criminal justice system](#)' [accessed: 31 October 2018]. General population figures from 2011 Census of England and Wales.

¹²⁵ Ministry of Justice (2018), '[Offender management statistics quarterly: April to June 2018](#)' [accessed: 23 November 2018].

¹²⁶ Ibid.

¹²⁷ Office for National Statistics (2018), '[Reporting on the Sustainable Development Goals: People on remand in custody in England and Wales](#)'. [accessed: 31 October 2018]. The female offender strategy (endnote 62) says that at 31 March 2018, 15% of women in prison were on remand and 13% were on sentences of fewer than 12 months, with 7% in prison for recall. Women on sentences of between 12 months and four years made up 26% of the prison population, and a further 28% were those on sentences of four years or more, with 9% on life or imprisonment for public protection (IPP) sentences.

¹²⁸ Ministry of Justice (2018), '[Female offender strategy](#)', para. 59 [accessed: 31 October 2018].

¹²⁹ Prison Reform Trust (2015), '[Why focus on reducing women's imprisonment?: A Prison Reform Trust briefing](#)' [accessed: 31 October 2018]. Women prisoners are far more likely to be primary carers of children. Surveying Prisoner Crime Reduction found that six in 10 women in prison had (on average two) dependent children. One fifth are lone parents before imprisonment. In 2010, more than 17,000 children were separated from their mothers by imprisonment. For eight out of 10 children, it's the first time they have been separated from their mums for more than a day or so. Fewer than one in 10 children whose mother is in prison is cared for by their father in her absence. Approximately 40% are cared for by grandparents or other family members, and only 5% remain in their own home. A 2011 report highlighted that up to 6,000 children a year are 'being forgotten by the state when their mother is sent to prison'. An earlier study found that 42 women held in HMP Holloway had no idea who was looking after their children, and that 19 children under the age of 16 were looking after themselves.

¹³⁰ Home Office. (2007) '[The Corston report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system](#)' [accessed: 22 January 2019].

- improve the provision and availability of mental health services for women in prison, recognising the different issues women, including trans women, experience in prison, to prevent suicide and self-harm, and facilitate resettlement
- monitor and collect data on the use of community sentences for women, and
- evaluate the community treatment sentence requirements to ensure that women are not unduly pressured to receive mental health treatment in order to avoid detention, and provide valid consent to treatment.

Immigration detention

Following his 2016 'Review into the welfare in detention of vulnerable persons', a second report by Stephen Shaw was published in July 2018.¹³¹ The report considers the progress made by the Home Office in implementing the 2016 Shaw recommendations.¹³² In this follow-up, Shaw expressed 'significant concerns' about the number of women held in immigration detention, noting that, while there has been a small reduction, the 'biggest determinant of the number of women in detention' is the capacity of Yarl's Wood Immigration Removal Centre (IRC).¹³³ Further, 84% of women who go on to claim asylum while detained at Yarl's Wood IRC are subsequently released.¹³⁴ Stephen Shaw concluded that, given significant levels of vulnerability, he could not find 'any justification for current levels of detention of these women'.¹³⁵

Shaw also raised concerns about conditions at Yarl's Wood IRC, including: a cramped and claustrophobic environment;¹³⁶ questioning of women about vulnerability while they are within earshot of others;¹³⁷ a failure to reach the target of 60% female staff at the IRC;¹³⁸ a lack of inpatient beds in healthcare units;¹³⁹ and the continuing practice of escorting women to the IRC at night.¹⁴⁰

¹³¹ Shaw, S. (2018), '[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)' [accessed: 18 September 2018].

¹³² Shaw, S. (2016), '[Review into the welfare in detention of vulnerable persons](#)' [accessed: 18 September 2018].

¹³³ Shaw, S. (2018), 'Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons', para. 2.99.

¹³⁴ Ibid., para. 2.99.

¹³⁵ Ibid., para. 2.99.

¹³⁶ Ibid., A7.101.

¹³⁷ Ibid., para. 2.80.

¹³⁸ Ibid., para. 2.82.

¹³⁹ Ibid., para. 2.78.

¹⁴⁰ Ibid., A7.107.

In response to the 2018 Shaw review, the UK Government announced it would pilot a community-based alternative to detention scheme for vulnerable women who would otherwise be detained at Yarl's Wood.¹⁴¹ The Home Secretary has further committed to conduct internal research into the approach to time limits on the use of immigration detention in other jurisdictions.¹⁴²

The UK Government introduced a new definition of torture for the purpose of rule 35 of the Detention Centre (Amendment) Rules, which came into effect in July 2018.¹⁴³ Rule 35 is a key safeguard against inappropriate detention of vulnerable detainees; evidence of 'torture' obtained by a rule 35 report leads to a very high presumption against detention. This new definition excludes certain types of serious violence that were previously included, such as street attacks arising from discriminatory persecution. The EHRC is concerned that the new torture definition will exclude women who are targeted and suffer serious violence in the community, or in other circumstances that are not considered to meet the 'control' and 'powerless' elements of the definition. This approach risks bringing about the inappropriate detention of women at risk of particular harm in detention, creating the possibility of serious deteriorations in mental health and, in extreme cases, breaches of Article 3 of the European Convention on Human Rights. The UN High Commission for Refugees' detention guidelines recognise that women who are 'victims of torture or other serious, physical, psychological, sexual or gender based violence or ill-treatment' are at particular risk of harm in detention.¹⁴⁴ The Home Office had stated it would undertake a review of the Detention Centre Rules late in 2018, which would include further revisions to rule 35.¹⁴⁵

In July 2018 the UK Parliament's JCHR launched an inquiry into immigration detention in the UK.¹⁴⁶ The EHRC submitted evidence drawing attention to our concerns that detention is not used sparingly and for the shortest time possible and

¹⁴¹ [Home Office \(2018\), 'Home Secretary statement on immigration detention and Shaw report'](#) [accessed: 18 September 2018].

¹⁴² Ibid.

¹⁴³ [Home Office \(2018\), *Adults at risk in immigration detention: version 3.0*](#) [ONLINE] [Accessed: 26 October 2018]. The Detention Centre (Amendment) Rules 2018 (SI 411/2018), which came into force on 2 July 2018, amended rule 35 of the Detention Centre Rules 2001 by introducing a new rule 35(6) that defines 'torture' as: 'any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which (a) the perpetrator has control (whether mental or physical) over the victim and (b) as a result of that control the victim is powerless to resist'.

¹⁴⁴ United Nations High Commissioner for Refugees. 2012. [Detention guidelines](#), guideline 9.1. [ONLINE] [accessed: 5 December 2018].

¹⁴⁵ Detention Centre Rules 2001 (as amended), SI 2001/238. Unamended version available at [The Detention Centre Rules 2001](#) [accessed: 5 December 2018].

¹⁴⁶ Joint Committee on Human Rights (2018), ['Immigration detention inquiry launched'](#) [accessed: 18 September 2018].

that there is no statutory limit on the length of time a person can be held.¹⁴⁷ The submission also highlighted concerns around the failure to uphold human rights standards within the detention estate, and in particular the failure to identify and respond to the needs of people with protected characteristics, including women, and others who face an increased risk of harm in detention.¹⁴⁸ We expect the JCHR to report back shortly.

Recommendations

The EHRC recommends that the UK Government should:

- ensure that revisions to rule 35 arising from the forthcoming Detention Centre Rules review result in sufficient safeguards for women who are victims of serious physical, psychological or sexual violence to ensure they are not detained
- ensure that immigration detention is used as a last resort, commit to setting a maximum limit of 28 days on the length of time an individual can be held and increase efforts to work towards community-based resolutions for women as an alternative to detention, and
- introduce independent processes for the identification of women with protected characteristics, or who otherwise face a particular risk of harm in detention, both when the decision to detain is made and once individuals have entered the detention estate.

Asylum seekers' access to services

Our 2018 research into experiences of healthcare for asylum seekers and refused asylum seekers highlighted that some barriers were experienced more by women, in particular pregnant women.¹⁴⁹ These included:

- the Home Office policy of allocating and moving people within asylum accommodation on a no-choice basis,¹⁵⁰ leading to interrupted and delayed care

¹⁴⁷ EHRC (2018), '[Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights' immigration detention inquiry](#)' [accessed: 5 December 2018].

¹⁴⁸ Ibid.

¹⁴⁹ Nellums, L.B., Rustage, K., Hargreaves, S., Friedland, J.S., Miller, A., Hiam, L. and Le Deaut, D. (2018), '[The lived experiences of access to healthcare for people seeking and refused asylum](#)' [accessed: 31 December 2018].

¹⁵⁰ Home Office (2017), '[Allocation of accommodation policy](#)' and '[UK Visas and Immigration \(2016\), 'Healthcare needs and pregnancy dispersal](#)' both accessed: 5 December 2018]. Home Office guidance states that: 'The overriding principle when allocating accommodation is that it is offered on a "no choice basis" ... Caseworkers must, however, consider requests to be allocated accommodation in ... specific location and consider whether there are exceptional circumstances that make it appropriate to agree to the request.'

- inadequate dissemination of information about health services, including antenatal care
- greater language and literacy challenges because of lower levels of education, literacy or acculturation
- cultural factors, including the use of male interpreters in maternity or sexual health services or when disclosing experience of domestic or sexual violence
- healthcare staff not having appropriate training and support to adequately address the healthcare needs of women who present with FGM, including the stigma associated with this practice, or women's religious beliefs or expectations, and
- associated immigration policies, such as identity checks and the overseas charging regulations in operation in England, led to women delaying or avoiding care due to fear.

Several UN bodies have raised concerns over the level of financial support given to asylum seekers in the UK, and the impact this has on their standard of living. In 2016, the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that the UK Government increase the level of support provided to asylum seekers, including through the daily allowance.¹⁵¹

Evidence in our recent research showed that inability to afford items necessary to accessing healthcare, including medication, transportation to get to healthcare appointments and phone credit to make medical appointments, presented significant barriers. The current amount of financial support from the Home Office provided to asylum seekers and refused asylum seekers in most cases falls below the level of mainstream benefits, and for most asylum-seeking families, takes them below the poverty line (defined as living on less than 60% of the median UK household income). We are concerned that this may undercut a core minimum level of protection and we strongly recommend that support is provided to this group of people in equal comparison to those on mainstream benefits.

The right to health requires that adequate nutrition and appropriate services be provided to pregnant women and new mothers. We note that the UK Government provides additional money to pregnant women and new mothers; however, the research evidence suggests that this is insufficient. In our research, pregnant women seeking asylum reported experiencing difficulties in affording the costs associated with accessing healthcare appointments, including for antenatal care, and not being

¹⁵¹ Committee on Economic, Social and Cultural Rights (2016), '[Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)' [accessed: 30 October 2018]

able to act on healthcare professionals' nutritional advice because of a lack of money for appropriate food.

Our review of existing evidence also highlighted a gap in support for pregnant refused asylum seeking women who are not already eligible for support¹⁵². Currently they cannot access support until six weeks prior to the estimated due date. This means that, for the majority of their pregnancy, women who have had their asylum claim refused have no access to money or housing. This puts them and their pregnancy at significant risk.

The EHRC is currently intervening in an appeal of a judicial review challenging the reduction in the rate of asylum support¹⁵³ with regard to single parents, the majority of whom are women. From 2015, a flat rate of financial support has been paid per individual. Prior to this a higher rate was paid to lone parents. This has a disproportionate impact on lone-parent families, as they will receive less income than two-parent families, but with less benefit from the economies of scale of a larger household.

The right to work is essential as a means of survival but also as an important component of human dignity. The EHRC agrees with CESCR's recommendation that the UK Government ensure that asylum seekers are not restricted from accessing employment while their claims are being processed. Access to paid employment would allow women to use their skills, contribute their experience and earn money to overcome many of the challenges identified in our research.

Ensuring protection for women and girls

¹⁵² Support is available for destitute refused asylum seekers who meet certain criteria under section 4(2) of the Immigration and Asylum Act 1999. Support consists of accommodation and subsistence via a pre-paid card (i.e. no cash). Criteria for receipt of section 4 support are for someone: to be destitute or about to become destitute within 14 days, and meet one of the following conditions: (a) be taking all reasonable steps to leave the United Kingdom or put themselves in a position in which they are able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate their departure (b) be unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason (c) be unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available (d) not have made an application, or have permission for judicial review of a decision in relation to their asylum claim (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998. Pregnant women who do not meet one of the conditions prior to pregnancy, become eligible under (b) six weeks before they are due to give birth.

¹⁵³ Accommodation and subsistence support is provided to destitute asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999. Subsistence is paid at £36.95 per adult or child per week.

In a July 2018 report, the All-Party Parliamentary Group for Ending Homelessness recommended 'the no recourse to public funds condition should not be imposed on a person who is applying for leave to remain under the family/private life rules when they have a dependent child. Care leavers and victims of domestic abuse and modern slavery should also be exempt from the condition'.¹⁵⁴

The EHRC recently voiced its concern regarding information sharing practices between the police and immigration enforcement in relation to victims of crime. In our submission to the Home Affairs Select Committee (HASC) inquiry into domestic abuse, we recommended that the UK Government ensure victims of crime with insecure immigration status are able to seek the assistance of the police and law enforcement authorities without fear of being reported to immigration authorities. The committee echoed this in its own recommendations.¹⁵⁵

Women with no recourse to public funds due to insecure immigration status are also at greater risk of homelessness, violence and sexual exploitation. One of the key recommendations from the Refugee Council's report into women seeking asylum who are survivors of violence, was that the Home Office should ensure that no woman faces homelessness and destitution when exiting the asylum support system after being granted refugee status or another form of leave.¹⁵⁶ The Refugee Council also reported that women feared reporting abuse would have a negative impact on their asylum accommodation and there is little evidence that the Home Office gives adequate consideration to previous histories of abuse.

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- fully implement the EHRC's recommendations on improving asylum seekers and refused asylum seekers' access to healthcare, including:
 - exempting all people who have been in the asylum process from NHS healthcare charging in England, in line with policy in devolved nations

¹⁵⁴ All Party Parliamentary Group on Ending Homelessness (2018), '[Rapidly responding to homelessness – a look at migrant homelessness, youth homelessness and rapid rehousing models](#)' [accessed: 18 September 2018].

¹⁵⁵ Home Affairs Committee (2018), '[Domestic abuse inquiry](#)' [accessed: 30 October 2018]. The committee said: 'Insecure immigration status must not bar victims of abuse from protection and access to justice. The Government states that its immediate priority is to ensure that all vulnerable migrants, including those in the UK illegally, receive the support and assistance they need regardless of their immigration status. It must ensure that the police service conforms with this objective.'

¹⁵⁶ Baillot, H. and Connelly, E. (2018), '[Women seeking asylum: Safe from violence in the UK?](#)' [accessed: 5 December 2018].

- ensuring free and full access to all family planning services and pregnancy and maternity services, regardless of immigration status
- reviewing current Home Office accommodation and dispersal policy and practice to ensure that healthcare needs, especially of disabled people and pregnant women, are met in the provision of asylum accommodation
- substantially increasing the level of weekly support to guarantee everyone is living above the recognised poverty line of 60% of the UK median household income, taking into account the needs of people with protected characteristics, such as pregnant women and new mothers
- allowing people seeking asylum to work after six months of waiting for a decision on their application so that they can access income, reduce their level of poverty and lead fulfilling and dignified lives, and
- ensuring all survivors of domestic violence can seek the assistance of police without fear by ending the requirement for police to share data of victims of crime with immigration enforcement, and taking steps to protect and support all survivors regardless of their immigration status.

7. Adequate standard of living and social security¹⁵⁷

Cumulative impact of welfare and tax changes

The EHRC's report 'The cumulative impact of tax and welfare reforms' assessed all tax and welfare spending changes made between May 2010 and January 2018, and what impact these will have had on women and other people sharing different protected characteristics in the year 2022.¹⁵⁸

Initial findings from our companion report published in November 2018, 'The cumulative impact on living standards of public spending changes' found that the combined impact of tax and welfare reforms and other public spending changes on final income has the biggest impact on lone-parent households – 90% of which are lone women¹⁵⁹ – in all three countries. In England, their losses are around 18.7%, compared to 10.5% in Wales and 7.6% in Scotland. In England and Scotland, female lone-parent households experience greater losses than male lone-parent households.¹⁶⁰

The Women's Budget Group's recent research into the causes and consequences of economic deprivation for women found that poverty is gendered, with the position of women in the labour market, the design of social security and women's roles within the family all contributing to women's vulnerability to poverty. It found that homelessness is particularly prevalent among lone parents, with nearly half (47%) of homeless households being lone-mother households.¹⁶¹

¹⁵⁷ relates to Lol paragraphs 5 and 21, articles 2, 3, 13 and 14, CO paragraphs 21, 61.b and 63, and SDGs 1, 3, 5, 8 10 and 11

¹⁵⁸ EHRC (2018), '[The cumulative impact of tax and welfare reforms](#)' [accessed: 5 December 2018].

¹⁵⁹ Hudson-Sharp, N., Munro-Lott, N., Rolfe, H. and Runge, J. (2018), '[The impact of welfare reform and welfare-to-work programmes: an evidence review](#)' [accessed: 29 April 2018].

¹⁶⁰ EHRC (2018), '[The cumulative impact on living standards of public spending changes](#)' [accessed: 5 December 2018].

¹⁶¹ Women's Budget Group (2018), '[The female face of poverty](#)' [accessed: 5 December 2018].

A number of the concerns outlined above were also highlighted by the UN Special Rapporteur on extreme poverty, who conducted an official visit to the UK in November 2018.¹⁶²

Recommendations

The EHRC recommends that the UK Government should:

- mitigate the impact of welfare reform measures on lone-parent families, the majority of which are women, by:
 - uprating all benefits in line with inflation and review the level of benefits to ensure it meets adequate living standards
 - reverse the two-child limit on child tax credits within Universal Credit
 - carry out an equality impact assessment of the conditionality and sanctions system on claimants to ensure that sanctions are not disproportionately applied, and conditionality is reasonable and based on flexibility of easements, specifically for lone-parent families, ethnic minority groups and disabled people
 - introduce publicly available service standards for the social security system that set out the rights of claimants, are fair and accessible, and measured and reported on, and
 - ensure that work coaches are trained to deliver tailored employment support, providing evidence of the steps taken to ensure that the specific needs of lone parents are being met.

Specific changes to the social security system

In August 2018, the UK Parliament's Work and Pensions Committee published a report on the issue of Universal Credit being used as a coercive measure in situations of domestic abuse.¹⁶³ Based on written evidence from over 200 organisations and individuals, including the EHRC,¹⁶⁴ the committee stated that the UK Government should 'publish all existing data on split payment requests' and

¹⁶² Office of the High Commissioner for Human Rights (2018), '[Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights](#)' [accessed: 5 December 2018].

¹⁶³ Work and Pensions Committee. 2018. [Government must act on domestic abuse risk under Universal Credit](#) [ONLINE] [accessed: 5 December 2018].

¹⁶⁴ EHRC (2018), '[Written evidence from Equality and Human Rights Commission \(UCR0231\)](#)' [accessed: 5 December 2018].

support the Scottish Government to 'pilot different approaches to split payments in Scotland as soon as possible'.

The committee also recommended that the UK Government:

- provide training for work coaches to identify the warning signs of abuse
- appoint domestic abuse specialists in every Jobcentre Plus, and
- pay Universal Credit to the main carer by default.

The UK Government has responded to this report, including evidence that just 20 households have taken up split payments to date; however, it confirmed that it is not collecting any data on the reasons why split payments have been requested.¹⁶⁵

The Women's Budget Group published a report on Universal Credit and domestic abuse in June 2018, which raised other concerns about the way the benefit has been designed and implemented.¹⁶⁶ These included that:

- it weakens incentives to enter employment or to earn more for many 'second earners' (often women)
- it can polarise a couple's choices through assuming that one is the carer and the other the earner, and
- rules that exempt survivors of domestic abuse from work-related conditionality are inconsistently applied and unavailable when the survivor is still living with an abusive partner.

Recommendations

The EHRC recommends that the UK Government should:

- undertake a further equality impact assessment of Universal Credit and offer split payments as standard, and, in the interim, ensure that the current system of single payments to a couple includes improved and robust safeguards for women experiencing domestic abuse.

Changes to the state pension age

Parliamentarians and other stakeholders continue to raise concerns over how changes to women's state pension age (SPA) have affected women born in the

¹⁶⁵ Work and Pensions Committee (2018), '[Universal credit and domestic abuse: Government response to the committee's seventeenth report](#)' [accessed: 5 December 2018].

¹⁶⁶ Women's Budget Group (2018), '[Universal Credit and financial abuse](#)' [accessed: 5 December 2018].

1950s. According to one parliamentary question, by June 2018, 3,521 complaints of maladministration relating to the equalisation of women's state pension age had been received by the Independent Case Examiner (ICE).¹⁶⁷ Another written question revealed that as of October 2018, 865 cases were awaiting an initial decision as to whether they would be accepted for investigation by the ICE.¹⁶⁸ According to extensive reporting in *FT Adviser*, the handling of these cases is now being escalated to the Parliamentary and Health Service Ombudsman.¹⁶⁹

This issue was raised by the UN Special Rapporteur on extreme poverty during a recent visit to the UK. His statement noted that women affected by these changes were required to return to 'a workforce for which many of them were ill-prepared and to which they could not reasonably have been expected to adjust with no notice'.¹⁷⁰ Meanwhile the campaign group BackTo60, which has coordinated various public actions on the changes to women's state pension age, has received permission from the court to bring a legal challenge to the policy.¹⁷¹

Recommendations

The EHRC recommends that the UK Government should:

- consider introducing transitional arrangements for those most disadvantaged by the changes to the state pension age (SPA) within the cohort of women born in the 1950s
- undertake a comprehensive communications campaign setting out the SPA changes and their consequences, and where to access accurate, accessible information, and
- make revisions to state pension statements in line with the recommendations made by the Work and Pensions Committee.

¹⁶⁷ UK Parliament. 2018. [State retirement pensions: females: written question – 146343](#). [ONLINE] [accessed: 5 December 2018]. The complaints are that failures by the Department for Work and Pensions to communicate the changes in SPA denied women the chance to make informed choices about their future pension provision.

¹⁶⁸ UK Parliament. 2018. [State retirement pensions: females: written question – 187381](#). [ONLINE] [accessed: 5 December 2018].

¹⁶⁹ *FT Adviser*. 2017. [Ombudsman intervenes in Waspi complaint cases](#) [ONLINE] [accessed: 5 December 2018].

¹⁷⁰ Office of the High Commissioner for Human Rights (2018), '[Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights](#)' [accessed: 5 December 2018].

¹⁷¹ BBC News. 2018. [Women's state pension changes to get legal review](#) [accessed: 5 December 2018].

8. Just and fair conditions of work¹⁷²

Women in work

Plans that would have extended shared parental leave (SPL) to grandparents have been temporarily put on hold while the UK Government carries out an evaluation of the SPL policy.¹⁷³ The findings of this evaluation are expected to be published in early 2019. Research conducted by the Chartered Institute of Personnel and Development (CIPD) showed that employers had mixed views about this proposal, with only around one in four welcoming the extension to grandparents.¹⁷⁴ This has led CIPD to conclude that the UK Government 'should concentrate in the more immediate term on tackling the barriers to greater uptake of SPL' by parents.¹⁷⁵ According to information gathered through a Freedom of Information response, the number of people taking SPL was just 500 higher in 2017/18 than the year before.¹⁷⁶

The Family and Childcare Trust's 17th annual Childcare Survey,¹⁷⁷ conducted between November 2017 and January 2018, found that the average price for a part-time nursery place for a child under two rose by 7%, to £122 per week or over £6,300 per year. The report also found that only half of local authorities in England and Wales have enough childcare available for parents who are working full-time. In March 2018, the House of Commons Treasury Select Committee published its report¹⁷⁸ into childcare policy and its influence on the economy. It found that the Treasury had 'made little effort to calculate the economic impact of the Government's childcare interventions', and that 'the level of complexity has become overwhelming' for parents navigating government policies.

¹⁷² relates to Lol paragraphs 16 and 18, articles 2, 5 and 11, CO paragraphs 47.a-d, 49, 59.b and 61.a and SDGs 4, 5, 8 and 9

¹⁷³ UK Parliament. 2018. [Parental leave: grandparents: written question – 147297](#). [ONLINE] [accessed: 5 December 2018].

¹⁷⁴ Chartered Institute of Personnel and Development (2016), '[Labour market outlook: focus on working parents](#)' [accessed: 5 December 2018].

¹⁷⁵ People Management. 2018. [Government shelves 'grandparental leave' reforms](#) [ONLINE]. [accessed: 5 December 2018].

¹⁷⁶ People Management. 2018. [Number of parents taking shared parental leave 'remarkably low' for third year](#) [ONLINE]. [accessed: 5 December 2018].

¹⁷⁷ Family and Childcare Trust (2018), '[Childcare Survey 2018](#)' [accessed: 5 December 2018].

¹⁷⁸ House of Commons Treasury Committee (2018), '[Childcare inquiry](#)' [accessed: 5 December 2018].

Introduced in April 2018, the Childcare Funding (Wales) Bill¹⁷⁹ is intended to facilitate the delivery of a key commitment in the Welsh Labour manifesto, which is to provide 30 hours per week of Welsh Government funded early education and childcare to the working parents of three and four year olds in Wales for up to 48 weeks per year. The bill's 'primary purpose' is to support the Welsh economy by helping parents, particularly mothers, to return to work or increase the hours they work. Full roll-out of the offer is expected by September 2020.

In April 2018 the Fair Work Commission was established to promote and encourage fair work in Wales. The Fair Work Commission will: consider whether measures to promote fair work currently available to the Welsh government could be taken further; identify what new or additional steps might be taken, including new legislation; and make recommendations. The Fair Work Commission must provide a national definition of fair work that includes flexible working and addresses the barriers for women accessing and progressing in the workplace. It is expected to report by March 2019.¹⁸⁰

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- address problems with the availability and affordability of properly regulated childcare, including by ensuring adequately funded, flexible and high-quality childcare for all children, and monitor the impact different models of provision have on women's labour market participation, and
- encourage men and women to share caring responsibilities.

The EHRC recommends that the UK Government should:

- introduce dedicated non-transferable 'use it or lose it' parental leave for fathers, with a pay rate that acts as a real incentive to take-up, and
- legislate to extend the right to flexible working to apply from day one in all jobs, unless there is a genuine business reason that means that this is not possible.

¹⁷⁹ National Assembly for Wales. 2018. [Childcare Funding \(Wales\) Bill](#) [ONLINE] [accessed: 5 December 2018].

¹⁸⁰ See [Fair Work Commission](#) [accessed: 22 January 2019].

Discrimination and harassment in the workplace

In July 2018, the UK Parliament's Women and Equalities Select Committee (WESC) published its report 'Sexual harassment in the workplace'.¹⁸¹ The report endorsed the EHRC's key recommendation from our 'Turning the tables: ending sexual harassment' report,¹⁸² calling for a mandatory duty on employers to protect workers from harassment and victimisation in the workplace. Breach of the duty should be an unlawful act enforceable by the EHRC and carrying substantial financial penalties. In December 2018 the UK Government responded to the report by saying it would introduce a statutory code of practice to 'help employers understand and demonstrate that they have taken "all reasonable steps" to prevent harassment'. It fell short, however, of agreeing to introduce a new duty.¹⁸³

WESC also published a report on older people and employment.¹⁸⁴ This highlighted that older age acts as an 'amplifier' of other inequalities, with older women being particularly affected. The committee report reflected evidence from the charity Business in the Community, which stated that women over 50 'experience more bias, discrimination and wage inequality than both their male counterparts and younger women'. One of its recommendations was that all jobs should be available on flexible terms unless an employer can demonstrate an immediate and continuing business case against doing so. Such an approach is central to enabling older workers and carers – the majority of whom are women – to participate in the labour market on an equal basis. This aligns with the EHRC's own long-standing recommendation to the UK Government that it should introduce the right for all employees to request flexible working from day one, unless there is a genuine business reason that means this is not possible.¹⁸⁵ The WESC report also noted that the UK Government's decision not to commence section 14 of the EA 2010 means that the true nature of the discrimination facing older women may not be being brought to light in case law and recommended that the UK Government commission research into the extent of this problem.¹⁸⁶

¹⁸¹ Women and Equalities Committee (2018), '[Sexual harassment in the workplace](#)' [accessed: 5 December 2018].

¹⁸² EHRC (2018), '[Turning the tables: ending sexual harassment at work](#)' [accessed: 5 December 2018].

¹⁸³ Women and Equalities Committee (2018). '[Sexual harassment in the workplace: Government response to the committee's fifth report of session 2017–19](#)' [accessed 3 January 2019].

¹⁸⁴ Women and Equalities Committee (2018), '[Older people and employment](#)' [accessed: 5 December 2018].

¹⁸⁵ EHRC (2017), '[Fair opportunities for all: a strategy to reduce pay gaps in Britain](#)' [accessed: 5 December 2018].

¹⁸⁶ The WESC report also raised concerns about discrimination facing older disabled people and older people from ethnic minority communities.

An independent inquiry into the bullying and harassment of House of Commons staff, conducted by Dame Laura Cox, was published in 2018.¹⁸⁷ The inquiry followed accusations of serious bullying and harassment made against MPs by members of staff, without effective procedures in place to resolve their complaints. The inquiry report made reference to the EHRC's work on sexual harassment in the workplace, finding similarities in its research findings around third-party harassment, where there is a lack of management support and harassment is seen by some employers as being a 'normal' part of the job. The report also referred to the EHRC recommendation to develop an anonymous complaints mechanism for harassment, describing this as a potentially helpful initiative.

Similarly, following allegations of bullying, harassment and sexual misconduct¹⁸⁸ within the National Assembly for Wales, the Standards of Conduct Committee undertook a review of the code of conduct for Assembly Members (AMs) and, in conjunction with this work, worked with the Assembly Commission to prepare a dignity and respect policy, which was approved in May 2018. The committee published its report, 'Creating the right culture',¹⁸⁹ which made a number of recommendations to the Assembly Commission, including: training around sexual harassment and responding to disclosures of sexual violence/harassment; creation of an annual dignity and respect survey of staff with an accompanying action plan; and an online reporting tool that allows people to report incidents of inappropriate behaviour either anonymously or through a named disclosure.

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- introduce a mandatory duty on employers to take reasonable steps to protect workers from harassment, sexual harassment and victimisation under the Equality Act 2010 in the workplace
- introduce a statutory code of practice on preventing and responding to sexual harassment and other harassment at work, and

¹⁸⁷ Cox, L (2018), '[The bullying and harassment of House of Commons staff: independent inquiry report](#)' [accessed: 5 December 2018].

¹⁸⁸ BBC News. 2018. '[Welsh Assembly: Claims of sexual assault and bullying](#)' [ONLINE] [accessed: 5 December 2018].

¹⁸⁹ National Assembly for Wales. 2018. '[Creating the right culture: National Assembly committee recommends new dignity and respect procedures](#)' [ONLINE] [accessed: 5 December 2018].

- implement all the other recommendations in the 2018 Equality and Human Rights Commission report, 'Turning the tables'.

Occupational segregation

In June 2018 the Young Women's Trust published research looking at the use of positive action¹⁹⁰ in gender-segregated apprenticeships. 'Equality at work? Positive action in gender segregated apprenticeships'¹⁹¹ focused in particular on the construction, engineering and IT sectors.

The 2018 research highlights significant confusion around positive action, including whether and how it can be used. It points to positive action being under-utilised and this in turn acts as a barrier to addressing the under-representation of women in key sectors, in apprenticeships and beyond. The research flags that small and medium-sized enterprises (SMEs) felt least able to use positive action measures due to a lack of support from larger organisations and limited funding.

In April 2017, an apprenticeship levy (applying across the UK) was introduced, requiring all employers with a pay bill of over £3 million per year to pay a contribution to meet apprenticeship funding. An overall fall in apprenticeship starts in England began in 2016/17; however, this then accelerated in 2017/18. It is clear that this has had a disproportionate impact on women – the total number of male starts fell by 16.9% in this time period, whereas female starts fell by 30.3%.¹⁹²

The Welsh Assembly's Economy, Infrastructure and Skills Committee published its report on apprenticeships in Wales¹⁹³ in February 2018. The report recognised that gender segregation in apprenticeships remains stubborn in Wales. For example, evidence submitted by Colegau Cymru (Colleges Wales)¹⁹⁴ stated that of the 4,675 foundation, apprenticeship and higher apprenticeships available in construction, 4,555 were male compared with 120 females. The report's 14 recommendations included that the Welsh Government should ensure there is no let-up in support to

¹⁹⁰ Positive action is permitted by sections 158 and 159 of the Equality Act 2010. Examples of positive action include encouraging under-represented groups to apply for roles through targeted advertising, open days or advice sessions for that group only, mentoring or coaching.

¹⁹¹ Davies, C. (2018), '[Equality at work? Positive action in gender segregated apprenticeships](#)' [accessed: 5 December 2018].

¹⁹² Department for Education. 2018. [Apprenticeships and traineeships data](#) [ONLINE] [accessed: 8 January 2019].

¹⁹³ National Assembly for Wales (2018), '[Apprenticeships in Wales](#)' [accessed: 5 December 2018].

¹⁹⁴ Ibid.

tackling the wider prejudices regarding gender and careers so that the widest opportunity is available to all.

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- ensure high-quality apprenticeships reduce women's employment gaps and occupational segregation
- set aspirational and transparent targets to improve the participation and progression rates of under-represented groups in apprenticeships, including through greater use of positive action to recruit women apprentices in sectors where they are under-represented, and
- assess the reasons for, and take action to address, the fall in apprenticeship starts in England since 2016, particularly the disproportionately high drops in apprenticeships starts among women.

Pay

All employers required to report their gender pay gap in compliance with new regulations did so by July 2018. EHRC has analysed 440 employers' accompanying narrative reports, identifying where improvements need to be made by employers to analyse and address root causes of inequality for women in the workplace, using their pay gap data.¹⁹⁵

We also commissioned research conducted with over 2,500 employees to understand their perceptions of the gender pay gap and how this may have affected working relationships, motivation levels and job-seeking behaviours.¹⁹⁶ The research found that if an organisation had a gender pay gap, this had a significant impact on women's motivations and behaviour in work, with 61% of women saying that they would select an employer without a gender pay gap when applying for a new job in

¹⁹⁵ Gov. uk gender pay gap service. 2018. [Gender pay gap data](#) [ONLINE] [accessed: 5 December 2018]. 200 employers were assessed from the five sectors identified as the poorest performing in their treatment of women and new mothers in the 2016 EHRC report '[Pregnancy and maternity-related discrimination and disadvantage: experiences of employers](#)' [accessed: 19 September 2018], as well as a further sample of 200 employers chosen at random and 40 FTSE350 organisations that had published gender pay gap figures.

¹⁹⁶ BMG Research (2018), '[Gender pay gap employee poll](#)' [accessed: 31 October 2018].

the future, and 58% saying it would make them less likely to recommend their employer as a place to work.

Similarly, the Young Women's Trust's recent report, 'It's (still) a rich man's world',¹⁹⁷ found that little progress has been made towards reducing inequalities for young women in the workplace, despite the introduction of mandatory gender pay gap reporting.

Understanding women's experiences in relation to other shared protected characteristics, such as race, is vital. We have published research into the extent to which employers are currently measuring and reporting on ethnicity and disability pay gaps, which found that just 3% of employers could report such data.¹⁹⁸ Following EHRC's calls for a mandatory reporting duty on ethnicity and disability employment data, the UK Government has announced its intention to introduce mandatory ethnicity pay gap reporting and has launched a consultation, which the EHRC will be responding to in due course.¹⁹⁹

The UK Parliament's Business, Energy and Industrial Strategy (BEIS) Select Committee has published its report, 'Gender pay gap reporting',²⁰⁰ assessing the adequacy and effectiveness of the new regulations and calling on the UK Government to be more ambitious. The committee recommended that organisations be required to provide narrative reporting alongside their gender pay statistics, and an action plan setting out how pay gaps are being, and will be, addressed, including objectives and targets. We welcome this recommendation, as outlined in our previous CEDAW submission, and see this as an essential step to tackling the root causes of inequality in the workplace. Narratives will promote transparency of actions as well as reduce the pay gap and ensure that steps are taken to promote equality.

In Wales, listed bodies subject to the Wales-specific PSED are not currently required to publish their gender pay data on the UK Government website but are free to do so if they wish. The EHRC in Wales is carrying out a monitoring exercise that will establish which listed bodies have also chosen to publish pay data in line with the

¹⁹⁷ Young Women's Trust Annual Survey (2018), ['It's \(still\) a rich man's world: Inequality 100 years after votes for women'](#) [accessed: 19 September 2018]. The report found that one in five young women said that they were paid less than their male colleagues for doing similar work, with 49% saying they did not have the confidence to challenge their boss on the issue.

¹⁹⁸ Adams, L., Luanaigh, A.N., Thomson, D. and Rossiter, H. (2018), ['Measuring and reporting on disability and ethnicity pay gaps. EHRC research report no. 117'](#) [accessed: 19 September 2018].

¹⁹⁹ Department for Business, Energy and Industrial Strategy (2018), ['Ethnicity pay reporting. government consultation'](#) [accessed: 5 December 2018].

²⁰⁰ BEIS Select Committee (2018), ['Gender pay gap reporting: Thirteenth report of the session 2017–19'](#) House of Commons [accessed: 19 September 2018].

Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. The Welsh Government is examining ways to ensure that future reporting arrangements are robust and that the way listed bodies publish their data is transparent, user-friendly and accessible.²⁰¹

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- make it mandatory for employers to publish a narrative with their gender pay gap data to help employees and the public understand the factors underlying the gender pay gap and focus on how to make substantive improvements to the workplace for women
- develop national action plans to close gender, disability and ethnicity pay gaps, and report regularly on progress, and
- require private, voluntary and those public sector employers not in the scope of the Scottish and Welsh Public Sector Equality Duty specific duties, to monitor and report on ethnicity and disability in recruitment, retention and progression. This should apply to organisations with more than 250 employees.

The EHRC recommends that the Welsh Government should:

- review and improve the specific duties – under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 – to require public bodies in Wales to take action to address pay and employment differences, report on progress and publish pay gap data.

²⁰¹ Welsh Government (2018), '[Letter from the Welsh Government to the Equalities, Local Government and Communities Committee](#)' [accessed: 4 October 2018].

9. Highest attainable standard of health²⁰²

Mental and physical health

Mental health

The UK Government continues to commit to improving access to mental health services and outcomes for the population as a whole,²⁰³ however there remain questions as to whether women and girls are receiving the care they need.

In a 2018 report, the charity Agenda found that women and girls in England were more likely to be held in mental health detention under emergency short-term sections than men and boys. Ethnic minority women were disproportionately at risk of being detained compared with the general population.²⁰⁴ Other evidence points to worrying trends in relation to the detention of women and girls under the Mental Health Act 1983 (MHA), including the following.

- Lack of capacity in the system leads to delays in admitting women to the appropriate secure beds, and women remaining in higher levels of physical security than appropriate and for long periods of time.²⁰⁵
- Staff in many mental health trusts do not routinely enquire whether women and girls in detention have a history of domestic violence and abuse, despite guidelines encouraging them to do so.^{206 207}
- The use of restraint against women and girls in mental health settings is widespread, with huge regional variations. Girls are more likely to be physically

²⁰² relates to Lol paragraph 21, articles 12 and 16, CO paragraphs 53.a-b and 61.a and SDGs 3 and 5

²⁰³ HM Treasury and Hammond, P. 2018. [Budget 2018: Philip Hammond's speech](#) [ONLINE]. [accessed: 14 January 2018].

²⁰⁴ Agenda (2018), '[Women in crisis: how women and girls are being failed by the Mental Health Act](#)' [accessed: 5 December 2018]. Figures reported by Agenda show that ethnic minority women made up around 9% of detained patients when they make up an estimated 7% of the general population.

²⁰⁵ Care Quality Commission (2018), '[Monitoring the Mental Health Act in 2016/17](#)' [accessed: 5 December 2018].

²⁰⁶ Agenda (2016), '[Agenda mental health gender responsiveness briefing September 2016](#)' [accessed: 5 December 2018].

²⁰⁷ Agenda (2018), '[Women in crisis: how women and girls are being failed by the Mental Health Act](#)' [accessed: 5 December 2018].

restrained than boys, and women are more likely to be repeatedly restrained than men, including in a face-down position.²⁰⁸

- The rate of self-inflicted deaths among women and girls detained under the MHA was higher than the rate for men and boys in 2015 and 2016.²⁰⁹ Over the past five years, 32 women died after a restraint episode.²¹⁰

The UK Government has commissioned an independent review into the MHA 1983, which has published a number of recommendations addressing how the act is currently implemented, including particular issues women face on mixed-sex wards.²¹¹

Women in Wales experiencing mental health conditions during pregnancy or following birth face different levels of specialist care depending on where they live. Research from NSPCC Cymru/Wales, Mind Cymru, the National Centre for Mental Health and the Mental Health Foundation²¹² found that around 9,000 new mothers every year experience a mental health condition during pregnancy or in the 12 months following the birth of their child.²¹³ These include depression, anxiety, post-traumatic stress disorder, obsessive compulsive disorder, eating disorders and postpartum psychosis.

Physical health

In September 2018, NHS England reported that while women were more likely to use health services routinely, there are some important disparities among particular groups of women. For example, Gypsies, Travellers and Roma and some vulnerable migrants, including pregnant women, victims of trafficking and survivors of gender-based violence, were still being refused registration in general practice because of the inability to provide ID, proof of address or immigration status.²¹⁴

²⁰⁸ Agenda (2017). '[Agenda briefing on the use of restraint against women and girls, March 2017](#)' [accessed: 5 December 2018].

²⁰⁹ Figures from the Care Quality Commission (CQC) are included in Agenda's 2018. '[Women in crisis](#)' report. The figures show that women's self-inflicted deaths outnumbered men for the first time in 2015, when 20 women died compared with 15 men. The same was seen in 2016 when 10 women died compared with six men.

²¹⁰ The CQC classifies 'restraint-related' deaths as when restraint occurred within seven days prior to death. Restraint in this case includes all forms of restraint, including physical, mechanical and chemical.

²¹¹ Department of Health and Social Care (2018), '[Modernising the Mental Health Act: increasing choice, reducing compulsion](#)' [accessed: 7 December 2018].

²¹² Maternal Mental Health Alliance. 2018. '[New mums face gaps in vital specialist mental health services in Wales](#)' [ONLINE] [accessed: 5 December 2018].

²¹³ Ibid.

²¹⁴ NHS England. 2018. '[Improving access for all: reducing inequalities in access to general practice services. A resource for general practice providers and commissioners](#)' [ONLINE] [accessed: 5 December 2018].

Research has found that the intersections between disability, poor socio-economic status and gender affect access to healthcare. Disabled women across the UK report worse access to healthcare, with transportation, cost and long waiting lists likely to be the main barriers.²¹⁵ In May 2018, Public Health England published guidance for health professionals on making reasonable adjustments and meeting the needs of women with learning disabilities in relation to cervical and breast cancer screening.²¹⁶

In May 2018, the UK Government announced that since 2009, 450,000 older women in England between 68 and 71 years old had not been invited for breast cancer screening due to a computer algorithm failure.²¹⁷ The former Secretary of State for Health and Social Care subsequently stated that up to 75 women 'may have had their lives shortened as a result' and set up an independent review of the NHS breast screening programme.²¹⁸

Since April 2018, several announcements have been made on the Welsh Government's intention to better support women's access to healthcare, such as providing an ovarian cancer drug on the Welsh NHS²¹⁹ and allowing women the option to take termination of pregnancy medication at home.²²⁰ However, the Welsh Government's long-term vision of a 'whole system approach to health and social care', published in October 2018, does not make any direct reference to the specific needs of women.²²¹

The Welsh Government has also announced that from autumn 2018, women requiring gender identity treatment will be able to access more of their treatment in Wales rather than having to travel to England.²²² The new Welsh Gender Team will allow trans women to access the care they need closer to home. Previously, patients

²¹⁵ Sakellariou, D. and Rotarou, E.S. (2017), '[Access to healthcare for men and women with disabilities in the UK: secondary analysis of cross-sectional data](#)', *BMJ Open*, vol. 7, issue. 8. [accessed: 5 December 2018].

²¹⁶ Public Health England. 2018. [Reasonable adjustments for people with a learning disability](#) [ONLINE] [accessed: 5 December 2018].

²¹⁷ Public Health England. 2018. [Women offered NHS breast screening after missed invitations](#) [ONLINE] [accessed: 5 December 2018].

²¹⁸ UK Parliament. 2018. [Breast cancer screening update: written statement HCWS731](#). [ONLINE] [accessed: 5 December 2018].

²¹⁹ Welsh Government. 2018. [New ovarian cancer drug approved for use in Wales](#) [ONLINE]. [accessed: 5 December 2018].

²²⁰ Welsh Government. 2018. [Wales to allow termination of pregnancy medication to be taken at home](#) [ONLINE] [accessed: 5 December 2018].

²²¹ Welsh Government (2018), '[A healthier Wales: our plan for health and social care](#)' [accessed: 5 December 2018].

²²² Welsh Government. 2018. [Written statement – update on improvements to adult gender identity services in Wales](#) [ONLINE] [accessed: 5 December 2018].

were referred to the Tavistock and Portman NHS Foundation Trust's Gender Identity Clinic in London.

Recommendations

The EHRC recommends that the UK and Welsh governments, where relevant, should:

- to address the health inequalities experienced by women, and especially those women who are at particular risk of vulnerability, set gender equality objectives that provide focus to gender-specific and gender-sensitive health policies and services where evidence demonstrates targeted interventions would be effective
- monitor and publish progress against equality objectives under the Public Sector Equality Duty, and take further steps where progress is insufficient
- ensure there are sufficiently funded, appropriate and high-quality mental health services that meet local demand. This will increase the availability of less restrictive options for mental health provision and reduce the need to resort to involuntary admission and treatment under the MHA
- ensure reasonable adjustments are provided for disabled women to ensure their access to healthcare services is on an equal basis with others, and
- take steps towards eradicating the use of physical, mechanical and chemical restraint and other restrictive practices in mental health settings.

The EHRC recommends that the UK Government should:

- ensure that staff caring for women and girls detained under the Mental Health Act comply with National Institute for Health and Care Excellence (NICE) guidance to routinely enquire about their potential history of domestic violence and abuse so it is appropriately factored into their care plan.²²³

The EHRC recommends that the Welsh Government should:

- address deficiencies in provision of specialist mental health service provision for pregnant women and new mothers by some health boards in Wales, to ensure consistency, and
- ensure timely implementation of a fully integrated gender identity service across Wales, and monitor the impact on health outcomes for trans women in Wales.

²²³ National Institute for Health and Care Excellence (2014), '[Domestic violence and abuse: multi-agency working: public health guideline \[PH50\]](#)' [accessed: 5 December 2018].

10. Equality in education²²⁴

Personal, social, health and economic (PSHE), relationships education (RelEd) and relationships and sex education (RSE)

Following a call for evidence on the teaching of relationships and sex education (RSE) and personal, social and health education (PSHE) in December 2017, the UK Government announced that it will require all schools in England to teach health education²²⁵ from September 2020. From that date, primary schools will also be required to teach relationships education (RelEd), and secondary schools RSE.

While the UK Government's proposal falls short of mandatory status for all PSHE,²²⁶ the PSHE Association welcomed this development as a step towards improving standards across all schools,²²⁷ and ensuring that every child in school will be guaranteed a PSHE education that covers mental health and wellbeing, physical health and learning about safe and healthy relationships.²²⁸ Following our own work to raise English and Welsh schools' awareness of the scale and impact of prejudice-based bullying,²²⁹ we also support the UK Government's encouragement of 'whole school' approaches, which ensure anti-bullying and equality policies are effectively aligned with the teaching of RelEd and RSE.

²²⁴ relates to Lol paragraph 17, articles 5 and 10, CO paragraphs 45.a-d and 61.a and SDG 4

²²⁵ Department for Education (2018), '[Relationships education, relationships and sex education, and health education in England](#)' [accessed: 14 September 2018].

²²⁶ Parents will retain the right to withdraw their child from elements of relationships and sex education.

²²⁷ PSHE Association. 2018. [Government takes 'major step' towards better PSHE for all](#) [ONLINE]. [accessed: 14 September 2018]. The UK Government consulted on its proposed regulations and guidance for schools; the consultation closed on 7 November 2018. See more at [Department for Education, Relationships education, relationships and sex education, and health education](#) [accessed: 5 December 2018].

²²⁸ Ibid. See also: Department for Education. 2018. [New relationships and health education in schools](#) [ONLINE] [accessed: 14 September 2018].

²²⁹ EHRC. 2017. [Tackling identity-based bullying in schools video animation](#) [ONLINE] [accessed: 31 October 2018].

The draft guidance²³⁰ suggests a need to teach about different forms of abuse of women and girls, including sexual violence and harassment, FGM and coercive control, as part of RSE. Some stakeholders suggest the guidance should be more specific on obligations to teach about relationships, respect, boundaries and the law as part of RelEd teaching in primary schools.²³¹ We have raised concerns that the draft guidance does not provide specifics on what 'age appropriate' teaching means, and that proposed content on 'virtues' is subjective, values-driven and not informed by human rights principles.²³²

Parents will have the right to withdraw their children from sex (but not relationships) education.²³³ We therefore welcome the encouragement for schools to engage with parents and to explain the purpose of RSE when faced with requests for children to be withdrawn from sex education. However, the rights of parents need to be balanced with the rights of the child. Parental rights to choose how their children are educated are not absolute. We acknowledge that the guidance gives children the right to refute the parent's decision to withdraw (from three terms before the child turns 16).²³⁴ However, given the scale of child sexual abuse and exploitation, we remain concerned that the right for parents to withdraw their children below that age from sex education poses an unnecessary safeguarding risk because it potentially removes the opportunity for them to learn about certain topics such as consent, abuse and harassment, and sexualised bullying.

We welcome the commitment of the Welsh Government, in making RSE mandatory for all school-aged children from 2022, to broadening the understanding of sexuality within the curriculum and including issues such as consent, domestic abuse and respecting diversity. We also welcome the commitment to providing the right training for teachers at all levels.²³⁵

Recommendations

The EHRC recommends that the UK Government should:

²³⁰ Department for Education (2018), '[Relationships education, relationships and sex education \(RSE\) and health education: guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#)' [accessed: 14 September 2018].

²³¹ End Violence Against Women. 2018. '[Plans for relationships and sex education don't go far enough](#)' [ONLINE] [accessed: 14 September 2018].

²³² EHRC (2018). '[Our response to the consultation on relationships education, relationships and sex education, and health education in England](#)' [accessed: 3 January 2019].

²³³ Parents currently have the right to withdraw from both sex and relationships education.

²³⁴ Department for Education (2018), '[Relationships education, relationships and sex education \(RSE\) and health education: guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#)' [accessed: 14 September 2018].

²³⁵ Welsh Government. 2018. '[Kirsty Williams announces major focus on healthy relationships in reforms to 'relationships and sexuality' education](#)' [ONLINE] [accessed: 17 September 2018].

- ensure human rights education, which cuts across all subject areas including relationships and sex education and health education, is fully embedded in the curriculum. This includes education about human rights, through human rights and for human rights. In particular, children should be taught about their human rights relating to health, education and bodily integrity
- balance rights of parents to choose how their children are educated with the rights of children as set out in the UN Convention on the Rights of the Child. The guidance and regulations concerning decisions to withdraw children should reflect these rights, as well as parents' rights. Further, certain topics should be exempt from the right to withdraw, such as: consent, sexual abuse and harassment, and sexualised bullying, grooming, sexual exploitation and domestic abuse, and
- ensure teaching is evidence-based, not values-based, and inclusive of children with different protected characteristics.

Contacts

This publication and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. We welcome your feedback.

For information on accessing one of our publications in an alternative format, please contact: correspondence@equalityhumanrights.com.

Keep up to date with our latest news, events and publications by [signing up to our e-newsletter](#).

EASS

For advice, information or guidance on equality, discrimination or human rights issues, please contact the [Equality Advisory and Support Service](#), a free and independent service.

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 19:00 (Monday to Friday)
10:00 to 14:00 (Saturday)

Post FREEPOST EASS HELPLINE FPN6521

© 2019 Equality and Human Rights Commission

Published February 2019

ISBN: 978-1-84206-786-4

You can download this publication from

www.equalityhumanrights.com

© 2019 Equality and Human Rights Commission

Published: February 2019

ISBN: 978-1-84206-786-4