Equality and Human Rights Commission

Progress on socio-economic rights in Great Britain

Update report on Great Britain's implementation of the International Covenant on Economic, Social and Cultural Rights, March 2018

Equality and Human Rights Commission

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List of acronyms

ASHE – Annual Survey of Hours and Earnings
BEIS – Department for Business, Energy and Industrial Strategy
BSL – British Sign Language
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CFR – Charter of Fundamental Rights
CIPD – Chartered Institute of Personnel and Development
CPAG – Child Poverty Action Group
CRC – Convention on the Rights of the Child
CRPD – Convention on the Rights of Persons with Disabilities
DH – Department of Health and Social Care
DLA – Disability Living Allowance
DWP – Department for Work and Pensions
EA – Equality Act
ECHR – European Convention on Human Rights
ECNI – Equality Commission for Northern Ireland
EHRC – Equality and Human Rights Commission
ESA – Employment and Support Allowance
EU – European Union
GB – Great Britain
HRA – Human Rights Act 1998
ICESCR – International Covenant on Economic, Social and Cultural Rights
IFS – Institute for Fiscal Studies
LASPO – Legal Aid, Sentencing and Punishment of Offenders Act 2012
MoJ – Ministry of Justice
NHRI – National Human Rights Institution
NIHRC – Northern Ireland Human Rights Commission

OHCHR – Office of the United Nations High Commissioner for Human Rights

ONS – Office for National Statistics

PIP – Personal Independence Payment

PSED – Public Sector Equality Duty

SDGs – Sustainable Development Goals

SHRC – Scottish Human Rights Commission

TUC – Trades Union Congress

UK – United Kingdom

UKIM – United Kingdom Independent Mechanism (made up of the Equality and Human Rights Commission, the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland)

UN – United Nations

UN CESCR – United Nations Committee on Economic, Social and Cultural Rights

UPR – Universal Periodic Review

WCA – Work Capability Assessment

Executive summary

The Equality and Human Rights Commission has assessed the progress on socio-economic rights in Great Britain[1] since 2016, focusing on four key areas:

- the status of socio-economic rights in domestic law and policy
- the rights to an adequate standard of living and social security
- the rights to and at work, and
- access to justice.

Progress has been made in some areas since 2016, for example, the publication of the findings of the UK Government's Race Disparity Audit, the entry into force of employers' gender pay gap reporting requirements, the introduction of the National Living Wage, the Government's strategy 'Improving Lives – The Future of Work, Health and Disability' to facilitate access to employment for disabled people, and the Welsh Government's Strategic Equality Plan and Equality Objectives 2016–2020. However, the overall picture emerging from the most recent evidence remains deeply concerning. We have identified persistent challenges in relation to a number of economic and social rights and, in some instances, further deterioration.

The implementation of the rights included in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the UK was last examined by the UN in June 2016. The UN Committee on Economic, Social and Cultural Rights found numerous areas of significant concern and recommended specific remedial measures in its 'Concluding Observations' (its recommendations for action). To date, the UK Government has not specified the measures it intends to take to address these recommendations. Yet, by ratifying ICESCR and other international human rights treaties the UK Government has pledged to be bound by the obligations

[1] This submission covers Great Britain for issues reserved to Westminster, and notes different outcomes and approaches where issues are devolved to the Welsh Government. It does not cover areas devolved to the Scottish Government. These fall within the mandate of the Scottish Human Rights Commission.

contained in them, and has publicly stated its commitment to retain its 'leading role in protecting and advancing human rights'.[2]

Socio-economic rights should provide a guarantee of dignity and justice for everyone, particularly those most at risk of poverty and material deprivation. We are calling on the UK Government to live up to its commitments and take concerted action in line with our, and the UN's, recommendations.

Status of socio-economic rights in domestic legislation, and access to justice (ICESCR Article 2)

The UK Government has an obligation to make socio-economic rights a reality, allocate enough resources to them and guarantee access to justice where those rights are violated. However, many economic and social rights have not been incorporated into law and policy, which means when breaches occur there is no effective remedy available. The UK's planned withdrawal from the European Union also poses risks to the protection and fulfilment of socio-economic rights.

Access to justice is an essential element of economic and social rights. The UN made clear that legal assistance needs to be made available where those rights have been breached and needs to be free for those who are unable to pay. However, access to justice is beyond reach for many people in Great Britain, especially children, disabled people and ethnic minorities, because of changes to legal aid and employment tribunal fees (until 2017). The objective of these reforms was to discourage unnecessary litigation. This has not been met. In family law proceedings, for example, the number of people attending publicly funded mediation fell, while the number of people attempting to represent themselves in family courts rose. The employment tribunal fees scheme has been ruled unlawful by the Supreme Court, but the UK Government has not ruled out reintroducing up-front fees to access employment tribunals in the future.

To date, the UK Government has failed to show why its tax, policy and legal reforms since 2010 were necessary and fair, and how they align with human rights standards. It has not demonstrated that it meets the criteria for austerity measures set out by the UN: such measures must be temporary, necessary, proportionate and not discriminatory, and respect the core content of all rights.

[2] Department for Exiting the European Union (2017), 'Legislating for the United Kingdom's withdrawal from the European Union'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf [accessed: 20 February 2018].

Our key recommendations

We recommend the UK Government:

- Makes socio-economic rights a reality in our domestic legislation as the UK leaves the European Union.
- Understands the implications of all new policies and legislation by undertaking human rights impact assessments. This will lead to better decision-making and prevent indirect discrimination.
- Avoids regression in socio-economic rights. If regressive measures have to be taken for economic reasons, demonstrate that they are temporary, necessary, proportionate and non-discriminatory, and that they do not remove minimum levels of protection. This is what the UK Government committed to when it ratified ICESCR.
- Implements the duty on public authorities to take account of the impact of their decisions on socio-economic inequalities under Part 1 of the Equality Act 2010 in England and Wales.
- Fully addresses its equality and human rights obligations when conducting its forthcoming review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), by carrying out:
  - an assessment of the impact of LASPO on groups sharing protected equality characteristics, and
  - an assessment of the impact of the changes on people's rights as protected by ICESCR and other UN human rights treaties.
- Reaffirms the commitment to ensuring equal access to justice for all by:
  - considering bringing areas of law back into the scope of legal aid, if reductions in that scope are found to have had a disproportionate impact on particular groups, or on the enjoyment of particular rights, and
  - ensuring no new barriers to accessing employment tribunals are introduced in light of the recent Supreme Court judgment that found the fee regime to be unlawful.
- Considers ratifying the Optional Protocol to ICESCR to allow for complaints directly to the UN, in order to strengthen access to justice as an essential element of the rights stipulated by ICESCR. By allowing individual communications with the UN, victims of alleged economic, social and cultural rights violations who are not able to access an effective remedy in the domestic system would be provided with an option for redress.

The rights to an adequate standard of living and to social security (Articles 9 and 11)

The reforms of the social security system since 2010 may present the most significant threat to the implementation of socio-economic rights in Great Britain. In many cases, the levels of social security entitlements are not sufficient to cover the basic cost of living. In January 2018, the Council of Europe's Committee of Social Rights found the UK to be in breach of the right to social security on the grounds that rates are well below the poverty line. Conditionality and sanctions in relation to social security entitlements have detrimental effects on claimants, especially on their mental health. The reforms have had a particularly negative impact on disabled people, families with more than two children, lone parents and ethnic minority households, who are already more likely to live in poverty. An inquiry by the UN Committee on the Rights of Persons with Disabilities in the UK, in 2016, into disabled people's rights to live independently and be included in the community, to an adequate standard of living and social protection, and to work and employment, found 'reliable evidence that the threshold of grave or systematic violations' had been met.[3]

Over one fifth of the UK population is living in relative poverty (after housing costs). Relative child poverty has increased since 2010, and is currently at just over 29 per cent (after housing costs). Changes to social security have contributed to an additional 400,000 children living in relative poverty in 2016 compared with 2012–13. Additionally, socio-economic inequalities are rising, which has a severe negative impact on people's enjoyment of their economic and social rights.

Our key recommendations

We call on the UK Government to:

- Commit to undertaking cumulative impact assessments of all tax and social security policies going forward, in line with the UN recommendations.
- Rethink those policies that have contributed to increased levels of poverty and inequality and consider what it can do to mitigate the impact of policy decisions taken in the past, in line with the requirements of the Public Sector Equality Duty.

[3] UN Committee on the Rights of Persons with Disabilities (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention', CRPD/C/15/R.2/Rev.1, para. 113. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2F15%2FR.2%2FRev.1&Lang=en [accessed: 21 February 2018].

- Monitor the effect the four-year freeze on social security entitlements has on the rights to an adequate standard of living and social security, especially for individuals in, or at risk of, poverty, and make sure this is in line with children's best interests.
- Set out a clear plan for identifying where new Work-related Activity Group claimants (under the Employment and Support Allowance) have additional, unavoidable living costs relating to their condition, and ensure a financial support package is in place.
- Examine the factors behind the higher levels of poverty amongst individuals and groups at risk, such as children, disabled people and refugees and asylum seekers, and develop a strategy to address these factors.
- Reintroduce income poverty-related targets for the eradication of child poverty and establish clear accountability mechanisms, including binding targets, with a set timeframe and measurable indicators, as part of a comprehensive child poverty strategy, ensuring that the best interests of the child are taken as a primary consideration.

The rights to work, and to just and favourable conditions of work (Articles 6 and 7)

Rights at work are not adequately protected for everyone in Great Britain. Though employment rates are at a record high, low pay, underemployment, job insecurity due to precarious self-employment and zero-hours contracts, and the high cost of housing and childcare continue to present significant challenges to those seeking to escape poverty. This is despite some improvements, such as reductions in involuntary part-time work, underemployment and temporary employment rates in recent years.

Working conditions in atypical employment arrangements give rise to concern: increased flexibility is often associated with insecurity, lower pay and loss of some employment protections. For example, the number of agency workers is rapidly increasing. Agency workers tend to be younger, lower qualified and from ethnic minority backgrounds.

Women, some ethnic minority groups and disabled people are most likely to be in low-paid, part-time work with few opportunities for progression. In spite of increasing Government efforts to tackle the disability employment gap, significant employment gaps persist, especially for disabled people due to several factors, including the lack

of reasonable adjustments, difficulties in accessing transport and the workplace, and negative attitudes towards disabled people.

On a positive note, gender pay gap reporting requirements for employers were introduced in April 2017, and the new National Living Wage for those aged 25 and over has led to the largest fall in low pay in four decades.

Our key recommendations

We recommend the UK Government:

- Legislates to extend the right to request flexible working to apply from day one in all jobs, unless there is a genuine business reason that means this is not possible.
- Ensures better access of workers as well as employers to information about employment rights and employer responsibilities.
- Updates and clarifies the legislative framework on workers' rights, as atypical work risks undermining existing rights and may undermine the Government's commitments to the rights set out in the international human rights framework.
- Effectively enforces the National Living Wage, and monitors and reports on its impact on women and young people, and considers extending the National Living Wage to those aged under 25 and increasing the level at which it is paid, so that it constitutes a Living Wage adequate to meet costs of living across the UK.
- Continues to monitor access to work for groups with comparatively low employment rates and high unemployment, and effectively addresses the causes of those differences.
- Consults with employers on the most effective way of extending the gender pay gap reporting regulations to ethnicity and disability pay gaps.
- Evaluates how well employment support programmes help disabled people find and stay in work, and introduces interim targets and a statutory reporting requirement on its commitment to a target of one million more disabled people in work over the next ten years.
- Makes 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.

1. Introduction

1.1 The role of the Equality and Human Rights Commission

The Equality and Human Rights Commission (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'.[4] The UK Parliament has also given the EHRC responsibilities to assess and report on Great Britain's progress in realising the human rights in the treaties it has ratified.[5] The EHRC has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations. We work with other NHRIs in the UK and liaise with Government departments and agencies to fulfil this role.

1.2 Aim and scope of report

In June 2016, the United Nations Committee on Economic, Social and Cultural Rights (UN CESCR) examined the UK's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Concluding Observations of UN CESCR[6] covered a wide range of areas in which the UK is required to make improvements – to the maximum of its available resources – in order to better fulfil its obligation to progressively realise economic, social and cultural rights, without discrimination of any kind (ICESCR Art. 2).

This report aims to provide an independent perspective on the UK and Welsh governments' progress in implementing the UN's recommendations in four key areas

[4] Section 9(1)(b) of the Equality Act 2006. Available at: http://www.legislation.gov.uk/ukpga/2006/3/section/9 [accessed: 16 December 2017].
[5] Section 9(2) of the Equality Act 2006. Available at: http://www.legislation.gov.uk/ukpga/2006/3/section/9 [accessed: 16 December 2017].
[6] UN CESCR (2016), 'Concluding Observations on the sixth periodic report of the United Kingdom', E/C.12/GBR/CO/6. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GBR/CO/6&Lang=En [accessed: 03 December 2017] (Hereafter: 'UN CESCR (2016), 'Concluding Observations').

in Great Britain (GB), England and Wales, with a view to driving forward progress following the 2016 examination. The four areas are:

- the enhancement of the status of socio-economic rights in domestic law and policy
- rights to an adequate standard of living and social security
- rights to and at work, and
- access to justice.

Where relevant, we also refer to the Sustainable Development Goals (SDGs), adopted in September 2015 by all UN member states.[7]

EHRC is one of the UK's NHRIs. This submission covers GB for issues reserved to Westminster, and notes different outcomes and approaches where issues are devolved to the Welsh Government. It does not cover areas devolved to the Scottish Government.[8]

In August 2015, we submitted a report on the implementation of ICESCR in the UK to the UN CESCR. The report covered a wide range of issues including adequate housing, equal pay gaps, education, and violence against women and girls.[9]

We provided an update report in April 2016, in advance of UN CESCR's examination of the UK Government's record on economic and social rights.[10] Our 2016 report covered the state of socio-economic rights in GB in relation to:

[7] The Sustainable Development Goals are set out in the '2030 Agenda', adopted in 2015, and replaced the Millennium Development Goals. The new Agenda covers a set of 17 Sustainable Development Goals and 167 targets to reach by 2030. It will serve as the overall framework to guide global and national development action for the next 15 years. While the Goals are global in scope, each State is expected to work towards achieving them domestically and contribute towards their implementation overseas. The UN adopted a set of indicators to assess progress against. In the UK, oversight sits with the Department for International Development. Its Policy Paper 'Agenda 2030 – Delivering the Global Goals' (March 2017; https://www.gov.uk/government/publications/agenda-2030-delivering-the-global-goals; accessed: 22 December 2017) outlines UK Government policy and activity against each of the Goals. However, the UK has neither adopted the UN's set of indicators nor set out its own indicators for measuring progress. The Office for National Statistics (ONS) will report on progress in England (first progress report published in Nov. 2017: https://www.ons.gov.uk/economy/environmentalaccounts/articles/sustainabledevelopmentgoalstakingstockprogressandpossibilities/november2017; with data available for 41 per cent of the 232 global indicators: https://sustainabledevelopment-uk.github.io/). Counterparts in Scotland and Wales are doing the same; ONS will bring together data from across the four nations of the UK. The UK Government has committed to deliver a voluntary report to the UN High-level Political Forum for Sustainable Development in 2019.

[8] These fall within the mandate of the Scottish Human Rights Commission.

[9] EHRC (2015), 'Socio-economic rights in the UK: submission to the UN Committee on Economic, Social and Cultural Rights on the UK's implementation of the ICESCR'. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social [accessed: 03 October 2017].

- their incorporation in domestic law and policy
- an adequate standard of living and social security
- access to work and working conditions
- access to justice
- access to higher education, and
- health.

1.3 Key developments since June 2016

Following the European Union (EU) referendum in June 2016, one week after the UK's last review by UN CESCR, there continues to be significant uncertainty regarding the future applicability of existing human rights protections that derive from EU law in the UK, including those in relation to non-discrimination, family life, education, work, social security, health care and the rights of the child.[11] We are of the view that the UK's exit from the EU provides an opportunity to enhance the status in domestic law of international human rights treaties to which the UK is a party, such as ICESCR. However, there has been no indication from the UK Government that this is under consideration.

In May 2017, the third Universal Periodic Review (UPR) of the UK took place.[12] The UK received 227 recommendations, including several relevant to ICESCR, for example, in relation to access to social security by particular groups and the impact of social security reforms, the eradication of child poverty, the gender pay gap, and the adoption of a national human rights action plan.[13] In September 2017, the UK Government gave its official response to the UPR, in which it supported 96 of those

[10] EHRC (2016), 'Socio-economic rights in the UK: updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR'. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social [accessed: 3 October 2017] (Hereafter: EHRC (2016), 'Socio-economic rights in the UK').
[11] For example, Article 7 of the Charter of Fundamental Rights of the European Union on respect for family life, Article 14 on the right to education, Article 15 on the freedom to choose an occupation and right to engage in work, Article 21 on non-discrimination, Article 24 on the rights of the child, Article 25 on the rights of the elderly, Article 26 on the rights of disabled people, Articles 27-33 on the rights at work, Article 34 on social security and social assistance, and Article 35 on health care.
[12] The UPR is a peer-review process set up by the UN Human Rights Council in 2006, in which the human rights situation in every country is assessed every five years by its fellow UN member states.
[13] UN Human Rights Council (2017), 'Report of the Working Group on the Universal Periodic Review - United Kingdom of Great Britain and Northern Ireland'. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/9 [accessed: 02 October 2017]. For example, paras. 134.79, 134.163, 134.164, 134.166, 134.168, 134.171, 134.175, 134.176, 134.177, 134.191, and 134.192.

recommendations (42 per cent).[14] This is significantly lower than the global average acceptance rate of 73 per cent, and a decline from the UK's previous UPR when the UK supported 54 per cent of recommendations.[15] The recommendation to increase efforts to eradicate child poverty and assess the cumulative impact of social security reforms on children from disadvantaged families was rejected by the UK Government which stated that '[d]ue to methodological and modelling limitations, the Government does not publish such cumulative analysis for protected characteristics'.[16] We have shown that it is possible to carry out a cumulative impact assessment and has called on the Government to conduct one ahead of the 2018 budget, and to reconsider existing policies that are contributing to negative financial impacts for those who are already most disadvantaged.[17] Among the other recommendations not supported by the UK Government was also one to adopt a national action plan on human rights. The Government stated that it had no such intentions, but preferred to 'drive forward work in specific areas'.[18]

We support the Office of the UN High Commissioner's (OHCHR) call for a national mechanism for comprehensive follow-up and reporting in relation to international and regional human rights mechanisms and treaty obligations.[19] It is our view that detailed and time-bound implementation plans, based on broad and meaningful stakeholder consultations are necessary in order to consistently implement the UN's recommendations.[20]

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[14] UN Human Rights Council (2017), 'Annex to the response to the recommendations received on 4 May 2017'. Available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbindex.aspx [accessed: 3 October 2017].

[15] The EHRC's page on UPR is at https://www.equalityhumanrights.com/en/our-human-rights-work/universal-periodic-review. Full documentation relating to the UN process can be found at http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBIndex.aspx. Figures on acceptance rates are from http://www.universal-rights.org/blog/by-invitation/states-racing-top-third-cycle-upr-view-uks-equality-human-rights-commission/ [all accessed: 29 December 2017].

[16] UN Human Rights Council (2017), 'Annex to the response to the recommendations received on 4 May 2017', p. 86 on Rec. 134.192. Available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbindex.aspx [accessed: 3 October 2017].

[17] EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings'. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].

[18] UN Human Rights Council (2017), 'Annex to the response to the recommendations received on 4 May 2017', p. 32 on Rec. 134.79. Available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbindex.aspx [accessed: 3 October 2017].

[19] OHCHR (2017), 'Letter to the UK Secretary of State for Foreign and Commonwealth Affairs', 23 October 2017. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session27/GB/UKHCLetter.pdf [accessed: 29 December 2017].

[20] See also http://www.universal-rights.org/blog/by-invitation/states-racing-top-third-cycle-upr-view-uks-equality-human-rights-commission/; https://www.ejiltalk.org/should-commitments-to-implementation-factor-into-elections-to-the-human-rights-council/#comments [accessed: 29 December 2017]. For practical guidance for states on national mechanisms for reporting and follow-

In November 2016, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) published a report on its inquiry into the UK.[21] The inquiry examined the cumulative impact of changes to law and policy in the UK since 2010 on disabled people's[22] rights to live independently and be included in the community (CRPD Article 19), to an adequate standard of living and social protection (Article 28), and to work and employment (Article 27). The Committee concluded that there was reliable evidence of grave or systematic violations of the rights of disabled people under these Convention articles in the UK, and made a number of recommendations to the UK Government. The UK Government rejected the inquiry's conclusions. The subsequent August 2017 review of the UK's compliance with the CRPD repeated these concerns and made recommendations under numerous other articles relevant to the socio-economic rights of disabled people. The UK Government has not yet responded to these recommendations.

Overall, there has been limited progress on implementation of the full set of recent UN recommendations concerning socio-economic rights. In December 2016, we wrote to the Ministry of Justice (MoJ), the lead department on ICESCR.[23] In its response in January 2017, the MoJ stated that it did not intend to publish a progress report regarding the implementation of the Concluding Observations before its next (seventh) state report to UN CESCR is due in June 2021.[24] Moreover, it made clear that there were no plans to establish a national human rights action plan.

Since June 2016, the UK and Welsh governments have, however, made progress in some individual areas relating to ICESCR, namely:

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up, see OHCHR (2016), 'National Mechanisms for Reporting and Follow-up; A practical guide to effective state engagement with international human rights mechanisms'. Available at: http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf [accessed: 29 December 2017].

[21] CRPD Committee (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention'. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f15%2fR.2%2fRev.1&Lang=en [accessed: 29 December 2017].

[22] 'Disabled people' includes those with 'physical or mental health conditions or illnesses' lasting or expected to last 12 months and which limit day-to-day activities. ONS (2016), Annual Population Survey dataset on Nomis, January-December 2015. Available at: https://www.nomisweb.co.uk/articles/948.aspx [accessed: 18 December 2017].

[23] EHRC (2016), Letter to Secretary of State Liz Truss, 1 December 2016. Available at: https://www.equalityhumanrights.com/sites/default/files/letter-to-liz-truss-un-committee-on-economic-social-and-cultural-rights-icescr-1-december-2016.pdf [accessed: 29 December 2017].

[24] MoJ (2017), Letter to Equality and Human Rights Commission, 24 January 2017. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social [accessed: 29 December 2017].

- The findings of the UK Government's Race Disparity Audit, launched in 2016 following the publication of the EHRC's report 'Healing a divided Britain',[25] were published in October 2017 in the form of an 'Ethnicity Facts and Figures' website.[26] The new website helps to demonstrate some of the entrenched inequalities which continue to be experienced by people from different ethnic backgrounds, including in relation to important aspects of health, education, employment and housing. Because the Government has committed to updating the data on a regular basis, the website has the potential to play a useful function for policy-makers and service providers by benchmarking performance. However, for this potential to be realised, issues regarding the completeness and comparability of the data will need to be addressed. The results of the Audit emphasise the need for the UK Government to put in place a comprehensive, coordinated and long-term strategy which recognises the inter-relationship between race and socio-economic factors, gender, age and disability, and establishes clear ownership, accountability and governance arrangements.[27]
- The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 for private and voluntary sector employers in the UK came into force in April 2017. They require all private and voluntary sector employers with 250 or more employees to publish prescribed information about their gender pay gap results. Similar requirements have been introduced for public sector employers. In October 2017, the Prime Minister announced a new drive to improve workplace equality (see section 4.4.1).[28]
- The introduction of the National Living Wage in the UK in April 2016 gives the lowest-paid a salary rise of approximately £600 a year.[29] However, it only applies

[25] EHRC (2016), 'Healing a divided Britain'. Available at: https://www.equalityhumanrights.com/en/race-report-healing-divided-britain [accessed: 9 January 2018].
[26] UK Government (2017), 'Ethnicity Facts and Figures'. Available at: https://www.ethnicity-facts-figures.service.gov.uk/ [accessed: 29 December 2017]. The website contains ethnicity data held by UK Government departments. As a result, data on Scotland, Wales and Northern Ireland data is included in areas that are not devolved.
[27] The EHRC, together with the Runnymede Trust, Operation Black Vote, the Black Training and Enterprise Group and Business in the Community, have set out the key actions which they consider the Government needs to take in five priority areas – health, employment, education, criminal justice and housing – in order to address the inequalities. EHRC (2017), 'A Roadmap to Race Equality'. Available at: https://www.equalityhumanrights.com/en/publication-download/roadmap-race-equality [accessed: 10 November 2017].
[28] UK Government (2017), 'Prime Minister announces new drive to end the gender pay gap'. Available at: https://www.gov.uk/government/news/prime-minister-announces-new-drive-to-end-the-gender-pay-gap [accessed: 22 December 2017].
[29] HM Treasury (2017), 'Autumn Budget 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf [accessed: 22 December 2017].

to those aged 25 and over and is considered by some not to be sufficient to cover living costs in some parts of the UK (see section 4.3).[30]

- The UK Government published its strategy 'Improving Lives – The Future of Work, Health and Disability' in November 2017 to facilitate access to employment for disabled people (see section 4.4.2).[31]
- The Welsh Government published a Strategic Equality Plan and Equality Objectives 2016–2020. The plan includes a number of actions to address and reduce the causes of employment, skills and pay inequalities, and reduce and mitigate the impacts of poverty and improve living conditions, particularly for disabled people, lone parents, certain ethnic minority groups and families with disabled children (see section 4.4.1).[32]

Since June 2016, some challenges have emerged or continue to persist in the realisation of economic and social rights. New evidence has emerged that:

- Recent social security reforms have had a disproportionate adverse effect on individuals sharing protected characteristics.[33] Disabled people, families with more than two children, lone parents and ethnic minority households are more likely to live in poverty and material deprivation[34] (see sections 3.2 and 3.3).
- Levels of relative child poverty have been increasing as a result of social security changes in recent years,[35] [36] and issues of in-work poverty persist[37] (see sections 3.3 and 3.4).

[30] KPMG (2017), KPMG Living Wage Research 2017. Available at: https://home.kpmg.com/uk/en/home/insights/2017/11/kpmg-living-wage-research-2017.html [accessed: 22 December 2017].
[31] Department for Work and Pensions (DWP) and Department of Health (DH) (2017), 'Improving Lives - The Future of Work, Health and Disability'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF [accessed: 3 November 2016].
[32] Welsh Government (2016), 'Strategic Equality Plan and Equality Objectives 2016-2020'. Available at: http://gov.wales/docs/dsjlg/publications/equality/161214-strategic-equality-plan-en.pdf [accessed: 22 December 2017].
[33] EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings'. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].
[34] Material deprivation is a measure of what households can afford, and so better reflects the standard of living than income alone.
[35] In the UK, a household is considered in relative poverty if its income is below 60 per cent of the median household income. A household is considered in absolute poverty if its income is below 60 per cent of the median in a base year, uprated for inflation. Currently, the base year used in UK statistics is 2010/11.
[36] Joseph Rowntree Foundation (2017), 'UK Poverty 2017'. Available at: https://www.jrf.org.uk/report/uk-poverty-2017 [accessed: 19 December 2017]. See also Hood, A. and Waters, T. (2017), 'Living standards, poverty and inequality in the UK: 2016–17 to 2021–22', Joseph Rowntree Foundation and Institute for Fiscal Studies. Available at: https://www.jrf.org.uk/report/living-standards-poverty-and-inequality-uk-2016-17-2021-22 [accessed: 29 September 2017]; Children's

- Working conditions in atypical employment arrangements give rise to concern: increased flexibility is often associated with insecurity, lower pay and loss of some employment protections[38] (see section 4.2).
- The gap between family income and living expenses is widening[39] (see section 4.3).
- Barriers in access to justice persist due to restrictions in the scope of legal aid, with a disproportionate impact on disadvantaged groups[40] (see section 5.1).

Rights Alliance for England (2017), 'State of Children's Rights in England 2017 – Briefing 3 on Poverty and Homelessness'. Available at: http://crae.org.uk/media/124456/B3_CRAE_SCR2017_POVERTY_D.pdf [accessed: 2 January 2018].

[37] McBride,J., Smith, A., and Mbala, M. (2018), 'You end up with nothing': The experience of being a statistic of 'in-work poverty' in the UK, *Work, Employment and Society 2018*, vol. 32, no. 1, pp.210-218.

[38] Judge, L. and Tomlinson, D. (2016), 'Secret Agents. Agency workers in the new world of work', Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/ [accessed: 18 December 2017]; ONS (2016), 'Contracts that do not guarantee a minimum number of hours'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016 [accessed: 18 December 2017]; New Economics Foundation (2016), 'Wellbeing at Work. A Review of Literature', p. 25. Available at: http://b.3cdn.net/nefoundation/71c1bb59a2ce151df7_8am6bgr2q.pdf [accessed: 18 December 2017]; TUC (2016), 'Living on the Edge. The rise of job insecurity in Britain'. Available at: https://www.tuc.org.uk/economic-issues/labour-market/living-edge [accessed: 18 December 2017].

[39] Joseph Rowntree Foundation (2017), 'Households below a Minimum Income Standard: 2008/09 - 2015/16'. Available at: https://www.jrf.org.uk/report/households-below-minimum-income-standard-200809-201516 [accessed: 31 January 2018]. Children's Rights Alliance for England (2017), 'State of Children's Rights in England 2017 – Briefing 3 on Poverty and Homelessness'. Available at: http://crae.org.uk/media/124456/B3_CRAE_SCR2017_POVERTY_D.pdf [accessed: 2 January 2018]; Baxter, D. and Fahnbulleh, M. (2017), 'The 'not quite managings': The depth of income crisis in the UK', Institute for Public Policy Research. Available at: http://www.ippr.org/publications/the-not-quite-managings-the-depth-of-income-crisis-in-the-uk [accessed: 18 December 2017]; Hirsch, D. (2017), 'The cost of a child in 2017', Child Poverty Action Group. Available at: http://www.cpag.org.uk/sites/default/files/TheCostofaChildin2017.pdf [accessed: 29 September 2017].

[40] The Law Society (2017), 'Access Denied? LASPO four years on: a Law Society review', pp. 24-29. Available at: http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/ [accessed: 10 November 2017]; Amnesty International (2016), 'Cuts that hurt: The impact of legal aid cuts in England on access to justice'. Available at: https://www.amnesty.org/en/documents/eur45/4936/2016/en/ [accessed: 29 September 2017].

2. Enhancing the status of socio-economic rights in domestic law and policy

UN CESCR, Concluding Observations 2016, paragraphs 6 and 23:

'The Committee […] urges the State party to fully incorporate the Covenant rights into its domestic legal order and ensure that victims of violations of economic, social and cultural rights have full access to effective legal remedies.'

'The Committee recommends that the State party bring into force the relevant provisions of the Equality Act that refer to the public authorities' duty on socio-economic disadvantage, as well as to the prohibition of intersectional discrimination, in order to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights.'

2.1 Introduction

Neither the UK nor Welsh Government has directly incorporated ICESCR into domestic law and policy. Thus, neither its general principles nor its substantive provisions can be enforced by domestic courts. An enhanced status for socio-economic rights would lead to improvements in rights protections across a number of areas, including the rights to social security, an adequate standard of living, health and education. In the absence of any formal status for many socio-economic rights in domestic law in the UK, the Government has introduced policy and legislation which does not fully comply with ICESCR, for example the Welfare Reform and Work Act 2016.[41] This concern has also been voiced by a number of independent authoritative bodies.[42] Groups which have been disproportionately impacted by changes to UK

[41] See also EHRC (2016), 'Socio-economic rights in the UK', p. 11.
[42] Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and

Government policy in these areas include children, women, disabled people and ethnic minorities,[43] but other protected and at risk groups would also benefit from enhanced protections for socio-economic rights, including groups of people who are disadvantaged by their socio-economic status.

2.2 The socio-economic duty in England

UN CESCR recommended that the UK commence the public sector duty regarding socio-economic inequalities, enshrined in Section 1 of the Equality Act (EA) 2010.[44] [45] We share the UN CESCR's concern over the status of treaty rights in the UK and regrets that the socio-economic duty has not yet been brought into effect in England and Wales. Implementing Section 1 of the EA 2010 would contribute to tackling existing disadvantages and inequalities, and protecting socio-economic rights for all people in the UK. This would be in line with the UK Government's commitment to the Sustainable Development Goals, in particular Goal 10 on reducing inequalities in income as well as those based on age, sex, disability, race, ethnicity, origin, religion or economic or other status. An Early Day Motion on the commencement and enforcement of the socio-economic duty in England was tabled in November 2017 by Harriet Harman MP.[46]

The negative impacts of the cuts in social security entitlements on people sharing protected characteristics, for example, disabled people's rights, could have been

human rights; and the Special Rapporteur on the right to food, Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016. Available at: https://www.equalityhumanrights.com/en/file/20686/download?token=kysE2dse [accessed: 22 December 2017]; UN CESCR (2016), 'Concluding Observations', paras. 18, 19, 40.

[43] Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the right to food, Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, pp. 9, 11. Available at: https://www.equalityhumanrights.com/en/file/20686/download?token=kysE2dse [accessed: 22 December 2017]; UN CESCR (2016), 'Concluding Observations', paras. 18, 19, 40.

[44] Section 1(1) of the Equality Act 2010 provides that '[a]n authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'.

[45] UN CESCR (2016), 'Concluding Observations', para. 23.

[46] The Early Day Motion calls on Parliamentarians to 'note the recommendations of the 2016 Concluding Observations of the UN CESCR to bring into force the outstanding provisions of the Equality Act 2010 and commends the efforts of some councils to implement the Socio-economic Duty (Part 1 of the Equality Act 2010) in their budgets and strategic planning; welcomes the Scottish Government's decision to commence the Socio-economic Duty; encourages the Welsh Government to make use of the powers of the Wales Act 2017 to bring the Duty to life; and calls on the Government to bring Section 1 of the Equality Act into effect'. Available at: http://www.parliament.uk/edm/2017-19/591 [accessed: 22 December 2017].

analysed and mitigated if decision-makers had paid due regard to the desirability of reducing socio-economic disadvantage when exercising their functions. In our evidence to UN CESCR in 2016, we highlighted the relationship between socio-economic status and certain groups covered by the EA 2010 ('protected characteristics').[47] For example, families headed by ethnic minorities, and families where at least one member is disabled are more likely to live in relative and absolute poverty compared with families headed by a White person and families without a disabled member.[48] The recent 'State of the nation' report on social mobility in GB published by the Social Mobility Commission[49] confirms stark socio-economic inequalities. In England, social mobility gaps were found to open up at an early age, with disadvantaged children 14 percentage points less likely to be 'school-ready' at age five in 'coldspots' (places that do not offer good opportunities for social progress) than in 'hotspots'. Disadvantaged young people in GB were found to be almost twice as likely not to be in education, employment or training a year after GCSEs. The interrelation between poverty and socio-economic inequality and disadvantage in the UK has also been confirmed by recent analysis by the End Child Poverty coalition and Oxfam.[50] Against this background, we reiterate our view that impact assessments facilitate better, human rights-compliant decision-making, preventing indirect discrimination against persons sharing protected characteristics.

2.3 The socio-economic duty in Wales

Section 45 of the Wales Act 2017, if commenced,[51] would amend the arrangements for the commencement of Part 1 of the EA 2010. The power to commence the socio-economic duty will be devolved to the Welsh Ministers so far as it relates to public

[47] Section 4 of the Equality Act 2010. Available at: https://www.legislation.gov.uk/ukpga/2010/15/section/4 [accessed: 20 February 2018].
[48] EHRC (2016), 'Socio-economic rights in the UK', p. 27.
[49] Social Mobility Commission (2017), 'Social mobility in Great Britain: fifth state of the nation report', p. 1. Available at: https://www.gov.uk/government/news/social-mobility-in-great-britain-fifth-state-of-the-nation-report [accessed: 18 December 2017].
All the Social Mobility Commission's members resigned in December 2017, claiming that they were tasked with an agenda that the Government was not committed to (https://www.theguardian.com/commentisfree/2017/dec/02/alan-milburn-government-not-comitted-to-social-mobility; accessed: 19 December 2017).
[50] End Child Poverty coalition (2018), 'More than half of children now living in poverty in some parts of the UK'. Available at: http://www.endchildpoverty.org.uk/more-than-half-of-children-now-living-in-poverty-in-some-parts-of-the-uk/ [accessed: 31 January 2018]; Oxfam (2017), 'Double Trouble – A review of the relationship between UK poverty and economic inequality'. Available at: https://policy-practice.oxfam.org.uk/publications/double-trouble-a-review-of-the-relationship-between-uk-poverty-and-economic-ine-620373 [accessed: 31 January 2018].
[51] The Welsh Government has indicated that it believes a similar duty is already included in the Well-being of Future Generations (Wales) Act 2015.

bodies exercising devolved or mainly devolved functions. The Welsh Government has, however, no current plans to introduce the duty and has indicated that it believes a similar duty is already included in the Well-being of Future Generations (Wales) Act 2015.

The introduction of the Well-being of Future Generations (Wales) Act 2015 aims to improve the social, economic and cultural well-being of Wales. It places a duty on public bodies to meet the well-being goals which include a 'more equal Wales' and a 'prosperous Wales',[52] and will be monitored by the Future Generations Commissioner for Wales. While addressing socio-economic inequalities is a key part of the Act, it remains to be seen how this will play out in practice.

2.4 Socio-economic rights in the context of constitutional change

Proposals to reform the Human Rights Act 1998 (HRA) and introduce a Bill of Rights[53] will be revisited once the UK has left the EU.[54] The EHRC holds the position that changing the HRA would have significant and constitutional consequences, and should only be considered as part of a broad and participatory process that advances human rights protections. Any change to the legal framework must not diminish the protections currently afforded by the HRA. We agree with UN CESCR that any new human rights legislation should be 'aimed at enhancing the status of human rights, including economic, social and cultural rights in the domestic legal order, and provide effective protection of those rights across all jurisdictions of the State party'.[55] This is particularly important given the UK's exit from the EU and the potential reductions in protections for human rights that may result.

We have developed a five point plan which sets out a positive vision for the kind of country we want to be after we have left the EU. The five priorities are:

[52] Well-being of Future Generations (Wales) Act 2015, Section 4 – the well-being goals. Available at: http://www.legislation.gov.uk/anaw/2015/2/part/2/crossheading/sustainable-development-and-wellbeing-duty-on-public-bodies/enacted [accessed: 31 January 2018].
[53] Cabinet Office and Prime Minister's Office (2015), 'Queen's Speech 2015', p. 75. Available at: https://www.gov.uk/government/publications/queens-speech-2015-background-briefing-notes [accessed: 3 December 2017].
Both the Welsh and Scottish governments have voiced opposition to proposals to repeal the Human Rights Act. See https://news.gov.scot/news/first-ministers-of-scotland-and-wales-meet [accessed: 18 December 2017].
[54] Conservative Party (2017), 'Forward, together: Our plan for a stronger Britain and a prosperous future'. Available at: https://www.conservatives.com/manifesto [accessed: 27 July 2017]; https://www.politicshome.com/news/uk/home-affairs/justice-system/house/house-magazine/83590/liz-truss-%E2%80%9Cprisons-can-be-difficult [accessed: 19 December 2017].
[55] UN CESCR (2016), 'Concluding Observations', para. 10.

1. Protecting Parliament's role in scrutinising the UK's equality and human rights legal framework.
2. Retaining the UK's equality and human rights legal framework as we leave the EU.
3. Ensuring the UK is a global leader on equality and human rights.
4. Protecting the UK's equality and human rights infrastructure.
5. Promoting the UK as an open and fair place to live and do business.

The European Union (Withdrawal) Bill was introduced in the UK Parliament on 13 July 2017. The White Paper on the Bill stated that: 'all the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU'.[56] However, in its current form, the Bill does not give legislative effect to these assurances. Additionally, the EU Charter on Fundamental Rights (CFR) will not be retained, which could result in a reduction in legal rights and domestic remedies. Protections relevant to socio-economic rights – such as the right to dignity (CFR Art. 1), the right to non-discrimination (Art. 21), the rights of the child (Art. 24), the right to fair and just working conditions (Art. 31), the right to social security (Art. 34), and the right to effective remedy (Art. 47) – do not have equivalent protection in UK law and are at risk of being lost.[57] We have recommended a number of amendments to the Bill to achieve the Government's aim of non-regression.[58]

2.5 Recommendations

- In view of the anticipated forthcoming constitutional changes as the UK leaves the EU, we reiterate our recommendation that the UK Government should consider and publish options for enhancing the status of the rights enshrined in ICESCR in domestic law. These options should include consideration of access to domestic remedy for breaches of ICESCR, a mechanism for scrutiny of policy, legislation and budgetary measures, and mechanisms to hold decision-makers to account for breaches of ICESCR.

[56] Department for Exiting the European Union (2017), 'Legislating for the United Kingdom's withdrawal from the European Union', p. 16. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf [accessed: 18 December 2017].
[57] EHRC (2018), 'Brexit and the EU Charter of Fundamental Rights: our concerns'. Available at: https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union-0 [accessed: 07 February 2018].
[58] For further information see https://www.equalityhumanrights.com/en/our-brexit-work [accessed: 7 February 2018].

- Section 1 of the EA 2010 provides a model for enhancing the status of ICESCR in domestic law. We recommend the UK and Welsh governments implement the duty on certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when taking strategic decisions on exercising their functions under Section 1.
- We recommend the UK Government ensures there is no regression in the respect, protection and fulfilment of socio-economic rights as a result of the changes introduced as the UK leaves the EU.
- We recommend the UK and Welsh governments should develop a national action plan on human rights, learning from Scotland's National Action Plan for Human Rights,[59] setting out concrete actions to implement UN recommendations.

[59] Scotland's National Action Plan for Human Rights (2013-2017). Available at: www.snaprights.info/wp-content/uploads/2016/01/SNAPpdfWeb.pdf [accessed: 18 December 2017].

3. Social security and adequate standard of living

UN CESCR, Concluding Observations 2016, paragraphs 19 and 41:

‘The Committee draws the State party’s attention to the criteria for austerity measures. Such measures must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups and respect the core content of rights. In that context, the Committee recommends that the State party review its policies and programmes introduced since 2010 and conduct a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities, that is recognized by all stakeholders.’

‘The Committee calls upon the State party to: (a) Review the entitlement conditions and reverse the cuts in social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016; (b) Restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food; (c) Review the use of sanctions in relation to social security benefits and ensure that they are used proportionately and are subject to prompt and independent dispute resolution mechanisms; (d) Provide in its next report disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low-income families and families with two or more children.’

3.1 Introduction

In 'Socio-economic rights in the UK', the we raised concerns in relation to the implementation of the obligations under ICESCR Articles 9 and 11 to ensure the rights to an adequate standard of living and to social security.[60] The reforms to the social security system since 2010 may present the biggest emerging threat to the implementation of socio-economic rights in the UK. The EHRC and a number of independent UN bodies have raised concerns as to the adverse impact of the Welfare Reform and Work Act 2016 on the enjoyment of these rights by groups sharing protected characteristics, such as children, disabled people and women.[61] UN CESCR has set out strict requirements in relation to regressive measures taken by governments; the UK Government has to demonstrate that the measures are temporary, necessary, proportionate, non-discriminatory, and that they do not undercut a core minimum level of protection.[62] Equality and human rights impact assessments that address these requirements need to be carried out. At the UK's examination in 2016, UN CESCR recommended that the UK and devolved governments undertake a cumulative impact assessment of reforms since 2010 on the enjoyment of economic, social and cultural rights by disadvantaged individuals, in particular women, children and disabled people, reverse the cuts in social security entitlements, and restore the link between rates of entitlements and the cost of living.[63] This has however not happened.[64]

A number of recent developments and evidence published since June 2016 support persistent concerns:

[60] EHRC (2016), 'Socio-economic rights in the UK', p. 15.
[61] Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the right to food, Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, pp. 9, 11. Available at: https://www.equalityhumanrights.com/en/file/20686/download?token=kysE2dse [accessed: 02 January 2017]; UN CESCR (2016), 'Concluding Observations', paras. 18, 19, 40; EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings'. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].
[62] Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012), CESCR/48th/SP/MAB/SW. Available at: http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf [accessed: 13 October 2017].
[63] UN CESCR (2016), 'Concluding Observations', para. 19.
[64] While the UK Government published a cumulative impact analysis of measures implemented since 2015/16, it does not look specifically at adverse impacts on individuals sharing protected characteristics and on the realisation of human rights norms. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661465/distributional_analysis_autumn_budget_2017.pdf [accessed: 7 February 2018].

- 22 per cent of the UK population is living in relative poverty, after accounting for housing costs. This has not changed significantly from 2014/15. Children, and those living in a family with a disabled member, are still more likely to live in low income households.[65]
- After a general decline in poverty over the last 20 years, child poverty rates have increased since 2012/13, reaching 30 per cent in 2015/16.[66] This contravenes Sustainable Development Goal 1 that the UK Government has committed to achieve, to reduce at least by half the proportion of people living in relative poverty and ensure social protection for all by 2030.

3.2 Impacts of recent social security reforms

Our November 2017 interim report found that the cumulative impact of all tax, social security entitlements and public spending reforms from 2010 to 2017 on people by 2022 is significantly regressive – particularly so for policy decisions taken in the 2015–17 Parliament (the impacts of which are, for the most part, still to come).[67] These reforms will boost the incomes of the top two deciles, while reducing incomes substantially for the bottom half of the income distribution. Overall our initial analysis shows clearly that a number of groups which share protected characteristics will be significantly adversely affected by these reforms:

- Ethnic minority households will be more negatively affected by the reforms than White households, with average losses for Black households about five per cent of net income – more than double the average losses for White households.
- Households with one or more disabled member will be significantly more adversely affected than those with no disabled members. On average, tax and social security changes on families with a disabled adult will reduce their income by about £2,500 per year; if the family also includes a disabled child, the impact will be over £5,500 per year. This compares to a reduction of about £1,000 on non-disabled families.

[65] Department for Work and Pensions (2017), 'Households Below Average Income: An analysis of the UK income distribution: 1994/95-2015/16'. Available at: https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201516 [accessed: 4 January 2018].
[66] Joseph Rowntree Foundation (2017), 'UK Poverty 2017'. Available at: https://www.jrf.org.uk/report/uk-poverty-2017 [accessed: 19 December 2017].
[67] EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings', p. 26. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].

- The more children in the household, the larger the average losses from the reforms. For households with three or more children the average cash losses are far greater, at around £5,400 per year, than for households with two children (around £2,000) or households with one child (around £1,250). Households with no children have average losses of around £500 per year.
- Lone parents lose around 15 per cent of their net income on average – almost £1 in every £6. By contrast, the losses for all other family groups are much smaller, from zero to eight per cent, especially for those that are relatively well-off.
- Women lose more than men from reforms at every income level.[68] Overall, women lose around £940 per year on average, compared with losses of around £460 for men – more than double.
- The biggest average losses by age group, across men and women, are experienced by the 65–74 age group (average losses of around £1,450 per year) and the 35–44 age group (average losses of around £1,250 per year).

A cumulative impact assessment of the changes to taxes, social security entitlements and public spending carried out by the Women's Budget Group and the Runnymede Trust (2017)[69] found that women from certain ethnic minorities in the UK have been disproportionately affected by the changes because they are more likely to be unemployed and to live in poor households with dependent children. The study confirms that the poorest 20 per cent of households have lost the most, with living standards set to drop by an average of 17 per cent by 2020, while the living standards of single mothers will drop by 18 per cent (£8,790). Black and Asian households in the poorest 20 per cent of households will experience the biggest drop in living standards; the drop currently is projected to amount to approximately 19–20 per cent.

The Trussell Trust reported in June 2017 that lone parents and their children constituted the largest number of people accessing their food banks.[70] Among those who received food bank support, 47 per cent were aged 5–11 and 37 per cent were

[68] Our cumulative impact assessment shows that even when calculated at the household level (which looks at shared income) and the individual level, women always lose more. EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings', p. 26. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].
[69] Women's Budget Group and the Runnymede Trust (2017), 'Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK'. Available at: https://www.intersecting-inequalities.com/ [accessed: 18 December 2017].
[70] Though single male households are the most common household type.

from households of three or more children. Half of all households included a disabled person.[71]

The Council of Europe's Committee of Social Rights assessed the implementation of several economic and social rights in the UK in 2017. In its Conclusions, published in January 2018, it found that the situation in the UK is not in conformity with the right to social security under the European Social Charter on the ground that the levels of the following entitlements are lower than 40 per cent of the median income, and therefore 'manifestly inadequate':

- Statutory Sick Pay
- minimum levels of the Employment and Support Allowance (ESA)
- long-term incapacity entitlements, and
- unemployment entitlements.[72]

3.3 Child poverty

The Welfare Reform and Work Act 2016 changed the way the UK Government assesses child poverty: it removed the measures and binding targets specified by the Child Poverty Act 2010,[73] and introduced a duty on Ministers to report annually on two indicators relating to children in workless households and educational attainment. It also made a statutory commitment to continue to publish annual data on households in low income. We have previously expressed concern about the repeal of the income poverty-related targets as these provided an important mechanism for accountability.[74] In 2016, UN CESCR urged the UK Government to

[71] Loopstra, R. and Lalor, D. (2017), 'Financial insecurity, food insecurity, and disability: The profile of people receiving emergency food assistance', The Trussell Trust Foodbank Network in Britain. Available at: https://trusselltrust.org/wp-content/uploads/sites/2/2017/06/OU_Report_final_01_08_online.pdf [accessed: 02 January 2018].
[72] European Committee of Social Rights (2018), Conclusions XXI-2 (2017), United Kingdom. Available at: http://hudoc.esc.coe.int/app/conversion/pdf/?library=ESC&id=CR_XXI-2_GBR_ENG&filename=CR_XXI-2_GBR_ENG.pdf [accessed: 31 January 2018].
[73] These targets comprised a reduction in the number of children living in relative poverty, absolute poverty, combined low income and material deprivation, and persistent poverty.
The Social Mobility Commission (previously Social Mobility and Child Poverty Commission) was responsible for publishing an annual report on progress made in improving social mobility and reducing child poverty in the UK, including against the targets set out in the Child Poverty Act 2010. In line with the Welfare Reform and Work Act 2016, the child poverty aspect of its remit was removed in 2016 and it was restructured as the Social Mobility Commission (https://www.gov.uk/government/organisations/social-mobility-commission/about; accessed: 20 December 2017).
[74] EHRC (2016), 'Children's Rights in the UK - updated submission', pp. 18, 19. Available at: https://www.equalityhumanrights.com/en/file/18726/download?token=mXNH6S2D [accessed: 22 December 2017].

reinstate the targets and reporting duties on child poverty, and to develop a comprehensive child poverty strategy.[75]

The Child Poverty Action Group (CPAG) has presented evidence that the combined impact of inflation and social security reforms is widening the gap between the income of families with children and what they need to cover the basic costs of living, leaving more families struggling to make ends meet.[76] The Institute for Fiscal Studies (IFS) predicts that absolute child poverty in the UK will rise from 27.5 per cent to 30.3 per cent between 2014–15 and 2021–22, despite overall absolute poverty declining slightly in the same period. The Joseph Rowntree Foundation and the IFS estimate that an additional 400,000 children in the UK were living in relative poverty in 2016 compared with 2012–13, as a result of social security changes.[77] The Department of Work and Pensions' (DWP) analysis in 2017 found that, in England, the percentage of children living in relative income poverty is just over 29 per cent, but it is 37 per cent in London, the highest anywhere in GB.[78]

The majority of children in poverty are in working families.[79] A combination of factors present significant challenges to those seeking to escape poverty, such as: low wages, part-time work, job insecurity (for example, zero-hours contracts), the high cost of housing and childcare, poor health, discrimination and low-level skills.[80]

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[75] UN CESCR (2016), 'Concluding Observations', para. 48.

[76] Hirsch, D. (2017), 'The cost of a child in 2017', Child Poverty Action Group. Available at: http://www.cpag.org.uk/sites/default/files/TheCostofaChildin2017.pdf [accessed: 29 September 2017]. CPAG calculates that in the year to April 2017, the minimum cost of raising a child to adulthood rose from £151,561 to £155,142 for couples and from £182,589 to £187,120 for lone parents (the latter having additional childcare costs). These costs are based on the minimum income standard for the UK, which researches regularly what members of the public think are the essential items that every family should be able to afford and is led by Loughborough University. For more information see www.lboro.ac.uk/research/crsp/mis-uk [accessed: 09 January 2018].

[77] Joseph Rowntree Foundation (2017), 'UK Poverty 2017'. Available at: https://www.jrf.org.uk/report/uk-poverty-2017 [accessed: 19 December 2017]. See also Hood, A. and Waters, T. (2017), 'Living standards, poverty and inequality in the UK: 2016–17 to 2021–22', Joseph Rowntree Foundation and Institute for Fiscal Studies. Available at: https://www.jrf.org.uk/report/living-standards-poverty-and-inequality-uk-2016-17-2021-22 [accessed: 29 September 2017].
See also Joint letter from the four UK Children's Commissioners to the Chancellor calling for Universal Credit roll-out to be paused for children and families, 17 November 2017. Available at: https://www.childrenscommissioner.gov.uk/2017/11/17/8416/ [accessed 31 January 2018].

[78] DWP (2017), 'Households Below Average Income 2013/14-2015/16', Table 4.16ts. Available at: https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201516 [accessed: 22 December 2017].

[79] Cribb, J., Hood, A., Joyce, R. and Norris Keiller, A. (2017), 'In-work poverty among families with children', Institute for Fiscal Studies. Available at: https://www.ifs.org.uk/uploads/publications/comms/r129_ch5.pdf [accessed: 29 September 2017].

[80] An unprecedented increase of in-work poverty in recent years has led to a situation where more than 50 per cent of all people in poverty are in working families. McBride,J., Smith, A., and Mbala, M. (2018), 'You end up with nothing': The experience of being a statistic of 'in-work poverty' in the UK, *Work, Employment and Society 2018*, vol. 32, no. 1, p. 211.

In the UK, families where two adults are in work are less likely to be in poverty. Such families are disproportionately from White ethnic backgrounds (86 per cent). The poverty rate for children varies significantly:

- 43 per cent of children of one-earner couples live in poverty, compared to
- 33 per cent of children of working lone parents, and
- 11 per cent of children of two-earner couples.[81]

In April 2017, the UK Government published the report 'Improving Lives: Helping Workless Families', setting out the Government's framework for improving outcomes for children who grow up in workless families.[82] The report sets out a number of non-statutory indicators to drive action to measure progress in tackling a range of disadvantages that can affect outcomes for families and children. In response to the report, we wrote to Damian Green, then Secretary of State for Work and Pensions, in April 2017,[83] recommending:

- a full equality impact assessment of all the measures proposed, including consideration of likely outcomes for individuals who face multiple disadvantage
- a comprehensive assessment of the measures in the policy on the human rights of children and disabled people
- a commitment to reintroduce income poverty-related targets for the reduction of child poverty, and
- a commitment to collect data disaggregated by protected characteristics for all of the measures of worklessness and the measures for children and young people.[84]

Joseph Rowntree Foundation (2016), 'We can solve poverty in the UK – A strategy for governments, businesses, communities and citizens', p. 11. Available at: https://www.jrf.org.uk/report/we-can-solve-poverty-uk [accessed: 22 December 2017].

[81] Cribb, J., Hood, A., Joyce, R. and Norris Keiller, A. (2017), 'In-work poverty among families with children', Institute for Fiscal Studies. Available at: https://www.ifs.org.uk/uploads/publications/comms/r129_ch5.pdf [accessed: 29 September 2017].

[82] DWP (2017), 'Improving Lives: Helping Workless Families Analysis and Research Pack'. Available at: https://www.gov.uk/government/publications/improving-lives-helping-workless-families-evidence-base [accessed: 3 October 2017].

[83] EHRC (2017), Letter to Secretary of State for Work and Pensions, 20 April 2017. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social [accessed: 10 October 2017].

[84] No response has been received at the time of writing in February 2018.

3.3.1 Impacts of recent changes to child tax credits, and child element of Universal Credit

Children have a right to an adequate standard of living (Convention on the Rights of the Child (CRC) Article 27), and to have their best interests as a primary consideration in all decisions affecting them (CRC Article 3). In its 2016 Concluding Observations to the UK Government, the UN Committee on the Rights of the Child reiterated this and recommended that the UK Government, where necessary, revise the Welfare Reform and Work Act 2016, 'in order to fully respect the right of the child to have his or her best interests taken as a primary consideration'.[85] This is in line with UN CESCR's recommendations relating to the recent social security reforms.

The four year freeze on entitlements since April 2016, including support for children under Universal Credit, has had a large impact on children.[86] Additionally, the further reduction in November 2016 of the upper limit of social security entitlements ('benefit cap') for most people aged 16 to 64 applies to all households whose entitlement to prescribed social security exceeds the amounts specified, regardless of their needs.[87] The lowering of the cap on housing benefits and Universal Credit alone resulted in a large increase in the number of households affected in GB, from around 20,000 to over 60,000.[88] The majority of families affected are single parents with young children.

In its impact assessment in 2016, the DWP noted that a total of 64,000 additional households in GB, including 161,000 children, would be affected by the further reduction of the cap on all entitlements. It recognised that the measure may have a greater impact on women and on large families, but argued that it is justified to achieve the legitimate aim of 'improving work incentives, promoting fairness between

[85] UN CRC (2016), 'Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland', CRC/C/GBR/CO/5, para. 71(d). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En [accessed: 18 December 2017].

[86] Children's Rights Alliance for England (2017), 'State of Children's Rights in England 2017 – Briefing 3 on Poverty and Homelessness', p. 10, Recommendation 2. Available at: http://crae.org.uk/media/124456/B3_CRAE_SCR2017_POVERTY_D.pdf [accessed: 2 January 2018].

[87] Section 96 of the Welfare Reform Act 2012, as amended by Section 8 of the Welfare Reform and Work Act 2016.
In Greater London to £23,000 and for those outside Greater London to £20,000 (https://www.gov.uk/benefit-cap, accessed: 07 February 2018).

[88] DWP (2018), 'Benefit cap statistics, Benefit cap: number of households capped to November 2017'. Available at: https://www.gov.uk/government/statistics/benefit-cap-number-of-households-capped-to-november-2017 [accessed: 7 February 2018]. See also Children's Rights Alliance for England (2017), 'State of Children's Rights in England 2017 – Briefing 3 on Poverty and Homelessness'. Available at: http://crae.org.uk/media/124456/B3_CRAE_SCR2017_POVERTY_D.pdf [accessed: 2 January 2018].

those on out of work benefits and taxpayers and delivering savings'.[89] The EHRC considers the impact assessment for this further reduction could have been strengthened in a number of ways. For example, it should have given primary consideration to the best interests of the child.[90]

In *R (DA) v Secretary of State for Work and Pensions*,[91] the High Court found that the benefit cap unlawfully discriminated against four lone parents. Because of their caring responsibilities and the unaffordability of childcare, these mothers would be unable to work for 16 or more hours per week and would thus become exempt from the benefit cap. The allowance for childcare costs under working tax credit did not provide sufficient assistance, while the availability of discretionary housing benefits was not regarded as providing a sufficiently reliable and long-term guarantee of support to offset the hardship caused by the benefit cap. The High Court stated: 'For those such as the claimants who are living on the edge of, if not within, poverty the system simply is not working with any degree of fairness'. It held that the benefit cap was not consistent with the best interests of the children adversely affected by it. The cap was also held to have an adverse impact on the women's private and family life and those of the children. The Court stated that the benefit cap was 'capable of real damage to individuals such as the claimants. They are not workshy but find it, because of the care difficulties, difficult if not impossible to comply with the work requirement'. The Government appealed this decision to the Court of Appeal. The appeal was heard in October 2017 but a judgement has not yet been made.

As stated in our evidence to UN CESCR in 2016, recent changes to the Tax Credits Act 2002 and the Welfare Reform Act 2012 limit entitlement to child tax credits and the child element of Universal Credit to the first two children in a household.[92] Parents have not been able to claim it for any third (or subsequent) child born on or after 6 April 2017, with an exception for children likely to have been conceived as a result of rape or a coercive or controlling relationship, multiple births, adoption from

[89] DWP (2016), 'Welfare Reform and Work Act: Impact Assessment for the benefit cap'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548741/welfare-reform-and-work-act-impact-assessment-for-the-benefit-cap.pdf [accessed: 7 February 2018]. See also http://www.legislation.gov.uk/uksi/2016/909/pdfs/uksiod_20160909_en.pdf [accessed: 7 February 2018].
[90] See EHRC (2016), 'Children's rights in the UK', pp. 17, 18.
[91] *R (on the application of DA) v Secretary of State for Work and Pensions* [2017] EWHC 1446 (Admin) (QBD (Admin)).
[92] Section 9 of the Tax Credits Act 2002, as amended by Section 13 of the Welfare Reform and Work Act, and Section 10 of the Welfare Reform Act 2012, as amended by Section 14 of the Welfare Reform and Work Act. See also EHRC (2017), 'Response to the Department for Work and Pensions and HM Revenue and Customs consultation on Universal Credit and Child Tax Credit: exceptions to the 2-child limit'. Available at: https://www.equalityhumanrights.com/en/legal-responses/response-department-work-and-pensions-and-hm-revenue-and-customs-consultation [accessed: 18 January 2018]; EHRC (2016), 'Socio-economic rights in the UK', p. 18.

local authority care and kinship care.[93] These changes impact on the living standards of children in households with more than two children, and therefore constitute a regressive measure in relation to the implementation of their rights to an adequate standard of living and to social security.[94] Analysis by CPAG found that the changes will lower 200,000 children below the official poverty line, in addition to the four million children living in poverty in 2015/16. CPAG estimates that the biggest group affected will be working families that have a third or subsequent child after 6 April 2017, who will miss out on up to £2,780 per year as a result of the policy change.[95] This will contribute to a two per cent rise in absolute child poverty from tax credits alone.[96]

The results of the recently published cumulative impact assessment of the changes to taxes, social security entitlements and public spending since 2010 on minority ethnic women indicate disproportionate effects on children from Black African, Pakistani and Bangladeshi backgrounds, as these children are more likely to live in large families.[97]

We consider that the impact assessment published by the DWP for these changes was not sufficiently detailed to enable proper scrutiny of the legislation.[98] In particular, it failed to mention the Public Sector Equality Duty (PSED),[99] how its aims would be achieved, how the potential impact of the changes will be monitored or how adverse impact identified after implementation would be tackled. There was no evidence provided to support DWP's assumption that the measures will incentivise

[93] UK Government (2017), 'Guidance: 2 child limit: claiming benefits for more than 2 children'. Available at: https://www.gov.uk/guidance/claiming-benefits-for-2-or-more-children#special-circumstances [accessed: 7 February 2018].
[94] EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings'. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017]. See also Joint letter from the four UK Children's Commissioners to the Chancellor calling for Universal Credit roll-out to be paused for children and families, 17 November 2017. Available at: https://www.childrenscommissioner.gov.uk/2017/11/17/8416/ [accessed 31 January 2018].
[95] CPAG (2017), 'Two-Child Limit for Universal Credit: 200,000 more children put in poverty'. Available at: http://www.cpag.org.uk/content/two-child-limit-universal-credit-200000-more-children-put-poverty [accessed: 26 October 2017].
[96] Hood, A. and Waters, T. (2017), 'Living standards, poverty and inequality in the UK: 2016–17 to 2021–22', Joseph Rowntree Foundation and Institute for Fiscal Studies. Available at: https://www.jrf.org.uk/report/living-standards-poverty-and-inequality-uk-2016-17-2021-22 [accessed: 29 September 2017].
[97] Women's Budget Group and the Runnymede Trust (2017), 'Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK'. Available at: https://www.intersecting-inequalities.com/ [accessed 18 December 2017].
[98] DWP (2015), 'Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element'. Available at: http://www.parliament.uk/documents/impact-assessments/ia15-006e.pdf [accessed: 18 January 2018].
[99] Section 149 of the Equality Act.

parents to 'reflect carefully on their readiness to support an additional child' after their first two children.[100]

In April 2017, the we wrote to the then Minister for Employment[101] to set out our concerns about the potential impact of the two-child limit for tax credits and the operation of the exception for children conceived as a result of rape in the Child Tax Credit (Amendment) Regulations 2017. The exception in the Child Tax Credit (Amendment) Regulations raises serious issues in relation to a child and mother's right to private life under Article 8 of the European Convention on Human Rights.[102] Following a public consultation, the UK Government has adopted a number of changes. There are, however, persistent concerns that the exception, which prevents women from being penalised, requires reporting of intimate details. The Commission considers that there has been a failure to fully consider the impact of the exception, including the potentially traumatic process for having eligibility assessed and the risk of re-traumatisation upon survivors of rape.

The UK Government's response in May 2017 did not address the concerns we raised in relation to the exception applying to children who are likely to have been conceived as a result of rape, and stated: 'Child Benefit will continue to be paid regardless of family size, as the basis of the state's contribution towards the cost of bringing up a child, and claimants will be still be entitled to an additional amount in respect of any disabled children, regardless of the total number of children in the household'. The Government also stated that 'people on benefit have to make the same choices as those supporting themselves solely through work'.[103]

3.3.2 Child poverty in Wales

Of all countries in the UK, Wales has the highest poverty rate. Nearly a quarter of the Welsh population live below the poverty line; children are particularly affected. Child poverty has remained relatively static over the last ten years and is currently 30 per

[100] DWP (2015), 'Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element'. Available at: http://www.parliament.uk/documents/impact-assessments/ia15-006e.pdf [accessed: 18 January 2018].
[101] EHRC (2017), Letter to Damian Hinds, Minister for Employment. Available at: https://www.equalityhumanrights.com/sites/default/files/letter-to-damian-hinds-child-tax-credits-rape-clause-21-april-2017.pdf [accessed: 10 October 2017].
[102] See *R (on the application of DA) v Secretary of State for Work and Pensions* [2017] EWHC 1446 (Admin) (QBD (Admin)).
[103] DWP (2017), Letter to Rebecca Hilsenrath, EHRC. [Personal communication: 9 May 2017].

cent. Working families and children in Wales are at greater risk of poverty now than they were a decade ago.[104]

Wales has its own strategies, powers and targets to tackle child poverty. The Welsh Government published a revised Child Poverty Strategy in March 2015. This built on its 2011 Child Poverty Strategy, adding additional objectives for improving the outcomes of low income households, and placed a duty on local authorities and other public bodies to play their part through the setting of objectives for tackling child poverty. The Welsh Government assessed its progress on child poverty in December 2016, and found, according to data from June 2016, a two per cent reduction in the proportion of children living in relative poverty in Wales.[105]

In a 2016 survey by the organisation Children in Wales on child and family poverty, 83 per cent of the respondents reported that the social security reforms were an issue of concern, and 86 per cent reported food poverty was a concern for them. Other key concerns included the 'bedroom tax',[106] imposition of sanctions[107] and Universal Credit.[108] The Welsh Government made a statement in December 2016 that it would not be able to meet its own target to eradicate child poverty by 2020. This was attributed, in part, to the UK Government tax and social security reforms.[109]

[104] National Assembly for Wales Research Service (2016), 'New Publication: Key Issues for the Fifth Assembly'. Available at: https://seneddresearch.blog/2016/05/12/new-publication-key-issues-for-the-fifth-assembly-2/ [accessed: 29 December 2017]; Welsh Government (2017), 'Households below average income'. Available at: http://gov.wales/statistics-and-research/households-below-average-income/?lang=en [accessed: 31 January 2018].

[105] Welsh Government (2016), 'Child Poverty Strategy: Assessment of Progress 2016', p. 6. Available at: http://www.assembly.wales/laid%20documents/gen-ld10867/gen-ld10867-e.pdf [accessed: 2 January 2018].

[106] Changes to housing benefits included reducing the amount paid to claimants if they live in social housing that is deemed to be too large for their needs. The under-occupation deduction aimed to contribute to tackling the budget deficit and to change the behaviour of social housing tenants by providing an economic incentive for them to move to smaller properties. DWP (2012), 'Impact Assessment: Social sector housing under-occupation impact assessment'. Available at: https://www.gov.uk/government/publications/social-sector-housing-under-occupation-impact-assessment [accessed: 8 February 2018].

[107] Social security entitlements including ESA, Jobseeker's Allowance and Universal Credit can be stopped or reduced if claimants do not behave in line with conditional welfare arrangements. (Joseph Rowntree Foundation (2014), 'Welfare sanctions and conditionality in the UK'. Available at: https://www.jrf.org.uk/report/welfare-sanctions-and-conditionality-uk [accessed: 12 February 2018].) See also https://www.gov.uk/government/collections/jobseekers-allowance-sanctions [accessed: 12 February 2018].)

[108] Children in Wales (2017), 'Children and Family Poverty in Wales. Results from the Child and family Survey 2016'. Available at: http://www.childreninwales.org.uk/resource/child-family-poverty-wales-results-child-family-survey-2016/ [accessed: 3 December 2017].

[109] National Assembly for Wales, 13 December 2016. Available at: http://www.assembly.wales/cy/bus-home/Pages/rop.aspx?meetingid=4012&assembly=5&c=Record%20of%20Proceedings#449114 [accessed: 29 December 2017].

3.4 Disabled people's rights to an adequate standard of living and social security

Disabled people are more likely to live in both relative and absolute poverty than people who are not disabled.[110] [111] Social security reforms made by successive UK Governments since 2010 have had a particularly disproportionate, cumulative impact on disabled people, resulting in a regression of their rights to independent living and to an adequate standard of living and social protection. [112] Recent research found that 30 per cent of people living in a household with a disabled person live in poverty, compared to 19 per cent of households without a disabled person.[113] Disabled people face additional living costs related to their specific needs.[114]

The 2016 inquiry report by the CRPD Committee documented these concerns and concluded that there have been grave and systematic violations of disabled people's rights, including their right to live independently and be part of the community (CRPD Article 19), and to an adequate standard of living and social protection (CRPD Article 28).[115] It recommended that the UK Government conducts a human rights-based cumulative impact assessment of social security reforms on disabled people since

[110] DWP (2016), 'Households below average income: 1994/95 to 2014/15'. Available at: https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201415 [accessed: 2 January 2018]. This applied to children and working age adults, but not to pensioners. For example, 36 per cent of children and 30 per cent of working age adults in families with one or more disabled members lived in relative poverty after housing costs.

[111] In the UK, a household is considered in relative poverty (also called relative low income) if its income is below 60 per cent of the median household income. A household is considered in absolute poverty (also called absolute low income) if its income is below 60 per cent of the median in a base year, uprated for inflation. Currently, the base year used in UK statistics is 2010/11.

[112] EHRC (2017), 'Distributional results for the impact of tax and welfare reforms between 2010 and 2017, modelled in the 2021/22 tax year: Interim findings'. Available at: https://www.equalityhumanrights.com/en/publication-download/impact-tax-and-welfare-reforms-between-2010-and-2017-interim-report [accessed: 22 November 2017].

[113] Joseph Rowntree Foundation (2017), 'UK Poverty 2017'. Available at: https://www.jrf.org.uk/report/uk-poverty-2017 [accessed: 19 December 2017].

[114] It was estimated in 2004 that the poverty rate among disabled people would have been 60 per cent of all disabled people if the additional costs were accounted for (no up-to-date estimate is available). Smith, N., Middleton, S., Ashton-Brooks, K., Cox, L., Dobson, B. and Reith, L. (2004), 'Disabled people's cost of living', Joseph Rowntree Foundation. Available at: https://www.jrf.org.uk/report/disabled-peoples-costs-living, cited in Joseph Rowntree Foundation (2016), 'UK poverty: Causes, costs and solutions'. Joseph Rowntree Foundation, p. 47. Available at: https://www.jrf.org.uk/report/uk-poverty-causes-costs-and-solutions [accessed: 29 September 2017].

[115] CRPD Committee (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention'. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f15%2fR.2%2fRev.1&Lang=en [accessed: 16 October 2017]. The inquiry into the UK was carried out under Article 6 of the Optional Protocol to the CRPD. The Committee launched an inquiry in 2014 into the UK's compliance with Articles 19, 27 and 28 of the CRPD after receiving evidence from a variety of sources, especially from disabled people's organisations. See section on CRPD in section 1.3 of this report for further details.

2010, and of any future measures.[116] In December 2016, the EHRC, along with the other UK equality and human rights bodies as part of the UK Independent Mechanism (UKIM),[117] wrote to the then Minister of State for Disabled People, Health and Work in support of the inquiry,[118] but we note with concern that the Minister's response failed to engage meaningfully with the substance of the inquiry recommendations.[119]

The first periodic review of the UK under the CRPD took place in August 2017. The CRPD Committee's Concluding Observations again called on the UK Government to act urgently on the findings of its inquiry and address concerns about regression in disabled people's Article 19 and 28 rights, and to report on progress in mid-2018 and annually thereafter until 2023.[120] In December 2017, UKIM wrote to the new Minister for Disabled People, Health and Work to highlight the CRPD Committee's Concluding Observations and call for action on the inquiry recommendations.[121] The Minister has agreed to meet with UKIM to discuss the concerns raised in its letter.

The CRPD Committee and UKIM also raised concerns about the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 and their impact on disabled people.[122] [123] We expressed concern that the changes brought in by

[116] CRPD Committee (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention', para. 114.
[117] In 2009 the UK Government designated the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC) as UKIM under CRPD Article 33. They are tasked with promoting, protecting and monitoring implementation of the CRPD.
[118] EHRC (2016), Letter to Minister of State for Disabled People, Health and Work, 1 December 2016. Available at: https://www.equalityhumanrights.com/sites/default/files/ukim-letter-to-penny-mordaunt-crpd-inquiry-1-december-2016.docx [accessed: 18 December 2017].
[119] DWP (2017), Letter from Minister of State for Disabled People, Health and Work to EHRC, 19 January 2017. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities [accessed: 18 December 2017].
[120] CRPD Committee (2017), 'Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland', CRPD/C/GBR/CO/1, paras. 73, 74, 78. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En [accessed: 8 February 2018].
[121] UKIM (2017), 'Letter to the Minister of State for Disabled People, Health and Work', 1 December 2017. Available at: http://www.scottishhumanrights.com/media/1742/011217-ukim-letter-to-sarah-newton-mp.pdf [accessed: 7 February 2018].
[122] Personal Independence Payment (PIP) is a social security entitlement that helps with the extra costs caused by long-term ill health or disability for individuals aged between 16 and 64. The change from Disability Living Allowance (DLA) to PIP was introduced in the Welfare Reform Act 2012. PIP is gradually replacing DLA across the UK (https://www.gov.uk/pip, accessed: 18 January 2018).
The Social Security (Personal Independence Payment) (Amendment) Regulations 2017, Explanatory note. Available at: http://www.legislation.gov.uk/uksi/2017/194/made [accessed: 18 January 2018].
[123] UKIM (2017), 'Submission to inform the CRPD list of issues on the UK'. Available at: https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities [accessed: 2 January 2018]; and UKIM (2017), 'Updated submission ahead of the public examination of the UK's implementation of the CRPD'.

these Regulations place people with mental health conditions at a serious disadvantage in meeting the costs they face relating to their condition, are contrary to the UK Government's CRPD obligations to support disabled people to participate fully in society, and contradict the social model of disability by treating psychosocial impairments differently to other impairments.[124] We intervened in the case of *RF v Secretary of State for Work and Pensions (SSWP)*,[125] to challenge the lack of 'parity of esteem' between physical and mental health issues in the award of the mobility component of personal independence payments (PIPs). The case was heard in December 2017. The High Court found that part of the rules governing PIPs are unlawfully discriminatory against people with mental health impairments, in breach of Human Rights Act 1998 obligations. The new Secretary of State for Work and Pensions, Esther McVey MP, announced in a Written Ministerial Statement in January 2018 that she would not challenge the December ruling.[126] Subsequently, the DWP announced that all 1.6 million people receiving PIPs would have their claim reviewed.[127]

3.4.1 Employment and Support Allowance

The CRPD Committee's inquiry report also expressed concerns about the UK's progress towards full compliance with CRPD Article 27, disabled people's right to work and to the opportunity to gain a living. In particular, the Committee highlighted:

- Evidence of flaws in the processes related to the Employment and Support Allowance (ESA), which 'has continued to be focused on a functional evaluation of skills and capabilities, and puts aside personal circumstances and needs, and barriers faced by persons with disabilities to return to employment'.[128]

Available at: https://www.equalityhumanrights.com/en/publication-download/disability-rights-uk-updated-submission-un-committee-rights-persons [accessed: 2 January 2018].

[124] EHRC (2017), 'Advice for Parliamentarians: Social Security (Personal Independence Payment) (Amendment) Regulations 2017'. Available at: https://www.equalityhumanrights.com/en/social-security-personal-independence-payment-amendment-regulations-2017-house-commons [accessed: 18 January 2018]. See also UKIM (2017), 'Disability Rights in the UK', p. 49.

[125] *RF v SSWP* [2017] EWHC 3375 (Admin).

[126] UK Parliament (2018), 'Welfare: Written statement - HLWS407'. Available at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-01-19/HLWS407/ [accessed: 31 January 2018].

[127] UK Parliament (2018), 'Personal Independence Payment: Mental Health: Written question – 124308'. Available at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-23/124308/ [accessed: 31 January 2018]; BBC News (2018), 'Personal Independence payments: All 1.6 million claims to be reviewed'. Available at: http://www.bbc.co.uk/news/uk-42862904 [accessed: 31 January 2018].

[128] CRPD Committee (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention', para. 102. Available at:

- Increases in sanctions on claimants in the ESA work-related activity group between 2012 and 2014.[129]

From April 2017, new claimants across the UK placed in the Work-related Activity Group of the ESA have received the same weekly payment as those on Jobseeker's Allowance.[130] This equates to an annual loss of about £1,500 a year for a disabled person.[131] We opposed this change and raised concerns about the lack of appropriate impact assessment.[132] Our offer to assist with an impact assessment of the change was refused by the UK Government.[133] Other stakeholders have voiced concerns that the change may put disabled people at a significant disadvantage where they have unavoidably higher living costs.[134] It is essential that a personal support package, which includes both financial and employment support, is in place to support the capacity of individuals to look for and move into work.

Further issues related to ESA with a negative impact on disabled people include:

- Work Capability Assessments (WCAs)[135] finding many claimants with serious health conditions or impairments nevertheless 'fit for work', and evidence showing that assessments, reassessments and poor decisions are adversely impacting on

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f15%2fR.2%2fRev.1&Lang=en [accessed: 16 October 2017].

[129] CRPD Committee (2016), 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention', paras. 102-109. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f15%2fR.2%2fRev.1&Lang=en [accessed: 16 October 2017].

[130] See UK Government (2017), 'Employment and Support Allowance (ESA) changes from 3 April 2017'. Available at: https://www.gov.uk/government/publications/employment-and-support-allowance-changes-from-3-april-2017/employment-and-support-allowance-esa-changes-from-3-april-2017 [accessed: 27 November 2017].

[131] House of Commons Library (2017), 'Abolition of the ESA Work-Related Activity Component'. Available at: http://researchbriefings.files.parliament.uk/documents/CBP-7649/CBP-7649.pdf [accessed: 18 December 2017].

[132] In our submissions to debates on the Welfare Reform and Work Bill, see EHRC Briefing (2016) on amendments to Welfare Reform and Work Bill, Report Stage: Clauses 11, 12, 13, and 14. House of Lords. Available at: https://www.equalityhumanrights.com/en/welfare-reform-and-work-bill-report-stage-clauses-11-12-13-and-14-house-lords-27-january-2016 [accessed: 27 November 2017].

[133] See the EHRC's letter to the Secretary of State, available at: https://www.equalityhumanrights.com/en/parliamentary-library/parliamentary-library/our-letter-department-work-and-pensions-dwp-re-welfare [accessed: 18 December 2017], and the Secretary of State's letter to the EHRC, available at: https://www.equalityhumanrights.com/en/parliamentary-library/parliamentary-library/department-work-and-pensions-dwp-response-our-letter%C2%A0re [accessed: 18 December 2017].

[134] See https://www.disabilityrightsuk.org/esa-wrag-cut-briefing [accessed: 18 December 2017] and House of Commons Work and Pensions Committee (2017), 'Disability employment gap – Seventh report of session 2016-17'. Available at: https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/56/56.pdf [accessed: 18 December 2017].

[135] A person must undergo a Work Capability Assessment to determine whether they have a limited capacity for work and if they are capable of 'work-related activity'. See https://www.gov.uk/employment-support-allowance/eligibility [accessed: 7 February 2018].

the physical and mental health of claimants. Links have also been made between WCAs and some suicides.[136] Our 2017 report 'Being Disabled in Britain' laid out a large body of evidence of the negative impact of WCAs on disabled people,[137] and further evidence continues to emerge.[138] A 2018 parliamentary report highlighted that, since 2013, 290,000 claimants of PIP and ESA (six per cent of all those assessed) received the correct award only after challenging the initial decision.[139] The high overturn rates at appeal raise questions as to why it requires an appeal for new evidence to come to light. In 2017, the parliamentary Select Committee on Work and Pensions called for swift reform of the WCA process, calling it 'fundamentally flawed'.[140]

- ESA conditionality and sanctions having a detrimental impact, particularly on those with mental health conditions.[141] A 2017 survey found that 90 per cent of respondents who had received out-of-work benefits and been sanctioned said this experience had negatively affected their mental health.[142]

We welcome the new criteria and guidance[143] for WCA assessors introduced in September 2017, allowing them to recommend that claimants with the most severe and life-limiting conditions should not be reassessed.

[136] UKIM (2017), 'Disability Rights in the UK', p. 28.
[137] EHRC (2017), 'Being Disabled in Britain', pp. 65-67.
[138] For example, a small-scale study in Scotland in 2017 concluded that WCAs cause deterioration in some people's mental health. See: Heriot Watt University and Napier University (2017), 'Mental Health and Unemployment in Scotland'. Available at: http://www.advocard.org.uk/wp-content/uploads/2017/02/2017-02-Heriot-Watt-Mental-Health-Report-on-WCA.pdf [accessed: 27 November 2017].
[139] House of Commons Select Committee on Work and Pensions (2018), 'PIP and ESA assessments: claimant experiences'. Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/355/355.pdf; summary available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/829/82903.htm [accessed: 19 February 2018].
[140] House of Commons Work and Pensions Committee (2017), 'Disability employment gap – Seventh report of session 2016-17'. Available at: https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/56/56.pdf [accessed: 18 December 2017].
[141] EHRC (2017), 'Being Disabled in Britain', p. 66. See also: Royal College of Psychiatrists (2017), 'Submission to: Improving Lives. The Work, Health and Disability Green Paper'. Available at: http://www.rcpsych.ac.uk/pdf/RCPsych%20response%20to%20Work,%20Health%20and%20Disability%20Green%20Paper.pdf [accessed: 18 December 2017].
[142] Mind (2017), 'People with mental health problems made more unwell by benefits system'. Available at: https://www.mind.org.uk/news-campaigns/news/people-with-mental-health-problems-made-more-unwell-by-benefits-system/#.WjaxD3ncvIU [accessed: 18 December 2017]. Online survey of 2,814 people with mental health conditions, carried out between 25 January and 7 February 2017.
[143] DWP (2017), 'Policy paper: Employment and Support Allowance and Universal Credit: changes to the Work Capability Assessment from 29 September 2017', Available at: https://www.gov.uk/government/publications/employment-and-support-allowance-and-universal-credit-changes-to-the-work-capability-assessment/employment-and-support-allowance-and-universal-credit-changes-to-the-work-capability-assessment-from-29-september-2017 [accessed: 17 January 2018].

In its response[144] to the 'Improving Lives: the Work, Health and Disability Green Paper' consultation,[145] the UK Government has committed to engaging with external stakeholders to explore ways to improve claimants' experiences of the WCA. While this commitment is welcome, our view is that further reforms to the WCA are urgently needed.

3.4.2 Independent living in Wales

The Welsh Government has announced it is to update its Framework for Action on Independent Living (2013), which sets out its vision for implementing the CRPD in Wales. We hope that the CRPD principles and substantive provisions will be incorporated throughout the Framework and recommends that the PSED be thoroughly integrated into the framework as a lever for change.

3.5 Recommendations

We reiterate the recommendations in our 2015 and 2016 submissions to UN CESCR and other reports in relation to the rights to social security and an adequate standard of living. The UK Government should, in particular:

- Commit to undertaking cumulative impact assessments of all tax and social security policies going forward, in line with UN CESCR's 2016 recommendation.
- Reconsider those policies that contribute to the negative financial impact described in our cumulative impact assessment, and, where appropriate, consider mitigating the impact of policy decisions taken in the past, in line with the requirements of the PSED.
- Demonstrate that regressive measures are temporary, necessary, proportionate and non-discriminatory (the UN criteria for non-retrogression), and that they do not undercut a core minimum level of protection, putting in place any mitigating measures required to safeguard people's rights.

[144] DWP and DH (2017), 'Improving Lives - The Future of Work, Health and Disability'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF [accessed: 17 January 2018].
[145] DWP and DH (2016), 'Consultation Work, health and disability: improving lives'. Available at: https://www.gov.uk/government/consultations/work-health-and-disability-improving-lives [accessed: 17 January 2018].

- Monitor the effect the four year freeze on social security entitlements has on the rights to an adequate standard of living and social security against the requirements set out by the UN CESCR,[146] especially for individuals and groups sharing protected characteristics, and make sure this is in line with children's best interests.
- Reintroduce income poverty-related targets for the eradication of child poverty, and establish clear accountability mechanisms, including binding targets, with a set timeframe and measurable indicators, as part of a comprehensive child poverty strategy, ensuring that the best interests of the child are taken as a primary consideration.
- Examine the factors behind the higher levels of poverty amongst individuals and groups at risk, such as children, disabled people and refugees and asylum seekers, and develop a strategy to address these factors.

In line with the recommendations in our submission to the CRPD Committee in 2017,[147] we call upon the UK Government to:

- Act upon the recommendation of the Work and Pensions Select Committee to set out a clear plan for identifying where new ESA Work-related Activity Group claimants have additional, unavoidable living costs relating to their condition, and ensure a financial support package is in place.
- Take prompt action to reform the WCA to offer a more flexible, personalised approach to providing support to unemployed disabled people, including those with greatest needs and fluctuating conditions. The focus should be on identifying work potential and the types of adjustments and support that could remove barriers to individuals accessing and staying in work. This should be separate from any financial assessment. Financial support for people unable to work, or where there are inadequate adjustments or personalised support in place, should not be conditional on actions linked to job-seeking or subject to benefit sanctions.

[146] Pillay, A. (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012), CESCR/48th/SP/MAB/SW. Available at: http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf [accessed: 13 October 2017].
[147] UKIM (2017), 'Disability rights in the UK; Updated submission to the UN Committee on the Rights of Persons with Disabilities in advance of the public examination of the UK's implementation of the CRPD', pp. 17, 18. Available at: https://www.equalityhumanrights.com/sites/default/files/crpd-shadow-report-august-2017.pdf [accessed: 18 December 2017].

4. Access to, and conditions at work

UN CESCR Concluding Observations 2016, paragraphs 27, 30 and 32:

'The Committee recommends that the State party [… a]dopt effective measures to eliminate the persistent gender pay gap, including by addressing the significant vertical and horizontal gender-based segregation in the labour market, which results in women occupying lower paid jobs and facing obstacles in the enjoyment of career opportunities on an equal footing with men […].'

'[… T]he Committee recommends that the State party review its employment policies to address the root causes of unemployment and include in its action plan time-bound goals with a specific focus on groups disproportionately affected by unemployment, such as young people, persons with disabilities and persons belonging to ethnic, religious or other minorities.'

'The Committee recommends that the State party: Take all appropriate measures to progressively reduce the use of temporary employment, precarious self-employment, and "zero hour contracts", including by generating decent work opportunities that offer job security and adequate protection of labour rights; and ensure that the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and "zero hour contracts" are fully guaranteed in law and in practice.'

4.1 Introduction

The right to just and favourable conditions of work entails the right to fair wages and equal remuneration for work of equal value, which provides a decent living for workers and their families; and the right to rest, leisure and reasonable limitation of working hours, and periodic holidays with pay. The Government's obligations under

ICESCR – as an employer and as a regulator – entail the duty to ensure everyone's right to work as well as rights at work are respected, particularly in relation to those who are most vulnerable to exploitation (ICESCR Articles 6 and 7). While technology is creating new models for business growth and ways of working, modern working practices need to be built on a firm foundation that provides fair access to work opportunities and protection to all.

4.2 The casualisation of labour

UK Government policy on addressing inequalities and tackling poverty largely focuses on getting people into work without addressing in-work poverty and conditions of work. There have been some positive developments in relation to employment and pay since June 2016:

- The proportion of those in part-time work in the UK who were unable to find a full-time job was 12 per cent in September–November 2017, compared with 13.6 per cent in September–November 2016, and 14.9 per cent in September–November 2015.[148]
- The underemployment[149] rate fell from 9.3 per cent in July–September 2015 to 8.1 per cent in July–September 2017.[150]
- The number of people in temporary employment has decreased from 1.65 million in September–November 2015 to 1.57 million people in September–November 2017. Women comprised the majority (53 percent) of temporary employees in September–November 2017.[151]

[148] Office for National Statistics (2017), 'Full-time, part-time and temporary workers', Table EMP01. Figures are seasonally adjusted. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa [accessed: 3 January 2018].
[149] Underemployed people are defined as those who meet three specific criteria: they are willing to work more hours, are available to do so and currently work more than the specified hours of work threshold, which varies by age.
[150] Office for National Statistics (2017), 'Underemployment and overemployment in the UK', Table EMP16. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/underemploymentandoveremploymentemp16 [accessed: 3 January 2018]. This provides a more detailed definition of underemployment.
[151] Office for National Statistics (2017), 'Full-time, part-time and temporary workers', Table EMP01. Figures are seasonally adjusted. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa [accessed: 3 January 2018].

Despite these recent improvements, overall, conditions have deteriorated for significant numbers of workers. Concerns around the 'gig economy'[152] and zero-hours contracts[153] persist, as we highlighted in our 2016 evidence to UN CESCR.[154] We believe the Government has an important role in creating an entrepreneurial and job-creating private sector which allows for flexibility for employers and workers, while adequately protecting the rights of all workers, especially those with limited choice in atypical employment.[155] UN CESCR recommended that the UK Government take measures to reduce the use of these often insecure and unstable types of employment and to ensure that 'the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and zero-hours contracts are fully guaranteed in law and in practice'.[156]

The increase in recent years in atypical work arrangements is well documented.[157] The Matthew Taylor Review of Modern Working Practices highlights that '[i]ncreasing atypical work is generally linked to a more flexible labour market, and the greater participation of women and older workers could be one driver of the move to increased flexibility'. However, it also points to the lack of clarity around the exact

[152] Academic literature identifies different models of gig work, but in all cases the digital platform links the customer requiring a service with an individual labour provider, on terms determined by the platform. Prassl, J. and Risak, M. (2016), 'Uber, Taskrabbit and Co.: Platforms as Employers? Rethinking the legal analysis of crowdwork', *Comparative Labor Law & Policy Journal*, vol. 37 no. 3, pp. 619-652. Available at: http://www.labourlawresearch.net/sites/default/files/papers/15FEB%20Prassl_Risak%20Crowdwork%20Employer%20post%20review%20copy.pdf [accessed: 09 January 2018].
However, it has also been used to describe labour markets characterised by the prevalence of short-term contracts or freelance work (not necessarily requiring an app to find work via a digital platform), as opposed to permanent jobs. House of Lords Library (2017), 'Gig economy briefing'. Available at: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2017-0086#fullreport [accessed: 18 December 2017].

[153] While there is no agreed definition of a 'zero-hours contract', it is generally understood to be a contract between an employer and a worker where the employer is not obliged to provide minimum working hours and the worker is not obliged to accept any work offered.

[154] EHRC (2016), 'Socio-economic rights in the UK', pp. 38-40.

[155] See also Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', p. 26. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017]; EHRC (2016), 'Written submission to the Taylor Review of Employment Practices in the Modern Economy: Future world of work and rights of workers'. Available at: https://www.equalityhumanrights.com/sites/default/files/ehrc-written-submission-taylor-review-26-april-2016.docx [accessed: 18 January 2018].

[156] UN CESCR (2016), 'Concluding Observations', para. 32.

[157] EHRC (2016), 'Socio-economic rights in the UK', p. 40. Judge L. and Tomlinson, D. (2016), 'Secret Agents. Agency workers in the new world of work', Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/ [accessed: 18 December 2017]; Hudson-Sharp, N. and Runge, J. (2017), 'International trends in insecure work', National Institute of Economic and Social Research (for TUC). Available at: https://www.tuc.org.uk/research-analysis/reports/international-trends-insecure-work [accessed: 18 December 2017]. Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices'. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

drivers of the increasingly flexible labour market, and that 'this is where concern around the balance of flexibility and security for individuals arises'.[158] Although research conducted by the Chartered Institute of Personnel and Development (CIPD) has highlighted positive aspects for some 'gig economy' workers,[159] on the whole, these relationships offer far greater benefits to employers than workers as they offer employers flexibility in workforce usage and reduced costs.[160] For workers in these types of jobs, increased flexibility is often associated with insecurity, lower pay and loss of employment protections, including redress mechanisms.[161] Instead of a regular salary, individuals get paid per job – or 'gig'. Classed as independent contractors, they are often not entitled to sick pay or redundancy pay, and do not have guaranteed working hours (see also section 5.2).[162] New evidence, including the Matthew Taylor Review of Employment Practices in the Modern Economy, a report by the Work and Pensions Committee on self-employment and the 'gig economy' and an inquiry by the Business, Energy and Industrial Strategy Committee on the future world of work and rights of workers,[163] supports these persistent

[158] Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', chapter 4. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

[159] For example, 'a number of surveys show that between 14 and 33 per cent of people in atypical work are only in these roles because they could not get regular employment'. CIPD (2017), 'To gig or not to gig? Stories from the modern economy', p. 2. Available at: https://www.cipd.co.uk/Images/to-gig-or-not-to-gig_2017-stories-from-the-modern-economy_tcm18-18955.pdf [accessed: 18 January 2017].

[160] EHRC (2016), 'Written submission to the Taylor Review of Employment Practices in the Modern Economy: Future world of work and rights of workers'. Available at: https://www.equalityhumanrights.com/sites/default/files/ehrc-written-submission-taylor-review-26-april-2016.docx [accessed: 18 January 2018]; House of Commons Work and Pensions Committee (2017), 'Self-employment and the gig economy, Thirteenth Report of Session 2016-17'. Available at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/847/847.pdf [accessed: 18 December 2017]; De Stefano, V. (2016), 'The Rise of the "Just-in-Time Workforce": On-demand work, crowdwork and labour protection in the "Gig-Economy"', Conditions of Work and Employment Series No. 71, International Labour Office. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf [accessed 18 January 2018].

[161] Judge, L. and Tomlinson, D. (2016), 'Secret Agents. Agency workers in the new world of work', Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/ [accessed: 18 December 2017]; ONS (2016), 'Contracts that do not guarantee a minimum number of hours'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016 [accessed: 18 December 2017]; New Economics Foundation (2016), 'Wellbeing at Work. A Review of Literature', p. 25. Available at: http://b.3cdn.net/nefoundation/71c1bb59a2ce151df7_8am6bqr2q.pdf [accessed: 18 December 2017]; TUC (2016), 'Living on the Edge. The rise of job insecurity in Britain'. Available at: https://www.tuc.org.uk/economic-issues/labour-market/living-edge [accessed: 18 December 2017].

[162] TUC, 'Guide to: Zero-hours contracts'. Available at: https://www.tuc.org.uk/workplace-guidance/zero-hours-contracts [accessed: 7 February 2018].

[163] House of Commons Work and Pensions Committee (2017), 'Self-employment and the gig economy, Thirteenth Report of Session 2016-17'. Available at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/847/847.pdf [accessed: 18 December 2017]; Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices'. Available at:

concerns about the decency of work and non-discriminatory access to employment since the last review of the UK's record on socio-economic rights by the UN, while acknowledging that 'some atypical work arrangements are chosen and valued by the individuals concerned'.[164]

The number of agency workers is estimated by the Resolution Foundation to have increased by 30 per cent to 865,000 between 2011 and 2016.[165] The same study (which was based on an analysis of the Labour Force Survey) found that agency workers are younger than average, and lower qualified. Black/African/Caribbean/Black British workers are three times as likely to be employed via an agency as White workers.[166]

Between April and June 2017, an estimated 883,000 people – 2.8 per cent of all people in employment – were on a zero-hours contract in their main job. This compared with 903,000 in April–June 2016, but only 747,000 in the same period in 2015. Women are more likely to be on zero-hours contracts than men.[167] Generally, workers on zero-hours contracts are more likely to be young, part-time, female, or in full-time education than others in employment.[168] In May 2017, the Office for National Statistics (ONS) business survey found that 1.4 million contracts had no guaranteed

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https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017]; and EHRC (2016), 'Written evidence from the Equality and Human Rights Commission'. Available at: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/future-world-of-work/written/44784.html [accessed: 18 December 2017].

[164] Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', chapter 4. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

[165] Judge, L. and Tomlinson, D. (2016), 'Secret Agents. Agency workers in the new world of work', Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/ [accessed: 18 December 2017]. ONS (2017), 'Temporary employees', Table EMP0o7. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/temporaryemployeesemp07 [accessed: 25 October 2017].

[166] Judge, L. and Tomlinson, D. (2016), 'Secret Agents. Agency workers in the new world of work', Resolution Foundation. Available at: www.resolutionfoundation.org/media/blog/is-agency-work-the-forgotten-face-of-the-uks-modern-workforce/ [accessed: 18 December 2017].

[167] ONS (2017), 'Labour Force Survey: Zero-hours contracts data tables'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/zerohourssummarydatatables [accessed: 18 December 2017]. In April-June 2017, 3.4 per cent of women in employment and 2.8 per cent of men in employment were on zero-hours contracts. These data are based on an analysis of the Labour Force Survey and are self-reported.

[168] ONS (2017), 'Contracts that do not guarantee a minimum number of hours: September 2017'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2017 [accessed 3 January 2018]; Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', pp. 24, 25. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

minimum hours, compared with 1.7 million contracts in May 2016 and 2.1 million contracts in May 2015.[169] The only legislative measures in relation to zero-hours contracts to date are: legislation introduced in May 2015 to prohibit the use of clauses which prevent employees from taking up posts with other employers (exclusivity clauses);[170] and legislation from January 2016 that guarantees zero-hours employees the right not to be unfairly dismissed and zero-hours workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation if these rights are breached.[171]

Between 2000 and 2016, the average number of self-employed people in the UK was increasing every year. However, there has been no major change between September–November 2016 (4.78 million) and September–November 2017 (4.77 million).[172] While self-employment can be a positive, informed choice, offering great flexibility and self-reliance,[173] it can also be highly insecure and can present challenges for the welfare state which is founded on the contributory principle (the provision of state support and a safety net in return for national insurance contributions by employees).[174] Self-employed individuals are not organised to

[169] ONS (2017), 'Contracts that do not guarantee a minimum number of hours: September 2017', Figure 1. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2017 [accessed: 3 January 2018]. The differences in the trends between the estimates of individuals and businesses reflect the different definitions used by the two surveys, as well as the fact that the business survey counts the number of contracts and not the number of individuals (and individuals can have more than one contract), and that business estimates will cover a variety of working arrangements.

[170] Section 27A Employment Rights Act 1996. Available at: https://www.legislation.gov.uk/ukpga/1996/18/section/27A [accessed: 15 January 2018].

[171] CIPD (2017), 'Zero-hours contracts'. Available at: https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-factsheet#6081 [accessed: 10 October 2017]. The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 (SI 2015/2021). Available at: http://www.legislation.gov.uk/uksi/2015/2021/pdfs/uksi_20152021_en.pdf [accessed: 18 December 2017].

[172] In September-November 2017, the self-employed accounted for 14.8 per cent of all employment. Men (3.19 million) were much more likely than women (1.59 million) to be self-employed. ONS (2018), 'UK Labour Market: January 2018', Table A01. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/december2017 [accessed: 31 January 2018].

[173] Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', p. 14. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

[174] House of Commons Work and Pensions Committee (2017), 'Self-employment and the gig economy; Thirteenth Report of Session 2016-17', p. 3. Available at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/847/847.pdf [accessed: 18 December 2017].

discuss issues collectively and take collective action, nor are they represented and protected by trade unions.[175]

In December 2016, the Trades Union Congress (TUC) estimated that 1.7 million people were in low paid self-employment,[176] including people working in the 'gig economy' who use internet platforms to access work.[177] There are no official estimates of the number of 'gig economy' workers. One study in April 2017 for the Royal Society for the encouragement of Arts, Manufactures and Commerce estimated there were 1.1 million 'gig economy' workers.[178] According to other estimates, the figure could be as high as 1.3 million people.[179] Many permanent employees also engage in 'gig economy' activity to top-up income.[180]

There is often a lack of clarity around self-employment status and associated rights, including whether they are eligible for the National Living Wage as well as where to go if they have concerns or want to make a complaint about their experience of working in the 'gig economy'.[181] The parliamentary Work and Pensions Committee and Business, Energy and Industrial Strategy Committee have suggested a new

[175] Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', p. 77. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].
[176] Below the level of the Government set National Living Wage.
[177] TUC (2016), 'Living on the Edge. The rise of job insecurity in Britain', p. 6. Available at: https://www.tuc.org.uk/sites/default/files/Living_On_The_Edge_2016.pdf [accessed: 18 December 2017].
[178] Balaram, B., Warden, J. and Wallace-Stephens, F. (2017), 'Good Gigs - A fairer future for the UK's gig economy', Royal Society for the encouragement of Arts, Manufactures and Commerce, p. 13. Available at: https://www.thersa.org/globalassets/pdfs/reports/rsa_good-gigs-fairer-gig-economy-report.pdf [accessed: 7 February 2018].
[179] Research has indicated, however, that only 25 per cent of them regard this work as their main job; for others it is to supplement other forms of income. House of Lords Library (2017), 'Gig economy briefing'. Available at: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2017-0086#fullreport [accessed: 18 December 2017]. CIPD (2017), 'To gig or not to gig? Stories from the modern economy'. Available at: https://www.cipd.co.uk/Images/to-gig-or-not-to-gig_2017-stories-from-the-modern-economy_tcm18-18955.pdf [accessed: 18 December 2017].
[180] Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', p. 25. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].
[181] One quarter of 'gig economy' workers say they do not know where they would go if they wanted to complain or seek compensation about their experience of working in the 'gig economy', with a further 17 per cent saying they would never make a complaint or seek compensation.
CIPD (2017) 'To gig or not to gig? Stories from the modern gig economy'. Available at: https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report [accessed: 18 December 2017].
See also House of Commons Work and Pensions Committee (2017), 'Self-employment and the gig economy; Thirteenth Report of Session 2016-17', pp. 10, 19. Available at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/847/847.pdf [accessed: 18 December 2017]; Department for Business, Energy & Industrial Strategy (2017), 'Good Work - Matthew Taylor Review of Modern Working Practices', p. 35. Available at: https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices [accessed: 18 December 2017].

model of worker status by default. This would place the burden on the employer to establish that the individual is self-employed, rather than placing the burden on the individual to establish worker or employee status in an employment tribunal claim.[182] Research suggests that atypical work relationships result in disadvantages for workers, including a lack of redress.[183] Shifting the burden of proving their status away from individuals could help address this.

The European Committee of Social Rights found in its Conclusions on the UK in January 2018 that self-employed and domestic workers are not covered by the occupational health and safety regulations, and determined that the UK is in breach of the right to safe and healthy working conditions, as enshrined in the European Social Charter.[184]

The Department for Business, Energy and Industrial Strategy (BEIS) published its comprehensive response to the Taylor Review of Modern Working Practices (2017) in February 2018.[185] The response includes proposals for a new right to 'request a more stable contract, providing more financial security for those on flexible contracts', increased enforcement measures (of the minimum wage and "vulnerable workers' holiday and sick pay"), and penalties for employers who breach existing employment protections. The proposals, however, provide little detail as to what legislative changes are actually envisaged, for example, in relation to employment status. The response also promises four consultations on topics including employment status, agency workers and the enforcement of employment rights.

4.3 Earnings and low pay

Given the high costs of living in some parts of the UK, employment alone does not always enable people to achieve a decent standard of living. Low pay may prevent

[182] House of Commons Work and Pensions and Business, Energy and Industrial Strategy Committees (2017), 'A framework for modern employment', p. 10. Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/352.pdf [accessed: 18 December 2017].
[183] TUC (2016), 'Living on the Edge. The rise of job insecurity in Britain'. Available at: https://www.tuc.org.uk/economic-issues/labour-market/living-edge [accessed: 18 January 2018].
[184] European Committee of Social Rights (2018), Conclusions XXI-2 (2017), United Kingdom. Available at: http://hudoc.esc.coe.int/app/conversion/pdf/?library=ESC&id=CR_XXI-2_GBR_ENG&filename=CR_XXI-2_GBR_ENG.pdf [accessed: 31 January 2018].
[185] UK Government (2018), 'Millions to benefit from enhanced rights as government responds to Taylor review of Modern Working Practices'. Available at: https://www.gov.uk/government/news/millions-to-benefit-from-enhanced-rights-as-government-responds-to-taylor-review-of-modern-working-practices [accessed: 8 February 2018]; UK Government (2018), 'Good work: a response to the Taylor Review of Modern Working Practices'. Available at: https://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices [accessed: 8 February 2018].

people from exercising their right to an adequate standard of living.[186] Research conducted by the Institute for Public Policy Research found that between 2014 and 2015 approximately 950,000 households were in 'income crisis', that is, unable to pay two or more of their essential bills – their mortgage or rent, energy bills, water rates or council tax – at any one time. The majority of these households have at least one adult in work and more than half contain children.[187]

New analysis by the TUC revealed that while real wages have fallen in England between 2008 and 2016, childcare costs rose by 48 per cent over the same period.[188] This is in spite of the expansion in Government funded childcare in recent years, including:

- 15 hours of free childcare a week provided for disadvantaged two-year-olds
- 15 hours a week for all three- and four-year-olds, and
- a further 15 hours for working parents.[189]

According to Government figures, 93 per cent of 3-year-olds 'benefitted from some funded early education in January 2017'.[190] However, in practice, parents are often not able to access the free childcare scheme because many childcare providers say they cannot afford to offer it as Government funding is not sufficient to cover the costs. Some providers have therefore opted out of the scheme; others expect parents to pay new charges to make up for the shortfalls.[191]

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[186] Joseph Rowntree Foundation (2017), 'Households below a Minimum Income Standard: 2008/09 - 2015/16'. Available at: https://www.jrf.org.uk/report/households-below-minimum-income-standard-200809-201516 [accessed: 31 January 2018]. See also Joseph Rowntree Foundation (2017), https://www.jrf.org.uk/insecurity-and-difficult-decisions-how-lone-parents-manage-low-incomes and https://www.jrf.org.uk/press/we-need-tackle-high-cost-living-support-just-managing-families [both accessed: 31 January 2018]; Children's Rights Alliance for England (2017), 'State of Children's Rights in England 2017 – Briefing 3 on Poverty and Homelessness'. Available at: http://crae.org.uk/media/124456/B3_CRAE_SCR2017_POVERTY_D.pdf [accessed: 2 January 2018].

[187] Baxter, D. and Fahnbulleh, M. (2017), 'The 'not quite managings': The depth of income crisis in the UK', Institute for Public Policy Research. Available at: http://www.ippr.org/publications/the-not-quite-managings-the-depth-of-income-crisis-in-the-uk [accessed: 18 December 2017].

[188] This is four times as much as the rise in average wages of those with a one-year-old child. TUC (2017), 'TUC highlights 'childcare gap' for parents with one-year-olds'. Available at: https://www.tuc.org.uk/news/cost-childcare-has-risen-four-times-faster-wages-2008-says-tuc [accessed: 2 January 2017]. See also Joseph Rowntree Foundation (2017), https://www.jrf.org.uk/data/childcare-costs and https://www.jrf.org.uk/press/working-parents-hit-living-standards-ceiling-due-high-childcare-costs [both accessed: 31 January 2018].

[189] https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds [accessed: 31 January 2018].

[190] Department for Education (2017), 'Provision for children under five years of age in England, January 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/622632/SFR29_2017_Text.pdf [accessed: 31 January 2018].

[191] Pre-school Learning Alliance (2018), 'Parents are paying to access 'free childcare' offer, survey finds'. Available at: https://www.pre-school.org.uk/news/2018/01/parents-are-paying-access-free-childcare-offer-survey-finds [accessed: 2 February 2018]. See also

On a positive note, the introduction in April 2016 of the National Living Wage, the UK's statutory national minimum wage rate,[192] has led to the largest fall in low pay in four decades.[193] It currently is £7.50 per hour[194] and applies to those aged 25 and over.[195] Evidence suggests that it has had the desired effect: wages of those at the bottom of the ladder are increasing, while shrinking low-paying sub-sectors have not significantly harmed the employment prospects of low earners.[196] Yet, the minimum pay per hour for those aged 21 to 24 (the 'National Minimum Wage') is currently only £7.05 per hour.[197] [198] The EHRC is particularly concerned about the much lower rates for those under 21 (currently £5.60 per hour for 18–20 year-olds[199]) and £4.05 per hour for those aged 16 and 17.[200] At its 2016 examination of the UK, UN CESCR called upon the UK Government to ensure the minimum wage is 'set at a level sufficient to provide all workers [including those under the age of 25] and their families with a decent standard of living'.[201]

In April 2017, an estimated 342,000 jobs in the UK paid less than the National Minimum Wage or National Living Wage to employees aged 16 and over. The

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https://www.theguardian.com/education/2017/aug/27/uk-nurseries-30-hours-free-childcare-parents-providers-think-again; http://www.bbc.co.uk/news/education-32957950 [accessed: 02 February 2018].

[192] In June 2017, the Government announced its plans to increase the Living Wage to 60 per cent of median earnings by 2020 (no London weighting). The Low Pay Commission is the independent body tasked with advising the Government on the rates of the minimum wage, including the National Living Wage. It is made up of employee, employer and academic representatives. The EHRC has welcomed the improvements this provides in closing the gender pay gap, but has noted that this must form part of a policy and regulatory framework that aims to completely close the gap. See also EHRC (2016), 'Socio-economic rights in the UK', p. 43.

[193] Resolution Foundation (2017), 'Low Pay Britain 2017', p. 4. Available at: http://www.resolutionfoundation.org/publications/low-pay-britain-2017/ [accessed: 18 December 2017].

[194] The UK Government announced an increase to £7.83 from April 2018 in its Autumn Budget 2017. The Low Pay Commission estimates this will benefit over 2 million workers. HM Treasury (2017), 'Autumn Budget 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf [accessed: 22 December 2017].

[195] UK Government, 'National Minimum Wage and National Living Wage rates'. Available at: https://www.gov.uk/national-minimum-wage-rates [accessed: 18 December 2017].

[196] Resolution Foundation (2017), 'Low Pay Britain 2017', p. 19. Available at: http://www.resolutionfoundation.org/publications/low-pay-britain-2017/ [accessed: 18 December 2017].

[197] £7.38 per hour from April 2018. HM Treasury (2017), 'Autumn Budget 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf [accessed: 22 December 2017].

[198] UK Government, 'National Minimum Wage Rates'. Available at: https://www.gov.uk/national-minimum-wage-rates [accessed: 18 December 2017].

[199] £5.90 per hour from April 2018. HM Treasury (2017), 'Autumn Budget 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf [accessed: 22 December 2017].

[200] £4.20 per hour from April 2018. HM Treasury (2017), 'Autumn Budget 2017'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf [accessed: 22 December 2017].

[201] UN CESCR (2016), 'Concluding Observations', para. 37.

number of jobs paid below the National Minimum Wage in 2015 was 218,000.[202] Women held 67 per cent of jobs paid less than or close to the National Minimum Wage or National Living Wage at the end of 2016.[203] Those aged under 25 and over 59 were also disproportionately represented among those paid less than or close to the National Minimum Wage or National Living Wage at the end of 2016.[204]

The Living Wage Foundation, a non-governmental organisation, considers the National Living Wage to be insufficient to cover living expenses in many parts of the UK. It independently calculates the so called 'living wage' according to the basic cost of living in the UK.[205] Research by KPMG estimated that 21 per cent of all employee jobs in the UK paid less than the voluntary living wage in 2017 (a slightly lower percentage than in 2016).[206] This contributes to in-work poverty. The Joseph Rowntree Foundation estimates that in 2017, 3.7 million workers were living in poverty.[207] [208] In its response to the Taylor Review, BEIS pledged to ask the Low Pay Commission to consider the impact of higher minimum wage rates for workers on zero-hour contracts.[209]

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[202] The increase may be attributed to a few factors, including: the increase for the National Minimum Wage rates (introduced in October 2015) were the largest increases in each individual rate since 2010; the new National Living Wage for those aged 25 and over was introduced; and, most importantly, there was a shorter time period between the introduction of the National Living Wage rate and when the ASHE data were collected. The figures should therefore not be compared directly.
ONS (2016), 'Low Pay in the UK: April 2016'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016 [accessed: 18 December 2017].

[203] ONS (2017), 'Earnings and low pay: distributions and estimates from the Labour Force Survey'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/earningsandlowpay/distributionsestimatesfromthelabourforcesurvey#analysis-of-jobs-paid-less-than-or-close-to-the-national-minimum-wage-or-national-living-wage [accessed: 18 December 2017].

[204] ONS (2017), 'Earnings and low pay: distributions and estimates from the Labour Force Survey'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/earningsandlowpay/distributionsestimatesfromthelabourforcesurvey#analysis-of-jobs-paid-less-than-or-close-to-the-national-minimum-wage-or-national-living-wage [accessed: 18 December 2017].

[205] More than 3,800 employers have voluntarily signed up to this higher 'living wage' rate, which amounts to £10.20 per hour in London, and £8.75 outside London (https://www.livingwage.org.uk/what-real-living-wage, accessed: 3 January 2018).

[206] 5.5 million individuals in the UK are paid less than the voluntary living wage – 25 per cent of all female workers,16 per cent of all males.
KPMG (2017), 'KPMG Living Wage Research 2017'. Available at: https://home.kpmg.com/uk/en/home/insights/2017/11/kpmg-living-wage-research-2017.html [accessed: 18 December 2017].

[207] Joseph Rowntree Foundation (2017), 'UK Poverty 2017'. Available at: https://www.jrf.org.uk/report/uk-poverty-2017 [accessed: 19 December 2017].

[208] The majority of people in poverty in 2014/15 were in working families.
McBride,J., Smith, A., and Mbala, M. (2018), 'You end up with nothing': The experience of being a statistic of 'in-work poverty' in the UK, *Work, Employment and Society 2018*, vol. 32, no. 1, pp. 210-218.

[209] UK Government (2018), 'Good work: a response to the Taylor Review of Modern Working Practices', pp. 16, 37. Available at: https://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices [accessed: 8 February 2018].

Retail and hospitality had the highest number of low-paid employees in 2016; the industries with the higher proportion of employees who were low-paid were hairdressing, childcare, hospitality and cleaning. All these industries have a predominantly female workforce.[210] The concentration of women in low-paid jobs is one of the primary causes of the gender pay gap.[211]

4.4 Discrimination in work and in access to work

Under ICESCR Articles 6 and 7, the UK Government has a duty to progressively realise the rights of all people to access work, and to enjoy just and favourable conditions of work on a non-discriminatory basis. This should include recognition that some groups experience more barriers and/or discrimination than others in exercising these rights. We have noted that, even though employment rates are at a record high, a number of groups have a disproportionately low representation in the labour force, such as young people (aged 16–24), Muslims and disabled people, including people with learning disabilities.[212] We agree with UN CESCR that the UK Government should monitor access to work for groups with comparatively low employment rates and 'include in its action plan time-bound goals with a specific focus on [these groups]'.[213]

Women, some ethnic minority groups and disabled people are most likely to be in low-paid, part-time work with few opportunities for progression. In 2017, Annual Survey of Hours and Earnings (ASHE) data showed that the overall hourly gender pay gap for median earnings (excluding overtime) for all employees in the UK (that is, including both full-time and part-time employees) was 18.4 per cent.[214]

The ethnicity pay gap (the difference in pay between ethnic minority and White British people) was 5.7 per cent in 2015-16,[215] while the disability pay gap (the

[210] ONS (2016), 'Low Pay in the UK: April 2016'. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016 [accessed: 18 December 2017].
[211] Brown, D., Rickard, C. and Broughton, A. (2017), 'Tackling gender, disability and ethnicity pay gaps: a progress review', EHRC Research Report no. 110. Available at: https://www.equalityhumanrights.com/en/publication-download/research-report-110-tackling-gender-disability-and-ethnicity-pay-gaps-progress [accessed: 22 November 2017].
[212] EHRC (2016), 'Socio-economic rights in the UK', pp. 33-35.
[213] UN CESCR (2016), 'Concluding Observations', para 30.
[214] ONS (2017), 'Annual Survey of Hours and Earnings: 2017 provisional and 2016 revised results', Table 2.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults [accessed: 3 January 2018].
[215] Longhi, S. and Brynin, M. (2017), 'The ethnicity pay gap', EHRC. Available at: https://www.equalityhumanrights.com/en/pay-gaps [accessed: 22 November 2017].

difference in pay between disabled and non-disabled people) was 13.6 per cent in the same period. [216] [217] This data is from the Labour Force Survey and is not comparable with ASHE data for gender.[218] Pay gaps are a measure of the difference in average hourly pay between different groups and a good indicator of inequalities in access to work, progression and rewards. Government should urgently address the challenges to progression for those in low-pay sectors.

4.4.1 Gender pay gaps

While the gender pay gap may in some cases be a result of pay discrimination, widespread part-time work and low pay,[219] it is likely to stem from wider social, economic and demographic factors.

In 2017, the overall hourly gender pay gap for median earnings for full-time employees in the UK was 9.1 per cent. Since 2012, when the figure was 9.5 per cent, there has been only a small reduction in the size of the gap.[220] Overall, the gender pay gap continues to be narrower in the UK in the public sector than the private sector.[221]

[216] Data are for employees aged 16-64, in Great Britain, median hourly pay including overtime. EHRC analysis of ONS Social Survey Division (2016), 'Annual Population Survey, April 2015 - March 2016', [data collection], UK Data Service, 2nd Edition [accessed: 19 January 2017].
[217] EHRC (2017), 'Being disabled in Britain: a journey less equal'. Available at: https://www.equalityhumanrights.com/en/publication-download/being-disabled-britain-journey-less-equal [accessed: 22 November 2017].
[218] The calculations to generate the gender pay gaps, ethnicity pay gaps and disability pay gaps here follow different methodologies and use different data sources and are therefore not directly comparable.
[219] Brown, D., Rickard, C. and Broughton, A. (2017), 'Tackling gender, disability and ethnicity pay gaps: a progress review', EHRC Research Report no. 110. Available at: https://www.equalityhumanrights.com/en/publication-download/research-report-110-tackling-gender-disability-and-ethnicity-pay-gaps-progress [accessed: 22 November 2017].
[220] ONS (2017), 'Annual Survey of Hours and Earnings: 2017 provisional and 2016 revised results', Table 2.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults [accessed: 18 December 2017]; ONS (2017), 'Annual Survey of Hours and Earnings: Occupation' (2 digit SOC) – ASHE: Table 2. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2 [accessed: 18 December 2017].
[221] ONS (2017), 'Annual Survey of Hours and Earnings: 2017 provisional and 2016 revised results', Tables 13.1a and 13.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults [accessed: 18 December 2017].

In 2017, in all nine major occupational groups, men working full-time had higher median hourly earnings than women who did so, but the size of the gender pay gap varied considerably between occupations.

Recent evidence shows that the pay gap widens with age: older women experience a larger pay gap than younger women. This is primarily because women are more likely than men to take time out of the labour market to care for children and others, often resulting in slow career development. The analysis for the EHRC found that having a child increases the pay gap considerably for women.[222]

The number of part-time jobs increased from 8.11 million in July–September 2013 to 8.53 million in July–September 2017.[223] In August–October 2017, 39.8 per cent of female employees were employed part-time, compared with only 11.7 per cent of male employees.[224] Part-time and flexible working are important ways of enabling those with caring responsibilities and disabled people to participate in the labour market. However, flexible ways of working for full-time roles or part-time work are predominantly only available for low-paid low-skilled jobs. Our 'Working Forward' campaign[225] encourages employers to offer flexible working practices in senior and higher-paid roles. We believe that part-time, job-share and other types of flexible working should be available at all levels of organisations, and should not be an obstacle to career development and promotion.[226]

Voluntary initiatives have largely failed to address the gender pay gap because employers' participation rates have been low. This has led the Government to enact legislation for gender pay gap reporting. The EA 2010 (Gender Pay Gap Information) Regulations 2017 for private and voluntary sector employers came into force in April

[222] Brynin, M. (2017), 'The gender pay gap', EHRC Research Report no. 109. Available at: https://www.equalityhumanrights.com/sites/default/files/research-report-109-the-gender-pay-gap.pdf [accessed: 18 December 2017].
[223] ONS (2016), 'Part-time and temporary workers by socio-economic classification', EMP12. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/parttimeandtemporaryworkersbysocioeconomicclassificationemp12 [accessed: 3 January 2018].
[224] ONS (2017), 'Full-time, part-time and temporary workers (not seasonally adjusted)', EMP01 NSA. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersnotseasonallyadjustedemp01nsa [accessed: 3 January 2018].
[225] See EHRC's Working Forward campaign's website: https://www.equalityhumanrights.com/en/pregnancy-and-maternity-workplace/working-forward [accessed: 7 February 2018].
[226] See also EHRC (2017), 'Fair opportunities for all - A strategy to reduce pay gaps in Britain', pp. 14-19. Available at: https://www.equalityhumanrights.com/en/publication-download/fair-opportunities-all-strategy-reduce-pay-gaps-britain [accessed: 18 December 2017].

2017.[227] These require all private and voluntary sector employers with 250 or more employees to publish prescribed information about their gender pay gap results. All listed public sector employers with 250 or more employees must publish the same information as private and voluntary sector employers under the EA 2010 (Specific Duties and Public Authorities) Regulations 2017. In Scotland and Wales, further specific duties apply.[228] In October 2017, the Prime Minister announced a new drive to improve workplace equality and has called on companies to: ensure progress on female representation at senior levels, including offering return to work schemes; publish their gender pay gap data, including companies with fewer than 250 employees; and advertise all jobs as flexible, unless there are solid business reasons not to.[229]

The Welsh Government has set clear equality objectives as part of its Strategic Equality Plan 2016–2020 to identify and reduce the causes of employment, skills and pay inequalities.[230] The Plan seeks to give all children the best start in life, provide a quality education, challenge gender stereotyping, encourage people with protected

[227] The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017: these provide that, by April 2018 (and thereafter annually), all qualifying organisations must publish proscribed gender pay gap data about employees as defined under Section 83 of the Equality Act 2010, which includes apprentices and workers who have a contract personally to do work.
See https://www.equalityhumanrights.com/en/advice-and-guidance/gender-pay-gap-reporting-requirements#when [accessed: 18 December 2017].

[228] In Scotland, the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended in 2015 and 2016) require listed public sector employers to publish information in April every two years on the percentage difference, among its employees, between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime). The reporting threshold for this duty changed from 150 employees to 20 in March 2016, affecting most listed authorities at that time. Scottish listed authorities also have a duty to publish statements on equal pay every four years. The information published must be based on the most recent data available for a date when the authority had at least 20 employees. No publication is necessary if the authority has not had 20 employees at any point since these regulations came into force or since publication was last due.
In Wales, the Equality Act 2010 (Specific Duties) (Wales) Regulations 2011 require listed public sector employers when drawing up equality objectives to have due regard to the need to have objectives that address the causes of any difference in pay between employees who are from any protected group and those who are not; make appropriate arrangements to identify, collect and publish information about differences in pay, and the causes of any such differences, between such employees; publish an equality objective in relation to addressing any gender pay difference identified, or publish reasons why it has not done so; and publish an action plan in respect of gender pay. A listed body in Wales must review all its equality objectives at least once every four years.

[229] UK Government (2017), 'Prime Minister announces new drive to end the gender pay gap'. Available at: https://www.gov.uk/government/news/prime-minister-announces-new-drive-to-end-the-gender-pay-gap [accessed: 18 December 2017].

[230] Welsh Government (2016), 'Strategic Equality Plan and Equality Objectives 2016–2020'. Available at: http://gov.wales/docs/dsjlg/publications/equality/161214-strategic-equality-plan-en.pdf [accessed: 15 December 2017].
The gender pay gap for hourly earnings of full-time employees in Wales was 6.3 per cent in 2017 (compared with 9.1 per cent in the UK overall). ONS (2017), 'Annual Survey of Hours and Earnings: 2017 provisional and 2016 revised results', Table 7.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults [accessed: 3 January 2018].

characteristics into roles where they are under-represented and reduce the number of young people classed as 'not in education, employment, or training'. However, there are limits to the actions that the Welsh Government can take as employment remains a reserved matter.

4.4.2 Disabled people's access to, and conditions at work

Disabled people across the UK are less likely to be in employment than non-disabled people. 49.2 per cent of disabled people aged 16–64 were in employment in April-June 2017 compared with 80.6 per cent of non-disabled people.[231] [232] This represents an increase of 5.0 percentage points for disabled people since April-June 2014, compared to a 2.2 percentage point increase for non-disabled people.[233] Our new analysis has also shown that there are particularly low employment rates in Britain for people with severe or specific learning difficulties, difficulties in seeing, and those with mental health conditions.[234] Disabled people face barriers in obtaining and maintaining employment including:[235]

- Difficulties in getting employers to make reasonable adjustments to support recruitment and staying in work, including a lack of awareness about rights and obligations among disabled people and employers. We recently reported that a quarter of disability discrimination-related helpline enquiries concern failures to make reasonable adjustments in employment.[236]
- Obstacles to securing apprenticeships and low uptake of apprenticeships among disabled learners in England and Wales.[237]

[231] ONS (2017), 'Labour market status of disabled people', Table AO8. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08 [accessed: 3 January 2018].
[232] In GB as a whole in 2015/16, the disability employment gap was 32 percentage points, above the EU average. The gap has widened from 30 percentage points in 2013.
House of Commons Work and Pensions Committee (2017), 'Disability employment gap', figure 2, p. 6. Available at: https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/disability-employment-gap-15-16/ [accessed: 15 December 2017].
[233] ONS (2017), 'Labour market status of disabled people', Table AO8. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08 [accessed: 3 January 2018].
[234] See EHRC (2017), 'Being Disabled in Britain', Table EG1.1. Available at: https://www.equalityhumanrights.com/en/disability-report-being-disabled-britain [accessed: 27 November 2017].
[235] See UKIM (2017), 'Disability Rights in the UK', pp. 56-58.
[236] EHRC (2016), 'Response to the report of the House of Lords Select Committee on the Equality Act 2010 and disability'. Available at: https://www.equalityhumanrights.com/sites/default/files/ehrc-response-to-lords-select-committee-equality-act-and-disability-july-2016.pdf [accessed: 4 December 2017].
[237] There are concerns in relation to England and Wales.

- Difficulties with transport and workplace access, negative attitudes, and bullying and harassment at work.[238]

A report by the All Party Parliamentary Group on Disability in 2016[239] found that public and private sector organisations had failed to provide appropriate support to disabled people in the workplace and in access to start up funds, business advice and business networks. It identified two key priorities:

- In order to close the employment gap, disabled people need access to jobs at a higher rate than has been the case, perhaps with preferential treatment through the use of lawful positive action.
- Disabled people need support to retain work; they are often managed out of the workplace rather than encouraged to stay.

There are concerns that initiatives intended to address the disability employment gap will fail to achieve positive change.[240] In particular:

- Despite benefits of the Access to Work scheme,[241] there are concerns that it focuses on those with physical impairments,[242] that the application process can

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England: in 2015/16, 88.5 per cent of all apprenticeship were started by learners without any learning difficulty or disability. In contrast, 9.9 per cent of apprenticeship starters were disabled learners (1.5 per cent not known); an increase of 33 per cent since 2013/14. SFA and BIS (2016), Statistical data set: FE data library: apprenticeships, https://www.gov.uk/government/statistical-data-sets/fe-data-library-apprenticeships [accessed: 3 January 2018].
Wales: in 2015/16, 98.6 per cent of all apprenticeships were started by learners without any learning difficulty or disability. In contrast, 1.4 per cent of apprenticeships were started by disabled learners. Further education, work-based learning and community learning statistics: Unique learners in work-based learning provision by age group, gender and programme type, https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Work-Based-Learning/uniquelearnersworkbasedlearning-by-age-gender-programmetype [accessed: 3 January 2018]; Estyn (2015), 'Breaking down barriers to apprenticeships'. Available at: https://www.estyn.gov.wales/thematic-reports/breaking-down-barriers-apprenticeships-october-2015 [accessed: 29 November 2017].

[238] Adams, L. and Oldfield, K. (2012), 'Opening Up: The Views of Disabled People and People with Long-term Health Conditions', EHRC Research Report No. 77. Available at: https://www.equalityhumanrights.com/en/publication-download/research-report-77-opening-work-views-disabled-people-and-people-long-term [accessed: 18 January 2018]; and Coleman, N., Sykes, W. and Groom, C. (2013), 'Barriers to employment and unfair treatment at work: A quantitative analysis of disabled people's experiences', EHRC Research Report no. 88. Available at: https://www.equalityhumanrights.com/en/publication-download/research-report-88-barriers-employment-and-unfair-treatment-work-quantitative [accessed: 14 January 2018]; TUC (2015), 'Disability and employment: a social model study of the employment experiences of disabled people in Great Britain, with a focus on mental illness'. Available at: https://www.tuc.org.uk/research-analysis/reports/disability-and-employment-report [accessed: 18 January 2018]; TUC (2015), 'You don't look disabled: supporting members with invisible impairments'. Available at: https://www.tuc.org.uk/research-analysis/reports/you-dont-look-disabled-supporting-members-invisible-impairments [accessed: 18 January 2018].

[239] All Party Parliamentary Group on Disability (2016), 'Ahead of the Arc'. Available at: https://www.disabilityrightsuk.org/sites/default/files/pdf/AheadoftheArc9Dec2016.pdf [accessed: 10 January 2018].

[240] UKIM (2017), 'Disability Rights in the UK', pp. 28-31.

take too long, and that a cap on support provided has been set at one and a half times the average salary.[243] The UK Government has recognised that capping individual support at this level may cause the cost of support to fall back on employers and therefore discourage them from employing disabled people, and that the majority of those affected by the cap are those who are deaf or have a hearing impairment.[244] Emerging evidence indicates that some disabled people are being negatively affected by the cap in practice, particularly deaf users of British Sign Language.[245]

- There are continued concerns that combining the support currently provided by the Work Programme[246] and Work Choice[247] into a single Work and Health Programme delivered by non-specialist prime contractors, will diminish the quality and effectiveness of support available for disabled people.[248] The UK Government's new Work and Health Programme is intended to offer a more personalised local approach to supporting disabled people, targeting specialist

[241] Access to Work: provides practical and financial support to disabled people and their employers. It covers GB and is delivered by DWP through Jobcentre Plus. Reviews have found the scheme to be cost effective, with positive benefits including increased productivity and staff retention and reduced sickness absence. Sayce, L. (2011), 'Getting in, Staying in and Getting on. Disability employment support fit for the future'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49779/sayce-report.pdf [accessed: 18 January 2018].

[242] House of Commons Library (2018), 'Briefing Paper: People with disabilities in employment. Available at: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7540 [accessed: 18 January 2018]; Sayce, L. (2011), 'Getting in, Staying in and Getting on. Disability employment support fit for the future'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49779/sayce-report.pdf [accessed: 18 January 2018].

[243] House of Commons Work and Pensions Committee (2017), 'Disability employment gap – Seventh report of session 2016-17', para 46. Available at: https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/56/56.pdf [accessed: 18 December 2017]. The EHRC has raised these concerns in other shadow reports, for example: EHRC (2016), 'Socio-economic rights in the UK', p. 36 and UKIM (2017), 'Disability Rights in the UK: Submission to inform the CRPD List of Issues on the UK', p 29. Available at: https://www.equalityhumanrights.com/sites/default/files/united_kingdom_main_submission_to_crpd_uk_loi_-_ukim13march.pdf [accessed: 31 January 2018].

[244] DWP (2015), 'Equality Analysis for the Future of Access to Work'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426416/future-of-access-to-work-equality-analysis.pdf [accessed: 9 December 2017].

[245] The EHRC is currently funding a case for judicial review, brought by the deaf CEO of a charity against the DWP. The Claimant challenges the DWP's decision to cap the funding provided for BSL interpreters on various grounds including that the cap is indirectly discriminatory against deaf people, the DWP have breached the PSED when imposing the cap and that the cap breaches the Claimant's human rights.

[246] A shorthand term for a number of schemes aimed at assisting jobseeker allowance claimants to find work.

[247] Introduced in October 2010, Work Choice is a specialist employment programme for disabled people offering three levels of help: work entry; in-work support for up to two years; and longer term in-work support.

[248] Work and Pensions Committee (2015), 'A specialist programme for disabled people'. Available at: https://publications.parliament.uk/pa/cm201516/cmselect/cmworpen/363/36307.html [accessed: 16 December 2017]. See also EHRC (2016), 'Socio-economic rights in the UK', p. 37.

support to those who are likely to be able to find work within 12 months.[249] However, the impact of these measures and other initiatives outlined needs to be carefully monitored and evaluated.[250]

- The UK Parliament Work and Pensions Committee released a report in January 2017[251] welcoming the UK Government's commitment to halve the disability employment gap. However, it commented that the Government would struggle to achieve its target if it could not bring employers on board and enhance in-work support, and recommended publication of a Disability Employment Strategy.[252]
- In November 2017, the UK Government launched plans to increase the number of disabled people in work – establishing a time-bound target of one million more disabled people in employment over the next ten years – including by building capability to deliver tailored support, by ensuring access to personalised and tailored employment support, by continuously improving the assessment process, and by empowering those furthest away from the labour market.[253] Although this programme of action, and the commitment to building a comprehensive evidence base about what works for whom, why and at what cost is a positive first step, we would welcome clarity on ensuring that responsibilities for the strategy are embedded across all relevant Government departments and that this accountability is demonstrated through regular monitoring of progress.

Disabled people in the UK are paid less on average than non-disabled people.[254] In GB in 2015-16, the disability pay gap stood at 13.6 per cent.[255] Our 2017 research[256] on the disability pay gap included the following key findings:

[249] The programme started in November 2017 and will be in place across England and Wales by March 2018. The Personal Support Package of employment support, including a range of Jobcentre Plus initiatives, new trials and contracted provision, are designed to deliver a more personalised tailored offer to customers with health conditions.
[250] DWP and DH (2017), 'Improving Lives - The Future of Work, Health and Disability', pp. 18, 19. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF [accessed: 3 December 2017].
[251] House of Commons Work and Pensions Committee (2017), 'Disability employment gap'. Available at: https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2015/disability-employment-gap-15-16/ [accessed: 27 November 2017].
[252] Among the Committee's key recommendations were that the Government should publish a Disability Employment Strategy which would bring together the different initiatives that relate to halving the gap; that they should build on them and ensure that this is seen as a shared long-term priority across all relevant Departments; and that the Strategy should be supported by annual reports on progress towards meeting goals, drawing on improved monitoring arrangements.
[253] DWP and DH (2017), 'Improving Lives - The Future of Work, Health and Disability'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663399/improving-lives-the-future-of-work-health-and-disability.PDF [accessed: 3 December 2017].
[254] UKIM (2017), 'Disability Rights in the UK', p. 31.

- The causes of the disability pay gap are complex. Differences in the personal characteristics of disabled people and non-disabled people may have an impact on the pay gap. For example, lower levels of education or reduced ability to work continuously on a full-time basis can have a negative impact on pay.
- The size of the pay gap varies depending on the exact nature of the disability. The pay gaps tend to be largest for those with neurological disorders, mental health conditions, learning difficulties or disabilities.
- The pay gaps for those with physical impairments are substantial. Men with physical impairments generally experience pay gaps in the range of 15 to 28 per cent, compared with non-disabled men, depending on the nature of the disability. The pay gaps for women with physical impairments range from eight to 18 per cent, compared with non-disabled women.

4.4.3 Ethnic minorities' access to, and conditions at work

In our 2016 submission to UN CESCR, we expressed concern about the unequal access to the labour market affecting certain ethnic minority groups. We highlighted the situation of Muslims in particular, noting that low employment and high unemployment rates were particularly prevalent among young Muslim men, and that Muslims were under-represented in the high-pay professions. UN CESCR recommended the UK Government establish an action plan with 'time-bound goals with a specific focus on groups disproportionately affected by unemployment'.[257]

New evidence shows, however, that unemployment continues to disproportionately affect individuals belonging to certain ethnic and religious minorities in the UK, although there has been some progress in recent years. The employment rates of ethnic minorities aged 16–64 have increased from 60.4 per cent in July–September 2013 to 65.5 per cent in July–September 2017. However, the overall figure masks considerable differences between ethnic groups: the employment rate for Indians aged 16–64 was 73.9 per cent in July–September 2017, whereas the equivalent rates for Pakistanis and Bangladeshis were only 54.6 per cent and 53.0 per cent

[255] EHRC (2017), 'Being disabled in Britain', Table EG2.2. Available at: https://www.equalityhumanrights.com/en/disability-report-being-disabled-britain [accessed: 27 November 2017].
[256] Longhi, S. (2017), 'The disability pay gap', EHRC Research Report no. 107. Data are for median hourly earnings of employees aged 16-64. Available at: https://www.equalityhumanrights.com/sites/default/files/research-report-107-the-disability-pay-gap.pdf [accessed: 18 December 2017]. See also: UKIM (2017), 'Disability rights in the UK', pp. 57, 58.
[257] UN CESCR (2016), 'Concluding Observations', para. 30.

respectively.[258] Pakistanis and Bangladeshis also continue to experience the highest unemployment rates in the UK at 10.3 and 13.0 per cent respectively in July–September 2017, compared with an unemployment rate for White people of 4.0 per cent.[259]

Ethnic minority representation in boardrooms and in senior management roles also remains disproportionately low. The Parker report into the ethnic diversity of UK boards found that, in 2016, the percentage of ethnic minorities represented in UK boardrooms was about eight per cent of the total (including non-UK nationals). This signalled a small improvement since 2014, when ethnic minorities represented five per cent of UK directors, but was still much lower than one would expect if UK boards were to reflect the population of the country, where ethnic minorities make up approximately 14 per cent of the population. Moreover, the Parker report found that ethnic minorities of UK citizenship represented only two percent of the total population of directors in Britain. The same report highlighted that, in 2016, 53 per cent of FTSE 100 companies did not have any ethnic minority directors at all.[260] In the public sector, ethnic minority representation in the Civil Service increased from 9.3 per cent in 2010 to 11.6 per cent in 2017. However, ethnic minority representation in the Senior Civil Service was 4.6 per cent in 2017, only a small increase from 4.2 per cent in 2010.[261]

The latest pay figures from the Labour Force Survey, for the last three months in 2016, suggest that ethnicity pay gaps persist, with people in the Pakistani or Bangladeshi group and Black people continuing to receive the lowest average hourly pay. The highest earning ethnic group was Indians.[262]

The reasons for the ethnicity pay gap are complex. Our recent study identified some common drivers of pay gaps across ethnic groups but also some important differences. Pay gaps experienced by Bangladeshi and Pakistani people (both men and women) may be explained by their over-representation in low-paid occupations.

[258] ONS (2017), 'Labour market status by ethnic group', Table A09. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09 [accessed: 3 January 2018].
[259] ONS (2017), 'Labour market status by ethnic group', Table A09. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09 [accessed: 3 January 2018].
[260] Parker, J. (2017), 'A report into the ethnic diversity of UK boards', The Parker Review Committee, pp. 5, 22. Available at: http://www.ey.com/Publication/vwLUAssets/The_Parker_Review/$FILE/EY-Parker-Review-2017-FINAL%20REPORT.pdf [accessed: 18 December 2017].
[261] UK Government (2017), 'A Brilliant Civil Service: becoming the UK's most inclusive employer: The Civil Service Diversity and Inclusion Strategy', p. 13. Available at: https://www.gov.uk/government/publications/a-brilliant-civil-service-becoming-the-uks-most-inclusive-employer [accessed: 3 December 2017].
[262] UK Government (2017), 'Ethnicity Facts and Figures'. Available at: https://www.ethnicity-facts-figures.service.gov.uk/ [accessed: 29 December 2017].

Age is another contributing factor as British-born male employees belonging to the Bangladeshi and Pakistani group tend to be younger than their White British counterparts, which also impacts on their average pay. The same over-representation in low-paid occupations explains part of the pay disadvantage experienced by Black African immigrant men and Black Caribbean immigrant and British-born men. In the case of these groups, lower qualifications also played a role. However, the study found that these factors account for only a small proportion of the pay gaps, with the rest unexplained. This suggests that discrimination may also play a role in the ethnicity pay gap.[263]

The UK Government has taken steps to address these inequalities, including by setting a target to increase the proportion of apprenticeships starts by people from ethnic minority backgrounds by 20 per cent by 2020.[264] This target is considered to be insufficient by some observers, given the much higher unemployment rates among young people from ethnic minority backgrounds than their White peers.[265] The Government has not extended the statutory requirement for employers to report on their gender pay gaps to ethnicity. While the Government has included statistical information on gross hourly pay in the Race Disparity Audit,[266] for this information to provide an effective benchmark for measuring progress toward closing ethnicity pay gaps, the data must be updated regularly, and broken down by occupational sector, and patterns of work. Moreover, the Government's initiatives in the area of employment remain piecemeal; they lack a strategic framework with which to consider the main causes, drivers and levers for change.

4.5 Recommendations

In order to guarantee access to work and just and favourable working conditions on a non-discriminatory basis, as required by ICESCR Articles 6 and 7, we recommend the UK Government and, where relevant, the Welsh Government in particular:

[263] Longhi, S. and Brynin, M. (2017), 'The Ethnicity Pay Gap', Institute for Social and Economic Research, University of Essex, EHRC Research Report no. 108. Available at: https://www.equalityhumanrights.com/sites/default/files/research-report-108-the-ethnicity-pay-gap.pdf [accessed: 18 December 2017].
[264] The UK Government has set up the Apprenticeship Diversity Champions Network to champion apprenticeships and diversity amongst employers, and encourage more people from underrepresented groups to consider apprenticeships.
[265] Runnymede Trust (2015), 'David Cameron's Employment Targets for Ethnic Minorities Will Not Reduce Racial Inequalities', Race Matters, Post on 11 June 2015: https://www.runnymedetrust.org/blog/david-camerons-employment-targets-for-ethnic-minorities-will-not-reduce-racial-inequalities [accessed: 7 February 2018].
[266] UK Government (2017), 'Ethnicity Facts and Figures'. Available at: https://www.ethnicity-facts-figures.service.gov.uk/ [accessed: 29 December 2017].

- To legislate to extend the right to request flexible working to apply from day one in all jobs unless there is a genuine business reason that means that this is not possible.
- To address the problems with the availability and affordability of properly regulated childcare, including by ensuring adequately funded and high-quality childcare for all children, including children sharing protected characteristics.
- To take action, together with employers, to unlock the earning potential of education by improving subject and career choices, educational attainment and access to apprenticeships.
- To uphold its commitment and take forward the implementation of the UN Guiding Principles on Business and Human Rights, as this provides a proportionate framework to encourage companies to operate with a culture of respect for human rights, and reiterates state obligations to use its regulatory and enforcement powers to protect human rights. Companies that do not operate lawfully must be held to account. Both parties should put in place effective remedies for individuals to seek redress when their rights have been harmed.
- To ensure better access of workers as well as employers to information about employment rights and employer responsibilities.
- To update and clarify the legislative framework on workers' rights, as atypical work risks undermining existing rights, and may undermine Government's commitments to the rights set out in the international human rights framework. For example, definitions for employment status do not easily apply to new ways of working and this is leaving individuals without adequate rights protections.
- To effectively enforce the National Living Wage,[267] to monitor and report on its impact on women and young people, and to consider extending the National Living Wage to those aged under 25 and increasing the level at which it is paid so that it constitutes a Living Wage adequate to meet costs of living across the UK.
- To continue to monitor access to work for groups with comparatively low employment rates and high unemployment, and effectively address the causal factors for these differences.
- To publish statistical information on the scale and trends in disability and ethnicity pay gaps for full-time and part-time workers (in addition to gender).
- To consult with employers on the most effective way of extending the gender pay gap reporting regulations to ethnicity and disability pay gaps.

[267] See also House of Commons Work and Pensions and Business, Energy and Industrial Strategy Committees (2017), 'A framework for modern employment'. Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/352.pdf [accessed: 18 December 2017].

- To 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.

Disabled people's access and conditions of work

- To evaluate how well employment support programmes help disabled people find and stay in work, and take steps to improve their effectiveness. This should include a regular and transparent evaluation of progress made on the UK Government's 'Improving Lives' strategy to ensure progress is seen as a shared, long-term, priority objective across all relevant Government departments.
- To introduce interim targets and a statutory reporting requirement on its commitment to a target of one million more disabled people in work over the next ten years, and report regularly on progress, including by impairment group, and identify steps if progress is insufficient.
- To ensure that changes to the Access to Work programme comply with the rights of disabled people, in particular by widening support for mental health and complex health or medical conditions; monitoring any adverse impact on employment opportunities, and introducing mitigations such as additional funding flexibilities, extending transition arrangements and reviewing the cap level.

Ethnic minorities' access and conditions of work

- To put in place a comprehensive, coordinated and long-term strategy to tackle the inequalities exposed by the Race Disparity Audit. In the field of employment, the strategy should include measures to encourage employers to set aspirational targets and take concrete actions, including the use of positive action to the fullest extent possible, to improve diversity at all grades in their organisations. Employers should also be encouraged to introduce quality apprenticeship schemes and enable a higher proportion of ethnic minority applicants to access these opportunities.
- To implement local strategies to tackle high unemployment rates for ethnic minority groups, including investment in training in sectors and industries where ethnic minorities are over-represented in low-paid and low-skilled jobs. Public authorities should be required to use the PSED to set objectives to address their ethnicity and employment gaps, including at senior levels, and to take into account as part of tender processes the actions suppliers are taking to address their own ethnicity employment gaps.

5. Access to justice

UN CESCR Concluding Observations 2016, paragraph 21:

'The Committee recommends that the State party review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups.'

5.1 Introduction

In 2016, UN CESCR expressed concern about 'the absence of […] access to justice for those affected by the use of sanctions' in relation to social security entitlements in the UK.[268] Access to (judicial or other) effective remedies is an essential element of the rights enshrined in ICESCR.[269] Legal assistance for obtaining remedies to fully realise all economic and social rights should be available, and free for those who are unable to pay.[270]

5.2 Legal aid

In our 2016 submission to UN CESCR, we expressed concern about the impact on access to justice of the restrictions in the scope of legal aid in England and Wales

[268] UN CESCR (2016), 'Concluding Observations', para. 40.
[269] UN CESCR (1990), General Comment No. 3 on the nature of States parties' obligations, para. 5; UN CESCR (1998), General comment No. 9 on the domestic application of the Covenant, E/C.12/1998/24, paras. 2, 3, 4; UN CESCR (2016), General Comment No. 23 on the right to just and favourable conditions of work, E/C.12/GC/23, para. 50; UN CESCR (2018), General Comment No. 19 on the right to social security, E/C.12/GC/19, para. 77. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11 [accessed: 18 December 2017]. A free-standing right to an effective remedy is also stipulated by the International Covenant on Civil and Political Rights (Arts. 2(3), 3, 26).
[270] UN CESCR (2016), General Comment No. 23 on the right to just and favourable conditions of work, E/C.12/GC/23, para. 57; UN CESCR (2018), General Comment No. 19 on the right to social security, E/C.12/GC/19, para. 77.

brought about by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, which removed many social welfare law cases from the scope of legal aid, including most cases concerning housing, social security, debt, employment, immigration and family law. We highlighted in particular concerns about the impact of the changes on disadvantaged groups, including: women and children who have been victims of domestic violence,[271] as a result of new evidential requirements for accessing legal aid in private family law cases; disabled persons, as a result of the impact on access to justice in social security, community care, housing and discrimination cases; and ethnic minorities, in particular as a result of the removal of many types of immigration cases from the scope of public funding.[272] In December 2017, following a review of the evidence requirements set out in LASPO, the UK Government announced that from January 2018 the current five year time limit on abuse evidence in the family courts would be removed, while the range of documents accepted as evidence of abuse would be widened to include statements from domestic violence support organisations and housing support officers.[273]

We also expressed concern about proposals to introduce a residence test for access to civil legal aid, which could discriminate against certain non-British nationals and amount to a violation of the right to a fair trial under the European Convention on Human Rights.[274] We therefore welcome the fact that the draft regulations introducing such a residence test have been withdrawn.

New research since the examination of the UK by UN CESCR in 2016 does not indicate any improvements. A 2017 report by the Law Society concluded that legal aid is no longer available for many of those who need it. It highlights the adverse effects of LASPO on children, especially separated children who have been directly excluded from legal aid, but also children who have been indirectly affected by the removal of private family law from the scope of legal aid. The Law Society notes that, a year after the adoption of LASPO, there was a 22 per cent rise in the number of private family law cases involving children where neither party was represented. This is likely to have led to negative outcomes for the children involved, given the

[271] See also TUC (2016), 'Justice denied - impacts of the government's reforms to legal aid and court services on access to justice'. Available at: https://www.tuc.org.uk/research-analysis/reports/justice-denied-impacts-government%E2%80%99s-reforms-legal-aid-and-court-services [accessed: 29 September 2017].
[272] EHRC (2016), 'Socio-economic rights in the UK', section 4. EHRC (2015), 'Equality, human rights and access to civil law justice: a literature review'. Available at: https://www.equalityhumanrights.com/sites/default/files/research-report-99-equality-human-rights-and-access-to-civil-law-justice.pdf [accessed: 18 December 2017].
[273] MoJ (2017) 'More legal aid support for victims of domestic violence'. Available at: https://www.gov.uk/government/news/more-legal-aid-support-for-victims-of-domestic-violence [accessed: 21 December 2017].
[274] EHRC (2015), 'Socio-economic rights in the UK', pp. 53-57.

difficulties which people face when representing themselves in court. Changes to the operation of the civil legal aid income cap and the capital means test for determining an individual's eligibility for legal aid have also had an adverse impact on people on low incomes, in terms of their ability to access legal advice.[275] Worrying trends have also been pointed out by Amnesty International in a report published in 2016,[276] which focuses on the areas of immigration, family and social security law and outlines the way cuts to legal aid have had a disproportionate impact on disadvantaged individuals.

The mechanisms which were introduced to offset some of these effects do not appear to be working. LASPO provides for an Exceptional Case Funding scheme for cases that do not fall within the scope of legal aid, but where the failure to provide legal assistance would be in breach of the Human Rights Act or enforceable rights based on EU law. However, applications for Exceptional Case Funding have been found to be complicated and time-consuming, and the number being received every year remains much lower than the number that had been predicted by the Government when it was introduced.[277] LASPO also provided for initial free legal advice by telephone for the areas of law that fall within the scope of legal aid. However, this Mandatory Telephone Gateway is also underused, suggesting that telephone advice for persons in vulnerable situations may not be appropriate.[278] The appropriateness of a telephone advice line for ensuring that individuals facing complex discrimination issues receive proper legal help is also subject to question as in 2017, out of 2,608 people who used the advice line for advice on discrimination cases, not a single one was referred for face-to-face legal help.[279]

Finally it has been observed that the reduced access to legal services is having detrimental effects not only on litigants, but also on the wider legal system. The increase in the number of persons representing themselves in courts, often without sufficient understanding of the law or court processes, is giving additional work to

[275] The Law Society (2017), 'Access Denied? LASPO four years on: a Law Society review', pp. 24-29. Available at: http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/ [accessed: 10 November 2017].
[276] Amnesty International. (2016), 'Cuts that hurt: The impact of legal aid cuts in England on access to justice'. Available at: https://www.amnesty.org/en/documents/eur45/4936/2016/en/ [accessed: 29 September 2017].
[277] Amnesty International (2016), 'Cuts that hurt: The impact of legal aid cuts in England on access to justice', pp. 23-25; The Bach Commission (2017), 'The Right to Justice: The final report of the Bach Commission', p. 23. Available at: http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf [accessed: 29 September 2017], containing evidence of the low numbers of children and young people who have been granted Exceptional Case Funding in contrast to Government estimates when it introduced LASPO.
[278] The Law Society (2017), 'Access Denied? LASPO four years on: a Law Society review', p. 21.
[279] Legal aid scheme: Telephone services: Written question 111874. Available at: http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-07/111874/ [accessed: 9 January 2018].

judges and court staff which is putting pressure on limited resources and adding further to delays. Cuts in the availability of early legal advice to individuals are resulting in the escalation of relatively minor problems particularly in relation to debt, housing and health, putting an additional burden on public services.[280] In November 2017, the Law Society published further research[281] which showed that:

- On average, one in four people who receive early professional legal advice had resolved their problem within three to four months. For those who did not receive early legal advice, it was not until nine months after the issue had first occurred that one in four had resolved their issue.
- Between an issue arising and the problem being resolved, people who did not receive early advice were 20 per cent less likely than average to have had their issue resolved.

A detailed and extensive report by the Bach Commission on access to justice,[282] published in 2017, found that the scale of cuts to legal aid has actually been much greater than originally anticipated. The Government estimated savings in legal aid spending resulting from LASPO of £450 million per year, but in reality annual legal aid spending is £950 million less than in 2010. It noted that the consequences are extremely damaging. The diminishing number of legal aid practitioners coupled with cuts to the advice sector means access to justice is beyond the reach of many people. Those problems are compounded by an outdated civil justice system and a bureaucratic and costly legal aid framework. The scale of problems is so widespread and profound that the then President of the UK Supreme Court, Lord Neuberger, issued a warning: 'We have a serious problem with access to justice for ordinary citizens … if it does not exist, society will eventually start to fragment'.[283]

In an attempt to remedy those problems, the Bach Commission report proposes a number of solutions, which it considers affordable and cost-effective in the short-term, as well as sustainable in the longer term. In summary, it proposes the following solutions:

- The statutory codification and extension of existing rights in a new legally enforceable Right to Justice Act that has constitutional status in the UK equivalent

[280] The Law Society (2017), 'Access Denied? LASPO four years on: a Law Society review', pp. 24-29.
[281] The Law Society (2017), 'Analysis of the potential effects of early legal advice/intervention'. Available at: http://www.lawsociety.org.uk/support-services/research-trends/documents/impact-of-early-legal-advice/ [accessed: 21 December 2017].
[282] The Bach Commission (2017), 'The Right to Justice: The final report of the Bach Commission'. Available at: http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf [accessed: 29 September 2017].
[283] Lord Neuberger (2017), 'Welcome address to Australian Bar Association Biennial Conference', 3 July 2017. Available at: https://www.supremecourt.uk/docs/speech-170703.pdf [accessed: 7 February 2018].

to the Human Rights Act 1998; the creation of an independent Justice Commission to protect, promote and enforce the new right to justice; and the replacement of the Legal Aid Agency with an independent body.

- Reforming legal aid assessment by creating a more generous legal aid eligibility system that is less bureaucratic and burdensome on practitioners and the public.
- Means-tested welfare benefits recipients should be automatically eligible for legal aid; capital limits and contributions should be consistently relaxed.
- Cases concerning legal support for children should be brought back within scope of legal aid; some immigration and family cases should be eligible for legal aid on important matters such as family reunion, child care and custody; the availability of legal aid in respect of inquests and judicial review should be improved.
- The scope of legal aid should be extended to provide early legal help and effective dispute resolution that is cost-effective in the longer run.
- Measures should be taken to improve public legal awareness, especially in schools and in the community, so people are aware of their rights, can understand legal problems and know where to turn for advice and assistance.
- Updating and modernising the legal system should ensure that it is fit for purpose and accessible to everyone.

In a post-legislative memorandum presented to the Justice Select Committee on 30 October 2017, the MoJ published an 'initial high-level assessment' of how the reforms contained within LASPO have worked relative to the Government's objectives in introducing them.[284] The post-legislative memorandum acknowledges that the objective to discourage unnecessary litigation has not been met. Family law proceedings had been a main target and it was felt that encouraging claimants in child custody or divorce cases to seek mediation in the absence of legal aid would further this objective. However, while the number of people attending publicly funded mediation fell, the number of people attempting to represent themselves in family courts rose.[285]

In addition to the memorandum, the MoJ has committed to producing post-implementation reviews for various policies contained within Parts 1 and 2 of

[284] MoJ (2017), 'Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf [accessed: 10 November 2017].
[285] MoJ (2017), 'Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum', pp. 38-44. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf [accessed: 10 November 2017].

LASPO.[286] The MoJ has said that it will seek the views of interested parties and will be writing to organisations and individuals to invite them to make submissions with a view to publishing the review by summer 2018. However, at the time of writing, the Government has not indicated the range of evidence that it will consider nor whether the review will include mechanisms for examining the particular impacts of the reforms on groups sharing protected characteristics. We will provide a submission to the UK Government's review based on research we are conducting on the different routes taken by individuals with legal problems who are no longer eligible for legal aid under LASPO.

5.3 Access to employment tribunals

As indicated above in relation to workers' rights (section 4.2), an individual's employment status dictates which, if any, employment rights they are entitled to. For example, to have the right not to be unfairly dismissed an individual must normally show that they are an 'employee'. To have the right to paid holiday or to enforce the right not to be discriminated against, an individual must show that they are a 'worker'. Individuals with atypical employment arrangements may find it difficult to show they fall within these categories. Various high profile cases have dealt with this issue, both in the employment tribunal and at an appellate level. For example, in *Uber BV v Aslam*, the Employment Appeal Tribunal held the Employment Tribunal had been entitled to look beyond the characterisation of the relationship set out in the contractual documentation and consider the reality of the obligations. In *Pimlico Plumbers Ltd v Smith*, the Court of Appeal found that an employment tribunal had been entitled to find that Mr Smith was a 'worker' due to the requirement for Mr Smith to personally provide work and the degree of control exercised by Pimlico Plumbers Ltd over Mr Smith. Pimlico Plumbers have appealed this decision and the appeal was heard in the Supreme Court on 20 and 21 February 2018. The judgment is awaited.

We noted in our 2015 and 2016 evidence to UN CESCR the substantial drop in cases following the introduction of employment tribunal fees in July 2013. The drop in the number of cases was particularly marked for those involving discrimination on the basis of sex, disability, race and sexual orientation, as well as those on equal pay, unfair dismissal and breach of contract. The introduction of tribunal fees thus

[286] MoJ (2017), 'Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf [accessed: 10 November 2017].

had a disproportionate impact on the ability to access justice and claim employment rights of individuals sharing these protected characteristics.[287]

In its review of the impact of employment tribunal fees in 2017,[288] the UK Government stated that while there is clear evidence that fees have discouraged people from bringing claims, there is no conclusive evidence that they have been prevented from doing so. Unison challenged the lawfulness of the fees in the Supreme Court, a case in which we intervened. The Supreme Court found the fee regime to be unlawful.[289] The judgment stated that the constitutional right of access to the courts is needed to ensure that laws created by Parliament can be enforced. The fees were also said to be indirectly discriminatory against women. Yet, the UK Government has refused to rule out reintroducing up-front fees to access employment tribunals in the future.[290]

5.4 Recommendations

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

- We urge the UK Government to use the full range of evidence available in its review of LASPO:
  - The review should include an assessment of the actual impact of the LASPO provisions on groups sharing protected characteristics, in line with the UK Government's PSED obligations.
  - Priority attention should be given to the impact of the provisions on disabled people, women, children, ethnic minorities, and non-British nationals.

[287] UK Government (2017), 'Tribunals and gender recognition certificate statistics quarterly – July to September 2017', Annex C, Table C.2. Available at: https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-july-to-september-2017 [accessed: 18 January 2018]; House of Commons (2017), 'Briefing Paper: Employment tribunal fees', chapter 3. Available at: http://researchbriefings.files.parliament.uk/documents/SN07081/SN07081.pdf [accessed: 18 January 2018]; EHRC (2016), 'Socio-economic rights in the UK', section 4.2.
[288] MoJ (2017), 'Review of the introduction of fees in the Employment Tribunals'. Available at: https://consult.justice.gov.uk/digital-communications/review-of-fees-in-employment-tribunals/ [accessed 16 October 2017].
[289] *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51.
[290] See exchange between Justin Madders MP and Dominic Raab MP, Minister of State for Courts and Justice on 12 October 2017. Available at: https://hansard.parliament.uk/Commons/2017-10-12/debates/6A5B39A8-BF84-416B-91C1-705A1C0CC0FC/DiscriminationClaimsTribunalFees [accessed 12 October 2017].

  - The review should also include an assessment of the impact of the changes on people's rights as protected by ICESCR and other UN human rights treaties, in particular the rights to social security, an adequate standard of living including housing, and education.
  - It is particularly important for the assessments to consider the cumulative effect on particular groups, including disabled people, women and children.
  - The review should look in particular at actions taken thus far to mitigate any adverse impacts, particularly on disabled people, those with limited English language skills and parents of children with special educational needs, and at the functioning and accessibility of the Exceptional Cases Funding Scheme and the Telephone Advice Gateway, and should set out what actions it will take to mitigate any indirectly discriminatory effects identified by the review.
  - If the Government is unable to effectively carry out this assessment, it should consider commissioning independent research.
- If reductions in the scope of legal aid are found to have had a disproportionate impact on particular groups, or on the enjoyment of particular rights, then the UK Government should consider bringing areas of law back into scope.
- In order to strengthen access to justice as an essential element of the rights stipulated by ICESCR, the UK Government should consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights regarding a communications procedure. By allowing individual communications with the UN, victims of alleged economic, social and cultural rights violations who are not able to access an effective remedy in the domestic system would be provided with an avenue for redress. It would also ensure consistency across the treaties, since the UK has ratified the Optional Protocols for individual petition to the Convention on the Elimination of All Forms of Discrimination against Women and the CRPD.
- The UK Government should ensure no new barriers to accessing employment tribunals are introduced in light of the Supreme Court judgment on fees, and should reaffirm its commitment to ensuring equal access to justice for all.

Contacts

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