



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

Briefing Paper 1

Rebuilding a more equal and fairer Wales: ELGC Committee response.

June 2020

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Introduction

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.

Our job is to help make Wales, Scotland and England fairer. We do this by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect.

As a statutory non-departmental public body established by the Equality Act 2006, the Commission operates independently. We aim to be an expert and authoritative organisation that is a centre of excellence for evidence, analysis and equality and human rights law. We also aspire to be an essential point of contact for policy makers, public bodies and business.

We use our unique powers to challenge discrimination, promote equality of opportunity and protect human rights. We work with other organisations and individuals to achieve our aims, but are ready to take tough action against those who abuse the rights of others.

How we have approached this inquiry

Our response is informed by emerging Wales evidence, and data and information from England and Scotland and elsewhere where we consider that to be relevant.

We have submitted our response on June 25th 2020. We acknowledge that some of the detail and many of the statistics cited will be out of date almost immediately, although the issues raised are likely to remain relevant.

Although the response is wide-ranging, we anticipate that – given the fluidity and rapidly-changing nature of the current context – we may need to raise additional issues, as well as provide updates on the issues raised here, to the Committee in due course.

Executive summary: Unequal impact of the coronavirus pandemic

The equality and human rights implications of the coronavirus pandemic stretch far and wide. It has precipitated a global public health and economic crisis that is significantly impacting all areas of life for everyone throughout Wales.

Early evidence and information from our stakeholders indicates that coronavirus and responses to it are having a disproportionate impact on some people. In this report, we specifically highlight the unequal impact on ethnic minorities, older people, disabled people, children and young people, women and people living in socio-economic disadvantage.

The Coronavirus pandemic has laid bare, intensified and deepened existing inequalities. In our *Is Wales Fairer? 2018*¹ report we documented how disabled people are being left even further behind, socio-economic disadvantage is leading to a stark gap in life experiences, violence against women and girls is a reality for many, and race inequality persists in Wales. We are concerned that the pandemic and responses to it are exacerbating these existing inequalities across all areas of life.

The impact of the pandemic on people sharing protected characteristics

We recognise that Welsh Government resources and public services are under exceptional strain and that responding to the pandemic means responding to a rapidly evolving situation and making tough decisions. However, now and as we emerge from this crisis, it is crucial that equality and human rights are at the

¹ [Equality and Human Right Commission \(2018\), 'Is Wales Fairer? 2018', EHRC website \[accessed June 2020\]](#)

centre of decision-making so that responses to it are effective and no-one is left behind.

In the immediate health crisis life-threatening inequalities emerged. More older people and men have died from COVID-19. Ethnic minorities have been disproportionately impacted by COVID-19. Older and disabled people faced fatal barriers to access to health and social care. There has been a lack of suitable personal protective equipment (PPE) for those working in health and social care settings. We were concerned about inappropriate application and communication of Do Not Attempt Resuscitation (DNAR/DNACPR) notices that put disabled people and older people at risk. The Coronavirus Act 2020 rolled back provisions within the Social Services and Wellbeing (Wales) Act 2014 resulting in confusion and concern on access to vital care and carers assessments. There have been grave concerns regarding safety in care settings with a lack of virus testing and personal protective equipment (PPE).

Lessons must be learnt from the immediate health crisis to ensure that we are prepared for a potential second spike and that we do not make the same mistakes again.

Older people: The impact of the Coronavirus pandemic on older people is of great concern for both the Commission and our stakeholders, particularly the situation in care homes. There was a slow commitment to testing residents and staff in care settings in Wales. Older people were discharged early from hospital to care homes, in some instances bringing the coronavirus back to the institution. Older people have reported feeling discriminated against. We have concerns that excluding any section of the population from lockdown easing based solely on age could be discriminatory².

² [Parveen, N. \(2020\), 'Elderly must not be left out of lockdown easing', The Guardian, 3 May \[accessed: May 2020\]](#)

Disabled people: Disabled people face further barriers to accessing justice and education. The rapid expansion of video and telephone hearings across courts and tribunals risks increasing barriers to effective participation for some disabled people and undermining the right to a fair trial if their specific needs are not recognised and met. The changes made to Mental Health Tribunals put disabled people in Wales at greater disadvantage than those in England³. There are concerns that disabled children and children with additional learning needs in Wales may not be accessing the support that they need for their education⁴ and predicted grades could impact on their achievements. Disabled employees have reported that their employers are struggling to provide reasonable adjustments so that they can work effectively, or are placing them on unpaid leave. Concerns have also been raised over the inability for some disabled people to access food and essentials from supermarkets during the crisis. As we move out of the immediate health crisis stakeholders have told us that disabled people are facing delays in access to health care and appointments.

Ethnic minorities: The coronavirus pandemic has shone a light on long-standing, structural race inequality in Britain, and raised serious issues that have yet to be fully answered. A report from the Office for National Statistics⁵ found that Black people are four times more likely to die from COVID-19, the reasons for this are likely to be multiple potential factors. Added to this, ethnic minorities are over-represented in low-paid and gig economy employment, and so will be disproportionately impacted by the lack of financial support packages for workers in this sector. Gypsy, Roma and Traveller communities face limited access to water and sanitation, and the risk of eviction. Predicted grades could have a lasting effect on young people from certain ethnic minority backgrounds who are already disproportionately disadvantaged. There are also reports of increased hate crime experienced by BAME people on-line. The hostile environment embedded within immigration policies continues to restrict access to services.

³ [Section 10 and Schedule 8 to The Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020, UK Government website \[accessed May 2020\]](#)

⁴ [Snap Cymru, 'Coronavirus and Additional Learning Needs – update', 3rd April 2020, Snap Cymru website \(accessed May 2020\)](#)

⁵ [Office for National Statistics, 'Coronavirus \(COVID-19\) related deaths by ethnic group, England and Wales: 2 March 2020 to 10 April', ONS website \[accessed May 2020\]](#)

People living in poverty: Socio-economic disadvantage impacts on people's life chances and intersects across other forms of discrimination. The Office for National Statistics (ONS) has published a study showing that the rate of deaths in the most deprived areas of Wales is significantly higher than in wealthier parts of the nation⁶. The most deprived areas in Wales had a mortality rate for deaths involving COVID-19, almost twice as high as the least deprived areas⁷. The ONS found that men working in the lowest skilled occupations had the highest rate of death involving COVID-19, with 21.4 deaths per 100,000 males compared to the average across occupations of 5.2 deaths per 100,000 females.⁸ The Samaritans have raised concerns that middle aged, socio-economically disadvantaged men are the most at risk from suicide, and the least likely to seek support⁹. Food insecurity has increased for children, ethnic minorities, disabled and older people. It appears that we are entering a recession¹⁰ that could further entrench socio-economic disadvantage and have far-reaching consequences for people in Wales. BAME workers and single parent families are likely to be the most negatively impacted economically by the pandemic¹¹.

⁶ [James, D. \(2020\), 'Higher coronavirus death rates in Wales' poorest communities', Wales Online, 1 May \[accessed May 2020\]](#)

⁷ [Office for National Statistics, 'Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020', ONS website \[accessed April 2020\]](#)

⁸ [Office for National Statistics, 'Coronavirus \(COVID-19\) related deaths by occupation, England and Wales: deaths registered up to and including 20 April 2020 Provisional analysis of deaths involving the coronavirus \(COVID-19\), by different occupational groups, among males and females aged 20 to 64 years in England and Wales, ONS website \[accessed May 2020\]](#)

⁹ [Townsend, M. \(2020\), 'Poorer middle aged men most at risk of suicide in the pandemic, says Samaritans', The Guardian, 17 May \[accessed June 2020\]](#)

¹⁰ [BBC news, 'Chancellor Rishi Sunak warns of 'significant recession'', BBC news website \[accessed May 2020\]](#)

¹¹ [Doward, J. \(2020\), 'BAME and single-parent families worst hit financially by Covid-19', The Guardian, 7 June \[accessed 19 June 2020\]](#)

Children and young people: The impact of the pandemic on children and young people in Wales is yet to be fully realised. The consequences of school closures, restrictions on movement, the impact of domestic abuse witnessed by children, and reduced access to caring networks are just some of the issues already identified. It is also likely that more children will be pushed into poverty as a result of the pandemic. Mental health support will be needed now more than ever. Early signs show that child and adolescent suicide rates may have risen¹² since the lockdown began. Predicted grades could have a lasting effect on disabled young people and young people from certain ethnic minority backgrounds who are already disproportionately disadvantaged. There are concerns that disabled children and children with additional learning needs in Wales may not be accessing the support that they need for their education.

¹² [Royal College of Psychiatrists briefing, 'COVID 19 and Mental Health April 2020' \[accessed May 2020\]](#)

Women: Evidence suggests that domestic abuse is increasing during the crisis, with reports that women allegedly killed by men have doubled. Disabled women, LGBT people and ethnic minority women are at greater risk of domestic abuse. There are serious concerns that survivors might not be able to access the support and protection they need during lockdown. Welsh Women's Aid have raised concerns that there will be an even greater demand for all violence against women and girls services as lockdown is eased and survivors reach out for support¹³. Concerns have been raised in Wales that pregnant women have been sent home on sick pay or unpaid leave during the Coronavirus crisis¹⁴. Caring responsibilities are increasing for many which will have a disproportionate impact on the one in four women aged 50-64 who have caring responsibilities, compared to one in six men¹⁵. As schools do not look likely to return to full capacity and as people start returning to work, we need to mitigate the negative impact this could have on women's careers as they continue to shoulder the majority of childcare and caring responsibilities¹⁶. Ethnic minority women are more likely to be in precarious employment and could therefore feel the brunt of any economic recession.

¹³ [Welsh Women's Aid Press Release, Welsh Women's Aid stresses urgent need for funding for support services due to COVID-19, 24th April 2020 \[accessed May 2020\]](#)

¹⁴ [BBC news, 'Coronavirus: Claim pregnant women put on sick pay', 10 May 2020 \[accessed May 2020\]](#)

¹⁵ [Carers UK, Facts About Carers policy briefing, August 2019 \[accessed May 2020\]](#)

¹⁶ [Summers, H. \(2020\) UK society regressing back to 1950s for many women, warn experts', The Guardian, 18th June \[accessed 18 June 2020\]](#)

Human Rights: There are a number of human rights issues arising from the coronavirus pandemic and responses to it. There is growing concern about the potential challenge to the right to private life and civil liberties by Welsh Government plans for digital contact tracing and immunity passports¹⁷. Data will need to be handled lawfully, temporarily and privacy risks properly evaluated and accounted for. This may have a particular impact on migrants, particularly in the context of the hostile environment, and people who are digitally excluded. There are important questions that need to be at the forefront of our minds when we consider the balance of rights and ensure decisions made in a crisis situation are proportionate, justifiable and time-bound. A Human Rights approach must be at the centre of Welsh government's response to the pandemic and central to plans for recovery.

As well as highlighting these inequalities, it is likely that Covid-19 has made many of them worse. However, in order to have a clear understanding of Covid-19's impact on these and other inequalities, we have to have robust information. This clearly demonstrates the importance of good equality and comparable data collection and dissemination not just during a pandemic, but in the long-term.

Overarching areas of action for Welsh Government

This report contains a number of recommendations across health, education, employment, access to justice, transport and living standards. We believe there are four key areas of action that Welsh Government should prioritise.

1. Strengthen the scrutiny, and compliance with equality and human rights law.

We are concerned with the lack of transparency on how decisions are being made by Welsh government at this time. Welsh Government is obliged through the Public Sector Equality Duty (PSED) to consider the impact of any legislation on people with protected characteristics. The lack of published Equality Impact Assessments (EIA) breaches this legal obligation.

¹⁷ [BBC News, 'Coronavirus: NHS virus tracing app could be used in Wales'. BBC News website \[accessed May 2020\]](#)

The limited scrutiny by the Legislation, Justice and Constitution Committee has highlighted that human rights implications were not published with the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 and has queried the urgent need for an increase in fixed penalty notices.

Although it is understandable that the original measures, including the Coronavirus Act 2020 had to be made quickly and without consultation, several months later and as Welsh Government moves towards recovery, there is clearly more time to conduct proper consultation and meaningful engagement, equality impact assessments and children's rights impact assessments and for full scrutiny.

We are reminding Welsh Government and listed public bodies in Wales of their obligation to comply with Section 149(1) of the Equality Act 2010, the public sector equality duty¹⁸. Equality Impact Assessments (EIAs) are a legal requirement under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and a useful tool to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made.

2. Engage and involve people to improve policy and practice.

We appreciate the Government's need to react to a fast moving, unprecedented health crisis, however, the need for engagement, inclusion, participation and consultation with the people for whom these new laws will impact, cannot be underestimated. We, along with our stakeholders are concerned, for example, about the lack of engagement with disabled people and disabled people's organisations, particularly in the early response. Utilising the expertise of the people with the lived experience would have ensured that unforeseen impacts could have been mitigated and U-turns on certain Welsh legislation, such as the restriction to exercise only once a day, could have been prevented.

It is crucial that Welsh Government listen, hear and act upon the needs of people with protected characteristics. Equality Impact Assessments are key tools to evidence engagement with people across protected characteristics. Not as a tick-box exercise but to ensure better, more informed decisions.

¹⁸ [Equality and Human Rights Commission, 'Guides to the PSED in Wales', EHRC website \[accessed May 2020\]](#)

Welsh Government must engage with people with protected characteristics and the organisations that advocate on their behalf in recovery plans. The role of strong, sustainable civil society and community organisations are key to engagement with people and will need sufficient funding and support.

3. Action plan and accountability framework to rebuild a more equal and fairer Wales.

We are at a critical crossroads where the decisions, plans and actions we make now will determine our future in Wales. It is important that Welsh Government and public bodies make ambitious action plans and put in place accountability mechanisms that address the inequalities and human rights issues that have been laid bare by the coronavirus pandemic and responses to it. A comprehensive equality and human rights action plan with equality outcomes will demonstrate how words will be turned into action with a robust cross-government accountability structure.

We welcome the Welsh Government commitment to develop and deliver a Wales race equality plan¹⁹, this needs sufficient resources, cross-government governance structures and a robust accountability mechanism to ensure successful implementation. Our ongoing work has shown that there are a disproportionate number of ethnic minority groups living in substandard accommodation and there is a need to improve access to healthcare, employment, educational outcomes and improve the immigration system. We have launched an inquiry²⁰ to develop clear, evidence-based recommendations for urgent action to tackle entrenched racial inequalities across the UK. This will help inform our advice on the race equality plan.

4. Care and wellbeing of people in Wales with access to appropriate support services and safe workplaces.

¹⁹ [Welsh Parliament plenary, June 3, 2020 \[accessed 19 June 2020\]](#)

²⁰ [Equality and Human Rights Commission \(2020\), Inquiry into the Impact of Coronavirus on Ethnic Minorities'. EHRC website \[accessed 15 June 2020\]](#)

Adequate investment in specialist support services will be crucial as we begin recovery from the pandemic. We have already seen reports that mental health for men, women and young people has declined²¹ as a result of the pandemic and that the number of attempted suicides has increased. We are concerned that as lockdown is eased further, increasing numbers of survivors of domestic abuse, as well as children and young people witnessing abuse, will need specialist support.

Welsh Government should immediately improve access to social care with an action plan for older people. This needs to learn lessons so that the actions can be put in place should there be a second wave. This could focus on testing regimes in care homes, access to PPE, access to healthcare.

²¹ [Oppenheim, M. \(2020\), Women's mental health disproportionately affected by pandemic, major study finds', The Guardian, 9 June \[accessed 15 June 2020\]](#)

Recommendations

Improved compliance with the Equality Act and the PSED in Wales

1. Welsh Government, public bodies in Wales and those carrying out public functions must comply with the Public Sector Equality Duty in developing and implementing responses to the coronavirus pandemic, ensuring they are informed by evidence and engagement with representative groups, that they evidence consideration of equality through an equality impact assessment and embed learning from different approaches across Wales and the UK.
2. Welsh Government should assist public bodies in complying with the PSED when they issue new guidance to them.
3. Welsh Government and public bodies should ensure that equality impact assessments of new or changed policies or processes are undertaken, which will improve the design and inclusiveness of policies and processes and reduce the risk of discrimination. Equality Impact Assessments (EIAs) are key tools to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made.

Improved consideration of Human Rights

4. Welsh Government must ensure that any restrictions on people's freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and properly scrutinised.
5. Welsh Government should ensure that Child Rights Impact Assessments (CRIA) are applied to all measures taken in response to Covid-19. In carrying out CRIA, Welsh Government can consider the recent guidance²² issued by the UN Committee on the Rights of the Child.

Commencement of the socio-economic duty as a tool for response and recovery

²² See UN document on website [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children](#)

6. Welsh Government should commence the socio-economic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales.

Scrutiny of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

7. Welsh Government should publish an EIA and CRIA on the Wales regulations and amendments without delay. They should also update and review the interference with human rights under the European Convention on Human Rights and why Welsh Government believes that the interference is justified each time the regulations are amended

Strong civil society working with people in Wales

8. Welsh Government should ensure that civil society organisations with representatives from across protected characteristics are included and heard in the development of policy and practice, and planning for recovery.
9. Welsh Government should continue to monitor the financial wellbeing of civil society organisations and consider whether further funding or other support is needed and put into place mechanisms to support them in the short, medium and long term.

Data, monitoring and scrutiny

10. Welsh Government and public bodies responsible for data collection should assess, monitor and report on the impact, including the health and other effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.
11. Welsh Government should also ensure data is gender-sensitive and, wherever possible, should include information on different categories of ethnicity or disability (going beyond White/Non-White and Disabled/Non-Disabled). Where normal data-gathering methods are disrupted or inadequate, they should use new sources or alternative methods to gain insight into potential impacts on groups sharing protected characteristics. Methods chosen should recognise the risk of missing the voices of those who are digitally excluded.

Education - Reopening of schools

12. Welsh Government should ensure that monitoring and reporting addresses the impacts of the legislation on different protected characteristic groups, and explain how the best interests of children are at the forefront of decision-making.
13. Welsh Government should ensure attendance data (and permitted non-attendance) is captured and disaggregated into protected characteristics and categories of vulnerability to understand levels of attendance and implement appropriate actions to ensure vulnerable children are attending school where possible, and receiving appropriate support if not.
14. As plans are developed for this phased return to schools, Welsh Government should engage with stakeholders and consider equality and human rights implications and produce appropriate EIAs and CRIAs. This should consider: those returning to school, those who may remain on remote learning, the Post-16 sector and provision for SEN/ALN learners; and the impact of existing inequalities such as attainment gaps.
15. Welsh Government should use relevant information from the output of the 'Coronavirus and Me' survey (published 7th June) to help inform these impact assessments.
16. Welsh Government should develop the sector's resilience and ability to meet the needs of all learners by working with schools and local authorities, with the participation of children, to:
 - put a proper recovery plan in place, including individualised support packages for children who have fallen behind in their education;
 - Strengthen aspects of the curriculum to focus on building empathy, safe relationships and well-being and Human Rights Education;
 - prioritise inclusive education for children with SEN/ALN and adequately resource children's services to meet the increased demand.

Concerns about the safeguarding gap created by school closures

17. Welsh Government should collect attendance data for each category of vulnerable child and then use it to make sure that the appropriate support for pupils with SEN is provided, and identify additional support required by other pupils, whether they are attending hubs or are at home.

18. Welsh Government should support schools to monitor and identify indicators of abuse when children return to school, ensuring they have the resources to support those who have experienced abuse. Welsh Government should also monitor children's services to ensure appropriate support is available and provided as necessary.

Disproportionate impact of school closures on children with SEN/ALN

19. Where this power is used and modifications are made, Welsh Government should ensure that appropriate EIAs and CRIAs are completed to determine if modifications are likely to have a disproportionate impact on any protected characteristic.
20. Welsh Government should monitor the provision of support provided to vulnerable children and young people, and ensure those who stay at home receive the support they need, including specialist equipment, training materials and social care. Local authorities should provide evidence to demonstrate the uptake and adequacy of available learning provisions.

Impact of remote learning on widening educational inequalities

21. Welsh Government should ensure assessments of the impact of school closures on attainment gaps are disaggregated by protected characteristics and socio-economic background. Sufficient funding should be secured for schools to develop individualised support plans tailored to the needs of particular groups.
22. Welsh Government should seek to ensure that the provision of digital devices and internet access is available to children of all ages who do not have adequate access to computers or the internet, including those in primary education.

Impact of remote learning on children and young people's mental health and safety

23. Given the current increased dependence on digital technologies, Welsh Government should encourage UK Government to deliver on its commitment to work with the technology industry to reduce exposure of children and young people to online harms, while ensuring that any measures adopted are consistent with the right to freedom of expression.
24. Welsh Government should commit to long-term funding of pastoral therapeutic care in schools, as well as child and adolescent mental health services, during and after the pandemic, along with resources to publicise nationally the availability of these services

Concerns about discrimination in approaches to grading

25. Qualifications Wales should conduct an evaluation of the exceptional arrangements for awarding grades once the process has concluded. If the evaluation reveals higher than average disparities for pupils sharing particular protected characteristics, or from socio-economically disadvantaged backgrounds, these should be investigated by Qualifications Wales.
26. Qualifications Wales should publish information in easy to understand and accessible formats about the routes available for pupils to challenge the grades that they are awarded through this year's exceptional arrangements, including on grounds of suspected unlawful discrimination.
27. Qualifications Wales need to provide an update on how to mitigate disadvantage for private candidates so these students are not disadvantaged in receiving their grades.

Higher Education

28. HEFCW should set out clearly how they will monitor and evaluate admissions to HE institutions in Wales over the next three years, to identify whether particular protected groups are adversely affected, in order to ensure the commitment to widening access is maintained.
29. HEFCW should clarify the need for higher education providers to involve students and representative bodies at an early stage in the process of developing their approach to assessments. This should include reminding them of their legal obligations under the Equality Act.

Health and Social Care – Immediate health crisis

30. Welsh Government must urgently act to protect the rights of health and social care workers at potential risk of contracting COVID-19 by providing adequate PPE, which is fit for different groups of workers such as women and ethnic minorities, who are over-represented within the health and social care workforce.

Disproportionate impact on the health of ethnic minorities and people living in socio-economic disadvantage

31. Welsh Government should ensure collection and publication of disaggregated data on COVID-19 cases – including by sex, age, ethnicity, nationality and disability – to better understand the differential health impact of the virus, inform decision-making and assist compliance with the public sector equality duty.
32. Welsh Government should take forward and implement the recommendations from the COVID-19 Black, Asian and Minority Ethnic (BAME) Advisory Group.

Access to health services, prioritisation and backlog

33. Welsh Government should work with appropriate bodies and civil society organisations to review policies and processes to ensure all policy decisions about care and treatment for COVID-19 are made in collaboration and consultation with disabled and older people and their representative organisations. This should be underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.
34. Welsh Government should understand the needs of people with protected characteristics and ensure that there is sufficient health care services in place to deal with the increase in demand and backlog as lockdown is eased.
35. Welsh Government and NHS Wales should continue to encourage those with non-COVID-19 health concerns, including groups sharing protected characteristics who may be more vulnerable to certain conditions and those with existing conditions, including mental health conditions to seek appropriate help; and issue clear guidance to service providers.
36. As rates of transmission of COVID-19 reduce over time, Welsh Government and NHS Wales should renew its focus on tackling health inequalities in its 'A healthier Wales' plan (2018). This must address issues exacerbated by or arising from the coronavirus pandemic, ensure that healthcare needs for groups with protected characteristics are understood at national and local levels, and prioritise resources appropriately.

Access to social care

37. Welsh Government should remove the easement of social care duties and ensure effective, ongoing scrutiny and oversight of local authorities to ensure they do not introduce easements to social care duties unless strictly necessary and to ensure their decision-making complies with equality and human rights obligations.
38. Welsh Government should ensure that its guidance on social care and the principles of equality and human rights are adhered to across Wales and in public and private sectors.
39. Local authorities should ensure that decisions on how to allocate resources for social care are compliant with the Equality Act 2010 and human rights obligations.

40. Welsh Government should consider all possible means to maintain social care provision at the level available prior to the outbreak of the pandemic, including by ring-fencing adequate resourcing and covering additional costs arising for home care providers as a result of the coronavirus outbreak, including PPE and sick pay.

The impact of the pandemic in Care homes

41. Welsh Government should publish the Equality Impact Assessments of its decisions relating to protecting care homes, including decisions related to testing in care homes, discharging people into care homes from hospitals and access to personal protective equipment to care home staff.
42. Welsh Government should publish and implement an action plan to set out the steps to taken in order to protect care home residents and staff going forward, including planning for a potential second wave.
43. Welsh Government should prioritise the regular testing of all care home residents and staff and learn lessons if there is a second wave.
44. Welsh Government should work with the Care Inspectorate Wales to ensure effective and ongoing monitoring and oversight of COVID-19 cases and deaths in care homes.

Impact on paid and unpaid carers

45. Welsh Government and Care Inspectorate Wales should ensure they listen to and taken into account unpaid carers', older people and disabled people's experiences and carry out effective, ongoing scrutiny and oversight of local authorities' provision of care and interface with the private sector.
46. Welsh Government should monitor the number of carers' needs assessments that are undertaken by Welsh Local Authorities to ensure that carers rights are maintained. Welsh Government to publish an Equality Impact Assessment on the impact on carers and to identify any disproportionate impact on particular groups and identify mitigating actions.

Mental Health provision

47. Welsh Government and NHS Wales should address the lack of access to mental health services in Wales, monitoring demand for health services from groups sharing protected characteristics and ensure that resources are available to meet these needs.

48. Welsh Government should increase and commit to sustain a range of mental health support services and interventions; including community based support to prevent crises and unnecessary detentions, and support at Tiers 1- 4 for children and young people; to respond to the potential increase in and ongoing demand for services for children and young people and adults, including older people, as lockdown is eased.
49. Welsh Government should ensure that decisions about the provision and prioritisation of mental healthcare - during the pandemic and in the longer term – comply with the public sector equality duty by ensuring adequate data on the need for, access to and outcomes from mental health services for people sharing different protected characteristics is gathered and analysed, and take action to address any disproportionate impacts.

Access to justice – Violence against women and girls

50. Welsh Government should ensure that addressing the rise in violence against women and girls is integral to the response to coronavirus, and that the duty to prevent and protect is built into planning at all levels now and as lockdown restrictions ease and we move into recovery phase.
51. Welsh Government should urgently provide funding to domestic abuse charities. This funding must be provided to specialist services, particularly for children and young people as well as support services provided 'by and for' ethnic minority, disabled and LGBT women.
52. Welsh Government should work with Chief Constables and PCCs across Wales to ensure that crimes of violence against women and girls continue to be addressed as high priorities, and ensure that there is public assurance of this at a local level. Welsh Government should ensure that this message, as well as information on the national helpline and how to access support, is reaching everyone across Wales. Consideration should be given to innovative practice to ensure that the message reaches the homes of those that may need it.

Domestic Abuse Support services

53. Welsh Government should urgently provide funding to cover the additional costs to violence against women, domestic abuse and sexual violence charities resulting from coronavirus both now and when lockdown is eased and a backlog of demand increases. This funding must be provided to specialist services, particularly for children and young people as well as support services provided 'by and for' ethnic minority, disabled and LGBT women. Welsh Government should further promote the fact that it remains lawful to seek safety whilst restrictions on movement remain, if there is a risk of abuse or violence at home, through channels accessible to all communities.
54. Welsh Government should ensure that during and immediately after the Covid-19 pandemic, migrant survivors of domestic abuse and sexual violence with no recourse to public funds (NRPF) can access equal protection and support (including refuge accommodation) in Wales, and that this is effectively communicated to both the providers and to migrant survivors themselves.

Police Enforcement of Restrictions

55. Welsh Government should work with the National Police Chiefs' Council (NPCC), College of Policing, Police and Crime Commissioners and police forces in Wales to:
 - Ensure that police officers are properly informed about the limits of new powers and restrictions, including the obligation to use or enforce them in a proportionate, non-discriminatory manner;
 - Consult with diverse communities to better understand particular needs around police community relations, and ensure that the use and enforcement of new powers does not have a disproportionate impact on particular groups; police forces should record data and report on the number of fines issued by protected characteristics listed in the Equality Act 2010;
 - Establish a mechanism for independent oversight of police use of new emergency powers in Wales to monitor compliance with equality and human rights obligations, similar to that established by Police Scotland.

Access to discrimination advice

56. Welsh Government should work closely with the providers of discrimination and human rights advice under the Single Advice Fund to ensure that citizens are accessing the advice services available. They must also ensure that the services are able to deal with any increase in demand for their services as lockdown restrictions ease.

Hate Crime

57. Recommendation: Welsh Government should work closely with public sector bodies across Wales to better understand tensions within their communities, and ensure that they are appropriately responded to as part of its response to Covid-19. This includes providing clear strategic direction for community cohesion coordinators to assist them in responding to tensions and clear messaging to communities around hate crime and the methods for reporting in Wales.

Fair Work – Making fair work a reality

58. Welsh Government should continue to deliver upon the principles of Fair Work within their joint statement with the Wales TUC and ensure that this is delivered and embeds non-discrimination, equality and human rights.

Potential impact of a recession

59. Welsh Government should monitor the impact of the recession on people with protected characteristics and put in place measures to mitigate it.

Impact on gig economy workers, employees in low-paid industries, and the self employed

60. Welsh Government should monitor and review the situation for small businesses, self-employed, gig-economy and precarious workers in Wales, who are more likely to be younger, female and/or from some ethnic minorities and ensure that they get the support they need.

Gender inequality in the workplace

61. Welsh Government should review the Gender Equality Roadmap to respond to women's experiences of work during the Coronavirus pandemic and in recovery

Pregnancy and Maternity at work

62. Welsh Government should include in all its guidance for employers links to the Equality and Human Rights Commission's Coronavirus employer guidance:

- [Coronavirus guidance for employers;](#)
- [Reasonable Adjustments for Employees;](#)
- [Your Duties on Pregnancy and Maternity.](#)

Reasonable adjustments for home workers

63. Employers must ensure they take equality obligations into account when supporting their employees, including making reasonable adjustments for disabled employees, and in making staffing and other employment decisions.

Access to transport - Restarting public transport guidance

64. Guidance to passengers should provide greater clarity on commitments to adhere to equality legislation.
65. Welsh Government should work with operators and disabled people to ensure that information about the availability of passenger assistance services and how they will operate is clear, available and accessible for disabled passengers.

The future of accessible transport

66. Welsh Government and Local Authorities in Wales must comply with the relevant legislation and ensure that plans to redesign public spaces do not directly or indirectly discriminate against disabled people, or prevent reasonable adjustments to be made.

Living Standards - Socio-economic disadvantage

67. Welsh Government should commence the socioeconomic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales
68. Welsh Government should take forward the socio-economic duty as part of a broad strategic approach to addressing socio-economic disadvantage and poverty. Welsh Government should set itself achievable and binding targets to reduce poverty and should report on progress annually.

Food Security

69. Retailers must discharge their legal obligation to make reasonable adjustments for disabled people under the EA 2010 and in line with the rights of disabled people to live independently and maintain priority shopping hours for disabled people and older people, and carers.

Homelessness

70. In light of any economic and housing difficulties resulting from the pandemic, the Welsh Government should monitor the effect that the statutory duties on local authorities to prevent homelessness under the Housing (Wales) Act 2014 are having on people sharing different protected characteristics, and take action to address any disproportionate negative impact on those groups

Recovery - Addressing deepened inequalities through an ambitious action plan to rebuild a more equal and fairer Wales

71. Welsh Government should create an ambitious action plan to build a more equal and fairer Wales. This should address key inequalities and human rights issues that have been exacerbated through the impact of the Coronavirus pandemic. This can build upon Strategic Equality Plans to identify the key inequalities exacerbated by the coronavirus pandemic and create a clear action plan with equality outcomes to build a more equal and fair Wales as we recover from this crisis.

72. Welsh Government's commitment to develop and deliver a Wales race equality plan should reflect key inequalities, and involve race equality organisations and individuals. Sufficient resources and robust accountability mechanisms must be in place to ensure successful implementation.

Equality and human rights at the heart of the framework for recovery

73. Welsh Government should strengthen the framework for recovery with questions on the consideration and measurement of the impact on protected characteristics, the reduction of inequalities of outcome resulting from socio-economic disadvantage, and human rights. The legal requirements within the Equality Act and the socio-economic duty need to be clarified in this framework. There needs to be a transparent decision-making process for the framework to recovery and evidenced consideration of equality and human rights.

Strengthening equality and human rights framework

74. Welsh Government should review and strengthen the Public Sector Equality Duties to focus public bodies on taking action to address key inequalities.

75. Welsh government put in place comprehensive national mechanisms for monitoring and reporting on progress and ensuring implementation of the UPR and treaty body recommendations.

76. Welsh government incorporate international human rights treaties into domestic law, so that individuals can effectively challenge rights violations using the domestic legal system and access a domestic remedy for alleged breaches of their rights.

Legal and policy framework

Improved compliance with the Equality Act and the PSED in Wales

Recognising the pressures facing public bodies due to the Coronavirus pandemic, we have reviewed and, where appropriate, postponed our approach to ensuring compliance with the reporting requirements in the PSED specific duties.²³ In Wales, we have told public bodies that they can delay the publication of their Strategic Equality Plans and Annual Equality Reports for six months. We will review the position in October 2020. However, we have encouraged listed public bodies in Wales to continue to meet these obligations where possible.

The Equality Act 2010 ('the Act') provides a legal framework that protects individuals from discrimination, promoting a more equal and fair society. Continued compliance with the Act, by Welsh Government and other public bodies, is essential in the current crisis and beyond.

Welsh Government and public bodies in Wales must comply with the Welsh specific duties within the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, including the engagement provisions and requirement to assess the equality implications of proposed and ongoing policies.

Most of the legislation and policies Welsh Government have published about the Coronavirus have not had an EIA published with them. This lack of evidence of compliance with the public sector equality duty is a potential breach of the Equality Act 2010.

Recommendation: Welsh Government, public bodies in Wales and those carrying out public functions must comply with the Public Sector Equality Duty in developing and implementing responses to the coronavirus pandemic, ensuring they are informed by evidence and engagement with representative groups, that they evidence consideration of equality through an equality impact assessment and embed learning from different approaches across Wales and the UK.

²³ [Equality and Human Rights Commission, 'Public Sector Equality Duty in Wales'. EHRC website \[accessed 18 June 2020\]](#)

Recommendation: Welsh Government should assist public bodies in complying with the PSED when they issue new guidance to them.

Recommendation: Welsh Government and public bodies should ensure that equality impact assessments of new or changed policies or processes are undertaken, which will improve the design and inclusiveness of policies and processes and reduce the risk of discrimination. Equality Impact Assessments (EIAs) are key tools to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made.

Improved consideration of Human Rights

Public bodies and those who carry out public functions in Wales are bound by the Human Rights Act 1998 (HRA) which incorporates into domestic law the rights contained in the European Convention on Human Rights (ECHR). Welsh Government must also comply with section 81 of the Government of Wales Act 2006 in ensuring that their actions are compatible with the European Convention on Human Rights. The UK is also party to seven legally binding UN human rights treaties, which protect civil and political rights,²⁴ economic, social and cultural rights,²⁵ freedom from torture and other ill-treatment,²⁶ and the rights of women,²⁷ racial and ethnic minorities,²⁸ disabled people,²⁹ and children.³⁰

Welsh Government's human rights obligations should inform its response to the current crisis – both in the immediate and longer term – and provide a framework against which to assess whether its response protects everyone's rights. There are a number of overarching principles that should guide the Committee's inquiry:

- a) Welsh Government is obliged to respect, protect and fulfil these rights without discrimination.³¹

²⁴ Including the rights to life, liberty, and a fair trial; freedom of expression, thought and religion; the rights to privacy and a family life; and freedom of movement, association and peaceful assembly: [International Covenant on Civil and Political Rights \(ICCPR\)](#) [accessed: 9 April 2020].

²⁵ Including the rights to education, health, work, social security and an adequate standard of living: [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) [accessed: 9 April 2020].

²⁶ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT\)](#) [accessed: 9 April 2020].

²⁷ [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) [accessed: 9 April 2020].

²⁸ [International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#) [accessed: 9 April 2020].

²⁹ [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) [accessed: 9 April 2020].

³⁰ [Convention on the Rights of the Child \(CRC\)](#) [accessed: 9 April 2020].

³¹ Article 14 ECHR; Articles 2(1) and 26 ICCPR; Article 2(1) ICESCR.

- b) Domestic and international human rights law recognises that certain rights may be restricted for public health reasons, provided there is a legal basis for such restrictions, and the action taken is necessary and proportionate - which includes that they should be time limited.³² Some rights – such as the prohibition of torture and inhuman or degrading treatment – cannot be restricted under any circumstances.³³
- c) Human rights are interdependent and there is no hierarchy of rights: all human rights have equal status,³⁴
- d) Welsh Government must not take regressive measures that hinder or reduce economic and social rights unless there are strong justifications.³⁵

Recommendation: Welsh Government must ensure that any restrictions on people’s freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and properly scrutinised.

³² The articles of the HRA set out the lawful basis for any restriction in those rights. According to the Human Rights Committee, in order to be proportionate, restrictive measures “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected”. Furthermore, “In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.” See Human Rights Committee, [General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#), 26 May 2004; and Human Rights Committee, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#), 2 November 1999.

³³ [Article 3 ECHR](#); [Article 7 ICCPR](#).

³⁴ [On the basis that each right is inherent to the dignity of every individual, see the Universal Declaration of Human Rights, 1948.](#)

³⁵ [Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties’ obligations, 1990.](#)

In Wales there is a legal requirement for Ministers to ensure consideration is given to the interests of children; this is particularly important in responses to the Coronavirus pandemic. Under Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, Ministers have a duty to have due regard to the UNCRC. This includes the requirement to undertake a Child Rights Impact Assessment (CRIA) of any legislation or policy that will have a direct or indirect impact on children as set out in the Children's Scheme 2014. CRIAs should be carried out at the start, and be central to, policy and legislative development and not completed retrospectively to ensure the obligation to have due regard has been met. This will help to ensure that any unintended negative impact on children of new guidelines and legislation will have been considered and acted upon.

Most of the legislation and policies that Welsh Government have published in relation to the coronavirus pandemic have not included a published CRIA.

Recommendation: Welsh Government should ensure that Child Rights Impact Assessments (CRIA) are applied to all measures taken in response to Covid-19. In carrying out the CRIA, Welsh Government can consider the recent guidance³⁶ issued by the UN Committee on the Rights of the Child.

Commencement of the socio-economic duty as a tool for response and recovery

The current crisis is likely to increase levels of poverty in Wales with reduced incomes and a potential economic downturn. This will have a greater impact on people already living in socio-economic disadvantage and intersect across other forms of inequality.

³⁶ See UN document on website [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children](#)

The socio-economic duty provides a tool for Welsh Government and public bodies to reduce the inequalities of outcome resulting from socio-economic disadvantage, through strategic decision-making. To do that, there needs to be clarity on what the most pressing inequalities of outcome are so that there is a clear vision and ambition to drive forward the response in Wales in a strategic way. It is important that an intersectional approach is taken when Welsh Government and public bodies are working towards the aims of the duty.

Welsh Government has committed to introducing the Equality Act's socio-economic duty, which seeks to reduce inequalities of outcomes related to socio-economic disadvantage. The duty's commencement date, which had been due to be in September, has been delayed due to the 'unprecedented nature of the Coronavirus crisis.'³⁷ We will continue to work closely with officials to prepare guidance and information to ensure the successful implementation of the duty.

Recommendation: Welsh Government should commence the socio-economic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales.

Scrutiny of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

Although the Coronavirus Act 2020 was jointly agreed between the four UK Governments, Welsh Government retains responsibility for devolved areas and response to the Coronavirus pandemic in Wales. We do not think that the review and amendments to the regulations have adequately demonstrated the consideration of equality and human rights. In this fast paced, crisis environment it is imperative that there is strong scrutiny of the regulations by the Senedd and Welsh Government.

³⁷ [Welsh Government, 'The Socio-economic Duty', Welsh Government website \[accessed June 2020\]](#)

From the outset there were differences between the Welsh and English and Scottish Health Protection Coronavirus Restrictions regulations, for example only in Wales was there a limit to exercise only once per day which may have adversely impacted disabled people. On the other hand, the Welsh regulations were the only ones to specifically reference access to domestic abuse services as being a reasonable excuse to leave home.

Welsh Government amended the regulations on 7th April 2020 to include requirements for employers to ensure 2 metre physical distancing for workers/employees. This has not been included elsewhere in Britain and has provided more protection for employees with protected characteristics who may be subject to discrimination.

On the 11th May 2020, when a further amendment was made to allow exercise more than once a day, in line with a Legislation, Justice and Constitution Committee recommendation, the Health Minister accompanied the regulations with an explanation of the interference with human rights under the European Convention on Human Rights and why Welsh Government believes that the interference is justified. We welcome this, but it should be updated and reviewed each time the regulations are reviewed to ensure that interference is still justified.

There is concern about a further amendment made on the 21st May 2020, where Welsh Government increased the amount of fixed penalty notices (FPNs) for repeated breaches from £120 to £1920. This amount had always been higher in Scotland and England. The Legislation, Justice and Constitution Committee have queried why there was an urgent need to make the amendment to the regulations on 21st May 2020. There was no EIA published alongside this amendment, and therefore no evidence that Welsh Government had considered the evidence published by the National Police Chiefs' Council³⁸ on 15th May 2020 which showed that over three-quarters of FPNs (77% or 614) had been issued to males and just under two-thirds (63%) were to individuals aged between 18 and 34. In England, where more data is available, there was also a disproportionate number of FPNs given to those who self-identify as Asian and Black.

There has been no EIA or CRIA published alongside the principal regulations nor any of the amendments.

³⁸ [National Police Chiefs Council, 'NPCC issues update on fines given during Covid lockdown'. NPCC website \[accessed May 2020\]](#)

The recent research [report](#) on the Public Administration and a Just Wales³⁹ highlights the lack of external challenges and the Admin Law Blog [tracker](#)⁴⁰ show that there have been 60 judicial reviews of Coronavirus legislation in England but none in Wales. The need for scrutiny is vital in Wales.

Although it was clear that at the start of the Coronavirus pandemic these regulations had to be made urgently and without consultation, now that there are ongoing reviews and more time, it is possible for there to be consultation and scrutiny to ensure that the substantial interference with the people of Wales human rights and equality implications are fully considered.

Recommendation: Welsh Government should publish an EIA and CRIA on the Wales regulations and amendments without delay. They should also update and review the interference with human rights under the European Convention on Human Rights and why Welsh Government believes that the interference is justified each time the regulations are amended.

Strong civil society working with people in Wales

The Coronavirus pandemic and responses to it have impacted on the capacities of civil society organisations throughout Wales. Civil society organisations play a crucial role in Wales to deliver essential support services for people as well as simultaneously seeking to support, inform and hold the Welsh Government to account. The experience of civil society organisations in advocating for and supporting disadvantaged or vulnerable groups before, during and after the Coronavirus pandemic is and will be invaluable.

Recommendation: Welsh Government should ensure that civil society organisations with representatives from across protected characteristics are included and heard in the development of policy and practice, and planning for recovery.

³⁹ [The Nuffield Foundation, 'Paths to administrative justice in Wales'. Nuffield Foundation website \[accessed June 2020\]](#)

⁴⁰ [Tomlinson, J, Hynes, J, Maxwell, J and Marshall, E, \(2020\) 'Judicial Review during the COVID-19 Pandemic \(Part I\)', The Admin Law Blog, 26 May \[accessed June 2020\]](#)

We welcome the Welsh Government's announcement of support⁴¹ for many such organisations through the Welsh Government Third Sector Covid-19 Response Fund. Welsh Government should ensure that civil society organisations with representatives from across protected characteristics are included and heard in the development of actions to contain and mitigate Coronavirus and in recovery planning, in line with the principles articulated in the Framework for Recovery⁴².

Recommendation: Welsh Government should continue to monitor the financial wellbeing of civil society organisations and consider whether further funding or other support is needed and put into place mechanisms to support them in the short, medium and long term.

Data, monitoring and scrutiny

To ensure effective monitoring of the impacts of the Coronavirus pandemic and the emergency measures – particularly indirect effects – it is essential that good quality and comparable data disaggregated by different protected characteristics and broken down to regional and local levels is available. Government and public bodies responsible for data collection should assess, monitor and report on the impact of coronavirus and the legislative and policy response on human rights and equality in the workplace.

Recommendation: Welsh Government and public bodies responsible for data collection should assess, monitor and report on the impact, including the health and other effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.

⁴¹ [Welsh Government \(2020\) Press Release: Welsh Government boosts support for valued charities and third sector organisations in Wales. Gov.Wales \[accessed 18 June 2020\]](#)

⁴² [Welsh Government \(2020\), 'Leading Wales out of the coronavirus pandemic: a framework for recovery'. Gov.Wales \[accessed May 2020\]](#)

Recommendation: Welsh Government should also ensure data is gender-sensitive and, wherever possible, should include information on different categories of ethnicity or disability (going beyond White/Non-White and Disabled/Non-Disabled). Where normal data-gathering methods are disrupted or inadequate, they should use new sources or alternative methods to gain insight into potential impacts on groups sharing protected characteristics. Methods chosen should recognise the risk of missing the voices of those who are digitally excluded.

Education

In this submission, we are focussing on our concerns around the equality and human rights considerations needed in relation to: reopening schools in Wales; the safeguarding gap created by school closures; the disproportionate impact on children with SEN/ALN; the impact of remote learning on widening educational inequalities as well as concerns about discrimination in approaches to predicted grading.

Reopening of schools

We note the statement⁴³ by the Education Minister on 3rd June 2020 announcing that schools will begin to reopen from the 29th June. As Welsh Government progresses plans to re-open schools, and some pupils remain at home, additional equality and human rights issues are likely to emerge. These include possible health and safety risks for all school staff and children, which may disproportionately impact those from ethnic minority backgrounds.⁴⁴ However none of the guidance documents or policy announcements have EIA or CRIAs published alongside them. There is also a risk that schools may increase the use of restraint and exclusions to try to control the behaviour of children, whilst maintaining social distancing measures.⁴⁵ In February 2020, we launched an inquiry into how schools in England and Wales are monitoring and recording their use of restraint and restrictive interventions, following concerns about its use and the lack of data available.⁴⁶

Recommendation: Welsh Government should ensure that monitoring and reporting addresses the impacts of the legislation on different protected characteristic groups, and explain how the best interests of children are at the forefront of decision-making.

⁴³ [Welsh Government \(2020\), Press Release: 'Check in, Catch Up, Prepare for summer and September'. Gov.Wales \[accessed 18 June 2020\]](#)

⁴⁴ [Batty, D. \(2020\), Plans to reopen English schools 'fail to address risk to BAME staff'. The Guardian, 26 May \[accessed June 2020\]](#)

⁴⁵ We have had longstanding concerns in relation to the use of restraint and exclusions: Equality and Human Rights Commission (October 2018), [Is Britain Fairer?](#), ch 2; Equality and Human Rights Commission (March 2019), [Human rights framework for restraint](#). We also launched an inquiry in Feb 2020 into how schools in England and Wales are monitoring and recording their use of restraint and restrictive interventions, following concerns about its use and the lack of data available, further details [here](#).

⁴⁶ Further restraint inquiry details [here](#)

It is important to understand the impact of reopening of all schools to all year groups. This includes understanding whether, by making their local school available, the attendance of children in vulnerable situations and disadvantaged children, young carers and those sharing protected characteristics, including Gypsy, Roma and Travellers, increases, as suggested by the Education Minister. Understanding how well these groups are represented will allow Welsh Government to put appropriate measures in place where necessary, to prevent attainment gaps growing.

Recommendation: Welsh Government should ensure attendance data (and permitted non-attendance) is captured and disaggregated into protected characteristics and categories of vulnerability to understand levels of attendance and implement appropriate actions to ensure vulnerable children are attending school where possible, and receiving appropriate support if not.

We welcome that the Education Minister has considered how best to increase attendance of children in more vulnerable situations and disadvantaged children. However, due to the ongoing need for some parents and pupils to continue to shield, including young carers, there will still be a number of children who will be unable to attend their local educational setting, perhaps for some time to come.

Recommendation: Welsh Government should develop a plan for those children who will not be able to ‘check in, catch up, and prepare’, to ensure that they are not disadvantaged in any way and receive the appropriate support and resources.

With schools and councils making their own decisions over managing the return, it is important that Welsh Government give clear guidance on the way forward, including reiterating responsibilities under the PSED and how it can be complied with in the current circumstances.

Recommendation: Welsh Government should remind Local Authorities, schools and councils of their responsibilities under the PSED to ensure that appropriate EIAs and CRIAs are completed to determine if modifications are likely to have a disproportionate impact on any protected characteristic.

Recommendation: As plans are developed for this phased return to schools, Welsh Government should engage with stakeholders and consider equality and human rights implications and produce appropriate EIAs and CRIAs. This should consider:

- those returning to school, those who may remain on remote learning, the Post-16 sector and provision for SEN/ALN learners; and
- the impact of existing inequalities such as attainment gaps.

Recommendation: Welsh Government should use relevant information from the output of the ‘Coronavirus and Me’ survey (published 7th June) to help inform these impact assessments.

Looking ahead, schools will need to prepare for the possibility of further closures, due to a possible resurgence in coronavirus or another national emergency.

Welsh Government should develop the sector’s resilience and ability to meet the needs of all learners by working with schools and local authorities, with the participation of children, to:

- **Put a proper recovery plan in place, including individualised support packages for children who have fallen behind in their education;**
- **Strengthen aspects of the curriculum to focus on building empathy, safe relationships and well-being and Human Rights Education; and**
- **Prioritise inclusive education for children with SEN/ALN and adequately resource children’s services to meet the increased demand.**

Concerns about the safeguarding gap created by school closures

School closures have reduced the safeguarding role of schools in respect of children in vulnerable situations, leaving many at risk. While government guidance specifies that schools should remain open for children identified as ‘vulnerable’, the narrow definition excludes other at-risk groups; for example children with SEN/ALN will not have a statement if they are at ‘school action plus’ or ‘school action’ under the SEN Code of Practice for Wales (the new ALN (Wales) Act 2018 is not yet in force.), and uptake of school places by ‘vulnerable’ children has been low. Data Cymru and Welsh Government statistics⁴⁷ show an average of just 2.7% of vulnerable children attended educational settings between 24th March and 29th May 2020.

⁴⁷ [Welsh Government, ‘Attendance at local authority settings during the coronavirus \(COVID-19\) pandemic’. Gov Wales website \[accessed 18 June 2020\]](#)

Recommendation: Welsh Government should collect attendance data for each category of vulnerable child and then use it to make sure that the appropriate support for pupils with SEN is provided, and identify additional support required by other pupils, whether they are attending hubs or are at home.

There are particular concerns about the impact of school closures on children at risk of abuse and neglect – including domestic abuse, harmful practices⁴⁸, online abuse and grooming⁴⁹ and children at risk of criminal exploitation – and the lack of a ‘back-up system’ to ensure their safety. Disabled children are more likely to be subject to abuse or neglect, and can face challenges in reporting abuse.⁵⁰ LGBT young people may also be at risk of abuse in the home from hostile family members. Schools have a crucial role in safeguarding and supporting children and young people who have experienced abuse.

Recommendation: Welsh Government should support schools to monitor and identify indicators of abuse when children return to school, ensuring they have the resources to support those who have experienced abuse. Welsh Government should also monitor children’s services to ensure appropriate support is available and provided as necessary.

48 Including female genital mutilation and forced marriage: see Oxford Against Cutting (May 2020) Press Release: Launch of lockdown poster campaign to support those at risk of female genital mutilation (FGM) or forced marriage; Dearden, L. (2020), ‘Coronavirus could cause rise in witchcraft and possession allegations in UK, police say’, The Independent, 1st May [accessed May 2020]

49 BBC News (27 March 2020), Coronavirus: Online child abuse warning during lockdown; The Children’s Society (April 2020), Covid-19’s impact on children at risk of abuse, neglect and exploitation.

50 The NSPCC has highlighted that disabled children and young people are three times more likely to be abused or neglected than non-disabled young people: see NSPCC (2020), *Coronavirus (COVID-19) and keeping children safe from abuse*; and Social Care Institute for Excellence (April 2020), *Safeguarding children and families during the COVID-19 crisis*.

Disproportionate impact of school closures on children with SEN/ALN

The guidance⁵¹ issued by Welsh Government states that, where possible, learners with statements of SEN will continue to have their needs met, with Local Authorities taking all reasonable steps to ensure the necessary provision is delivered by their school and/or registered childcare setting. Due to the relaxed approach to the national minimum standards for regulated childcare and the impact of the current situation on resourcing, there is a risk that the ratio of appropriately qualified teaching staff available to children with SEN/ALN may not be appropriate.

Currently all local authorities in Wales remain under obligation to comply with the law and regulations regarding Special Educational needs. There is no immediate change to the duties on local authorities. Under the Coronavirus Act 2020, Welsh Government has the power to modify this requirement instead, rather than an absolute duty, which would mean that Local Authorities would be able to use 'reasonable endeavours' to deliver the provision. Welsh Government has indicated that they will be using this power. It is crucial for Welsh Government to provide effective oversight of local authorities' and health bodies' efforts in this regard whether or not this power is used, in order to ensure that decision-making complies with equality and human rights obligations.

Recommendation: Where this power is used and modifications are made, Welsh Government should ensure that appropriate EIAs and CRIAs are completed to determine if modifications are likely to have a disproportionate impact on any protected characteristic.

Data Cymru and Welsh Government statistics show an average of just 2.7% of vulnerable children attending educational settings between 24th March and 29th May 2020. The number attending at the beginning of lockdown (1.2%) has increased in the weeks since, to 3.9%, but this is still low, and suggestive of a large number of vulnerable children not receiving the support they require.

⁵¹ [Welsh Government, 'Vulnerable children and young people: coronavirus', Gov Wales website \[accessed 18 June 2020\]](#)

Recommendation: Welsh Government should monitor the provision of support provided to vulnerable children and young people, and ensure those who stay at home receive the support they need, including specialist equipment, training materials and social care. Local authorities should provide evidence to demonstrate the uptake and adequacy of available learning provisions.

Anecdotal feedback suggests that additional learning support is not being proactively offered to those with statements of SEN, and that schools equipped to support these children and young people are closed. On 28th April, Welsh Government advised⁵² that parents who want to find out more about the support available to them and their children should get in touch with their local education authority. There is a risk that families with parents in vulnerable situations may not be in a position to ask for this help. Snap Cymru⁵³ reference such an example in their own submission to this inquiry; e.g. a vulnerable situation where a mother with a young child with ADHD had not engaged with anyone – (school included) for three weeks or more. SNAP Cymru made contact and found she'd not been taking essential medication in this time.

There is a risk that without appropriate support being offered at this time, the Coronavirus outbreak could further widen attainment gaps. Under existing conditions, there is a risk that children and young people with additional learning needs may be disadvantaged because of a lack of resource capacity to keep them safe, and the mental impact of social distancing as required. These children and young people need the structure of learning and skills provision delivered by people who are knowledgeable, skilled and committed to give the highest standards of care. In many cases, this care cannot be replicated in the home environment.

The long term impact on attainment for this group of children could be substantial. When lockdown measures are eased and schools start to return, if their safety cannot be guaranteed their return will be delayed.

⁵² [ibid](#)

⁵³ [Snap Cymru \(2020\) written submission to the Children, Young People and Education Committee. \[accessed June 2020\]](#)

It has become clear that the closure of schools and other restrictions enforced during this time may be maintained for longer periods. This will further widen the inequalities that we already see within society. Gaps in available data, for example in relation to the religion or belief of children, and the lack of disaggregated data, including by ethnic group and impairment type, mean that we do not have a full picture of the equality and human rights issues arising from the pandemic.

Impact of remote learning on widening educational inequalities

We welcome Welsh Government's commitment to making online learning available. However, online learning is a creative alternative to classroom learning which poses challenges for children who have limited or no access to technology or the internet or do not have adequate parental support. Inequalities in the home-learning environment risk undermining the right to education, and exacerbating existing attainment gaps for certain groups including disabled pupils, some ethnic minorities and those who are socioeconomically disadvantaged.

We welcome Welsh Government's intention to raise standards and ensure reduction of attainment gaps will remain a focus during these extraordinary times. However, access to technology is a significant concern. There are particular issues with digital exclusion for some pupils sharing protected characteristics, including Gypsy, Roma and Travellers. ['Is Wales Fairer? 2018'](#) found there continues to be areas of digital exclusion, particularly in rural areas of Wales. Additionally, it was found that households in social housing were less likely to have access to the internet in 2016/17 (72%) compared with those in privately rented or owner-occupied housing (88% and 87%)

Although there has been an extra £3 million pledged to support 'digitally excluded' learners in Wales, we are concerned about delays in children and young people receiving this provision, and the lack of detail around how this will be implemented. For example, many children from lower income families share a laptop with siblings and working parents, or live in a mobile phone-only household. Without appropriate resources, there is a risk that these children, already amongst the most educationally disadvantaged, may fall further behind as schools remain closed.

Recommendation: Welsh Government should ensure assessments of the impact of school closures on attainment gaps are disaggregated by protected characteristics and socio-economic background. Sufficient funding should be secured for schools to develop individualised support plans tailored to the needs of particular groups.

Recommendation: Welsh Government should seek to ensure that the provision of digital devices and internet access is available to children of all ages who do not have adequate access to computers or the internet, including those in primary education.

Impact of remote learning on children and young people's mental health and safety

We are concerned that remote learning potentially increases the risk of exposure of both children⁵⁴ and young people to online harms.⁵⁵ We know that the spectrum of online harms disproportionately affects those who share certain protected characteristics. As a result, we welcome the Online Safety resource for Wales.⁵⁶

⁵⁴ [National Crime Agency \(04 April 2020\)](#), Law enforcement in coronavirus online safety push as National Crime Agency reveals 300,000 in UK pose sexual threat to children; [NSPCC \(27 March 2020\)](#), Hundreds of children counselled over impact of coronavirus outbreak; [The Independent](#), Coronavirus: 90% fewer child sex abuse images taken down during pandemic, watchdog warns. The Guardian (22 April 2020), Harassment fears as students post extreme pornography in online lessons.

⁵⁵ "Online harms" is the umbrella terms for a spectrum of harmful online behaviour – from child sexual abuse, terrorism and revenge porn through to hate crime, harassment and intimidation/bullying. We have also provided evidence on our more general concerns about mental health to the Health and Social Care Committee, accessible [here](#).

⁵⁶ [Welsh Government Hwb, 'Keeping Safe Online' \[accessed June 2020\]](#)

Recommendation: Given the current increased dependence on digital technologies, Welsh Government should encourage UK Government to deliver on its commitment to work with the technology industry to reduce exposure of children and young people to online harms,⁵⁷ while ensuring that any measures adopted are consistent with the right to freedom of expression.⁵⁸

The impact of school closures on social isolation and related mental health issues among children and young people also raises concerns.⁵⁹

Early evidence suggests certain groups may be experiencing particularly poor mental health, including children and young people. According to a longitudinal study which is tracking mental health across the pandemic, one in four adults (24 per cent) in the UK have felt lonely because of Coronavirus. The most affected group were young people (aged 18-24 years) – with more than four in ten (44 per cent) saying they felt lonely⁶⁰.

While the majority of those who responded to the ‘Coronavirus and Me’ survey said that while they know where to get help in regards to their mental health and wellbeing only 39% of young people aged 12-18 would feel confident seeking school counselling at the current time.

⁵⁷ Department for Digital, Culture, Media & Sport and the Home Office (12 February 2020), Online Harms White Paper – Initial consultation response.

⁵⁸ See Article 10, European Convention on Human Rights and Article 19, International Covenant on Civil and Political Rights (ICCPR). We also raised this issue in our recent submission on the ICCPR: Equality and Human Rights Commission (March 2020), Civil and political rights in Great Britain, p 90.

⁵⁹ Childline has reported an unprecedented spike in demand for their services since the outbreak of COVID-19. See: NSPCC (27 March 2020), Hundreds of children counselled over impact of coronavirus (COVID-19) outbreak; A survey of 2111 young people up to the age of 25 years with a mental health history in the UK showed 83% said that the current pandemic and associated restrictions had made their conditions worse. See YoungMinds (March 2020) Coronavirus: Impact on Young People with Mental Health Needs. BBC News (19 May 2020).

⁶⁰ [Mental Health Foundation, ‘Almost a quarter of adults living under lockdown in the UK have felt loneliness’. Mental Health Foundation website \[accessed June 2020\]](#)

Furthermore, the coronavirus pandemic could create an increased risk of suicides and/or self-harm, especially as its long-term effects continue to manifest.⁶¹ The Royal College of Psychiatrists is ‘monitoring early signs that child and adolescent suicide rates may have risen since the lockdown began’.⁶²

Recommendation: Welsh Government should commit to long-term funding of pastoral therapeutic care in schools, as well as child and adolescent mental health services, during and after the pandemic, along with resources to publicise nationally the availability of these services.⁶³

Concerns about discrimination in approaches to grading

The Commission expressed early concern about proposals to replace GCSE, AS and A level exams with predicted grades this year. We highlighted evidence that there may be patterns of conscious or unconscious bias when teachers predict grades, with particular implications for ethnic minority pupils, including Gypsy, Roma and Traveller pupils, and children with SEN/ALN.

We welcomed Qualifications Wales decision to consult on the exceptional arrangements for awarding exam grades this year⁶⁴ and provided evidence. Together with the Children’s Commissioner for Wales, we wrote to the Education Minister to recommend urgent action to support schools and teachers in predicting grades and ranking students. We received a positive update from the Minister.

⁶¹ [Gunnell, D. et al. \(21 April 2020\), ‘Suicide risk and prevention during the COVID-19 pandemic’, *Lancet Psychiatry*.](#)

⁶² [Royal College of Psychiatrists \(2020\), ‘COVID 19 and Mental Health April 2020’.](#)

⁶³ [UN Committee on the Rights of the Child \(3 June 2016\), Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. See also an open letter to Government on young people’s mental health during lockdown by over 30 organisations \(May 2020\).](#)

⁶⁴ [Qualifications Wales \(28th April 2020\), ‘Consultation on the arrangements for the summer 2020 exam series’ \[accessed May 2020\].](#)

We are pleased that Qualifications Wales have taken on board our recommendations. Guidance on the approach that teachers should take to predicting grades and grades and ranking pupils, to minimise the risk of conscious or unconscious bias⁶⁵ has been shared with exam centres by WJEC.

Qualifications Wales have provided further information to heads of centres, on their obligations in relation to the Public Sector Equality Duty.

We also raised within our response to Qualifications Wales concerns that for a number of reasons some learners may not be able to receive a centre assessment grade and rank. This may have a disproportionate impact on certain groups of young people that are home schooled. While we know the home education sector is diverse, reasons for home learning can, for example, be because of additional learning needs and religious beliefs.⁶⁶

Recommendation: To ensure that this process is effective:

Qualifications Wales should conduct an evaluation of the exceptional arrangements for awarding grades once the process has concluded. If the evaluation reveals higher than average disparities for pupils sharing particular protected characteristics, or from socio-economically disadvantaged backgrounds, these should be investigated by Qualifications Wales.

Qualifications Wales should publish information in easy to understand and accessible formats about the routes available for pupils to challenge the grades that they are awarded through this year's exceptional arrangements, including on grounds of suspected unlawful discrimination.

Qualifications Wales need to provide an update on how to mitigate disadvantage for private candidates so these students are not disadvantaged in receiving their grades.

⁶⁵ [Ofqual \(22 May 2020\), 'Guidance for Heads of Centre, Heads of Department and teachers on objectivity in grading and ranking' \[accessed May 2020\]](#)

⁶⁶ [Forrester, D., Maxwell, N., Slater, T., Doughty, J., & Board, S. \(2017\). An evidence based review of the risks to children and young people who are educated at home Final Report. Cardiff University website \[accessed June 2020\]](#)

Higher Education

Welsh Government's Resilience Plan for post-16 learning, launched to support education for over-16s⁶⁷ demonstrates that widening access remains a commitment. Given the concerns about discrimination in approaches to grading these arrangements may impact on admissions to higher education, both now and in the near future. We welcome HEFCW monitoring institutional performance and evaluating behaviour in relation to admissions to Welsh institutions. However, it is unclear how this will be done.

Recommendation: HEFCW should set out clearly how they will monitor and evaluate admissions to HE institutions in Wales over the next three years, to identify whether particular protected groups are adversely affected, in order to ensure the commitment to widening access is maintained.

Furthermore, there are concerns about the lack of a consistent approach to student assessments, with some universities cancelling non-essential exams while others continue with assessed course work and online examinations. Students who do not have access to the required technology and disabled students are likely to be adversely impacted, given uncertainties about the extent to which the different approaches will accommodate reasonable adjustments.⁶⁸

Recommendation: HEFCW should clarify the need for higher education providers to involve students and representative bodies at an early stage in the process of developing their approach to assessments. This should include reminding them of their legal obligations under the Equality Act.

⁶⁷ HEFCW (2013), 'Policy Statement on Higher Education' [Accessed June 2020]

⁶⁸ NUS (14 April 2020), Press release: 'National approach needed to exams, assessment and 'no detriment' NUS website [accessed June 2020]

Health & Social Care

Prior to the coronavirus pandemic, there were deep-seated inequalities in access to healthcare and health outcomes for different groups, including those who share protected characteristics. Our state of the nation report, 'Is Wales Fairer? 2018' found that disabled people, those with learning disabilities, refugees and asylum seekers, transgender people, Gypsies, Roma and Travellers and homeless people, experience the most significant barriers to accessing healthcare, and have worse physical and mental health outcomes compared with the general population⁶⁹. The coronavirus pandemic could exacerbate and further entrench these inequalities.

Immediate health crisis

The coronavirus pandemic has put the health and social care services in Wales under unprecedented pressure and looks set to continue to do so for some time. Older people and disabled people face life-threatening concerns about access to health and social care. There is evidence that COVID-19 is disproportionately affecting people from ethnic minorities, as well as people living in deprived areas. More men and older people have died from COVID-19. There has been a lack of suitable personal protective equipment (PPE) for those working in health and social care settings. If Welsh Government and public bodies are to ensure an effective sustainable response, it is crucial that compliance with equality and human rights obligations is at the heart of decision-making.

Recommendation: Welsh Government must urgently act to protect the rights of health and social care workers at potential risk of contracting COVID-19 by providing adequate PPE, which is fit for different groups of workers such as women and ethnic minorities, who are over-represented within the health and social care workforce.

⁶⁹[Equality and Human Rights Commission - Is Wales Fairer \(2018\)](#)

Disproportionate impact on the health of ethnic minorities and people living in socio-economic disadvantage

There is evidence that COVID-19 is disproportionately affecting people from ethnic minorities, as well as people living in deprived areas, men, older people and those with underlying health conditions. A report from the Office for National Statistics⁷⁰ found that black people are four times more likely to die from coronavirus, the reasons for this are likely to be the accumulation of multiple factors. The most deprived areas in Wales had a mortality rate for deaths involving COVID-19, almost twice as high as the least deprived areas⁷¹. ONS data shows that men working in the lowest skilled occupations had the highest rate of death involving COVID-19⁷².

In light of these disparities, we welcome Welsh Government's review⁷³ into how different factors, including ethnicity affect people's health outcomes from COVID-19. We continue to advise Welsh Government through the BAME Covid-19 advisory group and the socio-economic sub-group. We have written to NHS Wales and Public Health Wales to offer our support, given our unique status and considerable expertise in analysing equality issues.

Recommendation: Welsh Government should ensure collection and publication of disaggregated data on COVID-19 cases – including by sex, age, ethnicity, nationality and disability – in order to better understand the differential health impact of the virus, inform decision-making and assist compliance with the public sector equality duty.

⁷⁰ [Office for National Statistics, 'Coronavirus \(COVID-19\) related deaths by ethnic group, England and Wales: 2 March 2020 to 10 April' \[accessed May 2020\]](#)

⁷¹ [Devlin, H. & Barr, C. \(2020\), 'Poorest areas of England and Wales hit hardest by Covid-19 – ONS'. The Guardian, 12 June \[accessed June 15 2020\]](#)

⁷² [Office for National Statistics, 'Coronavirus \(COVID-19\) related deaths by occupation, England and Wales: deaths registered up to and including 20 April 2020' \[accessed May 2020\]](#)

⁷³ [Welsh Government \(2020\) 'Written Statement: Covid-19 and BAME communities' 21 April 2020 \[accessed 21 April 2020\]](#)

Recommendation: Welsh Government should take forward and implement the recommendations from the COVID-19 Black, Asian and Minority Ethnic (BAME) Advisory Group.

Access to health services, prioritisation and backlog

As the Coronavirus pandemic has developed, medical staff, facilities and funding have been diverted to address COVID-19 critical care cases. This has had a particular impact on individuals sharing certain protected characteristics.

We have been deeply concerned about the inappropriate application and communication of Do Not Attempt Resuscitation (DNAR) notices that put disabled and older people at risk. Some GP surgeries have reportedly sent blanket communications to disabled and older patients asking them to consent to DNAR/DNACPR notices on the basis of pre-existing or non-pertinent health condition and this raises serious concerns about respect for individual's human rights. We were pleased that Welsh Government took action to give guidance that such decisions should not be made on a 'blanket basis', however mitigations should be put in to avoid similar concerns in the future.

Recommendation: Welsh Government should work with appropriate bodies and civil society organisations to review policies and processes to ensure all policy decisions about care and treatment for COVID-19 are made in collaboration and consultation with disabled and older people and their representative organisations. This should be underpinned by clear, accessible and consistent guidance that fully complies with equality and human rights laws and standards, including the principles of individual autonomy and non-discrimination.

Disabled people's organisations have raised concerns about the impact of the cancellation of services and treatments and the backlog this is creating, which have a substantial impact on quality of life of disabled people. Significant concerns have been raised about the delay in Wales in establishing COVID-19 free cancer treatment hubs⁷⁴ and delays in accessing to cancer screening.⁷⁵

Recommendation: Welsh Government should understand the needs of people with protected characteristics and ensure that there is sufficient health care services in place to deal with the increase in demand and backlog as lockdown is eased.

Recommendation: Welsh Government and NHS Wales should continue to encourage those with non-COVID-19 health concerns, including groups sharing protected characteristics who may be more vulnerable to certain conditions and those with existing conditions, including mental health conditions to seek appropriate help; and issue clear guidance to service providers.

We have particular concerns about reductions to healthcare services that affect people's right to sexual, reproductive and maternal health. The suspension of fertility clinics is likely to have a disproportionate impact on women, LGBT individuals and couples, and people with certain impairments.⁷⁶ Antenatal, perinatal and maternity services have also been affected by social distancing measures and the diversion of resources towards the coronavirus pandemic response.

While we recognise and support Welsh Government's immediate focus on protection against deaths from COVID-19, it is important that provision of other healthcare is appropriately balanced during and beyond the crisis, in recognition of the potentially significant impacts on groups sharing protected characteristics. The Public Sector Equality Duty and human rights obligations should be used to guide decisions about the prioritisation of healthcare resources.

⁷⁴ [BBC News \(2020\), 'Coronavirus: Call to set up 'Covid-free' cancer hubs quicker', 22 April \[accessed 26 April 2020\]](#)

⁷⁵ *ibid*

⁷⁶ [British Pregnancy Advisory Service \(April 2020\), Submission to the Women & Equalities Select Committee \[accessed May 2020\]](#)

Recommendation: As rates of transmission of COVID-19 reduce over time, Welsh Government and NHS Wales should renew its focus on tackling health inequalities in its ‘A healthier Wales’ plan (2018). This must address issues exacerbated by or arising from the coronavirus pandemic, ensure that healthcare needs for groups with protected characteristics are understood at national and local levels, and prioritise resources appropriately.

Access to social care

Welsh Government provided a legislative consent motion for the Coronavirus Act 2020 and provisions relating to social care came into force on 1st April 2020. The Coronavirus Act 2020 amends the Social Services and Well-being (Wales) Act 2014 and consequently relax duties on local authorities. The changes mean that local authorities no longer have to carry out needs assessments for adults and adult carers, and no longer have a duty to meet adults’ eligible care and support needs, nor adult carers’ needs for support.

Duties to meet adults’ eligible care and support needs, and the support needs of adult carers, have been removed (effectively replaced with a power to meet needs), and local authorities will not have to prepare or review care and support plans. Local authorities now only have a duty to meet the needs for care and support only in the most serious cases, where they determine it is necessary in order to protect the person from abuse or neglect, or a risk of abuse or neglect.

National Disabled People’s organisations in Wales have raised serious concerns about the impact of these changes on the rights of disabled people and the subsequent impact on the care and support they will receive. There are also concerns about the burden that will be placed on unpaid carers, with additional demands and caring duties at the same time that support services such as respite care are potentially being removed.

There have been concerns raised about a lack of guidance from Welsh Government on the regulatory changes. The British Association of Social Workers (BASW) Cymru has said that the lack of Welsh guidance means that “social workers in Wales currently have no framework or guidance on which to base their practice and decision making”⁷⁷.

We welcome Welsh Government’s guidance⁷⁸ issued to Local Authorities in early May which confirms that duties under the European Convention on Human Rights, Equality Act and PSED remain in place. The guidance also states that modifications are time-limited and set with the clear expectation that any changes to individuals’ care and/or support will be returned to their pre-modification arrangements at the earliest possible opportunity.

Recommendation: Welsh Government should remove the easement of social care duties and ensure effective, ongoing scrutiny and oversight of local authorities to ensure they do not introduce easements to social care duties unless strictly necessary and to ensure their decision-making complies with equality and human rights obligations.

Recommendation: Welsh Government should ensure that its guidance on social care and the principles of equality and human rights are adhered to across Wales and in public and private sectors.

Recommendation: Local authorities should ensure that decisions on how to allocate resources for social care are compliant with the Equality Act 2010 and human rights obligations.

Recommendation: Welsh Government should consider all possible means to maintain social care provision at the level available prior to the outbreak of the pandemic, including by ring-fencing adequate resourcing and covering additional costs arising for home care providers as a result of the coronavirus outbreak, including PPE and sick pay.

⁷⁷ [BASW Cymru – Coronavirus Act 2020 – Application to the Social Services and Wellbeing \(Wales\) Act 2014 \[accessed May 2020\]](#)

⁷⁸ [Welsh Government \(2020\) ‘Adult social services during the COVID-19 pandemic: guidance’, 30 April \[accessed May 2020\]](#)

The impact of the pandemic in Care homes

The coronavirus pandemic is clearly having a disproportionate impact on older people and disabled people in Wales. From 1 March to 15 May, Care Inspectorate Wales were notified of 571 care home residential deaths with suspected or confirmed COVID-19 and there are almost double the number of overall deaths by comparison to the same period last year.⁷⁹

People in care homes are particularly vulnerable to human rights breaches as all aspects of their lives are reliant upon public bodies discharging their statutory duties to provide them with care in a way that makes them safe.

We acknowledge that this is not a Wales specific issue, and we are also considering the position of the UK and Scottish governments. Until recently, the testing policy in adult care homes in Wales has not included all residents and staff at care homes. This means that care homes may have been unaware of the need to isolate residents who were asymptomatic and may have put residents and staff at risk.

There have also been concerns raised before and since the Coronavirus crisis began in relation to capacity, consumer protection and decision-making as detailed in the Competition and Markets Authority Care Homes Market Study⁸⁰

Lack of capacity may have an impact upon care providers and local authorities' ability to comply with their positive obligations to protect older and disabled people's human rights. For example, if isolation is required due to a positive COVID-19 test result, insufficient numbers of staff may be available in care homes to be able to isolate residents appropriately whilst not restricting the lives of COVID-19 free residents.

We were pleased to see that Welsh Government recently committed to testing all residents and staff in care homes. We remain concerned, however, that this will not protect older and disabled people in care homes if staff cannot access tests quickly, including home tests for staff who are on precarious contracts and cannot take paid leave to be tested, or if the necessary isolation, shielding and hygiene measures are not in place when there are positive results. Ensuring sufficient

⁷⁹ [Welsh Government \(2020\) 'Notifications of deaths of residents related to Covid-19 in adult care homes: 1 March to 15 May 2020', 19 May \[accessed May 2020\]](#)

⁸⁰ [UK Government, 'Competition and Markets Authority Care Homes Market Study' Gov.UK website \[accessed 26 May 2020\]](#)

capacity as well as more specific guidance about protection of human rights during this difficult time is also vital

Welsh Government has clear obligations under equality and human rights legislation including the obligations to protect life and eliminate discrimination against protected groups.

As Welsh Government have yet to publish its Equality Impact Assessments, it is difficult to understand how equality and human rights have been considered in their policies to protect people in care homes and what the justification is for the potential indirect discrimination and adverse impacts on older and disabled people.

We are concerned that there may be breaches of section 6 of the Human Rights Act 1998, and Article 2, 5 and 8 of the European Convention on Human Rights. These include potential breaches of the positive obligation to take appropriate steps to safeguard the lives, positive obligation to put in place measures providing effective protection of persons at risk, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge and respect for private and family life, home and correspondence.

The Equality and Human Rights Commission shares concerns with the Older People's Commissioner for Wales about the impact of the pandemic on older people and specifically the impact on residents and staff in care homes. We are working together to consider whether the Welsh Government, public bodies and care home providers have met their responsibilities to uphold older people's rights.

Recommendation: Welsh Government should publish the Equality Impact Assessments of its decisions relating to protecting care homes, including decisions related to testing in care homes, discharging people into care homes from hospitals and access to personal protective equipment to care home staff.

Recommendation: Welsh Government should publish and implement an action plan to set out the steps to taken in order to protect care home residents and staff going forward, including planning for a potential second wave.

Recommendation: Welsh Government should prioritise the regular testing of all care home residents and staff and learn lessons if there is a second wave.

Recommendation: Welsh Government should work with the Care Inspectorate Wales to ensure effective and ongoing monitoring and oversight of COVID-19 cases and deaths in care homes.

Impact on paid and unpaid carers

Evidence published by Autonomy⁸¹ highlighted that more care workers are dying as a result of COVID-19 than workers in any other occupational group. There is a disproportionately high number of women and BAME people working in the care sector which means these groups have been heavily impacted. ONS figures, as of 20 April, show that, across England and Wales, 66 female care workers and 32 male care workers had died during the crisis.⁸² No such statistics are available for ethnicity in Wales. It is important to note that although men make up only 15% of all care workers, 33% of COVID-19 care worker deaths have been men.⁸³

The Commission, along with the Older People's Commissioner for Wales, share concerns about the impact of the coronavirus pandemic on care workers. There have been significant concerns about the availability and access to Personal Protective Equipment (PPE), Welsh Government's decision earlier in the crisis not to provide tests for all care home residents and workers and the discharging of patients into care homes without testing. These factors among others are likely to have exacerbated the crisis in care homes.

The Wales Carers Alliance and representative organisations have raised a number of concerns with the Welsh Government about the impact of the Coronavirus pandemic on paid and unpaid carers.⁸⁴ These include reports of carers' needs assessments being ceased and support plans changed without consultation, in spite of Welsh Government guidance that states that Welsh Government expects Local Authorities to maintain the rights of unpaid carers. They have raised concerns about the discharging of people from hospital without adequate support arrangements in place. There are also concerns about the transparency of financial decision-making and the lack of involvement of carers' representative groups as Regional Partnership Boards have not met since the outbreak of the pandemic.

⁸¹ Autonomy, ['The work of Covid: care work and care homes mortality'](#), 13 May 2020 [accessed May 2020]

⁸² Office for National Statistics (2020) ['Coronavirus \(COVID-19\) related deaths by occupation, England and Wales: deaths registered up to and including 20 April 2020'](#) [accessed 5 June 2020]

⁸³ Autonomy, ['The work of Covid: care work and care homes mortality'](#), 13 May 2020 [accessed May 2020]

⁸⁴ Wales Carers Alliance, ['Letters to Welsh Government and Chief Medical Officer 1 June'](#) [accessed 4 June 2020]

The Wales Carers Alliance have reported that carers' mental health has been negatively impacted by the coronavirus pandemic. There has been an uplift in the number of unpaid carers, many of whom are young people who have additional concerns about the impact of the re-opening of schools. The Alliance have highlighted concerns about the lack of information and guidance available to unpaid carers on matters such as accessing PPE and testing.

Recommendation: Welsh Government and Care Inspectorate Wales should ensure they listen to and taken into account unpaid carers', older people and disabled people's experiences and carry out effective, ongoing scrutiny and oversight of local authorities' provision of care and interface with the private sector.

Recommendation: Welsh Government should monitor the number of carers' needs assessments that are undertaken by Welsh Local Authorities to ensure that carers rights are maintained. Welsh Government to publish an Equality Impact Assessment on the impact on carers and to identify any disproportionate impact on particular groups and identify mitigating actions.

Mental Health provision

Coronavirus and the measures to tackle it are having a profound impact on mental health that will likely continue beyond the immediate crisis.⁸⁵ Almost half of British adults have reported concerns about the impact of the pandemic on their well-being, with nearly two-thirds of this group experiencing stress and anxiety and one in five reporting worse mental health.⁸⁶ Early evidence suggests certain groups may be experiencing particularly poor mental health, including people with existing mental illnesses, disabled people, children and young people, LGBT people, and frontline healthcare workers. Continuing problems with access to PPE and testing

⁸⁵ Holmes, E. et al. (15 April 2020), '[Multidisciplinary research priorities for the COVID-19 pandemic: a call for action for mental health science](#)', *Lancet Psychiatry*; McKie, R. (2020), '[Britons will suffer health problems from Covid-19 for years, warn doctors](#)', The Guardian, 2 May

⁸⁶ ONS (2020), '[Coronavirus and the social impacts on Great Britain: 30 April 2020](#)' [accessed 3 May 2020]

are likely to exacerbate mental health issues among healthcare workers⁸⁷. While mental health need is increasing, the pandemic is reducing the capacity of the health service to deliver support. Evidence suggests people are already experiencing greater difficulty and delays accessing mental health services. We have seen reports of patients being discharged from treatment⁸⁸ in spite of Welsh Government guidance to the contrary. There are also concerns from mental health charities that whilst Welsh Government have been clear that pathways to mental health treatment remain open, that referrals to primary and community mental health services reduced at the start of lockdown⁸⁹.

Demand for mental health services will likely increase over time⁹⁰, due to the backlog of demand and the long-term impacts of the crisis, including those arising from social distancing measures and bereavement. We share stakeholders' concerns that the impact of long-term social distancing measures will be harder for certain groups, including older people,⁹¹ disabled people,⁹² carers,⁹³ LGBT

⁸⁷ See [British Medical Association \(3 May 2020\), 'BMA survey reveals almost half of doctors have relied upon donated or self-bought PPE and two thirds still don't feel fully protected' \(noting that one in four doctors reported worsening mental distress including depression, anxiety and burnout\).](#)

⁸⁸ [BBC News \(May 2020\) 'Coronavirus: Mental health patients discharged against guidance' BBC News online \[accessed 19 May 2020\]](#)

⁸⁹ [BBC News \(26 May 2020\) Coronavirus: Lack of mental health support 'devastating' \[accessed 5 June 2020\]](#)

⁹⁰ [Royal College of Psychiatrists \(April 2020\), 'COVID 19 and Mental Health April 2020.'](#)

⁹¹ Concerns have been raised about restrictions being age-related, rather than risk-related, and the impact on older people's mental health if an extended lockdown is imposed. See Busby, M. (April 2020), ["It's very lonely": older people's fears of extended lockdown](#), The Guardian; Wheeler, C. et al. (3 May 2020), ['Coronavirus lockdown: set free healthy over-70s, say doctors'](#), The Sunday Times. As at 7 May, the current Government guidance on social distancing includes those 'aged 70 or older (regardless of medical conditions)' in the list of 'clinically vulnerable people' who 'should take particular care to minimise contact with others outside [their] household'. UK Government (1 May 2020), ['Staying at home and away from others \(social distancing\)'](#).

⁹² Mencap (24 April 2020), ['Mencap responds to ONS statistics on the social impact of COVID-19 for people with a disability'](#).

⁹³ Alzheimer's Society (2020), ['Alzheimer's Society funded study reveals a third of people with dementia and two thirds of carers feel lonely'](#).

people,⁹⁴ pregnant women and new mothers,⁹⁵ and children.⁹⁶ The resulting economic effects of the pandemic, which will particularly impact many of these groups, are also likely to increase the need for additional mental health support.⁹⁷

The Institute for Fiscal Studies has noted that worsening economic conditions as a result of the coronavirus pandemic could have 'persistent negative health effects', with a disproportionate impact on those with pre-existing mental health conditions.⁹⁸

The coronavirus pandemic could create an increased risk of suicides and/or self-harm, especially as its long-term effects continue to manifest.⁹⁹ The Royal College of Psychiatrists is 'monitoring early signs that child and adolescent suicide rates may have risen since the lockdown began'.¹⁰⁰ This is of particular concern given the higher than average risk of suicide reported among men, young people, LGBT people, and those already in contact with mental health services prior to the pandemic.¹⁰¹ The Samaritans have raised concerns that middle aged, socio-

⁹⁴ [LGBT Foundation \(April 2020\), 'The essential briefing on the impact of COVID-19 on LGBT Communities in the UK'](#).

⁹⁵ [Royal College of Psychiatrists \(2020\), 'COVID-19: Working with vulnerable people: effect on maternal mental health'](#); [Royal College of Obstetricians & Gynaecologists \(2020\), 'Coronavirus infection and pregnancy'](#).

⁹⁶ [Action for Children and others \(April 2020\), 'Briefing: Ensuring that children and families are safe and supported during the CV-19 pandemic'](#).

⁹⁷ 29 per cent of people living with severe mental illness cited the impact of their employment situation during the pandemic as a key factor in the deterioration of their mental health. [Rethink Mental Illness \(27 April 2020\), '80% of people living with mental illness say current crisis has made their mental health worse'](#).

⁹⁸ Banks, J. et al. (9 April 2020), ['Economic downturn and wider NHS disruption likely to hit health hard – especially health of most vulnerable'](#), Institute for Fiscal Studies.

⁹⁹ Gunnell, D. et al. (21 April 2020), ['Suicide risk and prevention during the COVID-19 pandemic'](#), *Lancet Psychiatry*.

¹⁰⁰ [Royal College of Psychiatrists \(2020\), 'COVID 19 and Mental Health April 2020'](#).

¹⁰¹ ERHC (2018), ['Is Britain Fairer?'](#).

economically disadvantaged men are the most at risk from suicide, and the least likely to seek support¹⁰².

Recommendation: Welsh Government and NHS Wales should address the lack of access to mental health services in Wales, monitoring demand for health services from groups sharing protected characteristics and ensure that resources are available to meet these needs.

Recommendation: Welsh Government should increase and commit to sustain a range of mental health support services and interventions; including community based support to prevent crises and unnecessary detentions, and support at Tiers 1- 4 for children and young people; to respond to the potential increase in and ongoing demand for services for children and young people and adults, including older people, as lockdown is eased.

Recommendation: Welsh Government should ensure that decisions about the provision and prioritisation of mental healthcare - during the pandemic and in the longer term – comply with the public sector equality duty by ensuring adequate data on the need for, access to and outcomes from mental health services for people sharing different protected characteristics is gathered and analysed, and take action to address any disproportionate impacts.

Mental Health detention

The impact of emergency legislation on people with mental health problems is different in Wales to England. The changes in Wales are likely to reduce protections for those subject to the Act compared with the changes in England in two main regards.

¹⁰² [Townsend, M. \(2020\), 'Poorer middle aged men most at risk of suicide in the pandemic, says Samaritans', The Guardian, 17 May \[accessed June 2020\]](#)

The Coronavirus Act (Commencement No. 1) (Wales) Regulations 2020 brought some provisions of the Coronavirus Act into force on 27 March 2020 that relate to how the Mental Health Review Tribunal for Wales (MHRTW) reviews individual cases. The MHRTW has also issued a Coronavirus Covid-19 Practice Direction, issued for a six-month period.

In England, changes to how tribunals are handled were made through a Pilot Practice Direction issued by the Courts and Tribunals Judiciary on 19 March 2020. The Pilot Practice was also issued for a six-month period.

In both Wales and England, these changes are significant and include:

- Fewer tribunal panel members are needed to make a decision on a detention challenge
- In certain contexts, decisions can be made in the absence of a hearing altogether
- Pre-hearing assessments are waived
- Telephone/video conferencing and other remote access technologies are being used and encouraged

However, there are two key differences to how tribunals are operating in Wales and England.

Panel composition. Paragraph 11 of Schedule 8 of the Coronavirus Act allows the President of the MHRTW to decide that the tribunal could consist of either only one of the legal members *or* one of the legal members and one of the non-legal members, rather than the usual three members. There is a caveat: the criteria for the President to make such a decision is that it would be “impractical or would involve undesirable delay” for the Tribunal to sit with three members.

In England, the Pilot Practice Direction includes a provision allowing the sole legal member to receive advice or from a doctor or lay member before or during the tribunal. No such provision explicitly exists in the Welsh changes, so a patient may have their hearing determined by a judge on their own with no access to medical or social care advice.

Paper hearings. Under paragraph 12 of Schedule 8 of the Coronavirus Act, the MHRTW can make a decision without a hearing if it considers that:

- i. holding a hearing is impractical or would involve undesirable delay,
- ii. having regard to the nature of the issues raised in the case, sufficient evidence is available to enable it to come to a decision without a hearing; and
- iii. to dispense with a hearing would not be detrimental to the health of the patient.

It is significantly easier to obtain a paper hearing in Wales compared to England. While the MHRTW must give notice to the parties, **it does not need the consent of the parties**. In England, a tribunal can only *suggest* a paper hearing, only in certain cases, and must obtain consent from parties.

Welsh Government has also issued Coronavirus: [guidance](#) for Local Health Boards and Independent Hospitals in Wales exercising Hospital Managers' discharge powers under the Mental Health Act 1983 and [Information note](#) on delivering the Mental Health (Wales) Measure 2010 during Covid-19 pandemic. Although these do not enact the provisions of the Coronavirus Act 2020 which allow Welsh Government to change the Mental Health Act 1983 due to concern that COVID-19 will reduce the number of mental health professionals available to help people whose mental health places them at risk they do acknowledge the difficulties in the current situation. The provisions relating to the Mental Health Tribunal for Wales have been commenced.

These provisions may have been necessary and proportionate during the immediate response to the Coronavirus pandemic, however they potentially breach the Human Rights Act 1998 and Articles 5 and 6 of the European Convention on Human Rights.

We are particularly concerned that some mental health lawyers have told [Mind](#) that hospitals are not introducing processes quickly enough to facilitate electronic disclosure of notes or even telephone contact with lawyers. Access to legal representation is an essential element of Article 6 for individuals detained under the Mental Health Act 1983.

These hearings are usually held in hospitals which already have infection control protocols. It is possible for arrangements to be made for face to face hearings which allow for 2 metre social distancing and/or for hybrid hearings where the Panel have a video link to the individual, their legal representative and nurse who are at the hospital. This possibility is likely to show that interference with human rights is neither proportionate nor necessary.

Section 120 of the Mental Health Act 1983 requires that the regulatory authority must keep under review and, where appropriate, investigate the exercise of the powers and the discharge of the duties conferred or imposed by the Act so far as relating to the detention of patients or their reception into guardianship or to relevant patient.

Health Inspectorate Wales (HIW) carry out this regulatory role for Welsh Government and in the most recent annual [report](#) published in January 2020, they confirm that a key part of the role of their Mental Health Reviewers is to ensure that detained patients know their legal rights and are able to access legal representatives and advocacy services. HIW have confirmed that their routine inspection programme has been paused for the foreseeable future but if they receive significant concerns which affect safety they may undertake urgent visits if absolutely necessary. During a time when many protections have been reduced, this vital regulatory role is more important than ever and should be adapted and recommenced as soon as possible.

Access to justice

Video and phone hearings

During lockdown, courts have been closed and there has been an increase in video and phone hearings that our evidence suggests has a potential negative impact on disabled people's access to justice.

The Equality and Human Rights Commission recently undertook an inquiry into the treatment of disabled defendants in the Criminal Justice System. Our inquiry looked at the experiences of defendants with cognitive impairments, mental health conditions and neuro-diverse conditions, including autism and Attention Deficit Hyperactivity Disorder (ADHD). We looked at the defendant experience at the pre-trial phase and heard from a broad range of criminal justice professionals.

Findings from our inquiry into access to justice for disabled people in the criminal justice system¹⁰³ found that the use of phone and video hearings can significantly impede communication and understanding for disabled people with certain impairments, such as learning disability, autism spectrum disorders and mental health conditions, who are over-represented in the criminal justice system.¹⁰⁴ Other barriers include the absence of processes to identify, record and share information about impairments and the lack of adjustments, such as registered intermediaries, to ensure that disabled people accused of crime can understand and effectively participate in legal proceedings against them.

¹⁰³ EHRC (April 2020), '[Inclusive justice: a system designed for all](#)'. Whilst the findings relate to defendants in criminal hearings, they should provide a helpful insight into the impact on participation for parties to other proceedings.

¹⁰⁴ See, for example, JUSTICE (2017), '[Mental health and fair trial](#)'. JUSTICE has made the case for accurate reporting by police and courts on the number of people identified as having a vulnerability in the criminal justice system.

The impact of remote hearings on justice outcomes has not been fully evaluated and their implications are not fully understood. There may be unintended equality implications associated with video hearings given the disproportionate representation of people sharing particular protected characteristics in the criminal justice system.¹⁰⁵

The Ministry of Justice has found that defendants appearing over video were less likely to be represented and more likely to plead guilty and to receive custodial sentences.¹⁰⁶ Early anecdotal reports indicate challenges to participation and fair hearings in criminal courts¹⁰⁷, the family court¹⁰⁸ and the Court of Protection since the expansion of remote hearings.¹⁰⁹ Remote hearings could also undermine the principle of open justice owing to restrictions on access at the current time,¹¹⁰ while the current suspension of jury trials may risk incentivising defendants on remand to enter guilty pleas.¹¹¹

Although the criminal justice system is not devolved in Wales, Health is. Welsh Government have a role to play in ensuring that all people in Wales have equal access to justice.

Violence against women and girls

¹⁰⁵ See, for example, The Lammy Review (2017) '[An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System](#)'

¹⁰⁶ Ministry of Justice (2010), '[Virtual courts pilot: outcome evaluation report](#)'

¹⁰⁷ Transform Justice (April 2020), '[Is closed justice a price worth paying to keep courts running?](#)'

¹⁰⁸ See Jack Harrison, Transparency Project (23 April 2020), '[P \(A Child: Remote Hearing\) \(Rev 3\) \[2020\] EWFC 32: When is remote justice not justice?](#)'. See also Mr Justice MacDonald (16 April 2020), '[The Remote Access Family Court, Version 4](#)'.

¹⁰⁹ Legal Futures, '[Daughter in CoP case questions "second-rate" Skype justice](#)', 1 April 2020 [accessed 24 April 2020].

¹¹⁰ Legal Education Foundation (March 2020), '[Coronavirus Bill, Courts and the Rule of Law](#)'.

¹¹¹ Transform Justice (April 2020), '[Trial by Skype – uncharted waters](#)'

Increased risk of violence against women and girls is a predictable major 'secondary' impact of the coronavirus pandemic, with reports that women and children killed in domestic homicides have 'more than doubled'¹¹².

Our 'Is Britain Fairer?'¹¹³ report highlighted that domestic abuse and sexual violence are gender based crimes¹¹⁴ that disproportionately affect women, and we know that disabled, LGBT and some ethnic minority women are at particular risk.¹¹⁵ Children are also seriously impacted by witnessing domestic abuse, which is the most common factor amongst children considered to be 'in need' of support from local authority children's social care.¹¹⁶

There are serious concerns that survivors might not be accessing the support and protection they need during lockdown. Welsh Women's Aid have raised concerns that there will be an even greater demand for all violence against women and girls services as lockdown is eased and survivors reach out for support.¹¹⁷ Access to specialist services will be essential.

Welsh Government has positive obligations under international and domestic human rights law to prevent, and protect women from, gender-based violence, and to prosecute offenders, especially where there is a predictable increased risk

¹¹² [Grierson, J. \(2020\), 'Domestic abuse killings 'more than double' amid Covid-19 lockdown', The Guardian, 15 April.](#)

¹¹³ [EHRC \(2018\), 'Is Britain Fairer?'](#)

¹¹⁴ Women are around twice as likely as men to experience domestic violence, and men are far more likely to be perpetrators. See Office for National Statistics (2017), '[Domestic Abuse in England and Wales](#)', 2017. See also Crown Prosecution Service (2017) '[Violence against women and girls report, 10th edition](#)'

¹¹⁵ [EHRC \(2018\), 'Is Britain Fairer? 2018'](#), page 141. See also ONS (2019), '[Crime Survey England and Wales 2019](#)'

¹¹⁶ [Barnardo's \(February 2020\), 'Not just collateral damage: The hidden impact of domestic abuse on children'](#), page 9.

¹¹⁷ [Welsh Women's Aid \(2020\) Press Release: Welsh Women's Aid stresses urgent need for funding for support services due to COVID-19.](#) 24th April 2020

to women and children.¹¹⁸ Obligations under the UN Convention on All Forms of Discrimination Against Women (CEDAW) also require Welsh Government to place particular emphasis on those who are most marginalised, including women who are migrants, refugees, seeking asylum or stateless.¹¹⁹ Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a State's "failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."¹²⁰

We welcome the messaging from Welsh Government that victims and survivors of domestic abuse and sexual violence won't be forgotten during the pandemic, and that support is available, however this must be a consistent approach throughout the entire response to the pandemic. Furthermore, the VAWDASV sector in Wales must be able to meet this demand during and immediately after the pandemic.

Recommendation: Welsh Government should ensure that addressing the rise in violence against women and girls is integral to the response to coronavirus, and that the duty to prevent and protect is built into planning at all levels now and as lockdown restrictions ease and we move into recovery phase.

¹¹⁸ Under domestic law (the European Convention on Human Rights ('ECHR'), given domestic effect by the Human Rights Act 1998), the government has relevant obligations under Article 2 (right to life), Article 3 (the prohibition on torture), Article 8 (the right to respect for private and family life) and Article 14 (the right to non-discrimination). The ECHR imposes positive obligations on the Government to protect individuals against abuse or harm caused by other individuals. Under article 2 ECHR, the Government has positive obligations, in appropriate circumstances, to take preventative measures to protect an individual whose life is at risk from the criminal acts of another individual. There is an equivalent positive obligation to take preventative measures to protect an individual from inhuman and degrading treatment under article 3. Further, under article 8 the Government has a duty to protect the physical and psychological integrity of an individual against harm that might be caused by other individuals. See also, UN Committee on the Elimination of Discrimination against Women (2010), [General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention](#), para 19.

¹¹⁹ [UN Committee on the Elimination of Discrimination against Women \(2010\), General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention](#), para 26.

¹²⁰ [Opuz v Turkey \(2009\), Application no. 33401/02, para 186-191.](#)

Recommendation: Welsh Government should urgently provide funding to violence against women, domestic abuse and sexual violence charities. This funding must be provided to specialist services, particularly for children and young people as well as support services provided ‘by and for’ ethnic minority, disabled and LGBT women.

Recommendation: Welsh Government should work with Chief Constables and PCCs across Wales to ensure that crimes of violence against women and girls continue to be addressed as high priorities, and ensure that there is public assurance of this at a local level. Welsh Government should ensure that this message, as well as information on the national helpline and how to access support, is reaching everyone across Wales. Consideration should be given to innovative practice to ensure that the message reaches the homes of those that may need it.

Domestic Abuse Support services

There is a serious lack of funding and shortage of services for domestic abuse survivors, including for survivors with no recourse to public funds. Welsh Women’s Aid’s ‘State of the Sector’ report¹²¹ published in January 2019 highlighted ongoing funding concerns for the VAWDASV sector in Wales, warning that 431 women had to be turned away from refuge in 2018 due to lack of resource and capacity. Although, women (7.5%)¹²² are nearly twice as likely as men (3.8%) to experience domestic abuse, we note that men and boys need access to appropriate domestic abuse support services.

We are concerned that ethnic minority, migrant, disabled, Lesbian, Gay, Bisexual and Transgender (LGBT) and older women face particular barriers to accessing

¹²¹ [Welsh Women’s Aid \(2019\), ‘State of the Sector 2019’, WWA website \[accessed May 2020\]](#)

¹²² [Office for National Statistics \(2019\), ‘Domestic abuse victim characteristics, England and Wales: year ending March 2019’ \[accessed May 2020\]](#)

appropriate support, and that specialist organisations supporting these groups faced funding difficulties even prior to the coronavirus pandemic.¹²³

The Ministry of Justice (MoJ) recently secured £25million to support Domestic Abuse and Sexual Violence services as part of the UK Government's support package for charities¹²⁴. The Covid-19 related emergency funding will be distributed through Police and Crime Commissioners (PCCs) and the National Rape and Sexual Abuse Support fund.

As welcome as this funding is, it is unclear how support services in Wales will receive increased resources. We are concerned that funding may not reach smaller organisations providing life-saving services to survivors of domestic abuse, particularly those organisations led by and for ethnic minority, disabled and LGBT women. We have reached out to PCCs in England and Wales to highlight their obligations under the Public Sector Equality Duty, and the need to recognise the gendered and intersectional nature of domestic abuse and sexual violence when distributing the Covid-19 emergency funding.

We welcome the announcement by Welsh Government of a £200,000 fund¹²⁵ to help refuges source furnishings and white goods to respond to the crisis, and that the annual VAWDASV capital grant will prioritise projects that respond to the immediate crisis. Welsh Government also needs to consider the needs of male survivors of domestic abuse.

¹²³ [On all groups of marginalised survivors see: Agenda, Ava, 'Breaking down the Barriers, Findings of the National Commission on Domestic and Sexual Violence and Multiple Disadvantage,' 2019. On ethnic minority survivors, see for example: Imkaan, \[From survival to sustainability: critical issues for the specialist BME ending violence against women sector in the UK\]\(#\), 2018, p.10; Imkaan, \[Between the Lines, Service Responses to Black and Minority Ethnic \\(BME\\)\]\(#\), 2015; University of Central Lancashire, Connect Centre for International Research on Violence and Harm, \[Scoping Study: Violence Against Women and Girls Services 2018\]\(#\). On disabled survivors, including those experiencing mental health issues, see for example: SafeLives, \['Disabled Survivors Too: Disabled people and domestic abuse'\]\(#\), 2017; Safe Lives 2019 report \['Safe and well: mental health and domestic abuse'\]\(#\); Women's Health & Equality Consortium reported in 2017; \[On LGBT survivors see Galop, \\[LGBT+ people's experiences of domestic abuse\\]\\(#\\), 2018; on older survivors see: \\[Age UK 2019 report: No Age Limit: The Hidden Face of Domestic Abuse\\]\\(#\\)\]\(#\)](#)

¹²⁴ [UK Government \(2020\), 'COVID-19 funding for domestic abuse and sexual violence support services' Gov.uk \[accessed June 2020\]](#)

¹²⁵ [Welsh Government \(2020\) \[Press Release\]\(#\), 'Welsh Government supports survivors of domestic abuse during coronavirus', \[accessed 4th April 2020\]](#)

We welcome Welsh Government's pledge to take action to ensure that survivors of Domestic Abuse who have no recourse to public funds (NRPF) are sufficiently housed during the coronavirus pandemic¹²⁶. However, it is unclear how much of this funding has actually been expended on supporting those survivors with NRPF. Survivors of domestic abuse and sexual violence with NRPF need to be able to access equal protection and support in Wales during and immediately after the pandemic in order to secure their safety.

We note that Welsh Women's Aid have raised their concerns that the funding provided by Welsh Government thus far is insufficient to fund support services for survivors in Wales during the coronavirus pandemic¹²⁷. In exercising its duty to prevent and protect, Welsh Government must ensure that the VAWDASV sector in Wales is able to meet the needs of survivors.

Recommendation: Welsh Government should urgently provide funding to cover the additional costs to domestic abuse and sexual charities resulting from coronavirus both now and when lockdown is further eased and a backlog of demand increases. This funding must be provided to specialist services, particularly for children and young people as well as support services provided 'by and for' ethnic minority, disabled and LGBT women. Welsh Government should further promote the fact that it remains lawful to seek safety whilst restrictions on movement remain, if there is a risk of abuse or violence at home, through channels accessible to all communities.

Recommendation: Welsh Government should ensure that during and immediately after the Covid-19 pandemic, migrant survivors of domestic abuse and sexual violence with no recourse to public funds (NRPF) can access equal protection and support (including refuge accommodation) in Wales, and that this is effectively communicated to both the providers and to migrant survivors themselves.

¹²⁶ Welsh Government (2020) [Press Release](#), '£10 million emergency support for rough sleepers in Wales during coronavirus outbreak' [accessed 20th March 2020]

¹²⁷ Welsh Women's Aid (2020), ['Covid-19 VAWDASV public letter to Deputy Minister'](#) [accessed 22 April 2020]

Policing violence against women and girls

Prior to the coronavirus pandemic, there were already significant concerns about the low rates of prosecution of crimes of rape and sexual offences, linked to significant delays to the progress of these offences through the criminal justice system.¹²⁸ With all new jury trials currently suspended, delays may now increase further.

We welcome the communications from Welsh Government and Police Forces thus far in relation to recognising the increased risk to victims and survivors across all protected characteristics as a result of lockdown, and highlighting the different mechanisms available for reporting crimes, and accessing support. It is vital however that this information is reaching all those in need, recognising that those most at risk may be digitally excluded or have reduced access to the outside world as a result of shielding.

Police Enforcement of Restrictions

Regulations introduced in response to the coronavirus pandemic have given police¹²⁹ across the UK unprecedented powers to intervene in the lives of the public, including by dispersing gatherings and fining people who leave their homes without a 'reasonable excuse'.¹³⁰ We recognise these powers are key to slowing the spread of coronavirus and protecting the right to life. However, their use may have a disproportionately negative impact on groups with particular protected characteristics, as well as people who have less opportunity to access outside space, which may align with socio-economic factors.¹³¹

¹²⁸ Claire Waxman, Independent Victims' Commissioner for London (2019), [The London Rape Review: Reflections and recommendations](#) (2019); HMCPSI (2019) [2019 Rape Inspection: thematic review of rape cases by HM Crown Prosecution Service Inspectorate](#), p.16.

¹²⁹ The regulations provide police officers, PCSOs and others if designated with a range of enforcement powers. See House of Commons Library (17 April 2020), ['Coronavirus: Policing the instruction to stay at home'](#), p. 4.

¹³⁰ Regulations 8 and 12, [The Health Protection \(Coronavirus\) \(Wales\) Regulations 2020](#).

¹³¹ Blackall, M., [The Guardian](#) (23 April 2020), ['Lockdown UK: "There now two classes, people with gardens and the rest of us"'](#)

Some ethnic minority groups are at risk of disproportionate enforcement of the new powers given that they are already subject to stop and search and police use of weapons at a far higher rate than White people.¹³²

Data released by the National Police Chiefs Council¹³³ confirmed that as at 11th May 2020, 799 Fixed Penalty Notices (FPNs) has been issued in Wales. Over three-quarters (77%) had been issued to males and just under two thirds (63%) were to individuals aged between 18 and 34. Excluding FPNs where ethnicity was not recorded, the vast majority (91%) were issued to those self-defining as White with five percent of FPNs issued to those identifying as Asian. Just under 6% of the population in Wales are recorded as Black, Asian and minority ethnic, therefore this is disproportionate¹³⁴. It should be noted that police forces don't routinely capture ethnicity for FPNs and therefore, this data set doesn't necessarily provide the whole picture. In England, the same data source found there was also a disproportionate number of FPNs given to those who self-identify as Asian and Black.

Whilst we acknowledge that policing is not devolved to Welsh Government, Police Forces in Wales are enforcing the Welsh regulations.

Recommendation: Welsh Government should work with the National Police Chiefs' Council (NPCC), College of Policing, Police and Crime Commissioners and police forces in Wales to:

- a. Ensure that police officers are properly informed about the limits of new powers and restrictions, including the obligation to use or enforce them in a proportionate, non-discriminatory manner;**
- b. Consult with diverse communities to better understand particular needs around police community relations, and ensure that the use and enforcement of new powers does not have a disproportionate impact on particular groups; police forces should record data and report on the number of fines issued by protected characteristics listed in the Equality Act 2010;**

¹³² UK Government (March 2020), [Stop and Search](#); Busby, M., [The Guardian \(17 April 2020\)](#), '[Rights groups quit police body over stun gun use against BAME people](#)'.

¹³³ National Police Chief's Council (2020), [Fixed penalty notices issues under COVID 15th May](#), NPCC website [accessed June 2020]

¹³⁴ Stats Wales [Ethnicity by region 2019 data](#) [accessed June 2020]

c. Establish a mechanism for independent oversight of police use of new emergency powers in Wales to monitor compliance with equality and human rights obligations, similar to that established by Police Scotland.

Access to discrimination advice

There are concerns that the number of people accessing discrimination advice has decreased in Wales since the start of the coronavirus pandemic, although early evidence and stakeholder concerns suggest that the discrimination and injustice being faced by Welsh citizens has increased.

While many advice services have moved to operating online, digital exclusion may affect the ability of some older and disabled people¹³⁵ to access this advice. Telephone advice may also be available, but our inquiry into civil legal aid for discrimination cases showed the real difficulties that many people, particularly disabled people, faced in accessing telephone advice.¹³⁶

Data obtained from the Equality Advice Support Service (EASS) has highlighted that older people, disabled people and pregnant women required to shield are at increased risk of being discriminated against. This is particularly the case in relation to employment and accessing goods. Stakeholder engagement undertaken by the Ethnic Minorities and Youth Support Team Wales (EYST) has further highlighted that BAME people already have the most precarious and insecure employment and housing. Coupled with lack of support and advice on employment rights, plus the hostile environment, this leaves them extremely vulnerable.

¹³⁵ EHRC (2018), '[Is Britain Fairer? 2018](#)' and '[Is Britain Fairer? 2018: supporting data](#)'. This showed that in 2017 1 in 5 disabled people and just under half of those over 75 had never used the internet.

¹³⁶ EHRC (June 2019), '[Access to Legal Aid for Discrimination Cases](#)'.

A number of publications in recent years have alluded to advice deserts in Wales. The Commission on Justice in Wales raised concerns with regards to inconsistent levels of quality of advice being provided, as well as geographical gaps in provision¹³⁷. They also highlighted how the significant cuts to legal aid in Wales have resulted in advice deserts in rural and post-industrial areas where people struggle to receive legal advice.¹³⁸ It should be noted that both the legal aid providers for discrimination advice in Wales are based outside of Wales, and it is unclear how these services are promoted in Wales, if at all.

It is anticipated that as lockdown eases in Wales, and services return to the 'new normal', the number of people accessing discrimination advice is likely to increase. It is vital that individuals have equal access to timely and accurate discrimination and human rights advice.

We note that the Single Advice Fund¹³⁹ launched by Welsh Government earlier this year contains a specific requirement for the delivery of discrimination advice in Wales, and that this is facilitated by Newport and Flintshire CAB.

Recommendation: Welsh Government should work closely with the providers of discrimination and human rights advice under the Single Advice Fund to ensure that citizens are accessing the advice services available. They must also ensure that the services are able to deal with any increase in demand for their services as lockdown restrictions ease.

¹³⁷ [Commission on Justice in Wales \(2019\), 'Justice in Wales for the People of Wales'](#), page 92

¹³⁸ [Commission on Justice in Wales \(2019\), 'Justice in Wales for the People of Wales'](#), page 10

¹³⁹ [Welsh Government \(2019\), 'Single Advice Fund Guidance' Gov.Wales \[accessed June 2020\]](#)

Hate Crime

There have been reports of racist incidents and racially-aggravated offences targeting people perceived to be Chinese or East Asian, and incidents of violence and abuse against LGBT people in connection with the coronavirus pandemic.¹⁴⁰ This comes when levels of hate crime are rising, with more than 100,000 such crimes recorded by police in 2018/19¹⁴¹, almost 4,000 of these being recorded in Wales. There are reports of materials shared online falsely suggesting that Muslim communities are not following social distancing measures,¹⁴² and various forms of antisemitism connected to the pandemic including the hacking of virtual synagogue services.¹⁴³ Online harms not directly linked to the coronavirus pandemic may also increase as people spend longer periods at home and online.¹⁴⁴

¹⁴⁰ [The Guardian \(February 2020\), Chinese in UK report 'shocking' levels of racism after coronavirus outbreak](#); [BBC News \(April 2020\), Coronavirus: arrests over 'disgusting' racist Covid-19 stickers](#); [Crown Prosecution Service \(March 2020\), 'News story: Man jailed for coronavirus-related hate crime'](#). See also [Galop \(2020\), Covid-19 and anti-LGBT+ hate crime \(unpublished\)](#), notes that LGBT people have been falsely linked to the spread of the virus and that there is evidence of an escalation in hate crime towards LGBT people from neighbours.

¹⁴¹ [Home Office \(2019\), Hate crime, England and Wales 2018/19](#).

¹⁴² See, for example, [Tell MAMA, Shropshire Police debunk malicious tweet about a mosque 'ignoring' the coronavirus lockdown, 20 March 2020](#).

¹⁴³ [Community Security Trust \(2020\), Briefing: coronavirus and the plague of antisemitism](#).

¹⁴⁴ For information on the prevalence of online harms, see, for example, [Department for Health and Social Care \(2020\), Online harms white paper](#).

It is evident that tensions around the use of second homes continue¹⁴⁵, particularly in North Wales, and this is likely to be exasperated by the different approaches to the easing of lockdown in England and Wales. We are concerned that the ongoing dialogue highlighting the failures to observe social distancing in England in comparison to Wales is likely to exacerbate the situation.¹⁴⁶

It is unclear what action Welsh Government is undertaking to better understand and respond to community tensions in Wales. Welsh Government fund a network of Community Cohesion Coordinators throughout Wales whose roles it is to deliver against the National Community Cohesion Delivery Plan and promote inclusion and resilience across communities. We note that the most recent delivery plan published by Welsh Government relates to the period 2016/2017¹⁴⁷.

The Association of Police and Crime Commissioners has urged the UK Government to confirm publicly that police forces will continue to investigate hate crimes and incidents, and that victims should continue to report.¹⁴⁸ This is particularly important as charities who provide third-party reporting and support services are likely to have reduced capacity, and victims may be hesitant to draw on police resources.

Recommendation: Welsh Government should work closely with public sector bodies across Wales to better understand tensions within their communities, and ensure that they are appropriately responded to as part of its response to Covid-19. This includes providing clear strategic direction for community cohesion coordinators to assist them in responding to tensions and clear messaging to communities around hate crime and the methods for reporting in Wales.

¹⁴⁵ See BBC News (April 2020), [Coronavirus: 'Vigilante' worries for second home owners](#); BBC News (May 2020), [Coronavirus: MP at Anglesey home 'following government guidelines'](#); Daily Post (May 2020), [Family flee North Wales holiday home after police are called over fears for their safety](#)

¹⁴⁶ See BBC News (May 2020), [How Wales' parks and beaches compared to those in England and Scotland ahead of new lockdown rules](#);

¹⁴⁷ Welsh Government (2016), ['Community Cohesion National Delivery Plan'](#)

¹⁴⁸ Association of Police and Crime Commissioners, [Evidence to the Home Affairs Select Committee on Home Office preparedness for Covid-19 \(Coronavirus\)](#), April 2020.

Fair Work

The economic impact of the coronavirus pandemic has fallen on both employers and employees. Initial evidence shows that the groups identified as already being disadvantaged in the workplace, are experiencing further discrimination and so will need additional support from the Welsh Government both during and in the aftermath of the Coronavirus pandemic. These include disabled people, Black and Ethnic Minority (BAME) people and women, as well as those who are socio-economically disadvantaged.

Welsh Government has responded to the Coronavirus pandemic with a package of support for business, individuals and public services, "... to complement and fill the gaps left by UK Government schemes"¹⁴⁹.

Making fair work a reality

Welsh Government has also issued a joint statement¹⁵⁰ with Wales TUC outlining their expectations of employers during the coronavirus pandemic. This statement does refer to facilitating home working and is a more values driven document around what Welsh Government expects than the guidance¹⁵¹ for employers and businesses referred to below. It reflects Welsh Government's approach to employment during the current crisis using Fair Work and Social Partnerships as a framework. However, there are concerns that the statement and guidance are not linked. Welsh Government has included guidance for businesses and employers on its website but there appears to be little emphasis on home working or flexible working.

¹⁴⁹ [Welsh Government \(2020\), Press Release: Welsh Government releases additional £100 million business support as economic resilience fund sees unprecedented rate of applications. GOV.WALES \[accessed: 20 April 2020\]](#)

¹⁵⁰ [Wales TUC, 'Wales TUC and Welsh Government Joint Statement on Fair Work and COVID-19'. Wales TUC website \(accessed 10 April 2020\)](#)

¹⁵¹ ¹⁵¹[Business Wales, Welsh Government 'COVID-19: Support for Business'. Business Wales website. \(accessed 20 April 2020\)](#)

Recommendation: Welsh Government should continue to deliver upon the principles of Fair Work within their joint statement with the Wales TUC and ensure that this is delivered and embeds non-discrimination, equality and human rights.

There are elements of change to working practices that we might want to consider holding on to as we recover from the Coronavirus pandemic. Social distancing measures have required many employers to implement flexible working practices in order to survive, and this has demonstrated that it is possible, and beneficial to both employer and employees. Recent reports indicate ¹⁵² that many employees are worried their employer will revert to previous inflexible working practices. We hope to see this practice continue as the crisis draws to a close; as flexible working enables many more people to participate in the labour market; particularly those with caring responsibilities, and disabled people; leading to greater efficiency, reducing stress and increasing employees' motivation and commitment.

Potential impact of a recession

There are clear signs that Wales is now entering a period of recession¹⁵³. This is likely to impact on people across Wales, further exacerbating inequalities experienced by people already living in socio-economic disadvantage, ethnic minorities, children, women and disabled people.

¹⁵² [Personnel Today, 'Half of workers expect remote working reversal after COVID-19'. Personnel Today website \[accessed 18 April 2020\]](#)

¹⁵³ [Chancellor Rishi Sunak warns of 'significant recession' \(May 13\): The New Economics Foundation found that 17% of workers in Wales are employed in low paid, insecure work \[accessed May 2020\]](#)

Our analysis of the previous recession showed that women with childcare responsibilities were at a greater disadvantage than either men or other women in continuous employment¹⁵⁴. Our research into pregnancy and maternity discrimination also found that 1 in 20 pregnant workers or those on, or recently returning from, maternity leave experienced redundancy.¹⁵⁵ Our cumulative impact assessments of the impact of changes to tax and welfare found those most affected included children, disabled people and lone parents¹⁵⁶.

Evidence from Business in the Community shows that ethnic minority groups fared worse as a result of the 2008 recession than the white majority, exacerbating pre-existing inequalities with higher unemployment, lower earnings, lower self-employment rates and higher housing costs.¹⁵⁷

The employment rate for disabled people in Wales (48.6%) is lower than in England (53.7%) and Scotland (46.9%). Our State of the Nation report [Is Wales Fairer? 2018](#) showed that the employment rate of disabled people in Wales is less than half than that of non-disabled people. Disabled people are disproportionately employed in low-skill, low paid work of a type that is vulnerable to any economic downturn.¹⁵⁸

Recommendation: Welsh Government should monitor the impact of the recession on people with protected characteristics and put in place measures to mitigate it.

¹⁵⁴ [T.Hogarth, D.Owen, L.Gambin, C.Hasluck, C.Lyonette and B.Casey. \(2009\), Equality and Human Rights Commission Research Report 47 Equality Impacts of the current recession. \(accessed 23 June 2020\)](#)

¹⁵⁵ [Equality and Human Rights Commission, 'Pregnancy and maternity-related discrimination and disadvantage: Experiences of Employers'. \(accessed 20 April 2020\)](#)

¹⁵⁶ [Equality and Human Rights Commission, 'Pregnancy and maternity-related discrimination and disadvantage: Experiences of Employers'. \(accessed 20 April 2020\)](#)

¹⁵⁷ [Business in the Community, The Prince's Responsible Business Network, 'Factsheet : Ethnicity and the economic impact of COVID-19'. \(accessed 23 June 2020\)](#)

¹⁵⁸ [T.Hogarth, D.Owen, L.Gambin, C.Hasluck, C.Lyonette and B.Casey. \(2009\), Equality and Human Rights Commission Research Report 47 Equality Impacts of the current recession. \(accessed 23 June 2020\)](#)

Impact on gig economy workers, employees in low-paid industries, and the self employed

There is also evidence that Covid-19 is having a disproportionate impact on some ethnic minority workers, and ethnic minority women in particular. This is because long standing labour market inequality has led to certain ethnic groups being concentrated in low-paid, insecure or agency work in elementary occupations such as health and social care, cleaning and public transport.

High numbers of people work in low paid insecure employment in Wales. The number of zero hour contracts rose by more than a third in Wales between 2018 - 2019,¹⁵⁹ which equates to 3.4% of people employed in Wales. The New Economics Foundation found that 17% of workers in Wales are employed in low paid, insecure work¹⁶⁰.

This unprecedented situation has revealed the lack of basic employment rights such as sick pay that mean many gig economy workers or people on zero hours contracts have no choice but to continue working. This type of work is predominantly low paid, precarious, with an overrepresentation of young workers, and ethnic minorities.

¹⁵⁹ [Wales TUC \(2019\) Press Release: 35% annual jump in zero hours contracts in Wales: Wales TUC calls for ban', 25th November 2019 \[accessed June 2020\]](#)

¹⁶⁰ [New Economics Foundation \(2020\), 'Insecure Work: Are we at tipping point? \[accessed June 2020\]](#)

Women are most likely to be over-represented in jobs in retail and hospitality – low pay sectors that account for about a quarter of all employment in the UK economy, and which are particularly affected by social distancing requirements. As a result Covid-19 is likely to have a greater effect on the earnings of these groups now and in the future with many employers within these sectors under threat as their long term future is uncertain.

Concerns have been raised about the lack of support available to the self-employed, where certain ethnic groups, particularly Pakistani men, and Gypsy, Irish and Traveller groups, are concentrated. Low paid work also has an over-representation of women, and disabled people who often fail to meet the earnings threshold for either Statutory Sick Pay (SSP) or the Coronavirus Job Retention Scheme (CJRS).

Analysis by the Institute for Fiscal Studies (IFS)¹⁶¹ shows that people aged under 25 were two and a half times as likely as other employees to work in a sector that is now shut down. It also found that low earners and women were more likely to work in these sectors. The Bevan Foundation estimate that 211,500 people are employed in these sectors in Wales, which is about 16% of all employment¹⁶².

Recommendation: Welsh Government should monitor and review the situation for small businesses, self-employed, gig-economy and precarious workers in Wales, who are more likely to be younger, female and/or from some ethnic minorities and ensure that they get the support they need.

Gender inequality in the workplace

To allow employers to focus on supporting employees, the UK Government and the Equality and Human Rights Commission jointly agreed to suspend mandatory gender pay gap reporting for the 2019/2020 reporting period.

¹⁶¹ [Insitute for Fiscal Studies \(2020\) 'Sector shutdowns during the coronavirus crisis: which workers are most exposed?'](#), Briefing note [accessed 6th April 2020]

¹⁶² [Senedd Research blog \(2020\), 'Coronavirus: Equality issues'](#) [accessed June 2020]

There may be particular challenges arising as a result of placing staff on furlough, unpaid leave, paid special leave, sick leave, or disability leave; reducing staff hours and making redundancies. Detailed monitoring and reporting on the impact of the crisis on employees is required, so that effective action can be taken to mitigate any challenges faced by women in participating in the labour market, including during any forthcoming recession.

The Gender Pay Gap figures released by the Wales TUC in January 2020 showed that women earn on average 14.5% less than men in Wales. This figure however is much worse in some parts of Wales – Torfaen local authority area has a gender pay gap of 25.6%.¹⁶³

As a result of the closure of schools and nurseries, many parents face on-going difficulties balancing the needs of working and childcare, either because they are expected to work from home, or because they are required to attend work. We know that this is having a particular impact on mothers, and women with caring responsibilities for older or disabled relatives. Research we undertook showed even prior to the crisis that many mothers struggled to find suitable childcare, or a job that pays enough to pay for childcare¹⁶⁴. Lone parents, 90% of which are women¹⁶⁵, are also likely to have been particularly impacted by school closures and in addition are around twice as likely to fall into poverty.

The Gender Equality Review (GER) commissioned by Welsh Government and undertaken by Chwarae Teg was a rapid review of gender equality in Wales, to determine what Welsh Government is doing well, what they could do better and what could be learnt from around the world. The scope of the review included a focus on tackling the causes of unequal pay, culminating in July 2019 with the 'Deeds not Words'¹⁶⁶ report and a Roadmap¹⁶⁷ focusing on specific policy areas.

¹⁶³ [Wales TUC Press release, 'Gender pay gap is as high as 25% in some parts of Wales, TUC analysis reveals'. Wales TUC website. \(accessed 4 March 2020\)](#)

¹⁶⁴ ¹⁶⁴ [Office of National Statistics, 'Families and Households Dataset November 2019. Office of National Statistics website. \(accessed 23 June 2020\)](#)

¹⁶⁵ [A Hood and T Waters, 2017. 'Living Standards, Poverty and Inequality in the UK'. Institute for Fiscal Studies website. \(Accessed 23 June 2020\)](#)

¹⁶⁶ [Davies, N. and Furlong, C. \(2019\) 'Deeds not Words', Chwarae Teg. \(accessed 23 June 2020\)](#)

¹⁶⁷ [Hodge, P., Davies, N. and Furlong, C. \(2019\) 'Gender Equality: a roadmap for Wales', Chwarae Teg. \(accessed 20 April 2020\)](#)

Recommendation: Welsh Government should review the Gender Equality Roadmap to respond to women's experiences of work during the Coronavirus pandemic and in recovery.

Pregnancy and Maternity at work

Pregnant employees are currently being told by the UK Government to practice social distancing in case they are at a particular risk during the Coronavirus pandemic. Initial evidence from our stakeholders highlights concerns that pregnant workers are:

- Being forced to take unpaid leave, start maternity leave early, or being placed on sick leave, rather than furloughed.
- Being refused furlough despite male colleagues being placed on the Coronavirus Job Retention Scheme, because they have childcare responsibilities and are not deemed to be working.
- Being forced to work without proper health and safety risk assessments.

Facing financial penalties due to salary calculations for furlough support schemes, which are based on an employee's actual salary at 28 February 2020. This disadvantages parents who have just returned from maternity or paternity leave, especially women who may be returning from a period of unpaid maternity leave.

Recommendation: Welsh Government should include in all its guidance for employers links to the Equality and Human Rights Commission's Coronavirus employer guidance:

- **Coronavirus guidance for employers;**
- **Reasonable Adjustments for Employees;**
- **Your Duties on Pregnancy and Maternity.**

This will remind employers of their obligations under equality law in relation to unlawful pregnancy and maternity discrimination.

Reasonable adjustments for home workers

Current Welsh Government regulations continue to require all those who can work from home to continue to do so. For those people who cannot work from home the regulations provide an exception to allow travel beyond the recommended five mile travel limit in order to attend their workplace.¹⁶⁸

The barriers that disabled workers face are likely to have changed due to the current crisis. Disabled employees have reported that their employers are struggling to provide reasonable adjustments so that they can work effectively, or are placing them on unpaid leave. In some cases, disabled workers have been furloughed instead of having their requests for reasonable adjustments met. Disabled workers should not be disadvantaged financially, or forced to work in unsuitable or unsafe ways.

Recommendation: Employers must ensure they take equality obligations into account when supporting their employees, including making reasonable adjustments for disabled employees, and in making staffing and other employment decisions.

¹⁶⁸ Regulation 8A of the Health Protection (Coronavirus Restrictions) (Wales) Regulation 2020 (as amended and as at 11th June 2020) provides that no person may leave the place where they are living, or remain away from that place, for the purposes of work or to provide voluntary or charitable services if it is reasonably practicable for the person to work or to provide voluntary or charitable services from the place where they are living.

Access to Transport

Public transport should support older and disabled peoples' access to services and opportunities. Though it is about much more than reaching an end destination, it should also enrich people's wellbeing, and their right to live independently. Evidence from our report 'Is Wales Fairer?' (2018) shows that public transport in Wales often does not meet the needs of older and disabled people. The challenges presented by the Coronavirus pandemic have exacerbated some of these barriers further.

We are working with Welsh Government as it develops its Wales Transport Strategy to advise on how the new transport strategy can deliver a truly inclusive transport system for Wales.

Restarting public transport guidance

We welcome the guidance that Welsh Government have issued to operators¹⁶⁹ and passengers¹⁷⁰ in relation to restarting public transport. We provided advice to the Minister for Economy, Transport and North Wales on this guidance and were pleased to note the clarity in the guidance for operators that equality legislation relating to accessible travel remains in place as does the duty to make reasonable adjustments and comply with the Public Sector Equality Duty, where applicable. We were pleased to see the guidance encourage the use of Equality Impact Assessments by operators to ensure their actions meet the needs of people with protected characteristics, and that there was guidance to ensure information was available and accessible for people with different communications needs.

¹⁶⁹ Welsh Government Restarting public transport: guidance for operators [Welsh Government website](#) (accessed 4 June 2020)

¹⁷⁰ Welsh Government Travelling safely during the coronavirus pandemic: guidance for the public [Welsh Government website](#) (accessed 4 June 2020)

Successive weekly surveys by Transport Focus highlighted that disabled people are less confident with the idea of returning to use public transport than non-disabled people.¹⁷¹ We are concerned that without clearer and accessible information, guidance and advice many disabled people will not be confident to use the public transport system, which will impact on their right to independent living.

Recommendation: guidance to passengers provides greater clarity on commitments to adhere to equality legislation

Recommendation: Welsh Government should work with operators and disabled people to ensure that information about the availability of passenger assistance services and how they will operate is clear, available and accessible for disabled passengers.

The future of accessible transport

The financial impact of Coronavirus, and the continued need to contain its spread, raise new challenges for inclusive transport and public spaces. For example, the redesign of streets to encourage more walking and cycling may make travelling more difficult for blind and partially sighted people.¹⁷² In response to the Coronavirus pandemic we have seen a number of local authorities in Wales bring forward proposals to encourage safe public spaces and pedestrianise towns and city centres.

It is vital that the needs of disabled people are factored into these plans, including the impact of removing parking bays close to shopping areas. The Public Sector Equality Duty requires that public bodies engage with people with protected characteristics and conduct Equality Impact Assessment on the actions they plan, they also continue to have a duty to make reasonable adjustments.

¹⁷¹ Transport Focus Travel during Covid-19 Tracking Research Week 7 19 June 2020 [Transport Focus website](#) (accessed 19 June 2020)

¹⁷² RNIB (May 2020), [Act now to make sure street design changes are accessible for everyone](#).

Recommendation: Welsh Government and Local Authorities in Wales must comply with the relevant legislation and ensure that plans to redesign public spaces do not directly or indirectly discriminate against disabled people, or prevent reasonable adjustments to be made.

Living standards

The Coronavirus pandemic is disproportionately affecting people living in poverty, and the long-term societal impact of the pandemic will likely exacerbate poverty further.

Socio-economic disadvantage

Wales has the highest rate of poverty in Britain. In 2019, 23% of people in Wales were living in poverty.¹⁷³ Poverty cuts across all protected characteristic groups. For example, *Is Wales Fairer? 2018* shows that in 2016 40% of children aged 0–4 years were living in poverty. Thirty-eight per cent of people from ethnic minorities in Wales were living in poverty in 2013. Four out of ten lone parents, 9 out of 10 of whom are women¹⁷⁴ and 39% of disabled people in Wales are living in poverty¹⁷⁵.

Wales has a higher percentage of benefit claimants than the other GB nations. In May 2011, 18.4% of the working-age population in Wales were claiming welfare benefits compared with the Great Britain average of 14.5%. The main reason for the higher benefit claimant rate in Wales is the higher proportion of people claiming disability and sickness benefits.¹⁷⁶

¹⁷³ [StatsWales: 'Percentage of all individuals, children, working-age adults and pensioners living in relative income poverty for the UK, UK countries and regions of England between 1994-95 to 1996-97 and 2016-17 to 2018-19 \(3 year averages of financial years\)' Stats Wales website \[accessed June 2020\]](#)

¹⁷⁴ [EHRC \(2018\) 'Is Wales Fairer? 2018' \[accessed 23 June 2020\]](#)

¹⁷⁵ [Disability Wales \(2018\) 'A national disgrace: the high price of disability poverty in Wales' 18 April, 2018 \[accessed June 2020\]](#)

¹⁷⁶ [Welsh Government \(2012\) *Analysing the impact of the UK Governments Welfare Reforms in Wales, Stage 1 Analysis* \[accessed June 2020\]](#)

For people whose impairment means they are unable to work full-time, disability benefits are a lifeline, but benefit sanctions disproportionately affect disabled people, who have also been among the hardest hit by tax and welfare reforms since 2010¹⁷⁷. This has lowered many disabled people's living standards even further, and they are more likely to be living in poverty.

The Office for National Statistics has published a study showing that the rate of deaths related to COVID-19 in the most deprived areas of Wales is significantly higher than in wealthier parts of the nation¹⁷⁸. The most deprived areas in Wales had a mortality rate for deaths involving COVID-19, almost twice as high as the least deprived areas¹⁷⁹. The Samaritans have raised concerns that middle aged, socio-economically disadvantaged men are the most at risk from suicide, and the least likely to seek support¹⁸⁰.

These statistics highlight that people living in poverty have been disproportionately affected by the coronavirus pandemic. Furthermore, people in Wales face the risk of experiencing an increase in poverty and economic hardship as a result of it.

Welsh Government has committed to introducing the Equality Act's socio-economic duty, which seek to reduce inequalities of outcomes related to socio-economic disadvantage. The duty's commencement date, which had been due to be in September, has been delayed due to the 'unprecedented nature of the coronavirus crisis.'¹⁸¹ We have called on Welsh Government to introduce the duty by the end of the calendar year to support the response in Wales to the Coronavirus pandemic's impact.

¹⁷⁷ EHRC (2017) '[Impact of Tax and Welfare Reforms](#)' report [accessed June 2020]

¹⁷⁸ James, D. (2020) '[Higher coronavirus death rates in Wales' poorest communities](#)', Wales Online, 1 May [accessed 5 May 2020]

¹⁷⁹ Office for National Statistics (2020) '[Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020](#)'

¹⁸⁰ Townsend, M. (2020) '[Poorer middle aged men most at risk of suicide in the pandemic, says Samaritans](#)' The Guardian [accessed 17 May 2020]

¹⁸¹ [Welsh Government \(2020\) The Socio-Economic duty. Gov.Wales](#) [accessed 15 May 2020]

Recommendation: Welsh Government should commence the socioeconomic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales

Recommendation: Welsh Government should take forward the duty as part of a broad strategic approach to addressing socio-economic disadvantage and poverty. Welsh Government should set itself achievable and binding targets to reduce poverty and should report on progress annually.

Food security

Across April 2020 there was an 89% increase in need for emergency food parcels in Wales, compared to the same period last year. There has also been a 101% increase in the number of children receiving support over the same period of time.¹⁸² Welsh Government has taken some welcome steps to increase in funding to the Discretionary Assistance Fund. However, these figures show that many people do not have enough to afford necessary provisions.

We have repeatedly called for the retail sector to take action to ensure that disabled people are not left unable to shop for food and essentials during the crisis. We were made aware of widespread difficulties for disabled people in accessing supermarkets, both online and in store shopping because reasonable adjustments are not being made. Fry Law had 500 people download template complaint letters and now has 400 legal claims from across England and Wales against all major supermarkets relating to these failures to make reasonable adjustments. We have written to Welsh Government highlighting these issues which also affect those who they have advised to shield.

¹⁸² [Trussell Trust \(2020\) 'UK food banks report busiest month ever, as coalition urgently calls for funding to get money into people's pockets quickly during pandemic'. Press release: \[accessed June 2020\]](#)

We wrote to the British Retail Consortium (BRC) highlighting concerns that a large number of disabled people in the UK, who fall outside the government's high risk groups, are facing additional barriers to essential shopping. Common issues also included inaccessible websites and long-queues which can cause problems for people with mobility issues and chronic pain conditions. We outlined the BRC's failure to acknowledge the legal obligations on retailers to make reasonable adjustments for disabled people.¹⁸³

Recommendation: Retailers must discharge their legal obligation to make reasonable adjustments for disabled people under the EA 2010 and in line with the rights of disabled people to live independently and maintain priority shopping hours for disabled people and older people, and carers.

Homelessness

Housing problems are often closely linked to a reduction in income. As outlined above, certain groups are more likely to be in financial difficulty as a result of the coronavirus pandemic, which will result in housing difficulties.

In May, Welsh Government announced a £20 million fund for homelessness services¹⁸⁴. This followed an initial funding package of £10 million that, Welsh Government stated, had resulted in over 800 people being housed since lockdown began. The additional funding was for local authorities to help those currently in temporary accommodation to move on to a longer term home and ensure suitable options for those who face homelessness in the future.¹⁸⁵

Welsh charity Llamau has warned there has been an 'unprecedented' rise in the number of young people facing homelessness during the coronavirus crisis. Llamau stated that in May that it had already received more calls this year than it did in the whole of 2019.¹⁸⁶

¹⁸³ [EHRC \(2020\) 'Equality body calls on retailers to do more for disabled customers during corona crisis' \[accessed 7 May 2020\]](#)

¹⁸⁴ [Welsh Government \(2020\) Press release: 'The Welsh Government announced a £20 million fund for homelessness services' Gov.Wales \[accessed 28 May 2020\]](#)

¹⁸⁵ [Welsh Government \(2020\) 'Letter to all social housing tenants in Wales \(coronavirus\)' Gov.Wales \[accessed 25 May 2020\]](#)

¹⁸⁶ [BBC news, 'Coronavirus: 'Unprecedented' rise in youth homelessness', 26 May 2020 \[accessed June 2020\]](#)

In April, the Minister for Housing and Local Government wrote to social housing tenants stating that social landlords have agreed not to take eviction action against any tenants experiencing financial hardship as a result of coronavirus. The Minister asked landlords to go further and ensure every tenant can get support when they need it and that no tenants are left with unmanageable debts when the coronavirus crisis is over.¹⁸⁷

Recommendation: In light of any economic and housing difficulties resulting from the pandemic, the Welsh Government should monitor the effect that the statutory duties on local authorities to prevent homelessness under the Housing (Wales) Act 2014 are having on people sharing different protected characteristics, and take action to address any disproportionate negative impact on those groups

¹⁸⁷ [Welsh Government \(2020\), Press Release: 'Welsh Government announce new £20 million fund to transform homelessness services and ensure no-one need return to rough sleeping' Gov.Wales \[accessed 28 May 2020\]](#)

Recovery

As we move into recovery and start to rebuild, Welsh Government will need to prioritise and focus on delivering key equality outcomes with a robust cross-government accountability structure and resources for delivery to ensure successful implementation. An ambitious action plan on equality and human rights can set out the steps that need to be taken to stop the very real risk of inequalities deepening and further entrenching the discrimination and disadvantage experienced by many in Wales.

Addressing deepened inequalities through an ambitious action plan to rebuild a more equal and fairer Wales.

In our *Is Wales Fairer? 2018 Report*¹⁸⁸ we documented how disabled people are being left even further behind, socio-economic disadvantage is leading to a stark gap in life experiences, violence against women and girls is a reality for many, and race inequality persists in Wales.

Early evidence is showing that the Coronavirus pandemic, and responses to it, are exacerbating long-standing and entrenched inequalities across all areas of life. Structural and systemic race inequality, the right to life, protection and support for older people, disabled people being left without access to essential services, women at increased risk of domestic abuse, workers, particularly women and those in the gig economy are facing discrimination, and children and young people face further barriers to fulfil their potential. Add to all of this, rising socio-economic disadvantage that will cut across and threatens to deepen and perpetuate existing inequalities. Disabled people, older people, socio-economically disadvantaged people, ethnic minorities and women are at the sharp end of the impact of the Coronavirus pandemic and the measures being taken to respond to it.

¹⁸⁸ Report available on our website [Is Wales Fairer? 2018](#)

Responses to Coronavirus and the road to recovery must be focused on addressing the unequal impact and deepened inequalities in Wales, as well as promoting and protecting human rights.

Welsh Government has been increasingly listening to stakeholders about the disproportionate impact on their experiences and has taken some steps to address the issues raised. However, we want to ensure that the voices and needs of people experiencing inequality and discrimination continue to inform consideration of policy and that this ultimately results in action to save and improve lives in Wales. Lessons learnt from the Coronavirus pandemic about how to increase engagement and reach beyond the 'usual' groups and individuals will be valuable to how engagement can be sustained and further developed at local, regional and national level.

Recommendation: Welsh Government should create an ambitious action plan to build a more equal and fairer Wales. This should address key inequalities and human rights issues that have been exacerbated through the impact of the Coronavirus pandemic. This can build upon Strategic Equality Plans to identify the key inequalities exacerbated by the coronavirus pandemic and create a clear action plan with equality outcomes to build a more equal and fair Wales as we recover from this crisis.

We welcome Welsh Government commitment to develop and deliver a Wales race equality plan, this needs sufficient resources, cross-government governance structures and a robust accountability mechanism to ensure successful implementation.

Recommendation: Welsh Government's commitment to develop and deliver a Wales race equality plan should reflect key inequalities, and involve race equality organisations and individuals. Sufficient resources and robust accountability mechanisms must be in place to ensure successful implementation.

Equality and human rights at the heart of the framework for recovery

We are pleased to see that equality is within Welsh Government's 'Leading Wales out of the Coronavirus pandemic: a framework for recovery'¹⁸⁹. This can be strengthened to reconfirm the consideration of equality and human rights in decision-making in Wales. Scottish Government has produced a 'Coronavirus (COVID-19): framework for decision making'¹⁹⁰ that includes clearer commitment to equality and human rights.

Although Welsh Government's Framework to Lead Wales out of the Coronavirus Pandemic¹⁹¹ includes equality questions, it makes no specific reference to groups with protected characteristics. Similarly, whilst Welsh Government's traffic light system in their document, 'Unlocking our society and economy: continuing the conversation'¹⁹² confirms that they remain committed to addressing inequality, it does not make specific reference to how Welsh Government will comply with the PSED. We stand ready to advise Welsh Government on this framework for recovery.

Recommendation: Welsh Government should strengthen the framework for recovery with questions on the consideration and measurement of the impact on protected characteristics, the reduction of inequalities of outcome resulting from socio-economic disadvantage, and human rights. The legal requirements within the Equality Act and the socio-economic duty need to be clarified in this framework. There needs to be a transparent decision-making process for the framework to recovery and evidenced consideration of equality and human rights.

We are encouraged to note that both European and UN Convention rights are referenced in the social care guidance. However, a human rights approach needs to be embedded into the framework for recovery. This will involve careful consideration of how each policy decision affects individual's human rights across Wales.

¹⁸⁹ [Welsh Government \(2020\) 'Leading Wales out of the coronavirus pandemic: a framework for recovery'](#). Gov.Wales [accessed May 2020]

¹⁹⁰ [Scottish Government 2020, 'Coronavirus \(COVID-19\): framework for decision making'](#) [accessed May 2020]

¹⁹¹ [Welsh Government \(2020\) 'Leading Wales out of the coronavirus pandemic: A framework for Recovery'](#). Gov.Wales [accessed June 2020]

¹⁹² [Welsh Government \(2020\) 'Unlocking our society and economy: continuing the conversation'](#). Gov.Wales [accessed May 2020]

Strengthening equality and human rights framework

As we look to the future, it is important that we continue to strengthen legislation in Wales to protect and promote equality and human rights.

We have called for Welsh Government to strengthen the PSED in Wales. Our monitoring of the PSED in Wales in 2019 found that none of the 73 listed public bodies in Wales were fully compliant with the areas of the Public Sector Equality Duty that were checked, this includes Welsh Government. The PSED does not appear to be having the transformational impact that it was intended to have and it needs to be strengthened to tackle the greatest inequalities in Wales. Welsh Government has committed to undertaking a review of the Specific Duties in Wales but has currently paused this. This decision is understandable whilst we are in the midst of the Coronavirus pandemic, but it is important that the momentum is not lost.

Recommendation: Welsh Government should review and strengthen the Public Sector Equality Duties to focus public bodies on taking action to address key inequalities.

To ensure human rights are realised as part of a road to recovery, we believe that all relevant rights contained in UN human rights treaties should be made part of domestic law so individuals can effectively challenge rights violations using the domestic legal system and access a domestic remedy for alleged breaches of human rights. For example, the rights in the European Convention on Human Rights are incorporated into domestic law by the Human Rights Act (HRA). We believe that the HRA is well crafted in allowing people to enforce their rights and that Welsh Government should explore how a HRA model of incorporation could be applied in Wales.

We believe that the Welsh Government should establish a National Mechanism for Implementation, Reporting and Follow-up (NMIRF) to effectively and efficiently implement the provisions and recommendations emanating from the UN human rights system.

Recommendation: To strengthen the commitment to the international human rights framework, and ensure a joined up approach to implementation of the UK's obligations at domestic level, we continue to recommend that:

- **Welsh Government put in place comprehensive national mechanisms for monitoring and reporting on progress and ensuring implementation of the UPR and treaty body recommendations.**

- **Welsh Government incorporate international human rights treaties into domestic law, so that individuals can effectively challenge rights violations using the domestic legal system and access a domestic remedy for alleged breaches of their rights.**

Governments and other public bodies have shown that they can move quickly and address difficult issues when the situation – and the public – demands it. Support for people whose jobs are at risk or facing homelessness, for businesses facing collapse, for the NHS, for civil society organisations and other charities providing essential services has been produced or enhanced in short order. We can learn from this and in the future this approach can help us move quickly to address inequality and human rights.

Contacts

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

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

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Published June 2020

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