

Consultation response

Implementation of the Anti-racist Wales Action Plan (ArWAP)

Consultation details

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Equality and Human Rights Commission

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Introduction

About the Equality and Human Rights Commission

The Equality and Human Rights Commission ('the 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 Britain fairer by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect. The Commission has been given powers to advise Governments across England, Scotland and Wales on the equality and human rights implications of legislation and policy. We can also publish information or provide advice, on any matter related to equality, diversity and human rights.

We welcome the Welsh Government's commitment to a cross-government approach to tackle racism and advance equality for ethnic minority people in Wales. We would stress, however, that the success of the plan's implementation will depend on the Welsh Government establishing and publishing an impact measurement and monitoring framework, providing leadership in aligning activity and defining best practice across sectors; and communicating effectively with various audiences.

The Commission has been involved in development of the ArWAP in several ways. During its development phase, we participated in the plan's steering group, held advisory meetings with some Welsh Government (WG) ArWAP policy leads, and advised on proposals for ArWAP strategic goals. We also produced a research brief on the state of racial equality in Wales¹ and responded to the draft ArWAP consultation. Currently, the Commission sits as an observer on the ArWAP External Accountability Group.

¹ This document is not published but could be available to the Committee upon request.

Response to the Consultation Letter

Question 1: The effectiveness of Welsh Government leadership

The effectiveness of Welsh Government actions to deliver the plan, including what is being done to 'lead by example' in taking a pro-active and cross-governmental approach to racism.

The Commission welcomes ArWAP's cross-government approach but has stressed the need to prioritise ArWAP goals/actions and the crucial leadership role for Welsh Government in coordinating cross-sectoral implementation.

Prioritisation and setting national equality priorities/objectives

With around 200 ArWAP actions and several other Welsh Government equality action plans, it would be helpful for the Welsh Government to provide greater leadership on priorities. The Welsh Government should set the direction for Welsh public authorities through its own strategic equality plan (SEP) and by setting national equality and human rights priorities based on relevant evidence including our forthcoming Equality and Human Rights Monitor: Is Wales Fairer? National priorities should articulate desired outcomes which are monitored and evaluated.

Adequate and timely resourcing

There is a lack of clarity regarding sustainable resourcing, including funding in relation to ArWAP in the short, medium and long term.

Need for Welsh Government leadership to public bodies

In November 2022, the Commission hosted an Equality and Human Rights Exchange network event to consider implementation of ArWAP and recommendations from our [inquiry into experiences of ethnic minority health and adult social care workers](#). In discussion, public body representatives expressed desire for Welsh Government leadership in the following areas:

- Support in aligning implementation work of various Welsh Government equality action plans.
- Sourcing quality racial equality training and recommending best practice on training.
- Providing leadership and guidance on aligned actions across sectors and support in best practice guidance where different sectors have similar goals and actions.

EHRC RECOMMENDATIONS:

- **The Welsh Government should set evidence-based national equality and human rights priorities, with clear links to the ArWAP and other Welsh Government equality plans and specify how it expects to see those priorities. reflected in listed public body’s revised SEPs and corporate plans.**
- **The Welsh Government, in liaison with the ArWAP Accountability Group, should set priorities for ArWAP Years 2 and 3 as a matter of urgency and clarify funding plans.**

Question 2: Progress & monitoring arrangements; Role of public bodies, third and private sectors

The progress and monitoring arrangements for the Plan, including the role of the public sector (local authorities, health, education), third sector and where applicable, the private sector.

Overall, the ArWAP needs stronger progress and monitoring arrangements. The lag in formalising strategic goals, measurement frameworks, and setting up the external accountability group is impacting on understanding of the ArWAP’s implementation in Year one.

Strategic goals, interim milestones and timescales

ArWAP strategic goals and measurement framework were to be published in Autumn 2022 but have not been published to date. The Commission provided advice on draft strategic goals to members of the Welsh Government’s equalities team in February 2022. These structures are key to successful implementation of the ArWAP, and they should be published as soon as possible.

The Welsh Government must define improvement objectives for the short and medium terms as well as the long-term plan. We are concerned that the Welsh Government hasn’t articulated the necessary steps to reach milestones, particularly in relation to the bigger issues. For example, in 2021, the Welsh Government established a national milestone to eliminate the ethnicity pay gap by 2050, without a timeline of defined short and medium term actions and interim milestones to achieve that goal.

Internal and External Accountability Groups

The Welsh Government has established an external accountability group, via open recruitment, seeking people with lived experience and experts in anti-racism and policy areas. The Commission is an observer on the group. The External Accountability group has a defined Terms of Reference. As this group

is newly established, we are unable to comment on its effectiveness, or the Welsh Government's response to its recommendations but would suggest the ESJC may want to better understand:

- How effectively diverse communities are represented on the group.
- The mechanisms for prioritising goals, actions and issues.
- Engagement with relevant stakeholders from grassroots, third and private sectors, including with people and groups who haven't previously engaged in policy development or scrutiny.

We are aware that the Welsh Government has established internal accountability/implementation groups for each policy area/directorate but are unable to comment on these.

Ensuring sufficient attention for incorporation of previous plans relating to specific groups

There are some pre-existing plans relating to specific groups, such as Nation of Sanctuary, which will now be incorporated into the ArWAP. The Welsh Government must ensure that these plans, some of which relate to particularly marginalised people, do not get lost as part of ArWAP. It is equally important to ensure evaluation and learning from early implementation of these plans informs subsequent ArWAP work.

Incorporation of key ArWAP goals and national priorities into SEPs

In 2024, the Welsh Government and most listed public bodies in Wales must publish new SEPs. We advise that the Welsh Government and public bodies incorporate equality objectives and actions relating to relevant ArWAP goals into their SEPs. The Welsh Government 2024-2028 SEP is an opportunity to set evidence-based national equality and human rights priorities which include desired outcomes.

EHRC RECOMMENDATIONS:

- **The Welsh Government should publish ArWAP strategic goals and a measurement framework as soon as possible, ensuring SMART goals which focus on impact.**
- **The Welsh Government should publish a progress and impact report for the first year along with a schedule of future monitoring reports.**

Question 3: Racial Disparity Unit Progress, Data Gaps

The progress made by the Racial Disparity Unit (RDU), and whether there are gaps in data collection and analysis of data is being carried out effectively.

Importance of data for Public Sector Equality Duty

Public bodies must effectively collect and analyse evidence related to protected characteristics to meet the Public Sector Equality Duty (PSED). Doing so is crucial to understanding the impact of their policies and functions on people with different protected characteristics and producing effective equality impact assessments. The Welsh Government and public bodies must build trust amongst their employees and service users to provide race and ethnicity monitoring data. There is some evidence that public confidence in submitting data results in gaps in ethnicity health data and public sector employment data, as reported to the First Minister's Black, Asian, Minority Ethnic Covid 19 Advisory Group in 2020.

Progress on establishing the RDU

The Welsh Government has in place an Equality, Poverty and Children's Evidence and Support Division with three specialist units, including the Racial Disparity Unit (RDU). This is a positive step, with the Commission advising these teams through regular meetings.

Most RDU work to date has involved building the workforce. In 2023, the RDU made contributions to analysis of the National Survey for Wales by protected characteristics, supported the Anti-racist further education steering group to commission research, and contributed to establishing the health and social care Workforce Race Equality Standard (WRES).

With an RDU workforce in place, the Welsh Government should develop clear strategic plans for each disparity unit that specify priorities, timelines, and approaches for specific areas of data collection improvement. Development and communication of such plans to relevant Welsh Government policy units and public bodies is necessary to:

- Connect the RDU work with policy development and frontline data collection practices, so that Welsh Government departments and public bodies understand the priorities for filling data gaps and how to link evidence collection and analysis to their respective ArWAP goals.
- Plan for intersectional analysis, including links between protected characteristics and socio-economic disadvantage.
- Specify how the RDU will cover both race and religion, which can intersect in complex ways.

Race, ethnicity, and data gaps in Wales

Our forthcoming Equality and Human Rights Monitoring Report (Is Wales Fairer?) will review outcomes relating to racial equality in several life domains, including work, education, health and social care.

In compulsory education, there is a lack of pupil data disaggregated by the protected characteristics of race, sexual orientation, gender reassignment, and religion or belief. For example, while the current [Welsh Government anti-bullying guidance](#) recommends schools and local authorities collect and analyse disaggregated data on all protected characteristics in relation to bullying and harassment incidents, this is inconsistent across Wales. The ArWAP has pledged to strengthen this guidance and we await the publication of the new guidance. Additionally, the Commission's [inquiry on restraint in schools](#) found inconsistency in data collection on use of restraint, particularly relating to ethnicity, and recommends that schools monitor the use of restraint and restrictive practice via protected characteristics, in line with recommendations from the UN Committee on the Rights of the Child.

Publishing Wales-specific evidence on learners and workforces in Higher Education (HE) and Further Education (FE) is crucial to ensure evidence-based policy and regulation. Combined statistics for England and Wales point to racial inequalities across FE and HE learner and workforce outcomes and experiences. Currently, relevant data is held mostly at institutional level, not publicly available as nationally consolidated data. Once operational, the Commission for Tertiary Education and Research (CTER) will be an official statistics body. To meet its Public Sector Equality Duties, CTER will need to ensure that learning providers gather comprehensive data about learners and workforce, disaggregated by protected characteristics and coordinate its national consolidation.

The Education Workforce Council is currently working to improve data collection on school and FE workforces at the point of registration.

EHRC Recommendations:

- **The Equality, Poverty and Children's Evidence and Support Division should inform strategic equality planning across the Equality Evidence Unit, the Racial Disparity Unit and the Disability Disparity Evidence Unit, the Welsh Government and the Welsh public sector.**
- **The Welsh Government should ensure that the CTER takes over the Higher Education Funding Council for Wales (HEFCW's) ArWAP responsibilities ensure that the CTER coordinates collection of relevant disaggregated learner and workforce data from HE and FE providers to inform and monitor ArWAP actions.**

Question 4: Communication Channels

What channels of communication have been established to ensure people with lived experience are informed of the plan's progress and what changes are happening as a result of the plan.

Over the past year, there has been a lack of a coherent, strategic communication plan in relation to ArWAP progress. We are pleased the ArWAP external accountability group is committed to report annually on progress, but the group has only recently been appointed. There may be a need and benefit for more frequent and timely communication to external partners about progress in order to reach a range of audiences. Such a communication strategy may increase external buy-in, create consistent opportunities for scrutiny from grassroots stakeholders, and ensure more effective interdepartmental and cross-sectoral collaboration and learning. This could also demonstrate a contribution to compliance with the duty to engage under the PSED Specific Duties for Wales.

Question 5: Effectiveness of plan in first year

The effectiveness of the Plan in its first year, including whether actions have been delivered, what the key outcomes have been so far and to determine why any outstanding actions have not been implemented.

The ArWAP is a complex plan spanning numerous policy areas. As such, we limit our response to this question to areas which relate to current and recent Commission priorities, including education, health and social care, equality in a changing workplace, and some points on criminal justice and housing.

Education

Schools: We welcomed mandated inclusion of teaching of Black, Asian and Minority Ethnic histories and contributions within the Curriculum for Wales. The Welsh Government has updated the Statements of What Matters for Humanities to ensure the study of Welsh history includes stories of Black, Asian and minority ethnic people. There are calls for greater levels of professional learning to enable implementation of this mandate, some of which may be addressed through the Diversity and Anti-racism Professional Learning (DARPL) project.

We do have some concerns where ArWAP education actions are yet to be completed: co-designing and publishing statutory Gypsy, Roma and Traveller guidance for schools and strengthening the Welsh Government's anti-bullying guidance for schools as well as the guidance on exclusions from school and pupil referral units.

The UNCRC concluding recommendations of June 2023 echo these concerns.

Higher and Further Education: Our 2019 inquiry [Tackling Racial Harassment: Universities Challenged](#) found that racial harassment was a common experience for a wide range of students and staff and can have a profound impact on an individual's mental health, educational outcomes and career. What's more, our evidence highlighted that the higher education sector does not fully understand racial harassment and university staff lack confidence in dealing with race issues. The ArWAP includes several recommendations for the higher education sector.

The CTER, which will be operational in April 2024, has several strategic priorities including promoting equality of opportunity and encouraging participation. It will be vital for CTER to have a SEP and equality objectives which draw on HEFCW experiences and reflect ArWAP actions. CTER have an opportunity to evaluate and monitor ArWAP actions. For example, Welsh Government will soon be consulting on the regulations needed to establish the register of tertiary education providers. This could provide an opportunity for CTER to assess whether higher education providers have taken sufficient steps to promote an anti-racist culture and ensure staff and students can expect their experiences of HE to be positive, irrespective of their racial and ethnic background.

The Tertiary Education and Research (Wales) Act states that 'Welsh Ministers will set out strategic priorities for and in connection with tertiary education and research and innovation'. Welsh Ministers should ensure that strategic priorities for and in connection with tertiary education and research and innovation consider the most pressing inequalities that the sector should be taking action on. Strong links to the ArWAP and the CTER's strategic equality plan and equality objectives would strengthen the achievement of these priorities.

The Anti-racism FE Steering Group, set up to facilitate the implementation of FE ArWAP actions has a clear scope with established learner and workforce priorities; and facilitates shared learning between policy units, education institutions, and equality organisations including the Commission. Recently it completed a qualitative research project with recommendations to prioritise FE ArWAP actions, ensure consistency across the sector and further best practice.

Health

There is limited national level data on race and healthcare for Wales. Much of that data sits at health board level or within specific projects; this evidence gap should be addressed urgently. Work in this area should address healthcare access as well as service provision experiences for ethnic minority groups and workplace experiences for healthcare staff, providing better evidence on how healthcare systems and structures, including workplace cultures, play a role in racial inequalities. For example, [recent research from Race Alliance Wales](#) shows the impact of poor organisational workplace cultures on mental health.

There is evidence to suggest significant racial inequalities in maternity outcomes and some evidence to suggest prioritisation of investigation of care and health

outcomes for mothers and babies. In December 2022, the Welsh Government announced [a programme to improve collection of ethnicity/maternity health data](#). Research and evaluation of health and maternity services should consider factors such as discrimination and language barriers and evaluate the impact of recent policy changes, such as the creation of all local authorities in Wales as dispersal centres. Existing literature highlights the disproportionate impact of isolation on pregnant women and mothers of babies and young children.²

Social Care

Social Care Workforce: The Commission's inquiry report [Experiences from health and social care: the treatment of lower paid ethnic minority workers](#) found the following:

- There is a lack of robust workforce data on lower-paid ethnic minority workers, particularly in adult social care.
- Some lower-paid ethnic minority workers report they are treated differently from White British workers, experiencing bullying, harassment and abuse related to race; unsupportive line managers and less favourable treatment in allocation of hours and duties; have worse employment outcomes, including training and progression opportunities and over-representation in disciplinary procedures.
- The commissioning out of adult social care, and outsourcing of some roles in health, has resulted in more insecure work and poorer pay and terms and conditions than for those directly working for the public sector, with some UK wide evidence that ethnic minority workers are more likely to be in commissioned out roles.
- Lower-paid ethnic minority workers in the health and adult social care sectors, particularly migrant workers, are less likely to be aware of their employment rights.
- Lower-paid ethnic minority workers are fearful of raising concerns and complaints about working conditions or treatment in health and adult social care workplaces.

² C.F Fair F, Raben L, Watson H, Vivilaki V, van den Muijsenbergh M, Soltani H, et al. (2020) Migrant women's experiences of pregnancy, childbirth and maternity care in European countries: A systematic review. PLoS ONE 15(2): e0228378. <https://doi.org/10.1371/journal.pone.0228378> and McNight, Goodwin and Kenyon (2019) "A systematic review of asylum seeking women's views of UK maternity care," *Midwifery*. Vol 77. pp. 16-23

The ArWAP includes a commitment to incorporate this inquiry's recommendations into social care actions. Key recommendations relate to improving data collection on workforce demographics and experiences, including commissioned-out workers; ensuring attention to equality and worker welfare in commissioning practices and inspectorate frameworks; and effective worker voice and redress for discrimination and harassment. The Health Minister has provided a response committing action towards a number of recommendations but it will be important to monitor progress. The Welsh Government has also committed to monitoring progress of other public bodies in implementing our recommendations.

The ArWAP's goals and actions in relation to the social care workforce focus mostly on mid to senior level positions and relate mostly to local authority workforce practices, whereas most of the social care workforce are lower paid workers, including a large proportion in commissioned-out positions. The ArWAP needs to deliver for these workers as well as local authority employees and employees at mid to senior level pay bands.

Challenging social care decisions: Recommendations from the Commission's recent [inquiry into challenging adult social care decisions](#) can guide ArWAP actions around creating culturally competent care. The report found that local authorities do not adequately collect and analyse equality data on the people who challenge and complain about adult social care. Without this information, local authorities are unable to identify whether some protected characteristic groups are more or less likely to complain than others, and if so, why.

We have also recommended that Local Authorities have arrangements in place for effective advocacy commissioning and engage with protected characteristic groups to ensure that independent advocacy responds to diverse needs. There is an opportunity to address these issues and implement Commission recommendations in Wales through the forthcoming National Framework for Commissioning Care and Support.

Housing

Despite progress on several goals and actions relating to diversity in housing sector leadership and workforce and certain housing services/initiatives, there has been little to no progress in relation to provision of appropriate and suitable housing for Gypsy and Traveller people and communities, despite this group having the worst health, housing and education outcomes. There is little evidence that the Welsh Government capital fund for Gypsy and Traveller sites has translated into increased, good quality provision. Deliberate and urgent progress in this area should be a priority.

Crime and Justice

Racial disproportionality remains an issue across the criminal justice system in Wales. For instance, black people are overrepresented in stop and search use in all four police forces. However, most reporting on disproportionality in the criminal justice system uses combined Wales and England datasets. The ArWAP includes an action for the RDU to link with Criminal Justice in Wales partners to provide Wales specific datasets on race, ethnicity, and criminal justice outcomes. The ESJC should ask for a progress update on this action.

Cross-sector consideration

The ESJC may wish to explore how the Welsh Government is considering how priority areas relate to each other, for instance, links between health and housing or mental health and criminal justice. The Commission's forthcoming Equality and Human Rights Monitor: Is Wales Fairer? will include a chapter outlining how ethnicity relates to key life outcomes for people in Wales. We will share the publication with the ESJC when it is published in October.

EHRC RECOMMENDATIONS

- **The Welsh Government should report on progress and announce publication dates for developing statutory Gypsy, Roma and Traveller guidance for schools and strengthening the Welsh Government's anti-bullying guidance for schools as well as the guidance on exclusions from school and pupil referral units.**
- **The ESJC should explore how Welsh Government is monitoring and evaluating the impact of the mandate to include Black, Asian and ethnic minority histories and contributions in the New Curriculum and the impact of DARPL in preparing teachers to deliver this.**
- **The new CTER should implement a SEP which reflects both its strategic role and ArWAP actions and work with the RDU to ensure effective collation and analysis of national FE and HE data.**
- **Welsh Ministers should ensure that strategic priorities for and in connection with tertiary education and research and innovation consider the most pressing inequalities that the sector should be taking action on. Strong links to the ArWAP and the CTER's SEP and equality objectives would strengthen the achievement of these priorities.**
- **Welsh Government and relevant stakeholders should work with local authorities to improve the collection, analysis, and reporting of social care users' equality data to address poor outcomes experienced by people who share protected characteristics.**
- **The Welsh Government should prioritise urgent action on progressing ArWAP goals relating to provision of sufficient and suitable housing for Gypsy, Roma and Traveller communities.**
- **The RDU should report on its progress to work with Criminal Justice in Wales partners on establishing a system for Wales specific reporting on outcomes for ethnic minority people in the criminal justice system in Wales.**

Question 10: Barriers to implementation & further interventions needed

Help further understanding of what other interventions are needed to support delivery of the plan and whether there are barriers to implementing the plan.

To support delivery of the plan:

The Welsh Government should use the Commission's forthcoming Equality and Human Rights Monitoring (Is Wales Fairer?) to review priorities and ensure focus is on the most entrenched and serious inequalities.

The Welsh Government and public bodies should consider how ArWAP goals and actions relate to the socio-economic duty and the complex intersection between race, ethnicity, and socio-economic disadvantage.

The Welsh Government and public bodies should pay sufficient attention to coordination across sectors, achieving consistency and economies of scale, national agendas, and sharing resources.

Main barriers to effective implementation:

The scale of ambition of the plan may prove a barrier, resulting in lack of direction or prioritisation for public bodies and a risk that actions across different sectors may be inconsistent or lack impact for ethnic minority people.

Lack of published strategic goals and measurement framework will hinder government departments and public bodies' ability to assess priorities and monitor the impact of their actions. Above, we recommended that Welsh Government publish these as soon as possible.

In our response above, we made recommendations for mitigating these barriers, including strong Welsh Government leadership setting national priorities for public bodies and a call to publish ArWAP strategic goals and measurement framework as soon as possible.

Appendix 1: Equality and human rights legal obligations

We set out below some of the key equality and human rights legal obligations relevant to the implementation of ArWAP.

Equality

The [Equality Act 2010](#) (the Act) protects people from unlawful discrimination, harassment, and victimisation on the basis of nine protected characteristics. The Act places duties on employers, service providers and those carrying out public functions (and others). It prohibits direct discrimination, indirect discrimination, and unfavourable treatment because of something arising as consequence of a person's disability. There is also an anticipatory duty to provide reasonable adjustments where disabled people would be placed at a substantial disadvantage were they not provided. This includes providing information in accessible formats⁹.

The Act also places a positive duty on public bodies (and those carrying out public functions such as delivering services on behalf of public bodies) to proactively give appropriate consideration (due regard) to the need to:

- Eliminate unlawful discrimination.
- Advance equality of opportunity between people who share protected characteristics and those who do not; and
- Foster good relations between people who share protected characteristics and those who do not¹⁰.

This is known as the [Public Sector Equality Duty](#) (PSED) and is a key tool to ensure public bodies (and those carrying out public functions) drive progress on equality. The PSED is designed to help make sure that those bodies subject to the duty¹¹ have 'due regard' to the real human impact of their policies and practices and that they do this when they are developing, implementing, and reviewing them.

The [Socio-Economic Duty](#) (SED) requires that Welsh Government officials and listed bodies consider the impact of strategic decisions on those who are disadvantaged due to low income or other material deprivation.

Human Rights

Human Rights Act 1998

The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law. The Act sets out your human rights in a series of 'Articles'. Each Article deals with a different right and are commonly known as 'the Convention Rights'.

International human rights obligations

The UK government has ratified a number of international human rights treaties which are binding under international law. These treaties are not directly enforceable in the UK courts, but by ratifying them the government has agreed that their requirements will be reflected in laws, policy and guidance. They can also be used to interpret the rights protected under the Human Rights Act. The [EHRC Human Rights Tracker](#) provide details of current treaty monitoring cycles, recent national evidence relating to specific treaties and recent UN recommendations to UK governments.

UN Convention on the Elimination of Racial Discrimination (CERD)

[CERD is an international human rights treaty adopted in 1965.](#) The UK ratified (agreed to follow) CERD in 1969. By ratifying CERD, the UK agrees to take action to eliminate racial discrimination in all its forms, including: eradicating racial hatred and incitement to hatred; taking action to combat prejudices which lead to racial discrimination; and guaranteeing the enjoyment of civil, political, economic, social and cultural rights without discrimination on grounds of race, colour, or national or ethnic origin