

Submission to the United Nations Committee on the Elimination of all Forms of Racial Discrimination on the UK's 18th, 19th and 20th periodic reports

July 2011



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List of abbreviations

CJPOA	–	Criminal Justice and Public Order Act	ITMB	–	Irish Traveller Movement in Britain
CSI	–	Core Subject Indicator	LEA	–	Local Education Authority
DCLG	–	Department of Communities and Local Government	MEP	–	Member of the European Parliament
DfES	–	Department for Education	MP	–	Minister of Parliament
DWP	–	Department of Works and Pension	MSP	–	Minister of the Scottish Parliament
EA	–	Equality Act 2010	NGO	–	Non-Government Organisation
ECHR	–	European Convention on Human Rights	NHS	–	National Health Service
ECtHR	–	European Court of Human Rights	NPIA	–	National Policing Improvement Agency
EHRC	–	Equality and Human Rights Commission	PACE	–	Police and Criminal Evidence Act
EMAG	–	Ethnic Minority Achievement Grant	PCC	–	Press Complaints Commission
EMETF	–	Ethnic Minority Employment Taskforce	PCT	–	Primary Care Trust
GLA	–	Gangmasters Licensing Authority	PF	–	Procurator Fiscal
GTAA	–	Gypsy and Traveller Accommodation Needs Assessments	POP	–	Practice Orientation Package
HMI	–	Her Majesty’s Inspectorate	PSA	–	Public Service Agreements
HRA	–	Human Rights Act	RRAA	–	Race Relations Amendment Act
IMEG	–	Inter-Ministerial Equality Group	RSS	–	Regional Spatial Strategies
IPCC	–	Independent Police Complaints Commission	SHA	–	Strategic Health Authority
			SME	–	Small and Medium sized Enterprise
			TA	–	Terrorism Act
			UKBA	–	United Kingdom Border Agency

Introduction

The Equality and Human Rights Commission (the Commission) is a statutory body set up under the Equality Act 2006. It has statutory duties to promote understanding of the importance of human rights and equality.

The Commission is the 'A status' accredited National Human Rights Institution (NHRI) for Great Britain and as such we monitor Great Britain's compliance with international human rights treaties. The Scottish Human Rights Commission, which also has 'A status' accreditation has jurisdiction with respect to matters that are devolved to the Scottish Parliament.

The Commission welcomes the opportunity to make its first submission to the Committee on Great Britain's compliance with the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). We believe that our role as an equality body and an NHRI places us in a unique position to comment on equality and human rights issues impacting on racial and ethnic minority groups.

Wales has held a successful referendum on a more streamlined process for lawmaking powers for the National Assembly. This

means the Welsh Assembly Government can pass laws in 20 distinct policy areas without having to gain consent from the Government in Westminster.

We welcome the State report to the Committee. We are pleased to note that a number of the concerns raised by the Committee in the last reporting sessions have been addressed by government (see Appendix 1 for list of selected ICERD articles with matching examples of GB legislation and policy). In particular, the UK is to be commended on its considerable efforts in tackling some of the more intractable problems highlighted by the Committee in relation to criminal justice issues, employment, health, education and Gypsies and Travellers. Notwithstanding these achievements, the Commission considers that there is significant scope for improvement in these and other areas.

Since the last reporting period and the submission of the State report, there has been a change in government. One of the Government's main priorities is the economic recovery of the country following the downturn. Consequently, the Government has announced various 'austerity measures' to tackle the economic crisis. We consider, as evidenced in this

report, that some of these measures could impact disproportionately on ethnic minorities because of their relative situation within British society. However, at this time, it is not possible to say definitively how new policies will impact on these groups. Our shadow report therefore focuses on existing policies where these are still in place and new policy proposals and the impact for race equality.

The aim of this report is threefold:

- to draw the Committee's attention to the key issues that the Commission considers are impacting on race equality
- to highlight any gaps or inconsistencies in the State report, and
- where appropriate, to make recommendations to the Committee for government to take action.

Scope of the report

This report covers England, Wales and Scotland. The Scotland sections have been drafted in collaboration with the Scottish Human Rights Commission and therefore cover issues of policy in Scotland which are devolved to the Scottish Parliament and reserved to Westminster.

Structure of the report

This report is structured around Articles 1, 2, 4, 5, 6, 9 and 14 of ICERD. It focuses on the extent to which the UK has acted on the Committee's concluding observations and recommendations from the last reporting session. It highlights those areas which the Commission considers Great Britain may still be failing to comply with ICERD. Finally, it includes recommendations that are set out at the end of the relevant issue.

In relation to issues devolved to the Welsh Assembly, there is a separate section under the relevant articles for Wales.

In relation to issues devolved to the Scottish Parliament, there is a separate section under the relevant articles for Scotland.

Where there is not a separate section for Wales or Scotland, then what we say applies to all nations.

Article 1 (4)

Special measures

The Commission notes General Recommendation 23 on special measures. We are also pleased to note that the Committee is urging State parties to take positive action during this International Year of People of African Descent.

The Commission believes that positive action is an important tool for addressing inequalities in employment and the provision of services. The Committee will be pleased to learn that Great Britain has recently extended the scope for taking positive action to overcome discrimination and minimise disadvantage through the Equality Act 2010.¹ This is a welcome development as the previous provisions on positive action in the Race Relations Act were more limited. The Commission would encourage government to promote the use of positive action as part of its overall strategy for tackling racial inequalities in the fields of employment, education, and health.

Article 2

Protecting rights to non-discrimination

The key issues for the Commission under this Article are:

- the Durban Declaration and programme of action
- protecting individual rights to non-discrimination, and
- discrimination in the exercise of immigration functions.

The Durban Declaration and programme of action

The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and programme of action, and that it include in its next periodic report updated information on the action plan that it is in the progress of drafting in order to implement the Durban Declaration and programme of action.

The race equality strategy 'Tackling race inequality: a statement on race'² is a welcome development. It is encouraging to note that the strategy states that it 'will help the Government implement its

¹ S. 158 of the EA 2010 permits any person to take proportionate action where they reasonably think that people who share a protected characteristic suffer a disadvantage, have different needs or are under-represented in an activity. S.159 EA 2010 permits an employer to take account of a job applicant's protected characteristic i.e. race, gender, age etc in recruitment and promotion where there is a tie-break situation i.e. two candidates being 'as qualified' as each other.

² This strategy follows the first national race equality and community and cohesion strategy 'Improving Opportunity, Strengthening Society' referred to in the UK report.

obligations under the International Convention on the Elimination of all forms of Racial Discrimination. It also meets our commitments to the 2009 Durban Review conference...’

In the Commission’s view, the policy is a step in the right direction. However we do not believe it goes far enough to satisfy the requirements of an action plan required by the Committee.

In addition, in our view, the strategy fails to set out the steps the Government is taking or will take in response to some of the specific recommendations in the last concluding observations. For example, the Government has not stated its position on discrimination against asylum seekers or the impact of anti-terrorism measures on ethnic minorities in its race equality strategy or subsequent progress reports.

The Commission will be making a submission to government on producing action plans relating to concluding observations on all the UN treaties.

The Commission considers that the action plan would be best integrated into the race equality strategy (subject to what we say immediately below).

It is not entirely clear whether the race equality strategy will remain under the current arrangements for equality more generally. The Government has introduced the ‘Equality Strategy: Building a Fairer Britain’³ which sets out its vision for the future of equality and implementation of the strategy. In addition it has established the Inter-departmental Ministerial Group (IMEG) which will have oversight for all aspects of equality. We agree that there needs to be an integrated approach to equality. However, it is also important that government does not take a ‘one size fits all’ approach to equality.

It is disappointing that the wider equality strategy has no specific focus on tackling race inequality and the Minister with responsibility for race has not publicly set out his proposals for the approach to be taken.⁴ It has also come to the Commission’s attention that the ‘Tackling Race Inequalities Fund’ (see paragraph 36 of the State report) has been withdrawn.⁵ The Commission notes that government will be producing annual reports of progress on the strategy. The Commission considers the progress reports should disaggregate the outcomes for different groups to measure progress.

³ For the full publication see: <http://www.equalities.gov.uk/pdf/Equality%20Strategy%20tagged%20version.pdf>

⁴ A number of NGOs within the equality sector raised this issue with the House of Commons Home Affairs Select Committee. See, for example, the EDF’s written evidence at:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/732/732we14.htm> Also see Runnymede, EquanomicsUK, Centre for Local Policy Studies and Race on the Agenda (ROTA) at:

<http://www.rota.org.uk/Downloads/HAC%20SubmissionEquanomicsand%20partners%2011thMarch2011fin.pdf> Also see The Discrimination Law Association at:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/732/732we12.htm>

⁵ Members of our expert advisory group advised us of this development.

The Commission recommends the Committee asks government to provide detailed plans for tackling race inequality in its equality strategy and/or provide an effective race equality strategy.

Scotland

Whilst the Scottish Government is not bound by the Durban Declaration directly, given that much social policy covered by the declaration is now devolved to the Scottish Parliament, a similar strategy could be reasonably expected. We note that during the last session of the Scottish Parliament the Scottish Government promised to publish a race equality strategy, but in fact relied on a statement of intent during this period. We would encourage the Scottish Government to review its stance on race equality and develop a similarly crosscutting strategy for Government during this Parliamentary term.

In developing its Triennial Review in Scotland the Commission experienced significant difficulty identifying disaggregated statistics about the experience of ethnic minorities in Scotland. This lack of evidence hampers positive policy development or the monitoring and tracking of progress. Data gaps are particularly

evident in employment (where data is often presented as 'Scottish regional' data at a national level, preventing proper analysis by region or locality). Similarly, as noted in the section below, there is a serious lack of data about hospital admissions and the prevalence of particular illnesses or conditions which restricts the effectiveness of health promotion or targeted screening programmes.

Smaller communities, such as Gypsy Travellers, and newer communities, such as A8 migrants, are particularly affected by these data gaps.

Throughout the Scottish sections of this report these gaps in data are evident. The Commission is concerned that these data gaps prevent proper analysis of the problem experienced by ethnic minority communities and can be interpreted as meaning that there is no particular issue for such communities. This is of particular concern because Scottish Local Authorities are currently developing their 'Area profiles' which will set out the evidence of need which they will seek to address over the next 5 years.

In the Commission's view the Scottish Government needs to reassess the data it collects and provides to ensure

⁶ The Equality Act 2010 (EA) received royal assent on 6 April 2010 and came into force on 1 October 2010. The EA harmonises the existing equality legislation on sex, race, disability, age, religion or belief, and sexual orientation. It also removes anomalies in the Race Relations Act which made a distinction between race, ethnic and national origin and nationality and colour.

⁷ Third party harassment under the Act refers to the duty on employers to prevent non-employees such as contractors or customers violating a worker's dignity or creating a hostile, degrading, intimidating or hostile environment for a worker, see EA section 26.

that wherever possible ethnic minority experiences are both captured and reported.

The Commission recommends the Committee asks the Scottish Government to require Local Authorities and Community Planning Partnerships to address data gaps in their Area Profiles and support them, where necessary, by augmenting official statistics with boosters or local sample which address the current gaps in national statistics.

Protecting rights to non-discrimination

Equality legislation

The UK enjoys some of the best equality protections internationally. These protections have grown incrementally over the last 40 years and have recently been strengthened by the Equality Act 2010 (EA).⁶ The EA represents a landmark for the future of equality in Great Britain. It harmonised all equality legislation and removed anomalies which existed in the Race Relations Act 1976. It also introduced a number of new protections against discrimination and harassment. For example it prohibits third party harassment⁷ and

included a provision on discrimination because of dual characteristics⁸ (dual discrimination) both of which have high relevance for protecting ethnic minorities against racial harassment and discrimination. The EA also strengthened the duty on public bodies to mainstream equality in the exercise of their functions.

The Commission fully supported the EA through the legislative process and was instrumental in improving the scope of protection. The Commission commends Great Britain on its progress in improving the protections against discrimination and adopting a more proactive and progressive approach to equality.

It is therefore of concern that the Government has announced that it will not bring into force the provision for tackling intersectional (dual) discrimination, has started a consultation on repealing the provision on third party harassment⁹ and indicated that it will limit pregnancy and maternity rights for small businesses. More recently, it has announced plans to review compensation costs in discrimination cases. In addition government recently invited businesses and the public to have its say on the EA in which the first question posed was ‘should they [equality regulations] be scrapped altogether?’

⁸ Section 14 of the EA would have prohibited discrimination because of a combination of protected characteristics. It is interesting to note research by the Fundamental Rights Agency showing that ethnic minorities are five times more likely to experience intersectional discrimination, see European Union for Fundamental Rights (2010), *Data in Focus Report*, European Union for Fundamental Rights, available at: http://fra.europa.eu/fraWebsite/attachments/EU_MIDIS_DiF5-multiple-discrimination_EN.pdf

⁹ HM Treasury and the Department for Business, Innovation and Skills (March 2011) *The Plan for Growth* HM Treasury, available at: http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

In addition to the proposals for equality legislation, there are also proposals to reduce the civil legal aid budget, which currently stands at £2.1bn, by 23 per cent. To achieve this aim there are proposals to remove legal aid for certain types of civil cases. The Commission is concerned in particular by the proposals to remove legal aid for appeals for schools exclusions and employment matters (including discrimination cases in employment). The Commission is particularly concerned that a) the former, given the disproportionality in school exclusions could have disparate impact on certain ethnic minority groups (see later below on education and Gypsies and Travellers); and b) the latter could have 'a chilling effect on access to justice for workplace-based discrimination cases, [should] employment law be removed from the scope of legal aid'.¹⁰ Our research demonstrates that there are significant gaps in the provision of discrimination advice in England, Scotland and Wales.¹¹

The advice sector has also expressed concerns that the cuts in legal aid will mean that civil legal aid will 'be inaccessible for too many people and unworkable for too many advice providers'.¹²

If these proposals go ahead, the Commission considers they could impact on ethnic minorities' ability to enjoy their full rights under the Convention.

In the Commission's view, the Government has failed to give 'due regard' to the impact of its proposed and actual policies for tackling the economic crisis on ethnic minority groups as required by the EA. Under the EA, public authorities, including most government departments, have a duty to 'in the exercise of [their] functions, have due regard to the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations between different groups (known as the 'General Duty')'.¹³ This duty applies to the Government when making policies to tackle the economic crisis. At present, the Commission is not confident that the Government is necessarily complying with its duty under the EA, particularly as we are seeing the introduction of a number of policies which could have a negative impact on on groups protected by the EA, and in particular ethnic minority groups.

¹⁰ See Equality and Human Rights Commission (2010) *Response of the Equality and Human Rights Commission to the Consultation on reform of legal aid in England and Wales*. Equality and Human Rights Commission.

¹¹ Borland et al. (July 2009) *Responding to discrimination: the geography and geometry of advice provision in England, Scotland and Wales*. Equality and Human Rights Commission.

¹² See Owen Bowcott (29 June 2011) Ken Clarke announces £20m fund after criticism of legal aid cuts. *The Guardian*, available at: <http://www.guardian.co.uk/law/2011/jun/29/ken-clarke-fund-law-advice-centres> Accessed 1 July 2011.

¹³ Section 149 EA 2010.

The Commission recommends the Committee asks government to:

- a) monitor the impact of its policy initiatives on equality outcomes, particularly on race**
- b) outline what mechanisms it will put in place to ensure that individuals have fair access to justice for discrimination**
- c) outline how it will ensure that its policies and proposals for tackling the economic crisis do not adversely impact on ethnic minority groups.**

Scotland

Equality legislation is a reserved matter and the GB General Duty to promote racial equality applies to Scotland.¹⁴ However, specific duties are devolved to the Scottish Parliament, and have applied in Scotland since 2000.

Audit Scotland explored the way that local authorities had implemented the race equality duty¹⁵ and their 2008 report concluded that the race equality duty had not had a significant impact on the delivery of services or on people from ethnic minority communities, and councils needed to build better understanding of community needs, make race equality integral to routine management arrangements and give a higher priority to race equality in the delivery of services.

The Commission in Scotland has also carried out research to consider the impact of the duties and lessons to be learned, including outcomes achieved through implementation of the duties¹⁶ and particular implications such as in the 2010 report¹⁷ which considered funding by local authorities for ethnic minorities, women, and disabled people in light of the public sector duties. This report found that between 2007/08 and 2008/09, there was a £535,090 (11.5%) decrease in funding for ethnic minority organisations across the 12 local authorities studied, whilst the level of funding to support migrant communities increased substantially by £51,806 (75%) in the same period. Funding for ethnic minority organisations again decreased in 2009/10, by £28,566 (7.6%).

In smaller authorities, resource decisions were largely made on an ad hoc basis with limited strategic planning, monitoring or consultation. However, some larger, urban local authorities had taken a strategic approach to understanding needs and demographics and allocating resources accordingly, and had consultation and evaluation to assist them in decision-making about mainstream or targeted services.

¹⁴ Since 5 April 2011 the “Race Duty” has been subsumed into the Equality Duty under the Equality Act 2010.

¹⁵ Audit Scotland (2008) *The impact of the race equality duty on council services*. Audit Scotland. Available at: http://www.audit-scotland.gov.uk/docs/local/2008/nr_081113_equalities.pdf Accessed 23 April 2011.

¹⁶ OSDC (2009) *Capturing the Gains of the Public Sector Equality Duties*. Equality and Human Rights Commission, available at: http://www.equalityhumanrights.com/uploaded_files/Scotland/ehrcapturing.pdf Accessed 01 May 2011.

¹⁷ Fyfe, A. (2010) *Counting the Cost*. Equality and Human Rights Commission. Available at: <http://www.equalityhumanrights.com/scotland/projects-and-campaigns-in-scotland/counting-the-cost/> Accessed 23 April 2011.

Equality Impact Assessments were used in some instances, generally by the larger, urban authorities.

The impact of extensive budget cuts is likely to affect ethnic minority groups further. This raises the question of the nature of support available to ethnic minority individuals and communities who may be impacted more during recession in terms of unemployment and poverty as identified by the Scottish Government research (see section on Employment).

The Commission recommends that the Committee ask the Scottish Government if in framing new Specific Duties for Scottish Public Authorities they have ensured that financial decisions about resourcing are specifically addressed in Equality Analyses.

Discrimination in the exercise of immigration functions

The Committee recommends that the State party consider re-formulating or repealing section 19D of the Race Relations Amendment Act in order to ensure full compliance with the Convention.

The Commission notes the Committee's concern about section 19D of the Race Relations Amendment Act 2000 (RRAA). The Committee will be disappointed to learn that the new EA replicates the exception.¹⁸

The Commission shares the Committee's concern. In our view, the exception is too wide because it permits discrimination on grounds of ethnic and national origin which are not synonymous with nationality and cannot be easily separated from race (discrimination on grounds of race or colour is unlawful). The Commission considers that ethnic and national origin should be removed from the exception for immigration functions.

The Commission also has concerns about the lack of transparency in the exercise of the power; an issue that has been raised by the Chief Inspector of the United Kingdom Borders Agency (UKBA).¹⁹ For example, a ministerial authorisation was made on 10 February 2011 which would allow UKBA to

¹⁸ Equality Act 2010 Schedule 3, Part 4 paragraph 17.

¹⁹ The Independent Chief Inspector of the United Kingdom Borders Agency, who replaces the race monitor under the old RRA section 19D, found that there needed to be more transparency about which nationals were subjected to the authorisation. See Independent Chief Inspector of the United Kingdom Borders Agency (Jan–May 2010) *An Inspection of Entry Clearance in Abu Dhabi and Islamabad*, available at: <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/An-inspection-of-entry-clearance-in-Abu-Dhabi-and-Islamabad.pdf>

discriminate against certain nationalities in granting visas, carrying out checks at ports and airports and removals from the UK. UKBA however refuses to publish details of the lists of nationalities that will be subject to the authorisation or to disclose the information under the Freedom of Information Act.²⁰ The Commission is in correspondence with the Minister for immigration on this particular issue.

The Commission considers that while the exception remains in place, the Government must ensure greater transparency in the process.

The Commission recommends the Committee asks government to either remove ethnic and national origin from the exception for immigration functions or ensure greater transparency in the process of making authorisations.

Scotland

Immigration is a reserved function which means that it is dealt by the Westminster Government.

However, child welfare and education are devolved matters and the complexity of

addressing the intersection of these emerged with the issue of detention of children (who had committed no offence) at Dungavel Immigration Centre in South Lanarkshire, Scotland.

Her Majesty Inspectorate (HMI) report in 2002, identified that ‘the welfare and development of children held in the centre was compromised by detention, and the lengthier this was, the greater the risk’.²¹

The Children’s Commissioner in Scotland was noted to have threatened to report the UK and the Scottish Government to the United Nations as the continued confinement of asylum-seeking children under the age of 16 contravened the Convention of the Rights of the Child.²² The *Herald* reported that 103 children were held in Dungavel during 2009.²³

The Criminal Justice and Licensing (Scotland) Bill was introduced in March 2009. The Bill included a measure to end the remand of children in adult prisons. However, because immigration is a reserved matter, the difference in treatment of children of asylum seekers persisted until the Government addressed it.

²⁰ The Freedom of Information Act 2000 allows access to information held by public authorities unless the public authority can show that the information is exempt under the Act.

²¹ See HMI Chief Inspector of Prisons (2005) Reports on an unannounced inspection of Dungavel House Immigration Removal Centre, 14-16 December 2004, available at: <http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centre-inspections/dungavel.htm> Last accessed 22 April 2011.

²² Guitart, C. (2009) *Herald* 18 April 2009 Ministers renege on Dungavel Child Pledge, available at: <http://www.heraldscotland.com/ministers-renege-on-dungavel-child-pledge-1.826402> Accessed 23 April 2011.

²³ Adams A. and Currie B. (2010) *Herald* 19 May 2010 Ban on overnight detention of children at Dungavel, available at: <http://www.heraldscotland.com/news/home-news/ban-on-overnight-detention-of-children-at-dungavel-1.1028784> Accessed 23 April 2011.

In May 2010, the Home Office Minister announced that no children would be detained at Dungavel,²⁴ and that a comprehensive review of alternatives to child detention was to be held. This review reported in December 2010. HMI reported in their June 2010 inspection that no children had been detained in Dungavel since the announcement in May 2010. The Commission welcomes this development in Scotland but notes that children aged 16 or under, who have been resident in Scotland since entering the UK, are still detained for immigration purposes in England.

Article 4

Media reporting

The Committee recommends that the State party consider how the Press Complaints Commission can be made more effective and can be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organisations working in the field of race relations.

The Commission notes in the State report the work undertaken to tackle negative media reporting in relation to vulnerable groups. It is, however, disappointing that the print media has not always responded positively to the Government's efforts.²⁵ Thus negative reports on Gypsies and Travellers (see below section on Gypsies and Travellers), asylum seekers and refugees, and Muslims continue to make headlines. There is also a tendency by the media to refer to ethnicity when reporting on criminal activity particularly when it involves ethnic minority suspects. In the Commission's view, such negative media can impact adversely on race relations and reinforce negative stereotyping and perceptions of ethnic minorities.

The Commission therefore welcomes the Press Complaints Commission's (PCC) guidance on reporting on asylum seekers and refugees²⁶ and the reference in the Editors Code of Practice on discrimination.²⁷ However, it appears that certain sections of the media are not adhering to the Code of Practice or the guidance. The Commission also notes that there has been no progress on the Committee's recommendation regarding reporting complaints. We agree with the Committee that the PCC should be required to accept complaints from the Commission. We also believe that it

²⁴ Ibid.

²⁵ See headline in the *Sun* dated 11 July 2010 'Asylum seeker gets £2.1 m pad', available at: <http://www.thesun.co.uk/sol/homepage/news/3049443/Asylum-seekers-get-21m-pad.html>
Also on 5 January 2010 in the *Sun* '£28m on legal aid to asylum seekers', available at: <http://www.thesun.co.uk/sol/homepage/news/2794665/28m-on-legal-aid-to-asylum-seekers.html>

²⁶ See guidance at: <http://www.pcc.org.uk/news/index.html?article=OTE=>

²⁷ See paragraph 12, full text available at: <http://www.pcc.org.uk/cop/practice.html>

should be able to receive class and/or group complaints,²⁸ instead of only from individuals who are directly affected by a news report.

While the State report points to a number of initiatives for tackling negative press reporting there is no way of knowing whether that work will continue. The Commission believes that there is a need for the type of work highlighted in the State report for tackling racist media reporting.

Wales

The Commission carried out research²⁹ which found that those participating felt that the negative portrayals in the media of Gypsies and Travellers were fuelling mistaken assumptions. In doing so this was seen to encourage misunderstanding and derision.

Gypsies and Travellers told us of deep and widely held prejudices and misconceptions about them and their way of life. There was a feeling that only a few individuals had firsthand experience of how Gypsies and Travellers lived and had based their assumptions on media portrayals and widely held social beliefs about Gypsies and Travellers.

Scotland

The Commission is also concerned that negative media reporting about Gypsy Travellers in Scotland, particularly in the North East, is hampering attempts to develop local authority site provision. The Commission has passed one case to the Procurator Fiscal where we believe comments made on newspapers bulletin boards constituted incitement to racial hatred. The Commission is concerned that left unmoderated such bulletin boards have the potential to erode community relations. The Commission in Scotland has published and distributed guidance for journalists on responsible reporting of Gypsy Traveller stories.

The Commission recommends the Committee asks government to:

- a) act on its previous recommendation**
- b) continue the work set out in the State report, and**
- c) require the PCC to consider class and group complaints.**

²⁸ Equality and Human Rights Commission (2009) *Gypsies and Travellers simple solutions to living together*, available at: <http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/>

²⁹ Equality and Human Rights Commission (November 2010) *Not Just Another Statistic: Life in Wales for people with mental health conditions, Gypsy and Traveller Groups, transgender people and asylums seekers and refugees*. Equality and Human Rights Commission ISBN: 978-1-84206-319-

Article 5

Civil and political rights

The rights focused on under this article are political rights, right of security of person and economic, social and cultural rights.

Political rights

Ethnic minority political participation

The Commission believes that civic and political participation by ethnic minorities is a matter of justice, legitimacy and effectiveness.

It is therefore a concern for the Commission that a growing amount of evidence, including our own research,³⁰ has found that while there has been some progress in representation of ethnic minorities in civic and political life, many groups remain under-represented and continue to face barriers to participation at all levels.

It was encouraging to note that following elections to the UK Parliament in 2010, the number of ethnic minority Members

of Parliament (MPs) doubled to 27 – this included significant gains in ethnic minority women representation. However, this represents just 4 per cent of all MPs.³¹ Research suggests that at the current rate of progress it may take 75 years for the House of Commons to reflect the ethnic minority population of the United Kingdom.³²

The National Assembly for Wales has only one ethnic minority Assembly Member. The Greater London Assembly has four ethnic minority members (16 per cent) in a city where 29 per cent of the population is from an ethnic minority background. Our research found that the UK delegation to the European Parliament is the most representative of ethnicity with 6.9 per cent of the total UK delegation of 72 MEPs.³³

The proportion of ethnic minority councillors in England has fluctuated between 3 per cent and 4 per cent between 2001 and 2008.³⁴ In Wales, the proportion of ethnic minority councillors is 1per cent. In relation to ethnic minority women, in 2009, they accounted for less than 1 per cent of the 20,000 local councillors in England, despite comprising more than 5 per cent of the population.³⁵

³⁰ Equality and Human Rights Commission (2010) *How Fair is Britain? The first Triennial Review*, Chapter 14 'Power and Voice', p.580 http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_ch14.pdf

³¹ Ibid at pp: 593-594.

³² Catherine Durose et al. (2011) *Pathways to Politics, Research Report 65*. Equality and Human Rights Commission at p.92 http://www.equalityhumanrights.com/uploaded_files/research/pathways_to_politics.pdf

³³ Ibid.

³⁴ See n30 at p.18.

³⁵ The Black and Ethnic Minority Women Taskforce claimed it could take more than 130 years for ethnic minority women local councillors to be fully representative of the population see Findings of the BAME Women Councillor's Taskforce cited in Annex to Pathways to Politics, p.92 http://www.equalityhumanrights.com/uploaded_files/research/pathways_to_politics.pdf

The Commission welcomes the UK's efforts to improve civic and political participation of ethnic minorities. In 2008 the previous Government launched the 'Speakers Conference' which was established to:

'Consider, and make recommendations for rectifying, the disparity between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large.'³⁶

The Commission, as part of its engagement with the Speakers conference, undertook research into the barriers and enablers to pursuing a political career. It identified some of the following barriers to civic and political participation: a lack of commitment by political parties to increase diversity within the parties, lack of awareness of the parliamentary process, lack of access to funds to pursue a political career and lack of opportunities and transparency in obtaining internships in Parliament.

The Commission welcomed many of the recommendations of the Speakers Conference. In particular, we welcomed the inclusion of a provision in the EA for political parties to take positive action measures to tackle inequality in the party's representation.³⁷ We consider that the Government should encourage political parties to make use of this provision. The Commission notes the Government's recent review of women on public boards³⁸ and consider that a similar review should be undertaken in relation to ethnic minorities.

The Commission will be working with the Confederation of British Industry on how these issues can be addressed in Wales.

³⁶ For further information on the Speakers conference see: <http://www.publications.parliament.uk/pa/spconf/239/23901.htm>

³⁷ See EA section 104. The Commission recommended this course of action to the Speakers Conference, see EHRC Speaker's Conference submission, November 2009: <http://www.equalityhumanrights.com/legal-and-policy/parliamentary-briefings/submission-to-the-speakers-conference-on-parliamentary-representation/>

³⁸ Lord M. Davies (February 2011) *Women on Boards*, available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/11-745-women-on-boards.pdf>. The Commission is disappointed that the review did not take into consideration the position for ethnic minority women on boards.

Scotland

In 1999, 9 out of 624 candidates for Scottish Parliamentary elections were from ethnic minority backgrounds (1.44 per cent).³⁹

In 2003, 10 out of 615 candidates (1.62 per cent) and in 2007, 11 out of 588 candidates (1.87 per cent) were from ethnic minority backgrounds. The first ethnic minority MSP was elected in 2007 but died in 2009 to be replaced by a white candidate.

In the 2011 Scottish Parliament elections two ethnic minority candidates – both male, both Asian and both from Glasgow – were elected as MSPs. The Commission notes reports that ethnic minority candidates for the election (3 per cent) were predominantly male and were often stood in seats where they had little realistic chance of success.

A councillors' survey was conducted in Scotland in 2007.⁴⁰ 755 responses were received from 1,222 newly elected councillors (62 per cent). This showed that 2 per cent of councillors were from ethnic minority backgrounds compared with 1 per cent in 2003 and 0.5 per cent in 1999. There are no women among the ethnic minority councillors in Scotland.

Ethnic minority voting trends

Evidence collated for the Commission suggests high levels of non-participation from ethnic minorities both in terms of turnout and voter registration.⁴¹

Recent research by the Electoral Commission supports this and highlights an association between under-representation and ethnicity, particularly in areas with high levels of social deprivation.⁴² The Commission welcomes the Cabinet Office initiative, working with the Electoral Commission, to tackle under-representation in its drive to increase individual voter registration.

However, we are concerned that the Government proposed political boundary changes present a particular challenge for the Government and ethnic minority communities. The proposals seek to reduce the number of parliamentary constituencies from 649 to 600. Some constituencies will merge based on the number of those registered to vote. The problem occurs in urban areas where as much as 30 per cent of ethnic minority communities are not registered to vote. This therefore could have a double negative effect. First, because the majority of ethnic minority MPs are in urban areas a disproportionate number of

³⁹ Carroll, S. (2011) *Scottish parliament & Welsh assembly elections 2011: how diverse are the candidates?* *The Guardian*, available at: <http://www.guardian.co.uk/news/datablog/2011/apr/04/scottish-parliament-welsh-assembly-election-candidates-diversity?intcmp=239>) Accessed 22 April 2011.

⁴⁰ Maloney, W. (2008) *Scotland's Councillors 2007*, COSLA Research Report 2008. Edinburgh: Convention of Scottish Local Authorities, available at: http://www.improvementservice.org.uk/index2.php?option=com_content&do_pdf=1&id=1010) Accessed 23 April 2011.

⁴¹ See n30 p.18.

⁴² The Electoral Commission *The completeness and accuracy of Electoral Registers in Great Britain* (March 2009), available at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0018/87111/The-completeness-and-accuracy-of-electoral-registers-in-Great-Britain.pdf

these MPs could lose their seats. Secondly, MPs in these new constituencies could be disproportionately representing many more constituents, many of whom are living in deprived areas needing more advice and social services.

The Commission recommends that the Committee asks government to:

- a) review and report on progress in implementing the final recommendations of the Speaker's Conference (Parliamentary Representation) as part of its wider political reform agenda**
- b) encourage ethnic minority civic participation to support effective decision making at the local level and encourage local action to support diversity in public life**
- c) put in place measures to tackle under-participation of ethnic minorities in civic and political life**
- d) outline how it will mitigate the ethnic minority undercounting and the effects that that could cause, and**
- e) undertake a comprehensive voter registration campaign to address ethnic minority non-voter registration.**

Right to security of person

Criminal justice

The Commission has undertaken a wealth of research into some of the key issues for ethnic minorities in the criminal justice system in England and Wales. Comparative data for Scotland is harder to locate as key statistical reports do not disaggregate for ethnic group.

We consider that the key priorities in relation to the Convention are:

- increased disproportionality in stop and search
- reforms to the recording requirements for stops and searches
- the persistence of racist and religiously aggravated attacks
- adverse impact of counter-terrorism law and policy on Muslim communities
- continuing disproportionately in deaths in police custody.

Stop and search

The Committee is concerned that a disproportionately high number of stops and searches are carried out by the police against members of ethnic minority groups.

Stop and search continues to be one of the most intractable problems facing black and Asian communities in Great Britain today. Since the last reporting period (from 2004/05 to 2008/09) there has been a 70 per cent increase in the use of stop and search against black and Asian people in England and Wales.⁴³ Our research into stops and searches under the Police and Criminal Evidence Act (PACE) found that the black population had the highest rate of stop and search at 129 per 1,000, and 40 per 1,000 for Asian people compared to 17 per 1,000 for white people.⁴⁴

The Commission recognises the importance of stop and search powers as a tool for crime prevention. However, we also recognise the potential of these powers for violating human rights. It is therefore essential that they are used 'appropriately and proportionately,'⁴⁵ exercised fairly and in a non-discriminatory manner. Unfortunately, our research suggests that 'racial discrimination plays a significant

part in the disproportionality in stop and search of black and Asian people.'⁴⁶

The Commission welcomes the initiative by the National Policing Improvement Agency (NPIA) to develop the 'Next Steps' programme for securing 'best practice' in stop and search, in consultation with the Commission and others.⁴⁷ Its predecessor the 'Practice Oriented Package' (POP) was followed by a marked reduction in race disproportionality in the one area in which it was fully implemented, but not in some other areas where it was implemented piecemeal. We believe this will be avoided by the central quality control and central funding applying to 'Next Steps'.

The Commission considers that the Next Steps initiative is one which should be rolled out across all forces, and amended if necessary in the light of experience. We also welcome the recent decision by the Government to finance its implementation initially in three forces, the outcome of which we await.

The Government should continue to implement its Next Steps programme across all forces; and review the outcome of this work in order to inform its roll out to other forces. It should also work with forces to consider alternatives to stop and search (other than arrest), particularly

⁴³ Ministry of Justice (June 2010) *Statistics on Race and the Criminal Justice System 2008/09*, A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991. Ministry of Justice.

⁴⁴ In effect, there has been "150,000 'excess' stop and searches [...] conducted on black people than would be expected if they were stopped and searched at the same rate as the white population ... There were similarly 52,000 excess stops and searches conducted on Asian people out of a total of 90,0000." See Equality and Human Rights Commission (March 2010) *Stop and think – A critical review of the use of stop and search powers in England and Wales*. Equality and Human Rights Commission, ISBN 978-1-84206-265-4.

⁴⁵ Ibid at p.11.

⁴⁶ Ibid at p.58. As a consequence of our research, we are taking enforcement action against a number of police forces with some of the highest rates of disproportionality.

⁴⁷ Ibid at p63.

in areas where there are high levels of disproportionality and ensure that there are sufficient guidelines published to facilitate accurate and consistent ethnic monitoring across forces.

Specific key concerns for the Commission in relation to stop and search are stops and searches which can be conducted without reasonable suspicion ('authorised stops and searches') and the wide discretion afforded to police officers in exercising their powers of stop and search.

Authorised stops and searches

The Criminal Justice and Public Order Act 1994 (s.60 CJPOA) and the Terrorism Act 2000 (s.44 TA) permit a senior police officer⁴⁸ to authorise a particular police force area for stops and searches to be conducted without suspicion (authorised stops and searches).⁴⁹

Evidence suggests that authorised stops and searches contribute significantly to the

increased disproportionality in stops and searches. Black people were 26.6 times more likely to be stopped and searched and Asian people 6.3 times more likely to be stopped and searched than white people under s.60 CJPOA.⁵⁰ Between 2006/07 and 2007/08 stops and searches under s.44 rose by 322 per cent for black people and 277 per cent for Asian people compared with 185 per cent for white people.⁵¹

The Commission appreciates that there may be exceptional circumstances when it may be necessary for there to be a power to stop and search without suspicion. However, such a power should only be used where it is 'strictly necessary' and for the purposes for which they are intended i.e. to prevent an act of terrorism or serious violence. In our view, the authorisation powers are too widely drawn and do not provide for sufficient safeguards. For example there are no restrictions on the length or geographical scope of an authorisation,⁵² there is no limit on the duration of an authorisation and the power under s.60 CJPOA is not subject to independent oversight unlike the power under s.44 TA.

⁴⁸ In the case of s.60 the officer making the authorisation must be the rank of inspector and in the case of s.44 the officer making the authorisation must be the rank of Commander.

⁴⁹ Under s.60 CJPOA a senior officer can make an authorisation where he/she has a 'reasonable belief' that there is a risk of serious violence in a particular area, or that persons are carrying dangerous/offensive weapons or to find dangerous/offensive weapons used in a serious incident.

S.44 TA allows a senior officer to make an authorisation where he/she consider it 'expedient' for the prevention of acts of terrorism (there are proposals to change the test from one of expedience to one of necessity under the Freedom of Protection Bill 2010.11).

⁵⁰ Mark Townsend (17 October 2010) *Black people are 26 times more likely than whites to face stop and search*. *The Observer*, available at: <http://www.guardian.co.uk/uk/2010/oct/17/stop-and-search-race-figures>

⁵¹ See n44 at p.22. Also see concerns raised by the House of Commons Home Affairs Committee (2006) in *Young Black People and the Criminal Justice System second report of session 2006-07 Vol. 1*, available at: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/181i.pdf>

⁵² Currently an authorisation under the CJPOA can be extended beyond 24 hours by a superintendent and an authorisation under the TA can be made for up to 28 days providing it has been approved by the Secretary of State within 48 hours of it being made. The authorisations can be put in place for a police force area so for example in the case of the Metropolitan Police the authorisation could be made for all of London.

In 2010, the European Court of Human Rights (ECtHR) in the case of *Gillan*⁵³ held that the power of authorisation under the s.44 TA was in breach of the right to privacy under the European Convention on Human rights (ECHR). In the ECtHR's view: 'the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 [Terrorism] Act are neither **sufficiently circumscribed nor subject to adequate legal safeguards against abuse**' emphasis added). It is likely that, based on the reasoning of the ECtHR in *Gillan* that s.60 CJPOA would also be in breach of the ECHR.

There is also evidence that the powers of authorisation have been used for purposes for which they are not intended. The Independent Police Complaints Commission (IPCC) found that an authorisation had been made under s.60 CJPOA to deal with routine rather than serious crime.⁵⁴

In the case of s.44 TA, 14 forces were found to have used the power unlawfully in 40 different operations and in many cases forces failed to follow the correct procedures.⁵⁵ The Independent Reviewer of counter-terrorism law has also criticised s.44 TA for being 'over-used' and 'ineffective'.⁵⁶

In the Commission's view, if authorised stop and search powers are to comply with human rights standards they must be tightly drawn with stringent safeguards. We consider this would serve to reduce the numbers of authorisations that could be made and consequently the opportunities for exercising the power.

The Commission therefore welcomes the proposals to limit the powers of authorisation under s.44 TA to implement the ECtHR's judgment in *Gillan*.⁵⁷ However, we consider that to comply with human rights standards there needs to be stronger safeguards built into the new [s.44] power. We believe this could be achieved by subjecting designations to judicial authorisations; restricting the geographical limit to no more than one square mile; limiting the duration of an authorisation to a maximum of 48 hours and where there is a need for an extended period that a new authorisation should be made.⁵⁸

We also consider that safeguards need to be built into the power under s.60 CJPOA and that an **urgent** review of this power is necessary for this purpose.

⁵³ *Gillan and Quinton v The United Kingdom* [2010] (Application no.4158/05), European Courts of Human Rights.

⁵⁴ Independent Police Complaints Commission (August 2007) *Complaint of West Midlands Police misuse of powers upheld*, http://www.ipcc.gov.uk/news/pr230807_wmidsection60stop.htm last accessed 16/11/2010

⁵⁵ *The Guardian* (June 2010) *Stop and search used illegally against thousands*, <http://www.guardian.co.uk/law/2010/jun/10/illegal-police-searches-compensation> last accessed 19/11/2010 The report claims that as a result of the unlawful use of the powers approximately 840 people were stopped and searched unlawfully.

⁵⁶ Lord Carlile of Berriew QC (July 2010) *Report on the operation in 2009 of the Terrorism Act and Part 1 of the Terrorism Act 2006*. Home Office.

⁵⁷ The Freedom of Protection Bill outlines the proposed changes to the TA powers of authorisation. To see the Commission's briefing on the Bill go to: <http://www.equalityhumanrights.com/legal-an-and-searches-the-police-policy-parliamentary-briefings/briefing-protection-of-freedoms-bill/>

⁵⁸ *Ibid.*

The Commission recommends the Committee ask government to:

- a) ensure there are stringent safeguards built into the authorisation powers under the TA such as requiring authorisations to be subject to judicial oversight, limiting the duration of the authorisation to 48 hours and restricting the geographical scope and length**
- b) monitor the changes to s.44 TA, and**
- c) conduct a full review of s.60 CJPOA authorisation powers as a matter of urgency.**

Discretion of police officers in the exercise of stop and search powers

A further key concern for the Commission, in relation to stop and search powers, is the wide discretion afforded to police officers in the exercise of these powers. When an authorisation under s.60 CJPOA or s.44 TA is in place, a police officer can stop and search a person if he ‘thinks fit’.⁵⁹

In relation to PACE stops officers have a broad discretion over what circumstances constitutes ‘reasonable grounds for suspicion’. We consider this degree of discretion gives too much scope for stereotyping and generalisations based on race and other personal factors. We believe that disproportionately in stop and search might also decrease if the discretion afforded to officers is restricted. For example it should be made clear to officers that race alone should never be a factor when conducting authorised stops and searches. We also believe the statutory provisions on what circumstances constitutes reasonable suspicion should be tightened.

⁵⁹ This is a very low threshold and highly subjective. The ECtHR expressed concerns that the discretionary power afforded to officers under s.44 TA was arbitrary and could be used in a discriminatory manner, n42 at p.21.

Reform of stop and search to recording requirements

The Committee encourages the State party to implement effectively its decision to ensure that all 'stops and searches' are recorded and to give a copy of the record form to the person concerned.

The Commission considers that recording is an important tool for monitoring police activity in stop and search and ensuring accountability. It is particularly important given the increased rates in disproportionality, wide reaching stop and search powers and evidence of misuse in the exercise of authorised powers.

The Commission is concerned that the Government's policy of 'streamlined' recording of stops and search, and reduced central direction to forces, may lead to less accountability and weaker safeguards.⁶⁰

While we note the Government's concerns that the recording requirements were onerous, we do not believe the wholesale removal of recording stops is justifiable. Recording of 'stops' helps us to understand why the police once having stopped

someone, are more likely to go on to search black people than their white counterparts (but are no more likely to find evidence of criminality).

The Commission is also concerned about the policy of giving receipts for stops and searches instead of a full record. We are concerned that if officers are not required to give a full record at the time of the search that lapse in time/memory or workloads, could result in records being completed inadequately or not at all.

A key driver for the changes was concerns that the recording requirements were time consuming and taking officers away from the 'real' job of policing. The Commission does not consider that recording or issuing full records needs to be an undue burden on policing, especially since the information to be recorded was reduced in 2010 to exclude all the trawling for 'intelligence' that had become common.

In our view, hand-held computers which a number of forces already use could be used to save time, and we understand the Government is seeking to extend this.

⁶⁰ Theresa May (19 May 2010) Theresa May's speech to the Police Federation, Home Office. The proposals are to: remove the requirement to record stops which do not lead to a search and non-statutory (voluntary) stops; remove the requirement to provide a copy of the record to the person detained – it would now be sufficient to provide a receipt to the person entitling them to request a full copy of the record but this entitlement might be waived if the officer is called to another 'incident of higher priority'; reduce the level of information to be recorded. Forces will also be able to decide whether to record stops which do not lead to a search.

The Government should reconsider its policy on recording of all stops and/or searches to explore alternative recording strategies which would meet the concerns raised.

Scotland

Stop & Search – Terrorism Act 2000 (s.44)

Data on stop and search by ethnic group in Scotland do not appear to be routinely available. There is though increasing concern about the use of stops and searches in Scotland.⁶¹ Since 2007, there have been 338,000 searches, a rise of 86 per cent and of these, less than 10 per cent resulted in arrests. However, there is no breakdown by ethnicity.

The history of stop and search is very different in Scotland compared with England. The issue has not had the same amount of attention, nor been so controversial. A small-scale study by Frondigoun in 2007, states that “research confirms that, in comparison to England and Wales, Scotland has experienced fewer

high profile problems in relation to policing, ...groups of young people irrespective of ethnicity come into contact with the police “on the street” and have negative experiences of stop and search, with some ethnic minority youth and indeed some white youth, complaining of ‘over policing.’”⁶²

However, prior to the Scottish Governments intervention there was particular concern in Scotland about disproportionality in the use of stop and search by British Transport Police (a reserved Police Force accountable to Westminster, not Holyrood). Whilst this has been largely remedied concerns still exist in the community and recently issues of disproportionate searches of ethnic minorities have been alleged at Scottish airports.

⁶¹ Macaskill, M. (2010) *Low arrest rate raises stop-and-search doubts*. *The Sunday Times*. 3rd January 2010. Available at: <http://www.timesonline.co.uk/tol/news/uk/scotland/article6973920.ece> - data was elicited through a Freedom of Information Act request [Accessed 23 April 2011].

⁶² Frondigoun, L. et al. (July 2007) *Researching minority ethnic young people in Edinburgh and the Greater Glasgow Area*. Glasgow Caledonian University, available at: http://docs.google.com/viewer?a=v&q=cache:4r0fitBFn4UJ:www.strathclyde.police.uk/getFile.asp%3FFC_ID%3D2941%26docID%3D4111+%22police+s+top+and+search%22+scotland&hl=en&gl=uk&pid=bl&srcid=ADGEEsSiCaY4b-TsoXH3sntoJ5Vhholaj6l7AYzmYyKveedQmiGWzClS_UUigQg9sJ7krW_mgio6E7vRHxf2CR6lf2w-CCyiSt1KDBRYNQ65repLT_7b68sB07XlZhGu3Pf4thO3BAC9l&sig=AHIEtbTJsVY2NyoycZDuwsVQDIJDQq2-YQ Accessed 23 April 2011.

Deaths in custody

The Committee invites the State party to submit...detailed information on...the number of complaints involving racial discrimination referred to the IPCC, including deaths in custody.

The Commission acknowledges that the overall number of deaths of ethnic minorities in police custody in England and Wales have fallen steadily over the last 14 years. From 1995/06 to 2001/02 there were 47 such deaths out of a total of 327 – an annual average of 6.7 out of 46.7 (14.3 per cent).⁶³ During the periods 2002/03 to 2008/09, 28 people from an ethnic minority died ‘during or following police custody’⁶⁴ which is an annual average of 4.0 out of 26.5 (15.1 per cent).⁶⁵ This suggests that although overall deaths have nearly halved, the ethnic minority proportion has remained fairly constant. Although, the Committee should note that there has been a spike in deaths in police custody involving ethnic minorities this year.⁶⁶

A particular concern for the Commission is officers’ approaches to dealing with black

suspects resulting in a disproportionate number of deaths involving baton blows to the head and police restraint⁶⁷ – ‘over one-third of cases in which a black detainee died occurred in circumstances in which police actions may have been a factor’.⁶⁸ These types of cases are more likely to result in a recommendation for prosecution. There does not appear to be any plausible explanation for why oppressive restraint techniques are more likely to be used in the detention of ethnic minority arrestees. This is an area on which research could be helpful to explore this trend.

Scotland

According to the Bromley Briefings Prison Fact File 2009,⁶⁹ there were 7,857 people in prison in Scotland at October 2009. Some information is available about the number of ethnic minority people held in Scottish prisons (149 in December 2009) according to the Cabinet Secretary for Justice responding to questions in the Scottish Parliament Cross-Party Group on Racial Equality,⁷⁰ and there is some information

⁶³ The Police Complaints Authority’s annual reports, available at: <http://discovery.nationalarchives.gov.uk/avicon.ico>

⁶⁴ Independent Police Complaints Commission (2010) *Deaths in or following police custody: an examination of the cases 1998/99 - 2008/09*. Independent Police Complaints Commission.

⁶⁵ Ibid.

⁶⁶ David Emmanuel (Smiley Culture) died during a police raid on his flat. The circumstances surrounding why the police raid was taking place have been highly questionable, see report by BBC news at: <http://www.bbc.co.uk/news/uk-england-12751227>; Demetri Fraser who apparently committed suicide during a police raid, see: <http://www.obv.org.uk/news-blogs/demetre-fraser-outrage-new-death-police-custody>, and Kingsley Burrell who died four days after interactions with police. The IPCC have recently commenced an investigation into his death, see: http://www.ipcc.gov.uk/news/Pages/pr_070411_kingsleyburrell.aspx

⁶⁷ See nn63 and 64 above.

⁶⁸ Ibid, p.2.

⁶⁹ Prison Reform Trust (November 2009) *Bromley Briefings Prison Factfile*. London: Prison Reform Trust, available at: <http://www.prisonreformtrust.org.uk/uploads/documents/BromleyBriefingsNov09.pdf> Accessed 23 April 2011.

about the number of self-inflicted deaths in prisons (11 in 2007/08 and 3 in 2008/09) from Scottish Parliamentary questions. However, the latter figures are not broken down by ethnicity. Although, the Commission is aware of one ethnic minority death in prison custody (a Chinese man, Lin Jai Wu, in 2004). No statistical information is available about deaths in custody since the (Westminster) Parliamentary Report⁷¹ which identified that in 2002/03 there had been 8 deaths in police custody in Scotland. This compares with 600 deaths in custody in England and Wales in 2007. It is therefore likely that even if statistics were available, the numbers in Scotland would be too low to provide any information about the treatment/death of ethnic minority people in police custody.

The Commission recommends the Committee asks the Scottish Government to monitor and publish data on deaths in custody disaggregated by ethnicity.

Tackling hate crime

The Committee recommends that the State party include... more detailed information on the number of complaints of racial offences.

More hate crimes are recorded, prosecuted and sentenced in the UK than in any other state in the Organisations for Security and Co-operation in Europe (OSCE) region.⁷² This can be interpreted as a positive outcome of more victims and witnesses reporting hate crime; improvements made by criminal justice agencies to record, investigate and prosecute hate crime; and to make data publicly available.

There has been welcomed commitment and action by the Government in recent years to tackle hate crime.⁷³ However, the Commission's review of equality⁷⁴ shows that many challenges remain and racist and religiously aggravated attacks are a persistent phenomenon in Great Britain.⁷⁵

⁷⁰ Scottish Parliament (2010) *Scottish Parliament Cross-Party Group on Racial Equality* (minutes of 23/06/10), available at: http://www.scottish.parliament.uk/msp/crosspartygroups/groups/RacialEqual-docs/RacialEqual_minute230610.pdf Accessed 23 April 2011. Scottish Parliament (2010) *Scottish Parliament Cross-Party Group on Racial Equality* (minutes of 23/06/10), available at: http://www.scottish.parliament.uk/msp/crosspartygroups/groups/RacialEqual-docs/RacialEqual_minute230610.pdf Accessed 23 April 2011.

⁷¹ *Deaths in Custody* (Third Report of Session 2004/05 Vol 1), Parliamentary Joint Committee on Human Rights, 2004, available at: <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/jtrights.htm> Accessed 23 April 2011.

⁷² Office of the Democratic Institutions and Human Rights (2009) *Hate Crimes in the OSCE Region-Incidents and Responses: Annual Report for 2009* (OSCE 2010), available at: <http://www.osce.org/odihr/66388>. Not all hate crime is reported and international comparisons of hate crime are difficult because of variations in definitions and methodologies used in different states. It is therefore not possible to conclude from this data alone that more hate crimes are committed in the UK than in other states, some which have much larger populations.

⁷³ Of particular value have been an agreed definitions of hate crimes and incidents; awareness raising with more than 12,000 professionals, stakeholders and victims groups; CPS involvement of community representatives in hate crime scrutiny panels to improve performance and build confidence; development of a hate crime diagnostic tool to assess and improve the effectiveness of criminal justice interventions; and the All-Party Inquiry into Anti-Semitism.

⁷⁴ See n21 at p.15.

⁷⁵ Total of recorded hate crime from police in England, Wales and Northern Ireland in 2009 (ACPO 2010), available at: www.report-it.org.uk/.../e_crime_from_regional_forces_in_england_wales_and_northern_ireland_during_the_calendar_year_2009.pdf. There were a total of 43,426 race hate crimes (1,494 recorded in Wales and 41,140 recorded in England) and 2,083 religious hate crimes (28 in Wales and 1,979 in England).

People from ethnic minority backgrounds are roughly twice as likely as white people to report being worried about violent crime;⁷⁶ over five times more likely to have experienced harassment because of skin colour, ethnic origin or religion than white people⁷⁷ and victims of racist incidents were less likely to be satisfied with the overall service provided by police.⁷⁸

The Commission welcomed and contributed to the development of the Cross Governmental Hate Crime Action Plan in 2009. We note however that some actions have not been delivered. The Government has made a public commitment to tackle hate crime but has not yet provided full details of how it will achieve this. It would be useful for government to clarify its continuing approach to tackling hate crime by publishing a 'revised cross-governmental hate crime action plan'.

Data is published on racist, religious and anti-Semitic hate crimes recorded by police forces. In relation to religious hate crimes there is no breakdown according to different religions. Despite evidence to suggest significant levels of violence targeted against Muslims; those perceived to be Muslim⁷⁹ and Mosques⁸⁰ there is no requirement to record anti-Muslim hate crimes. There is a need for better data collection⁸¹ especially by police forces to measure the true scale of anti-Muslim hate crimes.

⁷⁶ Flatley, J. et al. (2010) *Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime*. Home Office 2010.

⁷⁷ Communities and Local Government (2010) *2008-09 Citizenship Survey: Race, Religion and Equalities Topic Report*. Communities and Local Government, available at: <http://www.communities.gov.uk/publications/corporate/statistics/citizenshipsurvey200809equality>

⁷⁸ Analysis of Policing and Community Safety – APACS (Home Office 2010), available at: <http://tna.europarchive.org/20100419081706/http://www.police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/apacs-2008-2009/index.html>

⁷⁹ Athwal et al. (2010) *Racial Violence: The Buried Issue*, available at: <http://www.irr.org.uk/violence/>

⁸⁰ Lambert and Githens-Mazer (2010) *Islamophobia and Anti-Muslim Hate Crime: UK Case Studies*.

⁸¹ Baroness Warsi's Sternburg lecture on the issue of Islamophobia highlighted the need for better data collection, available at: <http://www.cabinetoffice.gov.uk/news/transcript-baroness-warsi%E2%80%99s-sternberg-lecture-speech>

Ensuring equal access to justice for victims of hate crime is important but a criminal justice response can only address part of the problem. Local government, education, housing and transport agencies, NGOs and businesses need to work together with those most affected to tackle the problem effectively. Community Safety Partnerships bring all of these partners together in each local area and have a critical role to play in tackling hate crime. But many do not consider this a top priority.⁸²

Forthcoming Commission research shows some public authorities do not address hate crime in their policy or involve people from affected groups in developing this.⁸³ It also shows that some public authorities still do not recognise they have a role in tackling hate crime. Those that recognised their role did not always take action to fulfil it and even fewer evaluated the outcome of actions. They most commonly recognised a role in helping people report hate crime but were less likely to recognise a role in working with perpetrators; preventing hate crime or supporting victims. Commission research recommends that national policies for work with hate crime offenders needs to be developed.⁸⁴

The Commission recommends that the Committee asks government to develop a national policy for work with hate crime offenders.

Scotland

Section 96 of the Crime and Disorder Act 1998 makes provision for offences which are racially aggravated – religious hatred is covered by other legislation. The definition of a racial incident adopted in Scotland is the same as that used elsewhere in the UK allowing for a direct comparison to be made.

The Scottish Government notes that the total number of racist incidents recorded by the police in Scotland⁸⁵ fell by 4 per cent between 2008-09 and 2009-10 (from 5,143 to 4,952). Over the period 2004-05 to 2009-10, racist incidents in Scotland have increased by 10 per cent.

The Scottish Government report gives a number of possible reasons for the increase in recorded incidents including work by police forces with a range of victim support agencies to encourage reporting; increasing public intolerance of such behaviour; increased public confidence that reporting such incidents is worthwhile; improvements in data collection by police forces, and the introduction of centralised call centres which has encouraged the reporting of all incidents.

⁸² Crime and disorder reduction partnership survey 2009 (LGA 2010), available at: <http://www.lga.gov.uk/lga/core/page.do?pageId=4780562>

⁸³ University of Leicester et al. (forthcoming) *Public authority commitment and action to eliminate targeted violence and harassment*, Equality and Human Rights Commission.

⁸⁴ Iganski et al. (2010) *Rehabilitation of Hate Crime Offenders*. Equality and Human Rights Commission, available at: <http://www.equalityhumanrights.com/scotland/research-in-scotland/the-rehabilitation-of-hate-crime-offenders-an-international-study/>

⁸⁵ Scottish Government. *Statistical Bulletin: Crime and Justice Series: Racist Incidents Recorded by the Police in Scotland, 2009-10*. Scottish Government, available at: <http://www.scotland.gov.uk/Publications/2011/03/24114924/23> Accessed 23 April 2011.

There is of, course, also the possibility that there are more racist incidents occurring. (Lothian & Borders Police, who record the second largest number of racially motivated crimes, published research in 2010 suggesting that 60 per cent of racially motivated crimes go unreported.)

Racist crimes

The most frequently recorded racist crime/offence in 2009-10 was racially aggravated conduct, which accounted for 65 per cent of all crimes recorded as part of racist incidents, with another 30 per cent accounted for by breach of the peace, minor assault, fire-raising/vandalism, and racially aggravated harassment. (There is a similar pattern from 2004/05 to 2009/10.)

Asian men were the most frequently victims in reports, although around a third of reports concerned racism directed at 'White British' victims. Unfortunately the data presented does not allow for fuller interrogation to determine the ethnic background of the 'White British'. The profile analysis also does not provide enough information to explore, for example, whether there are now more incidents against new migrants or asylum seekers and refugees.

Overall, nearly 68 per cent of all racist crimes recorded in 2009-10 were cleared-

up (i.e. where there was a sufficiency of evidence to make a report to the Procurator Fiscal (PF) although a report may not have been made for reasons such as the age or mental capacity of the accused, or where the police give a warning to the accused due to the minor nature of the offence).

Eighty-eight per cent of cases reported to the PF result in proceedings but the manner of reporting makes it difficult to track cases across time.

In 2009-10, 72 per cent of perpetrators were referred to the PF or Scottish Children Reporters' Administration who deal specifically with accused under the age of 18. No further action was taken against 4 per cent of perpetrators.

Characteristics of perpetrators

For incidents where this information was available, in each year from 2004-05 to 2009-10, approximately 96 per cent of perpetrators were of white origin. Around 47 per cent of perpetrators in 2009-10 were aged 20 with 23 per cent under the age of 16. This is the case for males and females and, according to the Commission's Research Report on Rehabilitation of hate-crime offenders,⁸⁶ this is similar to England.

⁸⁶ Iganski, P. and Smith, D. (2010) *Rehabilitation of hate-crime offenders: an international study*. Equality and Human Rights Commission, available at: <http://www.equalityhumanrights.com/scotland/research-in-scotland/the-rehabilitation-of-hate-crime-offenders-an-international-study/> Accessed 23 April 2011.

It is a concern that a high proportion of perpetrators are under the age of 20 and this has implications for community safety and education policies and, potentially, for the workplace if racist attitudes persist among those who enter the labour market.

In 'Attitudes to Discrimination in Scotland 2006, an analysis of the 2006 Scottish Social Attitudes Survey', Bromley et al. found that discriminatory attitudes were often more common amongst older people than younger people although younger people were particularly likely to express concern about the impact of the presence of ethnic minorities and people from Eastern Europe on the competition for jobs.⁸⁷ The proportion of those surveyed who said that Scotland would begin to lose its identity if more Muslims came to live here rose from 38 per cent in 2003 to 50 per cent in 2006.

This would appear to suggest that work undertaken to prevent the development of racist attitudes, particularly among school-age young people, needs to be more effective and that there is a need to find out more about how young people develop and express racism, and how this is changing with demographic changes and economic or job opportunities. It is also important to find out if, in fact, younger people are less likely to hold racist attitudes but considerably more likely to enact them in racist incidents. As stated in the research report on hate

crime rehabilitation mentioned above this is not to ignore the perpetrators who are older, female or not white just because the majority are younger, male and/or white. Work should be undertaken with all perpetrators if the objective is the reduction of racist incidents and crimes.

The rehabilitation report also makes the point that that 'hate crime offenders are in general much more like other offenders than unlike them in their characteristics and in the attitudes and beliefs they express' and that 'these attitudes issue in acts of overt hostility or violence in situations of emotional arousal and threat'. Thus the impact of recession, increasing unemployment and consequent pressure on welfare benefits and financial and emotional strain may aggravate latent attitudes.

It is important to state that the report also identifies the need to consider religion in the context of hate crimes and it is perhaps pertinent to point out that whilst there will be anti-Muslim and anti-Semitic activity, the history in Scotland of Catholic/Protestant tension predicts that much of the religious hate crime in Scotland will be sectarian but may also be defined as being anti-Irish. It will be important to clarify the extent of anti-Muslim and anti-Jewish hate crime and to ensure it is addressed within this context.

⁸⁷ Bromley, C. et al. / (2006) *Attitudes to Discrimination in Scotland* (ch 15), available at: <http://www.scotland.gov.uk/Publications/2007/12/04093619/15> Accessed 23 April 2011.

However, the public reporting of religiously motivated incidents has until very recently been sporadic. The Commission welcomes the recent confirmation from the Scottish Government that religiously motivated crime statistics will now be published annually.

The Commission recommends that the Committee ask the Scottish Government when they will publish plans for reducing hate crime, including sectarian crime.

Counter-terrorism

The Committee draws the State party's attention to its statement of 8 March 2002 in which it underlines the obligations of States to 'ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin'.

Since the terrorist attacks in 2001, national security has been a key priority for the UK government. Consequently, the government has introduced a number of measures to

tackle terrorist threats to the nation. The Commission understands and agrees with the need for government to have policies to tackle terrorism for the protection of the public.

The Commission is concerned, however, that many of the counter-terrorism measures impact adversely on Muslims⁸⁸ and foreign nationals.⁸⁹ Our research shows that Muslim groups see these measures as contributing to 'to a wider sense that they are being treated as a suspect community'.⁹⁰ Additionally, sensationalised media reporting has perpetuated stigmatisation of Muslims which in turn has affected relations between Muslim and non-Muslim groups.

Counter-terrorism legislation

The Commission is pleased to note the previous Government's recognition of the difficulties faced by Muslim communities in consequence of its counter-terrorism policies and that it developed a strategy for rebuilding community relations.⁹¹ We are also pleased to note that the new Government has undertaken a comprehensive review⁹² of counter-terrorism measures and has made a number of far-reaching recommendations to reform some

⁸⁸ The Muslim community in the UK are predominately people of South Asian, Arabic and African ethnic and/or national origins. Thus there is a link between race and religion.

⁸⁹ HM Government (Jan 2011) Review of Counter-terrorism and Security Powers Equality Impact Assessment. As evidenced by the high rates of stops and searches of Asians under s.44 of the TA see section on stop and search in this report. Of 48 control orders made 28 were against foreign nationals.

⁹⁰ Choudhury, T. and Fenwick, H. (2011) *Equality and Human Rights Research Report number 72 The Impact of Counter-terrorism measures on Muslim Communities*. Equality and Human Rights Commission.

⁹¹ Although not mentioned in the government's report, we are pleased to report to the Committee that some of the more draconian legislative proposals proposed by government in the past to deal with the terrorist threat have not been implemented. For example, proposals for detaining terrorist suspects without charge for 90 days and subsequently 42 days were defeated in Parliament and indefinite detention of foreign nationals has been abolished, see *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* [2004] UKHL 56 <http://www.equalityhumanrights.com/news/2011/january/commissionresponse-to-the-governments-proposals-in-its-review-of-counter-terror-and-security-powers/>

⁹² HM Government (2011) Review of counter-Terrorism and Security Powers – Review Findings and Recommendations, HM Government Cm8004.

of the measures and improve the protection of human rights of those suspected of committing terrorist offences.

The Commission broadly welcomes the proposed changes to counter-terrorism law. In principle, we believe they are a step in the right direction to achieving a ‘better balance between protecting the public and protecting their rights’.⁹³ While the changes are likely to be more compatible with human rights standards we acknowledge they will not necessarily reduce disproportionality in their impact on Muslims.

Notwithstanding the issue of disproportionality we would highlight the following concerns in relation to the proposals for counter-terrorism law.

Pre-charge detention

The current time limit for pre-charge detention is 28 days. The Government intends to revert to the previous period of pre-charge detention which was 14 days. This is a welcomed reform, especially as there was much objection to 28 days detention because it was considered unnecessary (not used over a 3 year period); inconsistent with other western democracies; incompatible with the right to

liberty; and impacted negatively on Muslim communities.⁹⁴

However, the Commission considers that 14 days is still too long and should therefore remain subject to annual renewal by Parliament.

Control orders

Control orders were introduced to address the House of Lord’s declaration that indefinite detention of foreign nationals without charge was incompatible with the ECHR.⁹⁵ Forty-eight control orders have been made since their introduction, 28 of which were made in respect of foreign nationals.⁹⁶

There are concerns that the orders, which impose lengthy curfews and violate privacy rights⁹⁷ are difficult to challenge because such challenges are subject to closed hearings. The Commission therefore welcomes the Government’s conclusion in its review that the control order regime ‘can and should be repealed’.⁹⁸ In its place, the Government proposes to introduce a system which it considers will be ‘more comparable to restrictions under other powers in the civil justice system’.⁹⁹

⁹³ John Wadham (2 January 2011) *Commission statement on counter-terror review*, available at: <http://www.equalityhumanrights.com/news/2011/january/commission-statement-on-counter-terror-review/>

⁹⁴ See n92 at p.34.

⁹⁵ *A (FC) and Others (FC) (appellants) v. Secretary of State for the Home Department* [2004] UKHL 56. The court found the policy in breach of Article 14 (right to non-discrimination in the enjoyment of rights) read with Article 5 (right to liberty).

⁹⁶ Home Department (7 February 2011) *Anti-terrorism Control Orders*, Written answers and statements, 7 February 2011.

⁹⁷ See *JJ and others v. Secretary of State for the Home Department* [2007] UKHL 45.

⁹⁸ See n92 at p.34.

⁹⁹ *Ibid.*

It appears that the Government has in mind an arsenal of measures, such as restrictions on communications and curfews, which it could implement on approval of the High Court. Whilst the raft of proposed measures seem more progressive than the previous regime, we do not consider that they tackle the greater problem of bringing people suspected of criminal activity to prosecution.

The Commission believes that the alternatives such as surveillance and intercept evidence in court hearings would be a better alternative to the control order regime.¹⁰⁰ The Government should consider this proposal further.

Counter-terrorism measures not subject to review

Schedule 7 of the Terrorism Act 2000 allows for stops, searches, questioning and detention for up to nine hours without reasonable suspicion. 10,400 people have been examined under this legislation. Of them, 1,120 were detained and 43 of these convicted.¹⁰¹

The Commission's research into the impact of counter-terrorism laws on

Muslim communities found that Muslims considered the use of Schedule 7 powers to be more stressful than a stop and search on the street and that they were having the greatest negative impact on Muslim communities.¹⁰² Our findings also show that those who had been subjected to the exercise of the power felt the questioning process was being used for intelligence-gathering and to build profiles of them.

Given the findings of our research, we are disappointed that Schedule 7 powers were not included in the Government's review of counter-terrorism measures.

There are other aspects of counter-terrorism law which the Government did not address in its review but which we believe might also create a climate of fear for Muslim communities. These include the definition of terrorism, preparing for terrorist acts, disseminating terrorist publications, training for terrorism and attendance at a place used for terrorist training and proscribing 'terrorist' organisations. We consider that these measures could have a 'chilling effect' on the rights of Muslim communities to free expression and assembly.

¹⁰⁰ See n90 at p.34.

¹⁰¹ Ibid.

¹⁰² Equality and Human Rights Research Report number 72. *The Impact of Counter-terrorism measures on Muslim Communities*. Equality and Human Rights Commission.

The Commission recommends that the Committee asks government to conduct a further review of counter-terrorism measures to include all those not the subject of the recent review.

The Prevent strategy

As noted above, the Commission has been increasingly concerned about the impact of counter-terrorism measures on Muslim communities. In 2007, we conducted a small-scale consultation to establish the concerns of Muslim, Asian and other ethnic minority communities to counter-terrorism measures. We found that Muslim groups felt that these measures were increasing the public's sense of fear leading to increased Islamophobia. Consequently, they felt they had become more inward looking and faced greater social exclusion.

This year we followed up that initial work by undertaking more comprehensive research into this issue.¹⁰³ We found the impact of counter-terrorism laws and policies are experienced more acutely and directly amongst Muslims than non-Muslims.

We are therefore disappointed that the previous Government's Prevent strategy, which aims to tackle extremism and build 'safe, cohesive and empowered communities', has not been effective at meeting its overriding objective.¹⁰⁴ In 2010, a review was conducted of the Prevent policy.¹⁰⁵ The review concluded that the policy is controversial and alienates rather than engages Muslim communities. Our own research supports this conclusion.¹⁰⁶

The review highlighted a number of issues which underpin our concerns about the impact of counter-terrorism measures on Muslim communities. First, by making Muslims its central focus it has served to stigmatise and isolate them. Secondly, Muslim communities perceive it as a tool to 'spy' on them. Thirdly, it was considered to undermine the 'cross-cultural work' on cohesion and capacity building to combat exclusion and alienation in communities. Fourthly, the policy on supporting those who might be vulnerable to extremism was too heavily focused on the theological basis of radicalisation and failed to consider other factors such as politics, policy and socio-economics.¹⁰⁷

¹⁰³ Ibid.

¹⁰⁴ Communities and Local Government (June 2008) *Prevent Strategy: A guide for local partners*. Home Office.

¹⁰⁵ House of Commons Communities and Local Government Committee (16 March 2010) Preventing Violent Extremism sixth report of session 2009-10, House of Commons. London: The Stationery Office.

¹⁰⁶ See n104 above

¹⁰⁷ Ibid.

The review made a number of recommendations which the Commission believes government should consider taking forward in order to alleviate the adverse impact of counter-terrorism policies on Muslim communities. These included the 'need to address extremism of all kinds on a cross-community basis'; commissioning an 'independent investigation into allegations' of spying; providing 'greater empowerment and civic engagement with democratic institutions to strengthen the interaction and engagement with society' of Muslims and other socially excluded groups.¹⁰⁸ It is not clear how the Government intends to act on these recommendations but the Commission considers they should be implemented.

Scotland

In Scotland the CONTEST (Counter-terrorism) Scotland Board fulfils the same functions as the Prevent strategy in England and Wales. In Scotland counter-terrorism work has been far less contentious than in England, adopting an approach which it feels is better suited to the issues facing Scotland. This approach has been praised by the Director-General of the Office for Security and Counter-terrorism who noted in 2008 that '...the nature of communities in Scotland is discernibly different from the nature of communities south of the border. You have an ability to reach in and develop a strategy of this kind'.

Whilst Scotland remains as much of a target for terrorism as the rest of the UK the available evidence suggests that the approach taken in Scotland is more appropriate to the community tensions Scotland faces.

The Commission recommends that the Committee asks government to outline how it intends to take forward the recommendations set out in the review of the Prevent policy and ensure that any new policy will no longer stigmatise Muslim communities.

Economic, social and cultural rights

The State party intensify its efforts to ensure full enjoyment by all of the rights provided in Article 5 of the Convention without discrimination giving particular attention to the rights of employment, education housing and health.

This section focuses on education, employment, health, and Gypsies and Travellers.

¹⁰⁸ Ibid.

Education

Evidence from the Commission's Triennial Review¹⁰⁹ and other sources suggests that for some racial groups the key priority issues in relation to the right to education and training are:

- gaps in attainment rates
- higher rates of permanent exclusion from school
- higher rates of bullying
- lower levels of access and participation in post-16 education.

Gaps in attainment rates

It is acknowledged that there have been some improvements in narrowing the gaps in educational attainment rates but it is the persistent underachievement of Black Caribbean and Pakistani children which continues to be a priority concern (low educational attainment of Gypsy and Traveller children is also a priority concern for the Commission which we deal with separately below).

Level of development at age 5

In relation to children aged five, the figures show that pupils from black and Pakistani ethnic groups are underperforming compared with children from other racial groups.¹¹⁰

Attainment is higher for those pupils whose first language is English when compared to pupils who have English as an additional

language. Fifty-four per cent of pupils whose first language is English achieved a good level of development compared with 42 per cent of pupils for whom English is an additional language.¹¹¹

Educational attainment at age 16

Educational attainment at age 16 is improving overall for most ethnic minority groups across the whole of Great Britain but serious concerns remain about the persistent underachievement of Black Caribbean and Pakistani children. In England, the percentages of children achieving five or more GCSEs at a good grade were:¹¹²

Bangladeshi	51 per cent
Black African	51 per cent
Black Caribbean	39 per cent
Chinese	72 per cent
Indian	67 per cent
Pakistani	43 per cent
White	51 per cent

In Wales, pupils from a black ethnic background performed below the national average with 31 per cent achieving Core Subject Indicator (CSI) at age 16, compared to 44 per cent of all pupils.¹¹³

¹⁰⁹ See n30 at p.18.

¹¹⁰ Department for Children, Schools and Families and Office for National Statistics 2010; see also n30 at p.18.

¹¹¹ See n30 at p.18.

¹¹² See n30 at p.18.

¹¹³ This relates to the percentage of pupils achieving the expected level or above in English or Welsh (first language), Mathematics and Science in combination. Ibid at p.334.

Underachievement at age 16 has knock on effects for the prospects of these groups in attaining higher education qualifications,¹¹⁴ attending top universities¹¹⁵ and gaining meaningful employment. It is therefore essential that measures taken to improve educational attainment for ethnic minority children are effective.

Scotland

No information was found in Scotland about attainment levels in the early years. A new Early Years Framework has been implemented by the Scottish Government, with a new approach and a great deal of guidance and practical tools to implement 'Getting it Right for Every Child'.¹¹⁶ This is intended to be more child-centred and to deliver more equitable outcomes, and the website introduction states 'The approach helps those facing the greatest social or health inequalities.'¹¹⁷ This approach is portrayed as being within overarching strategies under the equality public duties. The approach identifies eight areas of wellbeing including being safe, being respected and being included. However, racial equality is not identified specifically.

The Scottish Qualifications Authority publishes annual results for pupils from S4 (aged between 14-16 when children sit their first examinations) showing attainment levels in relation to examination results.¹¹⁸

The data shows that pupils from some ethnic minority backgrounds are performing much better at school than white pupils, though there is variation between groups. It is useful to note that average scores for pupils in each of the deprivation deciles have increased between six and 12 points over the period 2003/04 to 2008/09. However, there is considerable variation for different ethnic minority groups in the same period with some increasing and some decreasing.

- The average tariff score of S4 pupils from a White-UK background in 2008/09 is 179, rising from 170 in 2003/04.
- The average for pupils from Asian backgrounds is much higher, with pupils of Chinese origin scoring an average of 222, and pupils of Bangladeshi or Mixed background also scoring above 200 which compares well with the average scores of 230 of all pupils in the least deprived areas.

¹¹⁴ This relates the percentage of pupils achieving the expected level or above in English or Welsh (first language), Mathematics and Science in combination *ibid* at p.334.

¹¹⁵ In April the Prime Minister publicly denounced top universities in Britain for their under-representation of black students. The response from the universities was that they were hampered in their efforts by poor educational attainment which many from this group faced at primary and secondary level, see http://www.ox.ac.uk/media/behind_the_headlines/101307.html

¹¹⁶ Scottish Government *Getting it Right for Every Child Overview*. Scottish Government, available at: <http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/programme-overview/Q/EditMode/on/ForceUpdate/on> Accessed 22 April 2011.

¹¹⁷ *Ibid*.

¹¹⁸ Scottish Government (2010) *SQA Attainment and School Leaver Qualifications in Scotland: 2008-09*. Scottish Government, available at: <http://www.scotland.gov.uk/Publications/2010/03/22111037/38> Accessed 22 April 2011.

- Whilst the average score for pupils of Chinese origin has generally been above 200, the scores for pupils of Bangladeshi origin have shown a steady rise from a low of 162 in 2004/05. The average scores for pupils of Indian backgrounds, on the other hand, have declined from 214 in 2004/05 to 185 in 2008/09.
- The average tariff for pupils of African origin is lower at 165 and has generally been between 160 and 170. (The tariff for pupils of Caribbean origin is not shown separately though the 2007/08 figures¹¹⁹ show a significantly lower average scores of 111.)
The scores for pupils of African origin have declined whilst the scores for Black-Other pupils have risen.
- The attainment levels are considerably lower than other ethnic minority groups for asylum seeker pupils (127) and refugees (152). These are similar to the scores for pupils in the more deprived areas. The score for refugees has risen from 109 to 152 whilst the score for asylum-seeker pupils rose between 2003/04 and 2007/08, but dipped again in 2008/09.

One other statistic worthy of noting is that amongst leavers in 2008/09, 41.3 per cent of pupils of Chinese origin gained at least one qualification at Scottish Credit Qualifications Framework (SCQF) level 7 compared with 33.3 per cent for pupils in the least deprived areas and 14.8% per cent for White-UK pupils.

The Commission recommends the Committee asks the Scottish Government what their plans are for disaggregating the ‘All other’ category when presenting data to enable greater analysis of the experience of groups who are particularly marginalised and separate out data on Gypsy Travellers and Caribbean pupils.

Ethnic minority achievement grant

The State’s commitment to increasing the attainment levels of ethnic minority children is not disputed and laudable efforts have been made in this area such as the Ethnic Minority Achievement Grant (EMAG) and ‘Aiming high: supporting effective use of EMAG’ initiative (DfES, 2004).¹²⁰

However, since the submission of the State report, the Government has announced changes to the EMAG. It will lose its ring-fenced status and instead it will form part of the ‘Dedicated School Grant’. The consequence of this is that schools will have discretion to increase or reduce the level of specialist provision to ethnic minority pupils as they see fit.

It is too early to tell what effect these changes will have but even under the EMAG regime there were shortcomings. An evaluation of EMAG carried out in 2005¹²¹ suggested that the EMAG had failed to deliver on its core objective of raising ethnic

¹¹⁹ Scottish Government (2009) *SQA Attainment and School Leaver Qualifications in Scotland: 2007.08*, available at: <http://www.scotland.gov.uk/Publications/2009/03/09154229/38> Accessed 23 April 2011.

¹²⁰ NB this does not apply to Scotland.

¹²¹ Leon Tikly, Audrey Osler and John Hill (2005) *The ethnic minority achievement grant: a critical analysis*, *Journal of Education Policy*, Volume 20, Issue 3, 2005, pp.283–312. See n21 at p.15.

minority achievement at least as far as Black Caribbean pupils are concerned. Critically, the researchers argued that the 'shameful historical legacy of underachievement' requires, in addition to the EMAG, a stronger anti-racist commitment by government and changes in other areas of policy such as the national curriculum and significant changes in the behaviour and practices of teachers and managers that are not currently targeted by EMAG. The researchers recommended the important role of supplementary educational opportunities and mentoring and greater consultation with black and Asian communities about the use of central funds.

The researchers also warned against the removal of the EMAG ring-fenced status 'because otherwise the temptation would be for schools to siphon off already limited funds specifically targeted at raising ethnic minority achievement to other areas of need'.

The Commission recommends the Committee ask government to:

- a) place a duty on schools/LEA to provide a strategic plan for how it intends to spend the Dedicated Schools Grant**
- b) consult with parents and pupils on how funds should be spent**
- c) ensure the inclusion of mentors in the provision of education, and**
- d) set targets for increasing the number of black and ethnic minority teachers and school governors.**

School exclusions

Black Caribbean, Mixed White/Black Caribbean (and Gypsies and Traveller pupils – considered more fully later in this report) continue to experience disproportionate rates of school exclusions.¹²² When coupled with the poor attainment levels, the school experience for Black Caribbean pupils is a disturbing one and requires urgent attention.

We are pleased that in its periodic report the Government reported on the progress against two of the recommendations made in the 2006 'Priority Review' led by the DfES High Level Group on Race Equality. It is disappointing, however, that the report does not state what the Government intends to do in relation to the other recommendations:

¹²² Mixed White/Black Caribbean pupils were 2.5 times more likely to be excluded than average with a permanent exclusion rate of 25 per 10,000 pupils. Pupils from Other Black households are twice as likely to be permanently excluded with a rate of 20 per 10,000 pupils. The highest rates of permanent exclusions were found among Black Caribbean pupils (30 per 10,000 pupils). See n21 above at p.15.

- focused work with relevant organisations to strengthen race equality awareness in school leadership and management programmes
- focused work with relevant organisations to strengthen coverage of race equality issues (and their relationship to effective behaviour management) in performance management and initial teacher training.

In addition, the State report does not comment on the further study on black pupil exclusions which was commissioned by the Black Pupil Exclusions Implementation Group. The outcome of that study was expected to contribute towards a strategy for intervention measures and support for the Review's recommendations. It includes good practice examples and identifies three interrelated features which were key to the success of schools rated as outstanding:

- respect for the individual and a systematic, caring and consistent approach to behaviour and personal development
- the courage and willingness to discuss difficult issues
- a focus on helping pupils to take more control of their lives by providing them with strategies to communicate well and look after each other.

Similarly, there was no mention of any of the Review's recommendations in the Government's White Paper on Education.¹²³

The emphasis in the White Paper is on restoring greater authority to teachers for maintaining discipline in schools.

The recommendations include:

- change the current system of independent appeal panels for exclusions so that they take less time and ensure that pupils who have committed a serious offence cannot be re-instated
- ensure that all children being educated in alternative provision get a full-time education
- improve the quality of alternative provision by giving existing providers more autonomy and encouraging new providers – including new alternative provision Free Schools
- pilot a new approach to permanent exclusions where schools have the power, money and responsibility to secure alternative provision for excluded pupils.

In addition, since the submission of the State report, the Government has introduced changes to the procedure for appeals against exclusions which we consider threaten the accountability of schools.¹²⁴

The Education Bill 2011 makes provision for a new 'review panel' which will have powers to quash decisions to exclude and to recommend or direct a 'responsible body'¹²⁵ to reconsider their decision. However, unlike the current system, the review panel cannot order reinstatement of a pupil.

¹²³ Department for Education (2010) *The Importance of Teaching: The Schools White Paper*. DFE CM 7980.

¹²⁴ Education Bill 2010-11 (going through Parliament at the time of writing this report), available at http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0067/lbill_2010-20120067_en_1.html

¹²⁵ A 'responsible body' is defined in the Education Bill as the governing body in maintained schools and any prescribed person in relation to a Pupil Referral Unit.

The Commission considers that the decision to remove the power of reinstatement may decrease the panel's ability to hold a school to account. Although one of the objectives behind the change is to shorten the time taken to determine an appeal, the practical effect on a pupil may be delay as decisions are referred back for reconsideration. The suspension of a child's education is detrimental to his or her development and the delay in reaching a decision is not in the best interests of the child.

Whilst we support the need for discipline in schools, it is not entirely clear how the proposals will lead to a reduction in exclusions, which is advised as a measure of last resort, and disproportionality rates. In particular, the focus on alternative provision, which is used for excluded pupils, indicates that exclusions will continue to be used as a disciplinary measure. Furthermore, reducing the time spent on an appeal should not be at the expense of the delay in the return to full time education.

Scotland

The 2007/08 statistics for attendance and temporary exclusions published by the Scottish Government¹²⁶ show that attendance for all groups is above 90 per cent with Chinese pupils attaining the highest attendance rate (95.8 per cent) and Black African pupils following closely (95.1 per cent).

The group with lowest attendance rate is Bangladeshi (91.2 per cent). White-UK pupils' attendance is 93.3 per cent. Absences due to temporary exclusion are listed as 0.1 per cent or no figure is given and it is not possible to identify any pattern as the numbers are small.

The Commission recommends the Committee asks government to:

- a) respond to the findings in the OFSTED study, and**
- b) undertake focused work with relevant organisations to strengthen race equality awareness in school leadership and management programmes and coverage of race equality issues (and their relationship to effective behaviour management) in performance management and initial teacher training.**

Bullying

Prevalence and types of bullying

Since the Stephen Lawrence Inquiry, schools have been required to record and report incidents of racist bullying. A Commission survey¹²⁷ found that 95 per cent of local authorities recommend that schools report race and ethnicity incidents and 75 per cent

¹²⁶ Scottish Government (2008) Statistics Publication Notice – Education Series: *Attendance and Absence in Scottish Schools 2007/08*. Scottish Government, available at: <http://www.scotland.gov.uk/Publications/2008/12/18120723/20> Accessed 22 April 2011.

¹²⁷ Neil Tippett, Catherine Houlston, Peter K. Smith (2011) *Prevention and Response to identity-based bullying among Local Authorities in England, Scotland and Wales*. Equality and Human Rights Commission.

of local authorities said they had evidence relating to the prevalence of racist bullying in schools.

However, the survey points to a limited amount of national evidence regarding the nature and extent of racist bullying, and little advice available to schools in terms of how they can best prevent and respond to this form of bullying.

Other research shows that white and mixed-race pupils were the most likely to have been bullied in the last three years (66 per cent and 67 per cent respectively), while Indian and Bangladeshi pupils were the least likely to have been bullied (49 per cent and 54 per cent). The figure for Black African, Black Caribbean, Pakistani and pupils from other ethnic minorities ranged from 58 per cent to 61 per cent. This compares with 47 per cent of all pupils reporting being bullied at age 14.¹²⁸

Early studies often examined racist bullying from a 'minority versus white' perspective. However, a more detailed study¹²⁹ looking at the bullying experiences of pupils from Hindu, Indian Muslim and Pakistani backgrounds showed that while all three ethnic groups were equally likely to be bullied by white children, victims indicated that in most cases the bullies were other Asian children from a differing ethnic group. Furthermore, bullying between differing ethnic groups most often related to the

child's religious or cultural differences, including the clothes they wore, the language they spoke, or the God(s) they worshipped. Recent research points to some evidence that caste may also be a basis for bullying.¹³⁰

These studies indicate that overall while bullying appears to show little variation between racial or religious groups, a large proportion of children report being bullied because their personal or religious beliefs differ from others in their peer group. This highlights how bullying related to race, ethnicity or religion can be brought about by a lack of tolerance or understanding regarding individuals' personal or religious beliefs.

Bullying of asylum seekers and refugees

In relation to young people seeking asylum, young refugees, and children of migrant workers, Commission research shows that the threat and reality of direct violence either in the classroom or the wider school environment is a common experience and can severely disrupt engagement in learning.¹³¹

While little is known about the motivation of the perpetrators, the itinerant lifestyles that these children experienced before and during their settlement means they are often isolated, and have little opportunity to form long-lasting friendships and establish

¹²⁸ DCSF (2007b) *Safe to learn: embedding anti-bullying work in schools*, available at: <http://publications.teachernet.gov.uk/eOrderingDownload/SAFE%20TO%20LEARN.pdf>

¹²⁹ Eslea, M. and Mukhtar, K. (2000) *Bullying and racism among Asian schoolchildren in Britain*, Educational Research, 42, pp.207-217.

¹³⁰ Hilary Metcalf and Heather Rolfe (December 2010) *Caste discrimination and harassment in Great Britain*. NIESR.

¹³¹ Niel Tippett, Catherine Houlston, Peter K. Smith (Goldsmiths) (2010) *Prevention and response to identity-based bullying among local authorities in England, Scotland and Wales*. Equality and Human Rights Commission.

themselves within the school community. Commission research into the experiences of children from refugee backgrounds showed that their experience of bullying differed according to the school's approach to bullying.

Three key issues marked the distinctions between the schools: the presence of specialist teachers, support from friends, and a whole school ethos which allowed children to identify themselves as refugees.

Further Commission research¹³² found that the more culturally diverse a school was the greater levels of support provided to pupils and there were reduced levels of bullying based on identity.

Key issues in preventing and responding

These studies show the importance of an inclusive ethos in the prevention of bullying based around identity. Schools that invest resources and effort in involving students from all racial backgrounds can have a profound effect on their experience within schools.

Access and participation in post-16 education

In 2008/09 ethnicity data was known for 95 per cent of UK domiciled first-year undergraduates.¹³³ The proportion of students from ethnic minority groups attending university has been rising fairly steadily over the last 12 years. In 2008/09 ethnic minorities constituted 20 per cent of all first-year UK domiciled students of known ethnicity studying for their first undergraduate degree.¹³⁴ This represents an increase in line with the growth of the ethnic minority population.¹³⁵ This is a welcome development. However, ethnic minority graduates fail to find employment commensurate to their qualifications compared to their white counterparts.¹³⁶ They are also under-represented at the top universities.¹³⁷

The Commission considers that government should set national targets to increase the numbers of ethnic minority students in the top British universities.

Scotland

The *Destinations of Leavers from Scottish Schools: 2008/09* gives a breakdown destination by ethnic background. Over 90 per cent of those from Asian groups (except Asian-Other) entered positive destinations with 96 per cent of those from Chinese backgrounds entering these destinations compared with 85.6 per cent of all pupils.

¹³² Ibid.

¹³³ Higher Education Statistics Agency (2010) *Students in Higher Education Institutions 2008/09*. HESA.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ See n114 at p.40. http://www.ox.ac.uk/media/behind_the_headlines/101307.html

The proportion of ethnic minority groups entering employment is much smaller than for any of the white categories, with those from Chinese backgrounds being the lowest (2.9%). A much higher proportion of ethnic minorities enter further or higher education; the highest proportion of leavers entering further or higher education were those of Chinese origin (90.8 per cent), with lower figures for other Asian groups (Pakistani – 80.1 per cent, Indian – 76.8 per cent) and black leavers (76 per cent). However as with attainment figures above, data is not available for Black African, Black Caribbean or Gypsy Traveller pupils.

Wales

Historically the Welsh Government has had responsibility for education so that a number of differences in policy and legislation have developed. Most recently (April 2011) the Welsh Government introduced specific duties to help improve performance by public authorities in Wales of the general public sector duty contained in the Equality Act 2010.¹³⁸ The Commission in Wales will monitor implementation and compliance with these duties which include obligations around equality objective setting, pay differences and public procurement. The duties will apply to school governing bodies in Wales.

We note a report¹³⁹ from the Welsh Schools inspectorate Estyn which looked at how schools in Wales were implementing the duties on public authorities that were

previously contained in the Race Relations legislation.¹⁴⁰ This report found a mixed picture in terms of how many schools had meaningful and well-implemented race equality policies, with some very good examples in schools where there were higher proportions of students from ethnic minorities, but that in other schools which had lower proportions they had simply adopted model policies provided by local authorities. Estyn also found that only around half of the schools they visited had tailored the policies to meet their particular circumstances.

The Commission in Wales recognises the increasing impact of Cyber-bullying on the lives of many young people, and is concerned to work with the relevant authorities to ensure that addressing this issue is incorporated within future model policies.

The Commission notes that the National Assembly for Wales recently passed into law in Wales the Rights of Children's and Young Persons Measure.¹⁴¹ The Measure imposes a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols in exercise of their functions. The Measure is due to be implemented in two stages beginning in May 2012. The Commission will monitor its implementation.

¹³⁸ Section 149.

¹³⁹ Estyn (May 2009) *The Impact of Schools Race Equality Policies*. Estyn.

¹⁴⁰ The Race Relations (Amendment) Act 2000; race is now dealt with under the Equality Act 2010 and contained in the Public Sector Duty in section 149 *supra*.

¹⁴¹ The Measure received Royal Assent in March 2011.

The Commission recently published 'How Fair Is Wales',¹⁴² this sets the Commission's 2010 British Triennial Review in a Welsh context. In education the weight of evidence points to socioeconomic group as one of the sharpest divides in Welsh society affecting the largest number of people. In terms of race we note differences in attainment between ethnic groups. Here, it is clear that the differences are much more complex than simply a distinction between white and non-white groups. Chinese and Indian children on average perform better than children from white groups at age 16, while black, Pakistani and Bangladeshi pupils on average do worse. The Commission considers that in Wales much more should be done to reduce socio-economic disadvantage. The needs of boys and girls, black and other ethnic minority pupils, as well as disabled learners, need to be integral to that action.

Employment

...The Committee urges the State party to submit in its next periodic report more detailed information on achievements under the State party's programmes aim at narrowing the employment gap... among different ethnic groups.

Employment is one of the single most important contributors to the wellbeing of individuals. Lack of employment can impact on the enjoyment of other socio-economic benefits leading to disadvantage in other areas such as health, education and housing. Therefore, having equal access to employment is important for

all racial groups and it is encouraging to see employment gaps for ethnic groups narrowing over the last decade.

Despite the improved position for ethnic minorities in employment there still remain 'significant disparities and inequalities in different groups' experience of work'.¹⁴³ For example, only 1 in 4 Bangladeshi and Pakistani women works; 44 per cent of young black people between the ages of 22 and 24 are not in employment; 66 per cent of Pakistani men and 62 per cent of Bangladeshi men are not in employment; 49 per cent of Bangladeshi women and 44 per cent of Pakistani women are economically inactive.¹⁴⁴ The overall statistics are well documented in the Government's report and our own evidence supports this.

We commend the UK's action on narrowing the employment gap, for example implementation of the public service agreement target to improve the employment rate of ethnic minorities and establishment of the Ethnic Minority Employment Taskforce (EMETF).

However, much of the good work undertaken to tackle the employment gap could be put at risk by government proposals to tackle the economic crisis and on restructuring central government.

The key issues for the Commission in employment are:

- impact of the public spending cuts on ethnic minorities

¹⁴² Equality, human rights and good relations, March 2011.

¹⁴³ See n30 at p.18.

¹⁴⁴ Ibid at p.401.

- abandonment of initiatives to tackle the employment gap – public service agreements and the Ethnic Minority Employment Taskforce
- alternatives to employment for ethnic minorities – opportunities and threats, and
- labour exploitation of migrant workers.

Public sector spending cuts

It is anticipated that proposed spending cuts will lead to significant job losses in the public sector. This is a concern for the Commission, as over 36 per cent of ethnic minorities work across the public sector. The Commission has been sufficiently concerned about the proposed cuts to invoke its enforcement powers to assess the compliance of the Treasury with the Race Equality Duty.¹⁴⁵

Changes in the way that government intends to deliver public services, relying much more heavily on private and voluntary organisations, focuses attention on the experience of ethnic minority employment in the private sector.

Evidence suggests that ethnic minorities are more likely to experience discrimination in the private sector (35 per cent) than the public sector (4 per cent).¹⁴⁶ It is also well-documented that discrimination is more likely to occur in an economic recession and that ethnic minorities are hit hardest during these times. Recent labour force statistics show that in quarter four (December) 2010 the unemployment rate for ethnic minorities stood at 13 per cent. This is 5 percentage points higher than the rate for the whole of Great Britain.¹⁴⁷

It is therefore important that government consider the impact of the spending review overall on employment prospects for ethnic minorities. The Commission has previously highlighted these matters with government.¹⁴⁸

The Commission recommends the Committee asks government to:

- a) outline how it will ensure that the employment gap for ethnic minorities does not increase disproportionately during the recession, and**
- b) set targets for increasing ethnic minorities in senior posts including board level.**

¹⁴⁵ Our assessment will also look at the impact on gender and disability. To see the terms of reference go to Equality and Human Rights Commission (2010) Section 31 Assessment of HM Treasury, available at: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/section-31-assessment-of-hm-treasury/> The Fawcett Society unsuccessfully judicially reviewed the spending cuts because they had a disproportionate impact on women.

¹⁴⁶ See M. Wood, J. Hales, S. Purdon, T. Sejersen and O. Hayllar (2009) *A test for racial discrimination in recruitment practice in British cities*. DWP Research Report no. 607.

¹⁴⁷ Labour Force Survey – Q4 2010. This also shows that the ethnic minority inactivity rate increased by 0.8 per cent points which is 8.9 percentage points higher than for all of GB. The ethnic minority JSA claimant count has increased by 0.1 per cent for ethnic minorities whilst it has reduced by 0.4 per cent for GB as a whole.

¹⁴⁸ Equality and Human Rights Commission (May 2009) *Response of the Equality and Human Rights Commission to the Consultation: Tackling race inequalities*. Equality and Human Rights Commission.

Public Service Agreements

The State report highlights public service agreements (PSA)¹⁴⁹ as part of the overall strategy for tackling race inequalities. The Commission considers that the equality PSA was a useful tool for mainstreaming race equality across the public sector.

We note that the government intends to end the 'previous administration's complex system of Public Service Agreements' and replace these with business plans.¹⁵⁰ However, we do not consider that the equality objective under the PSA should be lost under the new regime. The Government should outline how it will address equality in its 'business plans'.

Ethnic Minority Employment Taskforce

The Government has disbanded the Ethnic Minority Employment Taskforce (EMETF) and replaced it with the Inter-Ministerial Equality Group (IMEG), chaired by the Minister for Equality with ministerial representation from each department. The mandate of the IMEG is much broader than EMETF. This is a welcome development. A broad mandate allows for more comprehensive consideration of the issues. Also, ministerial oversight of equality demonstrates a 'real' commitment to equality and gives it a high status.

The downside to this approach however is twofold. First, there may be a loss of specific focus on ethnic minority and employment issues. Secondly, exclusion of non-government voices means that the discussion is not open to independent scrutiny and it may be more difficult to influence the agenda of the IMEG.

The Government commitment to work with expert groups such as the independent Ethnic Minority Advisory Group (EMAG) is therefore to be welcomed.¹⁵¹ We would actively encourage this since we have been advised by stakeholders of the EMAG that such engagement is not yet happening. It would be helpful for the government to set out how the IMEG will address race equality in its mandate.

Alternatives to employment: self-employment and business enterprise

The anticipated high number of job losses in the public sector may lead more ethnic minorities to consider alternative forms of economic activity such as self-employment and business start-ups. The Government firmly supports private enterprise seeing it as essential to economic recovery.¹⁵² To this end, the Government has committed over a billion pounds to support enterprise and business start-up schemes and growth.¹⁵³ Ethnic minority groups have high rates of self-employment (7 per cent)¹⁵⁴ and

¹⁴⁹ Note PSA does not apply to Scotland.

¹⁵⁰ H M Treasury (8 June 2010) *Spending Review 2010 – the Government's approach*. H M Treasury, available at: http://www.hm-treasury.gov.uk/press_10_10.htm

¹⁵¹ See n3 at p.9.

¹⁵² See n150 above.

¹⁵³ Ibid. See also H M Treasury and Business Innovation and Skills (November 2010) *The Path to Strong Sustainable and Balanced Growth*. HM Treasury.

¹⁵⁴ It should however be noted that there is some variation between different ethnic groups. Self-employment rates for Black Africans (4 per cent) and Bangladeshis (5 per cent) are lower than for Pakistanis (11 per cent), Indians (7 per cent) and Chinese (9 per cent).

aspirations to start up business.¹⁵⁵ Therefore government initiatives to encourage business start-ups open up possibilities for ethnic minorities who may want to pursue self-employment or other business enterprise in the face of unemployment.¹⁵⁶

However, based on current evidence there are likely to be some challenges. First, research shows that access to finance can be a particular difficulty for some ethnic minority groups. Black African and Black Caribbean owned businesses are more likely to have financial applications rejected compared to white owned businesses. In the current economic climate, where conventional lenders are cautious about lending,¹⁵⁷ access to finance for ethnic minority owned businesses may become even more problematic. It is therefore important that the financial schemes¹⁵⁸ government are putting in place to support enterprise are also accessible to ethnic minority businesses.

Secondly, a high percentage of small businesses rely on public service contracts. Ethnic minority businesses are disproportionately small to medium sized

enterprises. Research by the Commission shows that ethnic minority businesses ‘face persistent barriers to obtaining procurement contracts’.¹⁵⁹ We note that the Government wants to ‘create a more competitive and transparent procurement system... [by] unlocking barriers to SMEs.’¹⁶⁰ This is a welcome development.

The Commission believes there should be more supplier diversity in procurement. We believe this could be achieved in a number of ways. For example, buyers could split contracts into price thresholds, ensure more transparency in the tender process and include equality in the contract specification and contract conditions.¹⁶¹ Monitoring will be key to identifying trends and barriers to ethnic minorities businesses in procuring contracts under the new arrangements. We would therefore encourage government to monitor the new arrangements in order to identify possible inequalities in the processes. Where any disparity is identified the Government should take appropriate action to remedy this.

¹⁵⁵ Black Africans (35 per cent) and Black Caribbean (18 per cent), see n30 at p.15.

¹⁵⁶ Research suggests that ethnic minority groups tend to be more entrepreneurial than their white counterparts, see *Ethnic Minority Business Forum, Small Business Service, DTI (undated) Ethnic minority business forum the way forward 2005-2008*. Ethnic Minority Business Forum.

¹⁵⁷ In 2009, 77 per cent of small business reported that terms and conditions for lending had got worse in the last calendar year, see Forum of Private Business (27 October 2009) *Government support for small businesses must not be sacrificed in public spending cuts says FPB*, available at: <http://www.fpb.org/page/734/Communications.htm>

¹⁵⁸ Some of the financial initiatives the Government will introduce to support business enterprise are set out in HM Treasury and BIS (November 2010) *The path to strong, sustainable and balanced growth*. HM Treasury and BIS. These include support investments into early stage SMEs with high growth potential, particularly in areas worst hit by the spending cuts, see p.11.

¹⁵⁹ Equality and Human Rights Commission (April 2010) *London 2012: Good practice guideline Procurement and employment*. Equality and Human Rights Commission.

¹⁶⁰ See n152 at p.50.

¹⁶¹ See n159 above.

Scotland

Scottish Government research from 2005¹⁶² demonstrates that those from an ethnic minority background are more likely to be self-employed than those who are of white origin. The highest rates of self-employment were in the Asian ethnic groups: Pakistani (32 per cent), Chinese (23 per cent), Indian (22 per cent), Bangladeshi (20 per cent) and Other South Asian (20 per cent) compared to only 10 per cent amongst the white Scottish population.

There are striking differences in participation in self-employment by gender according to the Scottish Government research. The rate for Pakistanis among males is 34 per cent, for Chinese 25 per cent and 23 per cent for Indians. These compare to 16.6, 15 and 15 per cent, respectively, for female rates of self-employment. Even with these lower rates for female self-employment, they are still well above the national rate for women in Scotland, which is only 6 per cent.

Data from the Scottish Government research also covers self-employment by religious groups (which is linked to ethnicity). It showed that 33 per cent of Sikhs, 29 per cent of Muslims and 27 per cent of those who are Jewish were self-employed. The lowest levels of self-employment were amongst Roman Catholics (8 per cent), Another Religion (12 per cent) and Christian (13 per cent).

According to Blake Stevenson (2010)¹⁶³ there is no up-to-date information about self-employment among ethnic minority groups in Scotland.

Blake Stevenson conclude from their baseline research into different economic sectors that “evidence from our data analysis, document review and stakeholder interviews highlighted numerous equality and diversity issues’ for different groups. These include: the under-representation of ethnic minority people in senior management positions and as directors; lower pay among ethnic minority people; discrimination and barriers to promotion among ethnic minority people.

The Commission recommends the Committee asks government to monitor the new arrangements for procurement and to act on any disparity identified regarding ethnic minority businesses.

Other indicators of people's experience of work

The Commission considers that the employment gap is only one of the indicators that relate to people's experience of work. We have identified others including pay gaps,¹⁶⁴ occupational segregation,¹⁶⁵ and discrimination in employment.¹⁶⁶

¹⁶² Scottish Government (2005) *Minority Ethnic Enterprise in Scotland*. Scottish Government, available at: <http://www.scotland.gov.uk/Publications/2005/06/20132742/27489> Accessed 23 April 2011.

¹⁶³ Blake-Stevenson (June 2010) *Equality and Diversity Baseline Information on Scotland's Key Economic Sectors, Scottish Enterprise & Highlands & Islands Enterprise*, available at: <http://www.scottish-enterprise.com/about-us/how-we-work/resources/research/sectors.aspx> Accessed 1 May 2011.

¹⁶⁴ See n30 at p.18.

¹⁶⁵ Ibid. We know from our research that certain groups are likely to be doing certain types of jobs. For example black women are more likely to cluster in healthcare and other related personal services occupations and Bangladeshi women appear to cluster in retail and educational assistant jobs. They are also over-represented in lower status, lower paying jobs.

¹⁶⁶ Ibid.

The ethnic pay gap is of particular concern for the Commission in this area. Black and Asian groups earn less than White British people with the same qualification levels. Although, it is worth noting that the pay penalty is larger for some ethnic minority groups than others. For example Pakistani and Bangladeshi Muslim men earned 13 per cent and 21 per cent less pay than might be expected given their qualifications, age and occupation.¹⁶⁷

The intersection of race and gender means that ethnic minority women face greater pay penalties. In 2004-07, for example, the pay gap was 21 per cent for Black African women and 26 per cent for Pakistani women compared to 16 per cent for British white women. Chinese and Pakistani Muslim women also tend to experience the largest pay penalties among all ethnic minority groups.

Migrant workers and labour exploitation

The Commission recognises that migrant workers experience labour exploitation and welcomes the signing and ratification of the Convention on Trafficking. However, the problem of exploitation of migrant workers is a serious concern which the Commission wishes to draw to the Committee's attention.

The Commission conducted an inquiry into recruitment and employment in the meat and poultry processing sector. We found that around 70 per cent of workers in that industry were migrant workers¹⁶⁸ This group were found to be particularly vulnerable to poor employment practices by employment agencies. They often felt pressurised into signing documents about employment rights; experienced racial discrimination (including segregation) and harassment; and were exposed to criminal exploitation.¹⁶⁹

Further evidence suggests that issues around health and safety and proper payment of wages, tax and national insurance are particular problems for migrant workers. These are the areas where non-compliance with licensing laws is most likely to occur.¹⁷⁰

The Commission considers that a key part of addressing migrant worker exploitation is an effective licensing authority with a broad remit to include a wide range of sectors where agency workers are at risk of exploitation.¹⁷¹

The Gangmasters Licensing Authority (GLA) is currently the licensing authority for labour providers. The Government has included the GLA in the Public Bodies Reform Bill.¹⁷² The Commission considers that the GLA should not be subject to the process and mechanisms to modify or abolish public bodies.¹⁷³

¹⁶⁷ Ibid.

¹⁶⁸ Equality and Human Rights Commission (March 2010) *Inquiry into recruitment and employment in the meat and poultry processing sector Report of the findings and recommendations*. Equality and Human Rights Commission.

¹⁶⁹ Ibid.

¹⁷⁰ Gangmasters Licensing Authority (2007) *Annual Review: Executive summary*, November 2007. Gangmasters Licensing Authority. Also see Gangmasters Licensing Authority (2008) *Annual Review: Executive summary*, November 2008. Gangmasters Licensing Authority.

¹⁷¹ See n168 above.

¹⁷² The effect of including a public body in the Bill means that Ministers would have the power to change the powers and functions of the GLA without parliamentary debate and scrutiny.

¹⁷³ The Commission in Wales has taken forward work on the inquiry and notes that the Welsh Government is intending to publish a handbook 'Migrant Matters', which is aimed at both employers and employees, later this year – with the aim of providing advice around best practice.

Scotland

Blake Stevenson highlighted the use of migrant workers in the tourism and food and drink sectors.¹⁷⁴ Their report notes that migrant workers often fill vacancies that arise due to a lack of local labour, or an unwillingness of local labour to perform certain roles (local labour is reported to be either not prepared to undertake the roles or remuneration being offered).¹⁷⁵ The issue of perception versus reality is also identified. Of those UK industry employers who actually employ migrant workers, 79 per cent felt that migrants had no additional training needs to those of local staff.

A Scottish Government study examining recent evidence on migration¹⁷⁶ considered the relationship between migration and the economy. It found that a number of studies, across sectors and regions of Scotland convey the same messages from employers, as reported by Blake Stevenson above.

The study referred to above¹⁷⁷ also considered employment practices and found that employers report that they do not discriminate in rates of pay between migrants and local workers, though their take-home pay may be less if they are recruited through agencies. Employers say they employ migrants in largely low paid work because of the type of work available, the need for English language in more

highly skilled work or the absence of UK recognised qualifications. The report also identified that studies have found evidence of non-compliance with employment law including breach of race discrimination and breach of regulations in relation to working time and health and safety.

The Migrant Rights Network comments on the fragmentation of migrant groups in that support may come from groups working with particular migrant groups, and groups working from a race equality or diversity and equality perspective may perceive migrants as being from the A8 States, “white” and therefore not included within their work. This fails to recognise commonalities such as feelings of “otherness” or language barriers.

Health

National recognition of health issues for ethnic minority communities in Great Britain has undergone significant development over the past decade; with government seeking improvements in relative outcomes, access to services, and service quality.

Both the previous and current Government now recognise race as one of the key factors for national frameworks aimed at reducing health inequalities or improving service quality and the Government should be commended for this aspiration.¹⁷⁸

¹⁷⁴ See n163 at p.52.

¹⁷⁵ Ibid.

¹⁷⁶ Rolfe, H. and Metcalf, H. (2009) Recent migration into Scotland, the evidence base. Scottish Government, available at: <http://www.scotland.gov.uk/Publications/2009/02/23154109/10> Accessed 23 April 2011.

¹⁷⁷ See n163 at p.52.

¹⁷⁸ See Equality impact assessment for Health and Social care Bill Jan 2011, available at: http://www.dh.gov.uk/prod_consum_dh/groups/dh_123634.pdf.

The key issues for the Commission in relation to health are:

- health inequalities for ethnic minorities
- lack of access to health services, and
- poor quality of services for ethnic minorities.

Health inequalities: the data

Health inequalities have been recognised as a key issue in a series of reports, up to that produced by Professor Marmot for the Department of Health in 2010.¹⁷⁹ These have primarily recognised health inequalities around socioeconomic factors which remain the dominant precursors of ill health or early death. In a post-industrial society, however, it has become clear that other factors also now feed health inequality and these include educational and employment status, race, culture and access to preventative health; all of which are key issues for ethnic minority communities.

The Spearhead programmes, cited in paragraph 1 of the State's report, were set up primarily around socioeconomic issues but they have helped demonstrate wider determinants of health inequality. For example, they arguably had most impact in the Spearhead pilot areas when such factors as race, gender and age helped to achieve better than national average improvements for early diagnosis of cardiovascular disease, or early stage detections of cancer amongst men aged under 75, in communities with a high ethnic minority population.¹⁸⁰

The cited use of race health outcome statistics in paragraph 2 of the Government's submission is now also welcome and represents a major opportunity over the next decade to target resources at these communities. The Commissions' own recent Triennial Review¹⁸¹ has also identified such statistics around ethnic minority communities. Over the next three years the Commission, as an independent regulator, will focus on such key challenges for government as reducing levels of infant mortality within some ethnic minority communities and extending life expectancy for ethnic minority communities, as indicators of how well the Government is showing due regard to its need to improve health outcomes for ethnic minority people.

This will, however, be a challenge because any improvements need to be higher than for the community as a whole, not simply in absolute terms, nor in such ways as to focus only on selective improvements without giving the overall picture relative to the most affluent host communities. The reported statistics fail to stress that absolute improvements do not sufficiently recognise that relative inequalities for communities can also worsen even if people generally live longer, with the most affluent gaining benefits more rapidly than others. The much-reported work of Professor Richard Wilkinson for the World Health

¹⁷⁹ See www.ucl.ac.uk/gheg/marmotreview

¹⁸⁰ See Department of Health (2008) *Progress and Next Steps; Health Inequalities 2008*, available at: www.dh.gov.uk

¹⁸¹ See n30 at p.18.

Organisation shows that the UK with higher than average wealth inequalities has resulting higher levels of health inequality. Ethnic minority communities will need to also have higher than average improvements in their relative wealth to improve their health status, and some ethnic minority communities are amongst the poorest in the UK.

The Government's recognition that the general and specific equality duties in the EA are key tools by which national aspirations can be embedded into outcomes at local levels is to be welcomed. So far, however, this has not been matched in practice. A monitoring review of English Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) by the Commission in 2010 showed a poor join up between any national aspirations around tackling health inequalities and how these have been unpacked by local service commissioners within their race or other equality schemes. The SHAs and PCTs will be abolished over the next 2-3 years but there is as yet no good evidence that their replacement as commissioners by local consortia of general practitioners will pay more attention to the health risks or needs of ethnic minority communities. We are also aware of other studies which suggest a possible lack of sufficient join up between the need to tackle racial and other forms of discrimination with local hospital strategies in such areas

as cancer care.¹⁸² The Government should outline the steps it will take to ensure that equality is embedded more widely at both local and national levels to improve health equality for ethnic minority groups.

Access to services: more focus on local action

Ethnic minority communities should benefit from modest increases in access to primary care provision planned for the poorest UK areas, because they are disproportionately resident in these areas. The performance to date of preventative screening and associated preventative services also suggests these do not sufficiently reach ethnic minority communities.

The Commission would argue that while the research cited in paragraph 5 of the State report is to be welcomed it is now less important than improved action at local levels. For example, the Spearheads already show that greater specificity in screening achieves results. In addition some very notable health bodies, such as Imperial College London have illustrated since 2008 that action targeted at the health risks of ethnic minority communities provides major cost benefits. There is also well reported

¹⁸² Anne Fearfull, Nicolina Kamenou (2007) 'Exploring the policy and research implications for the British National Health Service and its customers', Equal Opportunities International Vol. 26, Issue 4, pp.305-318.

There is also well reported evidence that the higher need for organ donation for and from ethnic minority communities is best dealt with by such direct action and engagement between health professionals and these communities.

The welcome intentions around screening and the eventual value of the cited NHS Equality and Diversity Council have also to be contrasted with concerns that other potentially preventative services do not yet adequately reach ethnic minority communities. For example, another area concerns greater use of what are termed ‘personalised’ modes of both health and social care provision. These feature in the reform plans of government and in effect help the recipient to ‘buy’ their care or treatments with funding support.¹⁸³ They could help to provide more early preventative care as well as give more control and independence to service users. The Commission’s own findings on access to personalised services, however, illustrates that they are hard to reach for diverse communities, even though these services can prevent later health emergencies for groups such as Gypsies and Travellers or for young men with mental health conditions.¹⁸⁴ At the time of writing this report, there is inadequate evidence that this initiative is sufficiently being targeted at ethnic minority communities who could be just the ones to benefit most from them.

The Commission recommends the Committee asks government what steps it will take to ensure that engagement between local health planners, commissioners and providers is measurably reaching ethnic minorities and other diverse communities to a greater extent than is recorded at present.

Service quality: tackling discrimination

The aim and intention of the UK Government to put patients at the heart of the NHS and to focus on such issues as service quality and tackling discrimination in its reform programme are to be commended. It should be noted that the Government intends to increase the use of less invasive or institutional modes of mental health care which could address concerns about the disproportionate numbers of black men being consigned to the most institutional and restrictive modes of mental health treatment.

¹⁸³ The previous Government also considered such reform.

¹⁸⁴ See: <http://www.equalityhumanrights.com/key-projects/care-and-support/access-to-advocacy-and-personalisation/>

The 'Count Me In' programme, which was designed to support the Department of Health's five-year action plan for improving mental health services for BME communities has, since 2005, sought to monitor these services. In April 2011, the results of the programme were published.

The key findings of the report are:

- Admission rates remain higher than average among some ethnic minority groups, especially Black and White/Black Mixed groups
- The numbers of detained patients under the Mental Health Act are higher than average among the Black, White/Black Caribbean Mixed and Other White groups (but not in other ethnic groups).
- The rates for detained patients who were placed on a community treatment order (CTO) are higher among south Asian and Black groups.
- Seclusion rates are generally higher than average for Black, White/Black Mixed and Other White Groups. (Seclusion is the supervised confinement of a patient in a room, which may be locked to protect others from harm.)

This key analysis should form part of the impact assessment of the current service proposals for ethnic minority communities given its usefulness at identifying inequalities in mental health services. It is therefore disappointing that the 'Count Me In' programme has come to the end of its life-span and it is not clear

whether it will be replaced in some other form. The UK Government seeks to reduce what it perceives as an onerous regulatory landscape in health, but the Commission would suggest that major changes can have adverse negative impacts on those like ethnic minority communities who face the greatest likelihood of discrimination or poor service quality unless there is robust regulation on their behalf.

The provision of mental health services is a long standing bell-weather for ethnic minority communities on how race discrimination is being tackled in UK health services. The Commission has a formal relationship with the (English) Department of Health to monitor its equality performance in key areas, including these services. In 2010, the government strategies around mental health were announced which were preceded by impact assessments that recognised the disproportionate poor services (and outcomes) for ethnic minority communities. There is growing concern amongst authoritative NGOs promoting race equality such as AFIYA Trust, Race on the Agenda (ROTA) and the National Survivor User Network that it is difficult to determine where the original race impact assessment features in current plans for these services. The equality impact assessment however does acknowledge the data and evidence on racial inequality in mental health services, but there is a clear disconnect with the actual strategy.¹⁸⁵

¹⁸⁵ See *Guardian Society* 1 March 2011.

The Commission considers that such key service quality indicators for the ethnic minority communities as ‘Count Me In’ are retained and used alongside other more local data, and that they are used to make the NHS truly patient centred.

Wales

The Commission is aware of work done in North Wales that has identified particular barriers facing ethnic minority groups accessing healthcare services.¹⁸⁶ This report recommended that methods of engaging ethnic minority groups could be increased by building relationships with voluntary sector and community groups to improve local health services as well as taking action such as providing cultural awareness training for staff.

The introduction of specific duties in Wales will require engagement as part of Welsh public authorities’ compliance with those duties and the Commission will monitor compliance with these provisions. In terms of mental health the Commission is aware of recent work by the mental health charity Mind Cymru.¹⁸⁷ This highlights that whilst only 5.2 per cent of the Welsh population are of ethnic minority origin, 9.3 per cent of people in mental health environments are from ethnic minority groups. We note that the Welsh Government has taken positive steps in addressing mental health advocacy and diagnosis¹⁸⁸ but action needs to be taken to understand and address the higher proportion of black and ethnic minority

groups. Those from ethnic minority groups may experience multiple discrimination based on their mental health and ethnic background.

The Commission recommends the Committee asks government to outline:

**a) its intention in respect of retaining the ‘Count Me In’ programme, and
b) how it will effectively tackle the disproportionately high number of ethnic minority patients in mental health institutions.**

Scotland

Gruer et al.¹⁸⁹ summarised the Scottish position succinctly when they said: ‘We know surprisingly little about the health status of ethnic minority groups in Scotland. This is largely because ethnicity is not currently recorded on death certificates and rarely on health service records.

The Commission has however recently been contacted by the General Registry of Scotland who are proposing to start collection of ethnicity information on death certificates, a move which we welcome. Only 15 per cent of hospital admission records and 18 per cent of cancer registration data currently have an ethnic code. There are no national analyses by ethnicity of primary care data. The Scottish Diabetes Register has an ethnic code on 60 per cent of records.’

¹⁸⁶ See Hilary Nicholas (June 2010) *A report on the health/health promotion needs of the Black and Minority Ethnic Communities*, in North Wales Public Health Practitioner, Conwy & Denbighshire Local Public Health Team, Public Health Wales.

¹⁸⁷ Making Equality a Reality – Fourth Briefing paper, available at: <http://www.mind.org.uk/news/show/4667>

¹⁸⁸ See Mental Health (Wales) Measure 2010.

¹⁸⁹ Gruer, L. et al. (2009) *Health in our multi-ethnic Scotland*. Scottish Ethnicity and Health Research Strategy Group, NHS Health Scotland, available at: <http://www.healthscotland.com/documents/3768.aspx> Accessed 22 April 2011.

This study made a number of recommendations including a retrocoding project which is likely to produce results for mortality and hospital admissions in relation to cardiovascular disease, as well as maternal and child health.

It is important to note that recording of equality data has improved significantly across health boards in Scotland though collection rates remain low.¹⁹⁰ Examples include outpatient monitoring where the Scottish average is 27.4 per cent in the quarter ending September 2010. Five boards have above average data collection rates but vary from 99.5 per cent (Golden Jubilee Hospital) to 36.8 per cent (Grampian), and Tayside is persistently below 1 per cent.

The Commission is extremely concerned about the slow progress towards full data capture and has written to the Health Department about this issue. We are further concerned that whilst some Boards are making good progress on data capture, in the areas which the majority of Scotland ethnic minorities are resident this has been particularly slow.

The Commission recommends that the Committee ask the Scottish Government what plans they have to ensure that proper data on ethnicity in primary and secondary care is available to aid planning.

Health inequalities and ethnic minority communities

Gruer et al. (2009) also reviewed research since the 1960s and identified that whilst research had focused on some conditions that affected ethnic minorities more such as rickets, coronary heart disease and diabetes, less attention had been paid to conditions such as cancer and stroke that may be as common in ethnic minority groups as in the majority population.

A major review by Gordon et al. of health information about different population groups¹⁹¹ reports that 'the complexity of understanding health inequalities between different ethnic groups is further compounded by the lack of data for different ethnic groups in Scotland on health outcomes, health-related behaviors and use of services'. (Note: Health-risk behaviors may include aspects such as smoking, use of alcohol, diet and sexual health awareness and behaviour.)

The Information Services Division of NHS Scotland is reporting on progress in improving data collection for equality and diversity monitoring of patients.¹⁹²

The incidence of specific health conditions can vary by ethnic group. The review by Gordon et al. uses evidence from a study conducted in Scotland by Fischbacher which

¹⁹⁰ Jamieson, J. (February 2011) *Improving Data Collection for equality and diversity monitoring. All Scotland. Ethnicity completeness in SMRO1 and SMRO0*. ISD Scotland, NHS. Scotland, available at: http://www.isdscotland.org/isd/files/Briefing%20Paper0211-Feb11%20_JJ.pdf Accessed 01 May 2011.

¹⁹¹ Gordon, D. et al. (January 2010) *Dimensions of Diversity: Population differences and health improvement opportunities*. NHS Health Scotland, available at: <http://www.scotpho.org.uk/diversityreport/> Accessed 23 April 2011.

¹⁹² Jamieson, J. *Improving data collection for equality and diversity monitoring (web pages only)*. ISD Scotland, available at: www.isdscotland.org/isd/5826.html Accessed 01 May 2011.

found that diabetes in South Asians was around three to four times higher than that among non-South Asians – and yet Gruer et al. (2009), mentioned earlier, points to ethnic coding of only 60 per cent for diabetes patients in 2009 though this figure is likely to have improved.

A second study by Fischbacher (also noted in Gordon et al.) found the incidence of acute myocardial infarction (AMI) to be higher among South Asians than non-South Asians living in Scotland although survival following AMI was better among South Asians, possibly reflecting poor survival of non-South Asians in Scotland. AMI is the leading cause of death in Scotland in 2007/09 (5,000 deaths or nearly 9 per cent) according to the Scottish Public Health Observatory.¹⁹³

Gordon et al. (2010) refers to some studies in Glasgow and Edinburgh on mental health and ethnic minority groups though the general challenge remains the lack of information on prevalence data. The studies suggest that different cultures may have a different understanding of mental illness and wellbeing, different attitudes towards disclosure of mental health conditions and different presentation of symptoms which may ‘account for the apparently lower levels of mental health problems among South Asian and Chinese populations’. Gordon

et al. also report that national research in Scotland has suggested that levels of unreported psychological distress among Asian communities, and particularly Asian women, are high.

The Commission is concerned that the majority of Scottish health surveys or research into specific conditions do not refer to the health of ethnic minorities. This absence of data masks real problems experienced by ethnic minorities and often reported in community based surveys. The lack of data also causes a cyclical problem – a lack of evidence is taken as a lack of need and services are planned in ways which do not address ethnic minority health concerns or potentially different service access requirements.

The Commission recommends the Committee ask the Scottish Government what steps they will take to ensure that research and surveys commissioned by the Scottish Government, or Scottish Health Board, is inclusive of ethnicity in its design and reporting, making plans for booster samples to be conducted where necessary.

¹⁹³ *Population Dynamics. Deaths: Most Frequent Causes of Death*. Scottish Public Health Observatory (web pages only, available at: http://www.scotpho.org.uk/home/Populationdynamics/Deaths/deaths_data/deaths_top10causes.asp Accessed 01 May 2011.

Gypsies and Travellers

The Committee expresses concern about the discrimination faced by Roma/Gypsies/ Travellers that is reflected, inter alia, in their higher child mortality rate, exclusions from schools, shorter life expectancy, poor housing conditions, lack of available camping sites, high unemployment rate and limited access to health services. The Committee draws the attention of the State party to its general recommendation XXVII on discrimination against Roma and recommends that the State party develop further appropriate modalities of communication and dialogue between Roma/Gypsy/Traveller communities and central authorities. It also recommends adopting national strategies and programmes with a view to improving the situation of the Roma/Gypsies/Travellers against discrimination by State bodies, persons or organisations.

The Commission welcomes the Committee's acknowledgement of the impact of policies, national and local, on Gypsies and Traveller communities. This group continues to experience some of the worse forms of discrimination in the enjoyment of the rights set out in the Convention.¹⁹⁴ In recognition of the particular situation of Gypsy and Travellers in Great Britain, we have dedicated this section of the report to what we consider to be some of the key

issues affecting these groups in relation to the Convention. These are:

- lack of appropriate and secure accommodation
- lower than average health outcomes for Gypsies and Travellers
- lower than average educational outcomes
- high rates of economic exclusion, and
- negative and discriminatory media reporting.

The Commission welcomes the various initiatives by the UK to improve the situation of Gypsies and Travellers.

However, we consider that there is still scope for improvement in all areas identified by the Committee.

Accommodation

Our evidence shows that there is a relationship between the inequalities experienced by Gypsies and Travellers and the lack of decent, appropriate and secure accommodation.¹⁹⁵ Some local authorities have pioneered ways of meeting the needs of these nomadic groups to preserve their traditional lifestyle, while accessing health and education services and maintaining good relations with other communities.

Our reviews of progress by local authorities in meeting the accommodation needs of Gypsies and Travellers show that provision is patchy and remains insufficient. It also revealed a slowing down in progress over

¹⁹⁴ As the Chair of the Commission in his former role once noted, 'discrimination against Gypsies and Travellers is the last remaining 'respectable form' of racism'.

¹⁹⁵ <http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/>

the period 2008-2010 and that the previous 2011 target, to increase the number of authorised sites, has not been met.¹⁹⁶

The current shortfall in site provision is a result of various factors. These include, for example, historic changes in planning and housing legislation which has led to a reduction in the number of authorised stopping places; government measures that have failed to address the shortfall in sites; and local objection to unauthorised sites especially on Green Belt land. Negative media coverage also has a ‘knock on effect’ on public and media perceptions in areas which have identified need. This makes it politically challenging to deliver against need.

Dale Farm, in Basildon, Essex, provides a good example of the issues. For over 40 years, there have been a number of authorised pitches at Dale Farm with Council permission to develop the land for residential purposes. Over the years, more families came to Dale Farm in search of accommodation as the number of authorised sites and stopping places across the country decreased. However, the land they bought adjacent to the authorised sites (a disused scrap heap) was protected Green Belt land, making development on it illegal. The Travellers applied for retrospective planning permission. The settled community objected to this as the same option would not apply to them. The lack

of alternative authorised sites remains the central barrier to progress, in Dale Farm and other smaller unauthorised encampments or developments. It perpetuates the lack of access to vital services and related poor life chances of Gypsy and Traveller communities and impacts negatively on community tensions.¹⁹⁷

The Government has committed to ‘fairness’ in the planning system and created new incentives for local authorities to provide authorised sites, through the new Homes Bonus Scheme.¹⁹⁸ The Commission has been in discussion with the DCLG to influence the new Government policy agenda and welcomes these initial commitments as part of a wider strategy. The Government has begun to articulate their strategy through media releases and the Localism Bill.¹⁹⁹ The Commission continues to engage with DCLG on relevant issues, including significant changes to housing, homelessness and planning provisions.²⁰⁰

¹⁹⁶ Evidence suggests that there are about 200 legal sites for 135 local authorities. <http://www.communities.gov.uk/publications/planningandbuilding/circulargypsytraveller>.

¹⁹⁷ See Review of Inequalities Experienced by Gypsies and Travellers, March 2009: http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf See also n30./

¹⁹⁸ <http://www.communities.gov.uk/news/corporate/1700758>

¹⁹⁹ At the time of writing this report the Localism Bill is progressing through Parliament.

²⁰⁰ <http://www.equalityhumanrights.com/legal-and-policy/parliamentary-briefings/parliamentary-briefing-localism-bill/>

The Localism Bill is the legislative foundation to the Government's decentralisation and localism agenda. In relation to Gypsies and Travellers, the Bill's provisions aim to do two things which we consider could be problematic. First, it moves away from central government targets and the regional delivery framework of Regional Spatial Strategies (RSS). Secondly, it seeks to end retrospective planning permission and strengthen local authority powers to evict unauthorised encampments and developments. The Government has also indicated its intention to revoke Planning Circular 1/2006 but has not yet indicated what will replace this.

The Commission's most recent research into local authority site provision outlines many of the key barriers to provision.²⁰¹ These include funding and public and media perceptions and myths about Gypsies and Travellers and sites. While this research indicates that a rethink in strategy may be appropriate, the Commission is concerned that a purely local approach may not be adequate to ensure provision of a mixed economy of sites (public, private, permanent, temporary and transit), particularly when there is no existing duty to address needs identified through Gypsy and Traveller Accommodation Needs Assessments (GTAAs).

It is also a concern that housing authorities appear to adopt a position by which they seek to discharge their duties under

homelessness legislation by offering Gypsies and Travellers 'bricks and mortar' housing. The consequence of this is that if the individual refuses such an offer they will be deemed 'intentionally homeless' and will have no further right to housing.

The Government should support local authorities to demonstrate compatibility with the Human Rights Act (2008) and the Public Sector Equality Duty (April 2011) in developing housing, homelessness, planning and sustainable communities strategies. It should also engage Gypsy and Traveller communities in decision making which affects their lives and encourage cross boundary cooperation. In addition it should monitor and evaluate local authority site delivery and maintenance and applications for Homes Bonus Scheme for site development and report to Parliament annually on progress.²⁰²

Wales

The Commission has welcomed the work of the dedicated 'Gypsy and Traveller' team within the Welsh Assembly Government and its efforts to ensure that the needs of this group are reflected in all of the devolved policies. In January 2011 the Welsh Assembly Government collected data under the voluntary Bi-annual Gypsy and Traveller Caravan Count in Wales, previously collected by DCLG. The returns have provided an opportunity for comparisons

²⁰¹ This was recommended by the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers (2007), See: http://www.equalityhumanrights.com/uploaded_files/research/rr68_gt_web_version.pdf

²⁰² <http://www.communities.gov.uk/publications/housing/Taskgroupreport>

with January 2010 across 14 authority areas. This comparison shows a decrease in the number of local authority provided pitches and an increase in the number of caravans on unauthorised sites.

The lack of sufficient authorised sites not only continues to be a cause of tension within communities, but has significant impact on the health and wellbeing of Gypsies and Travellers in Wales, including access to vital services, an issue reflected in a recent decision to grant temporary planning permission by a Planning Inspector in North Wales (February 2011):

‘The evidence clearly indicates that in all probability the consequences of the current unmet need for Gypsy and Traveller sites is that refusing permission and requiring cessation of the current, albeit unauthorised, use would be to return the present occupants to a transient roadside or similar existence, with all of the dislocation to their present family, healthcare and educational arrangements that would come with this.’

The Commission considers that reporting on location of Gypsy and Traveller caravans across Wales provides a useful snapshot as part of the monitoring of changes.

The Commission recommends the Committee ask government to:

- a) provide adequate and decent sites for Gypsy and Traveller communities, and**
- b) consider ways of obtaining comprehensive information across the whole of Wales in relation to site provision.**

Scotland

Overview

There is little hard statistical data on which to base discussions about Gypsy Traveller communities in Scotland despite being the subject of considerable press and parliamentary debate. However several different and distinct ethnic groups (for the purposes of the law) can be identified as being present in Scotland: Scottish Gypsy Travellers, English Romanies and/or Travellers, Irish Travellers, and Roma from Eastern Europe. Show people are not considered to be members of the Gypsy Traveller community and have no protection in domestic equality law (nor are they seeking such status).

This section concentrates on issues relating to Scottish, English and Irish Travellers who are the most prevalent and widespread groups.

The Scottish Parliament’s Equal Opportunities Committee has taken evidence on Gypsy Traveller issues on two occasions, in 2001 and 2005, and noted the significant problems that the communities face. However, since the publication of the last report little has been done to audit progress towards achieving the recommendations made by the Committee.

In 2010, in response to growing tensions in some parts of Scotland, the Commission identified three areas of public policy which need to change if tension between Gypsy Travellers and settled communities is to be reduced.

- Land – sufficient, acceptable land needs to identified – in public or private ownership – to meet the needs of the community, particularly in the summer months.

- Leadership – to achieve this MSPs and local authority members must show leadership in identifying sites, reducing prejudice and increasing understanding between communities. Gypsy Traveller communities also need to exercise leadership internally within their own communities.
- Legitimacy – there needs to be an acceptance that Gypsy Travellers have the right to their lifestyle and accommodations must be made to ensure that an infrastructure is in place to enable travelling.

Accommodation

The Commission published research in 2010 looking at the most recent Government census (or 'biannual count'). The Commission accepts that this data is flawed and only identifies those people who are either in official sites or 'on the road' at particular points of the year, and does not include the majority of Travellers who for various reasons may not be travelling at that point in time.

The research identified that 'Caravan numbers in Scotland are relatively low and numbers have changed little since 2006' although it noted that the vast majority of sites were in public ownership, with privately run 'community sites' the exception. The report noted that travelling patterns in Scotland were highly seasonal and that shortfalls in accommodation in the summer months were most problematic. The research identified that only 5 out of 32 Councils in Scotland had an accurate or up-to-date estimate of likely demand in summer months and that only a quarter of Councils had estimates of new demand for either residential or temporary sites.

We note that the Scottish Government has now withdrawn the financial aid programme to Local Authorities to enable them to develop transit or permanent sites. The Commission believes that the lack of funding available will hamper Local Authorities in the current climate of financial cuts particularly as there is often strong local opposition to such provision.

This pressure on land has been most evident in the North East of Scotland during the summer months of 2009-10 when Irish Travellers started to come to the area in greater numbers and camping in high visibility areas of towns and cities. This led to considerable press and media attention, much of it negative. A minority of travellers were responsible for damage to property and trespass which has given rise to petitions to the Scottish Parliament, particularly in relation to support to private individuals whose land is being trespassed on.

In response to this growing tension evident in the community the Commission again lobbied Scottish Ministers seeking a regional approach to the provision of accommodation, and stating our concerns that the tensions could spill over into confrontations should the accommodation issue not be resolved. In November 2010 the Scottish Minister for Housing convened a short life working group of the Police, Gypsy Travellers, and local authorities to seek solutions to the issue, which included opening up land to Travellers to take the pressure off town centres. We strongly support this approach and recommend that its principles are extended to other areas of Scotland. The Commission also reissued a publication on Media Reporting of Gypsy Traveller issues.

The Commission recommends that the Committee asks the Scottish Government what plans they have to:

- a) address the issue of site provision for Scottish, and other, Gypsy Travellers given the clear mismatch of supply and demand evident in the Commission research. In particular we recommend that the Committee asks the Scottish Government what plans it has to offer further financial aid to Local Authorities to assist in site development.**
- b) ensure that leadership is shown at a senior level by Ministers, by officials in the Scottish Government, and in their partnership with Local Authorities to address issues of community opposition to local site provision.**
- c) promote the inclusion of Scottish, and other, Gypsy Travellers as part of the fabric of Scottish society.**

‘Travellers are dying 10-12 years earlier than the average life span of a person living in Britain today. They also experience an infant mortality which is three times higher than the national average and are also eighteen times more likely to experience the death of a child.’²⁰⁵

The Sheffield Report also shows that Irish Traveller men and women experience chronic ill health; often with more than one condition. They also face high levels of depression. Poor psychological health is often seen in the context of multiple difficulties, such as discrimination, racism and harassment, as well as frequent evictions and the instability caused by this. Alcohol consumption is often used as a coping strategy, and drug use among Traveller youths is also widely reported and feared.²⁰⁶

The Commission does not consider that the concerns raised in relation to shorter life expectancies and lower access to health provision has been adequately addressed in the State report. The statistics demonstrate that they have not improved since the last reporting session. The Government will need to take more positive steps to address the health inequalities of Gypsies and Travellers ensuring that the new commissioning framework effectively responds to these challenges.

Health

Overall health for the Traveller community is poorer than the general population and also poorer than others in socially deprived areas.²⁰³ They also have poor health expectations and make limited use of healthcare provision.²⁰⁴ The disparities between Travellers and the general population are shown in the Leeds Report:

²⁰³ Parry et al. (2004) *The Health Status of Gypsies and Travellers: Report of Department of Health Inequalities in Health Research*, University of Sheffield.

²⁰⁴ Van Cleemput, P., Parry, G., Thomas, K. et al. (2007) *The health related beliefs and experience of Gypsies and Travellers: a qualitative study*, *Journal of Epidemiology and Community Health*, 61(3), pp 205-210.

²⁰⁵ M. Baker MBE (2005) *Leeds Baseline Census 2004-2005*.

²⁰⁶ See also Appleton, L., Hagan, T., Goward, P., Repper, J. and Wilson, R. (2003) Smail's contribution to understanding the needs of the socially excluded: the case of Gypsy Traveller Women. *Clinical Psychology* (24), 40-6; Bowers, J. (2004). *Travellers' tales*. *Health Service Journal* Dec. 114 (5936) 26-8; Clohessy McGinley, A. (2002) *Determining Factors Influencing Traveller Men to Access or Avail of Health Services: An Exploratory Study*.

Scotland

The issue of Gypsy Traveller health in Scotland is largely un-researched meaning that inferences about life expectancy, child mortality, and general health can only be inferred from GB data or English-specific research. There is little evidence that hand held records have made a significant impact on the health of the community. The Commission believes that the issue of health is closely linked to that of land and that until the accommodation issue is resolved it is unlikely that we will see a significant increase in access to primary or secondary care.

Education

As the periodic reports submitted by the government acknowledge, the education attainment rates for Gypsies and Travellers remain extremely poor. We also consider that bullying and harassment and exclusions are further causes for concern.

Attainment levels

The issue of improving educational outcomes for Gypsy, Roma and Traveller pupils has been a focus of research and policy for some time. Research shows that Gypsy and Traveller children are well below the average with only 9 per cent of children from these groups achieving this level. Their progress has fallen further behind since

1997. They are the only ethnic groups whose performance has deteriorated sharply in recent years, dropping from 42 per cent and 23 per cent of pupils respectively getting five GCSEs A*-C in 2003, to just 16 per cent and 14 per cent in 2007.²⁰⁷ The problem appears to be particularly serious for secondary age pupils. Evidence suggests that where Gypsy and Traveller pupils do transfer successfully to secondary school, their attendance is unlikely to continue beyond the age of 14.²⁰⁸ Ultimately, recent figures have found that only 38 per cent of Irish Travellers reach statutory leaving age.²⁰⁹

Research by the Department for Education, using an analysis of the national pupil database over a five year period, shows higher rates of Free School Meals eligibility for Irish Travellers. This suggests a connection between poverty and disrupted educational experience. Irish Traveller pupils are reported to have the highest level of Special Educational Needs of all ethnic minority groups. This may be the result of families lacking information or experiencing problems accessing appropriate healthcare, or schools failing to respond appropriately to cultural difference. Overall, the fact that such pupils tend to have low prior attainment, have Special Education Needs and are entitled to Free School Meals was found likely to have been affected by cultural factors.²¹⁰

²⁰⁷ Department for Children, School and Family and National Office for Statistics (2010a) see also n21 at p.15.

²⁰⁸ See Department for Education and Skills, *Ethnicity and Education: The Evidence on Minority Ethnic Pupils aged 5-16 (2006)*. See also, Derrington, C. and Kendall, S. (2004) *Gypsy Traveller Students in Secondary Schools: Culture, Identity and Achievement*. Stoke on Trent: Trentham Books.

²⁰⁹ Department for Education (Oct 2010) *Improving the outcomes for Gypsy, Roma and Traveller Pupils: final report* DoE.

²¹⁰ Ibid.

The Commission is therefore concerned about the Government's proposals to withdraw funding to support Traveller Education Teachers which have been the only dedicated resources working towards promoting higher attainment levels. It is also concerned about the withdrawal of funding for the annual Gypsy Roma Traveller history month, which was instrumental in portraying the positive image of Traveller culture and traditions.

Bullying and harassment

Research examining the experiences of children and young people from Roma, Traveller or Gypsy communities is sparse, particularly regarding bullying and the extent to which these children experience it. The Commission review of equality in Great Britain²¹¹ looks at the widespread prejudice against Traveller communities and the relationship this bears toward bullying in schools and the wider community.

By way of illustration, a small-scale study on the experiences of Gypsy and Show Travellers in Scottish Schools provides an insight into the lives of these children and young people.²¹² Both Gypsy and Show Traveller children attending mainstream schools experienced frequent bullying and name-calling based on their racial and ethnic backgrounds. Parents and children reported this behaviour to be persistent and harmful, negatively affecting the child's

happiness and involvement in the school community. Parents indicated that they believed name-calling was an inevitable aspect of sending their children to school. However, many of the children indicated that they believed retaliation to be the only available response, as teachers did not listen or believe them when reporting their experiences, or simply failed to take action. As a result, children would either avoid going to school, or retaliate against their aggressors, eventually becoming excluded or suspended for their behaviour.

The role of school staff appears to be fundamental in improving the experiences of Roma, Gypsy and Traveller young people. This research showed that teachers failed to distinguish these children from the rest of their peers, and in doing so did not acknowledge their unique cultural background and experiences. Rather than treating all pupils as a homogenous group, it is important to recognise children's ethnic and cultural distinctions, thereby embracing the difference and diversity within the school, and using this to inform an ethos of inclusion and acceptance.

²¹¹ See n30 at p.18.

²¹² Lloyd, G. and Stead, J. (2001) *The boys and girls not calling me names and the teachers to believe me. Name calling and the experiences of Travellers in school. Children & Society*, 15 (5), pp.361-374.

Exclusions

Pupils from Irish Traveller backgrounds and Gypsy/Roma pupils, have some of the highest rates of school exclusions (30 per 10,000 pupils and 38 per 10,000 pupils). Taken together these rates are between 3-4 times the national average.²¹³ As noted above there is a link between exclusion rates and attainment and the treatment of Traveller groups in schools.

In the Commission's view, the Government needs to take further action to improve educational outcomes for Traveller children, ensuring that schools have the resources for creating a learning culture which encourages attendance, improves attainment and tackles bullying.

Wales

In autumn 2009, the Welsh Assembly Government launched a draft strategy document 'A Road Less Travelled'. The Welsh Assembly took the view that accommodation inequalities experienced by Gypsies and Travellers could not be treated in isolation from other inequalities experienced by the community, including equal access to services such as education and health. The document included sections on health and continuing care, education and training, participation, engagement and accommodation. Plus a special section on children and young people. The report of this consultation found that in Wales:

'...some Gypsy Traveller children are having positive experiences of education but that there is room for improvement with regard to:

1. Bullying and discrimination
2. Supporting attainment and attendance
3. Attitudes towards school
4. Understanding of Gypsy Traveller Cultures
5. Being listened to.'

Save the Children Wales were commissioned by the Welsh Assembly Government to carry out the consultation work on the draft Gypsy Traveller Strategy with young people from across Wales. The results of the consultation 'Travellers and Gypsies: Generations for the Future' were similar to the findings from the Scotland study referred to above and confirmed the importance of ensuring access to education.

The Commission recommends the Committee asks government to provide details of the action it will take to improve educational outcomes for Gypsy and Traveller children.

Economic exclusion

Gypsies and Travellers continue to suffer from high rates of economic and social exclusion. From 2003 onwards there have been reports of growing unemployment and welfare dependency amongst Gypsy and Traveller communities.²¹⁴

²¹³ Caution is needed in using these estimates due to the possible under-recording of pupils from the Gypsy/Roma and Irish Traveller groups, and the small population sizes.

²¹⁴ Irish Traveller Movement in Britain, (2010), *Roads to Success Report*.

In common with other (non-Gypsy/ Traveller) sectors of society who experience deep social exclusion and deprivation, evidence suggests that there has been an increase in involvement in crime, alcohol and drug abuse amongst marginalised Gypsies and Travellers.²¹⁵

A report by the Irish Traveller Movement in Britain (ITMB) found that 78 per cent of respondents had experienced racism in their adult lives; that such racist experiences negatively impacted on interviewee's educational, employment and training opportunities; and that G/IT interviewees living on Traveller sites faced 'address based' discrimination with a number of interviewees referring to potential employers being unwilling to offer them jobs due to their place of residence. Further, the evidence highlighted that the low educational attainment of Gypsies and Travellers in school makes it harder for them to develop and maintain their own businesses and secure waged employment.

Gypsies and Travellers are not categorised as an ethnic minority group by the Department for Works and Pensions (DWP) despite being an ethnic minority group in GB law. Not acknowledging Gypsies and Travellers ethnic minority status has resulted in them being excluded from DWP research focused on ethnic minority groups. This has resulted in a severe lack

of economic and social support for the Gypsy and Traveller communities from the government. The DWP should provide cultural awareness training for frontline and managerial staff who are working with Gypsy and Traveller customers.

There is a need for targeted initiatives to raise awareness of, and access to, training opportunities amongst those Gypsy and Traveller community members in low waged and low skilled employment. Hand in hand with the latter there needs to be initiatives to reduce the occurrence of informal work practices/unemployment and encourage 'regularisation' of work situations.

The Commission recommends the Committee asks government what steps it intends to take to counteract economic exclusion of Gypsies and Travellers.

Media

Gypsies and Travellers continue to experience discriminatory and racist reporting in both local and national media. The Commission found that negative portrayals in the media of Gypsy and Travellers were fuelling mistaken assumptions about them and encouraging misunderstanding and derision of this group.²¹⁶

²¹⁵ Power, C. (2004) *Room to Roam: England's Irish Travellers*. London: Community Fund <http://www.statewatch.org/news/2005/feb/Room-to-Roam-England%27s-Irish-Travellers.pdf>
Matthew, Z. (2008) *The Health of Gypsies and Travellers in the UK. A Race Equality Briefing Paper*. London: Race Equality Foundation.

²¹⁶ Equality and Human Rights Commission (forthcoming) *Not Just Another Statistic: working together to challenge prejudice*. Equality and Human Rights Commission.

Highly offensive terminology continues to be used in respect of Gypsy and Traveller communities without always being deemed unacceptable by the press, statutory bodies and the wider public.²¹⁷ Headlines such as the *Sun* newspaper's 'Stamp on the Camps' and 'War on Gypsy Free for All' were deemed by the Crown Prosecution Service (CPS) to not incite racial hatred, because no direct link could be found between the reported acts of racial abuse following the reporting and the reports themselves.²¹⁸

The Press Complaints Commissions (PCC) code of practice is ambiguous on the press making 'prejudicial or pejorative' references to a group's 'race, colour, religion, gender, sexual orientation or any physical or mental illness or disability'.²¹⁹ The Commission recommended that 'the Press Complaints Commission should revise their rules to allow for class/group complaints to be made'.²²⁰

Anecdotal evidence from the Irish Traveller Movement in Britain's online media monitor indicates that the majority of coverage of Gypsies and Travellers in the media is negative and is dominated by the issue of accommodation.²²¹ The Government should take steps to encourage non-inflammatory media coverage of Gypsies and Travellers. It should also be made clear in the PCC's Editors' Code of Practice that 'prejudicial or pejorative' references to race, colour and religion are unacceptable.

Article 6

The human rights and equality infrastructure

The Committee refers to the earlier commitment of the State party to consider establishing a Human Rights Commission in order to enforce the Act and the possibility of granting such a commission comprehensive competence to review complaints of human rights violations.

The Equality and Human Rights Commission

The Commission was established under the Equality Act 2006 to promote and protect human rights in England and Wales. The Commission also has a duty to promote and protect human rights in Scotland in respect of matters reserved to the Westminster Parliament.²²² We also have a remit to promote equality and good relations. The Commission does not have competence to deal with individual complaints of human rights violations. However, we can judicially review non-compliance with the Human Rights Act 1998 (HRA), without the need for an actual victim, and intervene in human

²¹⁷ ITMB media monitor, available at: <http://www.irishtraveller.org.uk/media/>

²¹⁸ Richardson and Ryder (2009) *Stamp on the Camps*, p.13.

²¹⁹ Press Complaints Commission Code of Practice, Clause 12.

²²⁰ See n28 at p.17.

²²¹ ITMB media monitor <http://www.irishtraveller.org.uk/media/>

²²² Reserved matters include employment and equality.

rights cases before the courts to provide guidance on the interpretation of the HRA.²²³

The issues for the Commission in relation to this article are:

- the spending review
- proposals to reform the Commission, and
- proposals for reforms to the Human Rights Act.

The spending review

The Government proposes to cut public spending over the next four years by approximately £81 billion.²²⁴ The cuts will affect all aspects of the public sector. The Commission's funding is expected to be reduced by approximately 66 per cent over the next five years.

There are also proposals to cut legal aid significantly and cuts to local authority spending is already beginning to impact on voluntary and third sector organisations working in the field of equality and human rights (see further under Article 2).²²⁵

Reform of the Commission

There are currently two Government proposals for the reform of the Commission: the Public Bodies Bill and the consultation on the Commission's powers and functions, 'Building a fairer Britain: Reform of the Equality and Human Rights Commission'.²²⁶

a) The Public Bodies Bill

The Public Bodies Bill (the PBB) was introduced to the Westminster Parliament in 2010. It makes provisions for a Minister to abolish or modify the constitution, funding arrangements or functions of a number of public bodies. The Commission is one of the bodies listed in the Bill. If the Bill goes through it could mean that a Minister could modify the core functions and/or powers of the Commission (although not abolish it) without going through the parliamentary process.²²⁷

b) Building a fairer Britain: Reform of the Equality and Human Rights Commission

As noted above, the Government is currently consulting on reforms for the Commission. The main proposals are to reform our

²²³ The Commission has intervened in a number of cases including: *NS v Secretary of State for the Home Department* about the removal of an Afghan asylum seeker from the UK to Greece under an EU law known as the Dublin Regulation; *Hode v UK* about the rights of spouses to join refugee partners on a non-discrimination basis; *AlSaadoon v UK* which involved the transfer of two Iraqi suspects to Iraqi jurisdiction in violation of an order by the ECtHR.

²²⁴ HM Treasury (October 2010) *Spending Review 2010*. HM Treasury CM7942.

²²⁵ A number of voluntary sector advice agencies recently successfully challenged local government decisions to withdraw funding, see more at: <http://www.lvsc.org.uk/Templates/information.asp?NodeI=103643&i1PNID=89787&i2PNID=90117>

²²⁶ HM Government (March 2011) Government and Equality Office.

²²⁷ Equality and Human Rights Commission (March 2011) *Parliamentary Briefing: Public Bodies Bill Committee Stage, House of Lords 7 and 9 March 2011*. Equality and Human Rights Commission, available at: http://www.equalityhumanrights.com/uploaded_files/briefings/ehrc_public_bodies_bill_lcs3.doc

²²⁸ See the document at: <http://www.official-documents.gov.uk/document/cm75/7577/7577.pdf>

‘core functions as an equality regulator and a National Human Rights Institution; stop non core activities and to clarify the Commission’s relationship to government and strengthen further its governance and systems’. (See Appendix 2 for the Commission’s response to the proposals on its reforms.)

Protecting human rights in the UK – The Human Rights Act and a proposed Bill of Rights for the UK

The Human Rights Act (HRA) currently provides for the protection of human rights in the UK, by implementing into domestic law most of the rights in the ECHR. Since its introduction, the HRA has come under much criticism particularly from the tabloid press and increasingly successive governments. The previous Government considered it was necessary to review the human rights culture in the UK and started the process by way of a Green Paper entitled ‘Rights and Responsibilities: developing our constitutional framework’.²²⁸ The current Government has now established an Independent Commission with terms of reference to, among other things: ‘investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK

law, and protects and extend our liberties.’²²⁹ The Government should keep the Committee apprised of the developments on its work on a Bill of Rights.

Article 9

State reporting

The Committee recommends the State party submit a combined eighteenth and nineteenth periodic report, due on 6 April 2006, and that the report addresses all the points raised in the present concluding observations.

As the Committee will be patently aware, the UK submitted its eighteenth, nineteenth and twentieth reports in February 2010 almost four years after the due date. This is a matter the Commission takes seriously in its role as an NHRI. We wrote to the Government in 2009 expressing our concerns. We consider that such late reporting demonstrates a lack of commitment to the CERD process on the part of the UK. The Commission considers it imperative that the Government submits the next report on time. This is particularly important because we anticipate that many of the changes currently in trend will begin to take effect by the next reporting period.

The Commission also considers that government should engage more with stakeholders in the reporting process.

²²⁸ See the document at: <http://www.official-documents.gov.uk/document/cm75/7577/7577.pdf>

²²⁹ Ministry of Justice (18 March 2011) Press Notice.

We acknowledge that the Government consulted on the report before it was submitted to the Committee. However, the Commission considers that the reporting process could be more dynamic and inclusive if government engages with stakeholders at the beginning of the process, for example when it is deciding on the issues to report on.

The Commission recommends the Committee calls on government to ratify Article 14.

Article 14

Right to individual petition

The Committee notes that the State party is currently reviewing the possibility of making the optional declaration provided for in article 14 of the Convention and invites the State party to this high priority to such a review and to give favourable consideration to making this declaration.

The Commission is concerned that the UK has not ratified the optional declaration in Article 14, although it has ratified the Optional Protocols for individual petition to CEDAW and the CRPD. We consider that adopting the optional declaration would ensure consistency across the treaties and therefore should be ratified. The Commission will be writing to government separately in this regard.

Appendix 1: Table of selected CERD articles with matching examples of relevant GB legislation and policy

Article number	This Article commits parties to	Relevant UK law and policy initiatives
2	<ul style="list-style-type: none"> • Implementing policies to eliminate racial discrimination • Reviewing and amending any policies which discriminate on the basis of race. • Promoting understanding among all races 	<ul style="list-style-type: none"> • Equality Act 2010. • Government's race equality strategies: Improving Opportunity, Strengthening Society and Tackling Race Inequalities. • Public Service Agreement 21 to build cohesive, empowered and active communities
3	<ul style="list-style-type: none"> • Condemning and preventing racial segregation and apartheid 	<ul style="list-style-type: none"> • Equality Act 2010. • Government's race equality strategies: Improving Opportunity, Strengthening Society and Tackling Race Inequalities.
4	<ul style="list-style-type: none"> • Adopting measures to condemn the incitement of racial hatred and the propagation of ideas of racial superiority 	<ul style="list-style-type: none"> • Public Order Act 1986, Part III. • Racial and Religious Hatred Act 2006. • Department of Communities and Local Government's Cohesion and Faith Unit. • DCLG's Migration Impact Plans.

Article number	This Article commits parties to	Relevant UK law and policy initiatives
5	<p>Guarantee the following rights to everyone regardless of race, colour or national or ethnic origin:</p> <ul style="list-style-type: none"> • equal treatment by courts and tribunals • security of the person and freedom from violence • political rights, such as the right to vote and take part in the government • civil rights, for example the right to freedom of movement and expression, and to nationality, and • economic, cultural and social rights, for example the right to housing, health care and education 	<ul style="list-style-type: none"> • Equality Act 2010. • Human Rights Act 1998. • Equality and Human Rights Commission. • Home Office’s Cross-Government Hate Crime Action Plan. • Crime and Disorder Act 1998. • Press Complaints Commission, independent of the government. • Government’s race equality strategies: Improving Opportunity, Strengthening Society and Tackling Race Inequalities. • Borders, Citizenship and Immigration Act. • Delivering Race Equality in Mental Health Care. • Black Pupils Achievement Programme (Education). • Aiming High Strategy (Education). • Ethnic Minority Employment Taskforce (Employment). • Ethnic Minorities Innovation Fund (Housing). Gypsy and Traveller Accommodation Needs Assessments.
6	<p>Guarantee judicial protection against racial discrimination.</p>	<ul style="list-style-type: none"> • Equality Act 2010. • Equality and Human Rights Commission.

Article number	This Article commits parties to	Relevant UK law and policy initiatives
7	Educating and providing information to promote understanding and combat the prejudice which can lead to racial discrimination.	<ul style="list-style-type: none"> • Education and Inspections Act 2006. • Commemorative projects on bicentenary of slave trade abolition. • Holocaust education compulsory part of curriculum. • Legal duty on schools to promote community cohesion. • Citizenship education.

Appendix 2: The Equality and Human Rights Commission's high level response to the consultation paper 'A stronger economy and fairer society'

This response deals at a high level with the strategic issues set out within the Government's consultation document. It summarises the key issues which society is facing and raises concerns that the Government's proposals may have significant unintended consequences which run counter to its own equality strategy and approach to de-regulation and de-centralisation.

The Equality and Human Rights Commission (the Commission) will publish a longer and more detailed response to the

specific proposals later in the consultation period.

Summary

The Commission welcomes the opportunity, after three years of operation, to learn from the lessons of its start-up period, to build on its considerable achievements so far and to address the acknowledged shortcomings in its performance. We agree that it is essential for the Commission to have a clearer, better defined mission, both as an equality regulator and as a National Human Rights

Institution (NHRI). We have already gone some way towards defining that mission as follows:

- an effective outcome-focused regulator
- an evidence-led champion, and
- an expert leader.

In particular, we agree that the role of regulator needs to be better articulated and set as a priority for the Commission. In this role the Commission's job is to focus on explaining, promoting and, where necessary, helping the courts to enforce the law. We believe that any reforms introduced should above all help us to do this effectively and efficiently. We believe that they should protect and where possible enhance the Commission's independence.

We recognise Ministers' intentions as expressed in the consultation document lie in the same direction. However we consider that the proposals as they stand do not match up to the Government's own ambitions for the following reasons:

- In areas where there are substantive proposals, they appear to be quite disproportionate; dealing with past problems which the Commission has acknowledged and has invested in solving without recourse to expensive and time-consuming restructuring, or further complicated legislation.
- In areas where a transfer of functions, resources and personnel is proposed, the document is silent on how the Government intends to use its increased resources, and how at a time of reduced spending on, for example, legal aid, the legitimate objective of greater efficiency will be achieved whilst continuing to

offer an appropriate service to the public. There isn't any suggestion, either, that this might be a golden opportunity for the Government and the Commission to work together to develop an innovative, not-for-profit led initiative in advice and guidance.

- In areas where there is an opportunity for truly radical reform, where the efforts of both the Government and the Commission are brought together to support economic recovery, the consultation document is disappointingly vague; for example, whilst we welcome the Government's decision to create a single equality strategy, the Commission will still need to use precious resources managing relationships with several government departments, each of which has a different strategy.
- Finally where sensible and modest legislative change may be appropriate, such as in reducing the complicated and cumbersome nature of the Commission's investigative and prosecutorial powers, evolving a new approach to conciliation, mediation and good relations, the document misses the opportunity to create a more modern, more transparent model of regulation which lay a new emphasis on preventive, proactive work, rather than costly litigation. The document gives no consideration to how the Commission might develop non-governmental streams of income, thus reinforcing its own independence and reducing its cost to the taxpayer.

Overall, we also consider that the document does not pay sufficient attention to the effect of the Government's reforms in other areas, such as localisation and public service reform, which will have a profound effect on

the Commission's regulatory capabilities. It is also clear that the Commission, as a Britain-wide regulator will need flexibility to address the very different environments being developed by the Welsh Assembly Government and the Scottish Government.

In summary, whilst we concur with Ministers' broad intentions we consider that the proposals in the consultation document do not yet achieve the ends set out. They focus overly on problems which should be solved by better management and stronger governance; they apply a bureaucratic and legalistic set of solutions to what is in essence a cultural problem and they risk missing the opportunity to modernise the management of equality and human rights legislation in favour of reducing the Commission to an outdated, adversarial and costly compliance factory just at the time that it is starting to develop a newer, more effective model.

The Commission's role and the changing equality and human rights landscape

1. The Commission operates in an increasingly tolerant and open-minded society, in which some equality gaps have closed over the past generation. Its own work – like that of its predecessors – has made significant contributions to the advances which society has made.

2. The Commission's role is to explain, promote and enforce equality and human rights in Great Britain. Increasingly we

recognise that most people want change and most organisations are ready to try. Part of our function is to offer information and guidance to those who want to change; but our experience and that of our predecessors shows that without the presence of a clear legislative framework, many will not do so; and particularly in the private sector, transparency and effective enforcement aid the maintenance of a level playing field, an aspect of fairness which all agree favours reputable and sustainable wealth creation.

3. The Commission has achieved significant successes since it was created. It has taken 134 pre-enforcement actions, mostly settled without recourse to compliance or legal action; and 'won' 45 of its 59 major legal actions – leading to better protection for millions of people including carers, disabled people and members of the armed forces. It has also settled more than 75 per cent of the 459 mediation cases it has entered into without the need for costly litigation.

4. The Commission has launched 10 statutory inquiries and assessments into areas including disability-related harassment; the human rights of older people; human trafficking; exploitation in the meat processing industry; and gender pay discrimination in the financial services sector. In 2010 the Commission entered into a collaborative assessment with HM Treasury of the UK Government's spending review.

5. As part of its work on the police's use of stop and search, the Commission has entered into binding agreements with two forces, one of which has already reported a drop in race disproportionality. The Commission advised the inspectorate of the UK Borders Agency on how to put in place

fair and non-discriminatory stop and search policies and practices at border controls.

6. As a source of credible evidence and information on discrimination and human rights, the Commission has distributed jointly with the British Chambers of Commerce, Federation of Small Businesses and Institute of Directors 250,000 publications to small businesses; and dealt with an average of 12,000 calls per month to its helpline in the past year.

7. The Commission has supported the development and implementation of a new legislative framework for equality in Great Britain. It has produced three statutory Codes of Practice on the Equality Act, a range of practical guides and is consulting on three further Codes.

8. Amongst international equality and human rights bodies, the Commission is regarded as an exemplar – retaining its accreditation at the UN as an ‘A’ status NHRI and engaging actively in European Network of Equality Bodies (EQUINET).

9. The Commission has successfully intervened in a series of strategically important human rights cases covering areas such as the protection of military personnel serving abroad and the rights of gay and lesbian asylum seekers.

10. The Commission has written to the Government on human rights issues including the use of body scanners, the retention of information about people found innocent of any crime on the DNA database and the guidance given to security service personnel on the use of information gained as a result of torture.

11. However, while recognising the significant advances that Great Britain has made on equality and human rights, the Commission’s recent comprehensive compilation of evidence on discrimination and disadvantage in Great Britain shows that long-standing inequalities remain undiminished. Additionally, new social and economic fault-lines are emerging as Great Britain becomes older and more ethnically and religiously diverse.

12. The recession, the management of migration and technological change and public service reform are all major risk factors potentially hindering progress towards a fairer society and equality of opportunity for all. Additionally, the Government’s spending review and big society and localism agenda will change the way public services are delivered.

13. In relation to human rights there have been significant recent developments concerning the protection of human rights in Great Britain. In March 2011 the Government established a Commission on a Bill of Rights which will consider the creation of a UK Bill of Rights to replace the Human Rights Act. It is possible that this may lead to proposals that weaken protection of human rights. Significant work remains to be done by the Commission and the Government to improve the understanding of human rights and why the Human Rights Act should be retained.

Making the Government’s equality strategy a success

14. The Government’s own equality strategy concludes that ‘failure to tackle

discrimination and to provide equal opportunities harms individuals, weakens our society and costs our economy... At a time of global economic pressures, equality becomes more, not less, important.'

15. The Commission has a significant role to play in ensuring the success of the Government's equality strategy by working with people, communities and businesses to empower them to enact change.

16. However, the Commission is not the only body with the power to make the equality strategy a success. The Commission therefore believes that the consultation should also examine the role of the Government Equalities Office (GEO) and government more generally in protecting and promoting equality and human rights.

17. This response to the Government's consultation outlines the changing role the Commission can play in 'shining the light of transparency on organisations, challenging their performance and acting as a driver for change'.

18. The Commission's priorities are to support the economic recovery, create a fairer society and deliver value for money.

19. It will achieve these by being an effective, outcome-focused regulator; an exemplar NHRI; an evidence-led champion; and an expert leader.

20. The Commission's Triennial Review revealed the most pressing equality challenges Great Britain faces and this is where the Commission will focus its work. As many of these will or cannot be dealt with by direct legal remedy, the Commission's

future model of change will need to be more subtle and multifaceted. The Commission will also be publishing in December 2011 its Human Rights Review. This will provide evidence of the main areas of concern in the enjoyment of human rights in Great Britain and be an evidence base for developing our future human rights programme of work.

The Government's consultation

21. The Commission acknowledges the Government's agenda to support the recovery by decreasing bureaucracy and devolving decision making away from central control, reducing unnecessary regulatory burdens and driving greater efficiencies in government and arms length bodies. The Commission aims to be an effective regulator achieving the maximum protection for its mandates at the lowest practical cost whilst operating as efficiently as possible.

22. It is therefore concerned that proposals in the Government's consultation could lead to greater bureaucracy; increased centralisation of power and resources within government departments; an extension of the direct reach of ministers on the operations of businesses and public bodies; and a threat to the Commission's independence – which is key to its role and status as a UN-accredited NHRI.

23. There are a number of other bodies spread out across government including the Office of Disability Issues and Race Equality Unit. This provides the Government with a challenge as to how it coordinates its equality agenda and the development, implementation and monitoring of the Government's Equality Strategy (as soon

to be issued Equality Action Plan). The Commission has developed relationships with each government department but it believes that consideration should be given to unifying these within one government department, the GEO, to reduce duplication and cost.

24. Under present plans, ministers are proposing to transfer certain responsibilities and the associated funding from the Commission to the Government. The Government is currently proposing a 37 per cent increase to the Home Office equalities budget from £15m to £20.6m by 2015 while at the same time cutting the Commission's budget by around 51 per cent from £53m to £26m over the same period.²³⁰

Whilst these figures are partially explained by the Government taking responsibility for outsourcing the helpline and directly resourcing residual funding of legal grants, it is not clear what the Government is planning to do with the remainder of the additional resources it looks set to gain. Without clarity on this matter, it is difficult

to understand the balance of funding between the Home Office equalities budget and the Commission (£20.6m and £26m in 2014/15), as this does not seem to reflect the breadth of the GEO's role or the Commission's remit.

Mediation, conciliation and good relations

25. The Government's equality strategy recognises that 'while legislation has helped to enshrine people's rights in law, more than legislation is needed to change people's attitudes or behaviour to ensure those rights are not abused'.

26. Many of the most deep-seated issues which limit equality of opportunity and the enjoyment of human rights are complex and cannot be addressed directly by legislation. Limiting the Commission's role to the regulation of specific legislation, which the Government is proposing in its consultation, will necessarily limit its ability to successfully address these issues.

²³⁰ **Cumulative changes in Home Office Equalities budget and EHRC funding as outlined in correspondence from GEO to EHRC dated 24 March 2011**

Year	Home Office Equalities Budget		EHRC	
	Increase/ Decrease £	Increase/ Decrease £	Increase/ Decrease £	Increase/ Decrease £
2011/12	2.4	15.8	-5.4	-10.2
2011/13	5.7	37.5	-11.7	-22.2
2013/14	5.8	38.2	-18.8	-35.6
2014/15	5.5	36.2	-26.5	-50.2

27. The proposed removal of the Commission's mediation and conciliation powers and aspects of its good relations mandate could lead to an increase in lengthy and expensive litigation by forcing private and public sector organisations down the more costly compliance rather than conciliation route.

28. For example, many of the problems faced by disabled people relate to the provision of goods, facilities and services. If these cannot be resolved quickly and efficiently through conciliation and mediation both sides could be forced to undertake costly and lengthy litigation.²³¹

29. The Commission recognises that its good relations remit is not well defined or understood but is concerned that its explicit removal may make it harder to tackle some of the significant community integration issues which exist.

30. For example, good relations and integration issues go well beyond the remit of public authorities. Private sector employers have an important role to play in community cohesion. In some areas of the country, workplaces are the main areas where people from different groups come into contact with each other and this contact can ease tensions between them.

31. The Commission's own Inquiry into the meat processing sector revealed examples of good practice by employers with large numbers of staff from different nationalities as well as practices which heightened tension between different groups. Its current inquiry into disability-related harassment also shows the important role which can be played by private sector transport

companies in reducing the instance of harassment of disabled people.

32. Restricting the Commission's role to the monitoring of the public sector duty in respect of good relations would explicitly prevent a non-legal and cheaper method of engagement with the private sector and mean that such issues would not be tackled. It would also prevent the Commission from providing advice and guidance to private sector employers on how to help address workplace issues. The Commission therefore believes its good relations role should be redefined rather than abandoned.

33. The Government's equality strategy states that: 'We have strong legislation designed to tackle discrimination and hate crime... But legislation alone will not be able to change the attitudes that lie behind this behaviour.'

34. The Commission's good relations power remains important as a non-legal method of tackling issues such as the rise in extremism evidenced by the growth of the English and Welsh Defence Leagues, and the increase in community tensions.

Advice and guidance

35. The Government's consultation document makes reference to the decision taken by Ministers to remove the advice and guidance helpline from the Commission by outsourcing it to another supplier. Without specific proposals as to how this function may be provided in the future, it is difficult to comment in detail. However, the Commission is concerned about the impact on victims of discrimination, by potentially

removing the only expert national source of advice and guidance on equality and human rights issues.

36. It is also concerned that a conventional outsourcing exercise may be a missed opportunity to take a more innovative approach, perhaps bringing together a coalition of VCS partners to work with the Commission and GEO to broaden the service to users and find other ways to augment the current telephone helpline.

37. The consultation also makes reference to the removal of the Commission's current legal grants programme. The Commission is concerned that with the reduction in legal aid also being proposed by the Government, the removal of the legal grants programme could lead to a significant reduction in advice and support for those people pursuing discrimination claims.

38. The Commission believes the lack of clarity underpinning the Government's proposals on the Commission's helpline and grants programme warrants further discussion between the Commission, GEO and Government on how these services would be re-provisioned.

Independence and accountability

39. The Commission is an 'A' status NHRI with a constitutional and democratic role to ensure government complies with its domestic and international equality and human rights obligations.

40. Maintaining constitutional and operational independence from government in relation to accountability and powers has been formally recognised by the UN as a pre-requisite for the future retention of the Commission's NHRI 'A' status.

41. The Commission also recognises that while it must remain independent, it fully supports the Government's policy of ensuring that non-departmental public bodies are fully accountable and transparent in all their activities. For this reason, the Commission has been identifying ways in which it can achieve an optimal balance between independence, accountability and transparency.

42. The Commission is therefore proposing changes to its accountability and governance mechanisms to bring it into line with similar constitutional bodies which have a role in holding the government to account, such as the National Audit Office, Electoral Commission, and Parliamentary and Health Service Ombudsman which report directly to parliament.

43. The Commission gives the highest priority to being accountable and transparent in the way it uses public money and should be subject to public expenditure and related management controls, as with all other public bodies. We do not believe that legislative changes are needed to the governance and accountability of the Commission, including the role of the Chair. The Commission is committed to ensuring it complies with the Framework Agreement it has with Government and HMT's 'Managing Public Money'. It believes that the governance and accountability arrangements for non-departmental

public bodies (NDPBs) should be the basis of its relationship with its sponsorship department and that separate arrangements are neither necessary, helpful or cost effective.

44. We recognise that serious improvements have been needed to both systems and compliance since the Commission was set up. We now have robust processes in place to ensure the strongest standards of accountability and financial probity are adhered to. These have been based on best practice across government.

A cost-effective regulator

45. The Commission is also proposing changes to its powers and functions which would help it move beyond a purely legislative or compliance model of an equality regulator and NHRI, and make more use of non-directive, low-cost regulatory mechanisms.

46. Where the Commission suspects that discrimination is occurring, but lacks evidence in the absence of formal complaint, the organisation currently lacks the power to investigate quickly and inexpensively.

47. This could be addressed through a power to contact and undertake visits to organisations in order to monitor suspected discriminatory practices and market testing – for example by submitting false applications for employment or services.

48. The Commission could also be better equipped to support the Government's transparency agenda and gather material on the performance of organisations for publication in the form of reports or league tables.

49. The Equality Act 2006 gives the Commission powers to charge for information, advice and conciliation services. Extending this to allow the Commission to charge for other services would bring it in line with other regulators and NHRIs; increase its independence by ensuring it is not wholly reliant on central government funding; and respond to the current economic climate and the limited government resources available.

50. To become a more effective regulator and NHRI, the Commission believes its human rights powers should be brought into line with its equality mandate. It should have the power to fund strategic human rights cases; have human rights monitoring powers in line with those it has to enforce the public sector equality duty; and the power to advise government and parliament on the harmonisation of national legislation with international human rights instruments and principles.

The Commission's future role and functions

51. The Commission's own review of its first three years of operation has concluded that the organisation has been most successful when it:

- acts where it is uniquely placed to drive change as a regulator, for example, by

shaping the Equality Act and producing Codes of Practice and guidance

- ensures its actions are evidence-based, for example, by producing the first Triennial Review, *How Fair Is Britain?*
- responds to the changing environment, ensuring compliance with the law in a changing economic and political environment through strategic engagement with government and parliament
- delivers value for public money, by for example reducing overheads through improvements in areas such as staffing, procurement and grants
- uses its legal expertise, by funding strategic cases, providing expert interventions in the higher courts or by taking proceedings in its own name.

52. This evidence suggests the Commission's future core functions are:

- an effective outcome-focused regulator
- an evidence-led champion, and
- an expert leader.

53. The Commission will move towards a new model of regulation in which it will utilise three types of regulatory tools:

- direct or 'hands on' regulation in which we investigate, carry out inquiries and take compliance or legal action.
- collaborative or 'hand-in-hand' regulation where we will operate with, and through, others (including the courts) to monitor and moderate, set standards and provide regulatory incentives to encourage institutional change.
- non-directive or 'hands-free' regulation in which we will make use of transparency of information and

where we will encourage and support the citizen, consumer and shareholder regulators.

54. The Commission recognises the legislative frameworks regulating the distinctive equality duties and human rights protection in Scotland and Wales.

55. The Commission envisages having a strong and distinct presence in both these countries. It will work with the regulators, Commissions and other institutions operating in the two nations to deliver a programme relevant to the demographic, social, economic and political circumstances and needs of Wales and Scotland.

56. The Commission believes that, if implemented, the proposals set out in its response to the Government's consultation will allow it to fulfil its vision of an accountable and independent public body working with, and through, other organisations to be an ambitious catalyst for social change in Great Britain.

Contacts

England

Arndale House
The Arndale Centre
Manchester M4 3AQ

Helpline:

Telephone
0845 604 6610

Textphone
0845 604 6620

Fax
0845 604 6630

Scotland

The Optima Building
58 Robertson Street
Glasgow G2 8DU

Helpline:

Telephone
0845 604 5510

Textphone
0845 604 5520

Fax
0845 604 5530

Wales

3rd Floor
3 Callaghan Square
Cardiff CF10 5BT

Helpline:

Telephone
0845 604 8810

Textphone
0845 604 8820

Fax
0845 604 8830

Helpline opening times:

Monday to Friday: 9am-5pm

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