



House of Commons

House of Lords

Joint Committee on
Human Rights

**Black people, racism
and human rights:
Government Response
to the Committee's
Eleventh Report of
Session 2019–21**

**Fourth Special Report of
Session 2019–21**

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Fourth Special Report

The Joint Committee on Human Rights published its Eleventh Report of Session 2019–21, *Black people, racism and human rights* (HC 559/HL 165) on 11 November 2020. The Government response was received on 5 February 2021 and is appended below.

Also appended is the formal response of the Equality and Human Rights Commission (the ‘Commission’) received on 11 January 2021.

Appendix 1: Government Response

Introduction

The Government notes the Joint Committee on Human Rights’ (‘the Committee’) report on *Black people, racism and human rights*. While many challenges remain, the UK has made significant progress over the years in tackling racism. The Government made Manifesto commitments to tackle prejudice, racism and discrimination and is committed to making further progress.

As the report acknowledges, the Government has established the Commission on Race and Ethnic Disparities (‘CRED’) to consider what disparities exist, what the drivers of any disparities are, and what more might be done. The work of the Commission focuses on what, based on the evidence, works to address disparities in education, employment, health and the criminal justice system. It also builds on the work of the Race Disparity Unit, whose data-driven approach to these issues has been in place since 2017 and continues to improve the breadth and quality of the information available about ethnic disparities.

The CRED will submit its findings to the Prime Minister in due course, along with recommendations for key actions for Government. It would therefore not be appropriate to pre-empt those findings here. In establishing the Commission, the Prime Minister said:

‘It is no use just saying that we have made huge progress in tackling racism. There is much more that we need to do; and we will.’

The Government has considered the recommendations and conclusions in the Committee’s report and has responded to each of these in turn. Where action to address the issues raised is already underway, the Government’s response provides details.

We thank the Committee for its report and look forward to continuing to work collectively to ensure the rights of individuals across the UK are protected.

Recommendation 1: The majority (over 75%) of Black people in the UK do not believe their human rights are equally protected compared to white people. This is a damning indictment of our society and must be addressed as a matter of the highest political priority. To this end, the Equality and Human Rights Commission must undertake to run an annual opinion survey on whether Black people feel their human rights are equally protected, so that issues can be identified, and progress checked. (Paragraph 23)

1. The Equality and Human Rights Commission (EHRC) is an independent public body and is responding separately to this recommendation. However, in line with the 2018 Tailored Review of the EHRC and the 2019 inquiry into the enforcement of the Equality Act and the work of the EHRC by the Women and Equalities Select Committee, the Government is keen to see the EHRC making further progress on prioritising and delivering against its unique powers to enforce the Equality Act 2010, as opposed to a range of other activities which could be undertaken equally by Government or by other organisations. Streamlining the Commission's priorities is important in order to maximise its effectiveness and impact, including on issues relating to race.

2. The Government is also conscious of the importance of rationalising any overlaps between the EHRC and other public bodies, in particular the CRED, whose remit includes considering detailed quantitative data and qualitative evidence in order to understand why disparities exist and what works and what does not (for more detail on the CRED please see the response to recommendation 6 below).

Recommendations 2–4 are for Parliament to consider. The Government has not therefore responded.

Recommendation 5: Commissioning reports and failing to implement them intensifies disaffection and lack of confidence in the Government on race issues. Government must implement the findings of previous reports that have been commissioned. (Paragraph 35)

3. The Government acknowledges the importance of building and upholding trust and confidence on race issues. We take very seriously the findings of recent reports into racial inequalities and disparities.

4. However we would challenge any assertion of inaction, there has been substantial work undertaken to implement the findings and recommendations from these reports, which is summarised in the sections below. In particular, this response sets out the significant steps taken to implement the findings from the Lammy and Angiolini reviews, summarised in the responses to recommendations 10 and 12 respectively. As well as implementing the findings, work is underway to go above and beyond the recommendations made. This includes engaging with stakeholders to look at the root causes of issues that cause disparities.

5. It is also clear that despite implementing these recommendations, issues persist. This is why the CRED is looking at drivers of disparities in the round, as part of its remit, rather than individually as has been done with previous reviews.

Recommendation 6: The Government has established the Commission on Race and Ethnic Disparities which is expected to report before the end of 2020. Previous inquiries and work of the Race Disparity Unit have identified the problems and pointed to

solutions; the focus of this new Commission must therefore not be further fact-finding but on taking action to reduce inequalities and secure Black people's human rights. This should take the form of a comprehensive cross Government race equality strategy. (Paragraph 36)

6. The Commission for Race and Ethnic Disparities is carrying out a deeper examination of the causes of race and ethnic disparities and is seeking to establish what works to address them effectively. This work will form the basis of the Commission's final report which will include evidence-based recommendations for key actions to address disparities in education, employment, health and the criminal justice system.

7. The Government agrees that the work of the CRED should be action-focused, although it also needs to be informed by rigorous analysis and data. As noted above, the Government is committed to tackle prejudice, racism and discrimination—and to improving the quality of data and evidence about the types of barriers faced by people from different backgrounds to help drive effective and lasting change.

Recommendation 7: The death rate for Black women in childbirth is five times higher than for white women. The NHS acknowledge and regret this disparity but have no target to end it. The Government must introduce a target to end the disparity in maternal mortality between Black women and white women. (Paragraph 45)

8. The Government acknowledges that there is a significant disparity in maternal mortality rates. While the UK is one of the safest places in the world to give birth and maternal deaths across all ethnicities are fortunately very rare, behind these tragic statistics there are devastating consequences for families and children, so it is vital to tackle this complex and concerning issue.

- The University of Oxford's MBRRACE-UK found that in 2016–18, 217 women died during or up to six weeks after pregnancy, from causes associated with their pregnancy among 2,280,451 women giving birth in the UK. When broken down by ethnic group; 140 women were from a White European background, 72 women were from an ethnic minority background, and 5 women whose ethnicity data was missing sadly died during or up to six weeks after pregnancy.
- According to MBRRACE-UK's 2020 Confidential Enquiry into Maternal Deaths, deaths due to indirect causes still remain the major proportion (58%) of maternal deaths in the UK. The leading indirect cause of maternal mortality is heart disease.
- In the period 2016–2018, there were unfortunately 28 maternal deaths among Black women in England, a maternal mortality rate of 34 per 100,000 maternities.
- Because maternal deaths in the UK are rare and Black women form a relatively small part of the population, the statistical uncertainty surrounding the mortality rates is large. This can make it difficult to ascertain trends in these rates over time for some ethnic groups. Therefore, further research to examine drivers of disparities in maternal health outcomes overall will be necessary.
- We want to avoid scaring women from an ethnic minority background into thinking that giving birth is unsafe. We want to reassure them that maternal

deaths are uncommon, while stressing the importance of seeking help and presenting early to maternity services even during the pandemic.

9. The Government is taking steps to address this issue. The Minister for Patient Safety, Suicide Prevention and Mental Health hosted a roundtable on maternal mortality rates for ethnic minority women in July 2020. She then co-hosted, with the Minister for Equalities, a further discussion on this issue in September. This event was attended by academics, midwife practitioners from regional trusts and public health experts to develop joint solutions to this issue.

- At the roundtable on 2 September 2020, leading experts in the field clarified that underlying health conditions and comorbidities (like heart disease, diabetes, and mental health) largely, but not wholly, explain ethnic disparities in maternal mortality rates.
- Following on from this event, we have held one-to-one meetings with stakeholders, such as the Chief Midwife for England, and Dr. Gloria Rowland on her ‘Turning the Tide’ report.
- The Government continues to work with maternal health practitioners and ethnic minority women to drive positive actions and interventions in this area so that our actions can benefit more women. This includes the recently launched NHS campaign ‘*Help us Help You*’ informing pregnant women about the importance of attending check-ups, and providing reassurance that the NHS is there to see them safely.
- Officials in the Cabinet Office Race Disparity Unit are supporting the Department of Health and Social Care in driving positive actions through a number of interventions on maternal mortality from an equalities perspective.

10. In addition, the Department of Health and Social care, together with the NHS, have already set ambitious targets and actions to further improve outcomes in maternity services:

- In 2015 the Government set the National Maternity Safety Ambition, which was revised in 2017, to halve the rate of stillbirths, neonatal and maternal deaths and brain injuries that occur during or soon after birth by 2025, and to achieve a 20% reduction in these rates by 2020. We will update on these targets, once the data from the relevant sources becomes available.
- In September 2020 the Minister of State for Patient Safety, Suicide Prevention and Mental Health, established the Maternity Inequalities Oversight Forum to bring together experts from key stakeholders to consider and address the inequalities for women and babies from different ethnic backgrounds and socio-economic groups. The Forum will review whether policies and strategies are being implemented as intended and that expected results are being achieved. The Forum will consider areas of concern and how these areas could be addressed. This will provide rapid and contemporary information about reduction in disparities.
- On 12 January, Patient Safety Minister Nadine Dorries MP announced a new

£500,000 fund for a maternity leadership programme launching later this year that will train hundreds of senior maternity and neonatal leaders from 126 NHS trusts and 44 local maternity units.

- The new training programme will aim to apply lessons learned both from the pandemic and maternity safety inquiries, while strengthening maternity leadership and oversight and empowering nurses, midwives and obstetricians to deliver safe, world-class care to mothers and their babies.
- Safety Champion and Chief Midwifery Officer for England, Professor Jacqueline Dunkley-Bent, wrote to NHS Trusts on 12 January to request urgent action to create an independent senior advocate role who will be available to families attending follow up meetings with clinicians where concerns about maternity or neonatal care are discussed.
- NHS England is developing a national model for a network of advocates, to ensure consistency and equity across England and that the voices of mothers and families are heard.

11. New maternity commitments were also set out in The NHS Long Term plan, published in January 2019 including:

- ‘Reducing outcome inequalities – In maternity services, we will implement an enhanced and targeted continuity of carer model to help improve outcomes for the most vulnerable mothers and babies.
- NHS England and Improvement are introducing a funded and comprehensive national support offer which will be mobilised later this year. This will require Local Maternity Services to work towards achieving the ambition that 75% of Black and Asian women receive continuity of care by 2024.
- As the JCHR report notes, the Chief Midwifery Officer has formulated a four-point action plan to better support ethnic minority women during the Covid-19 Pandemic.

12. The Government will continue to review progress in implementing these targets and delivering these commitments.

Recommendation 8: The impact of Covid-19 has only served to sharpen pre-existing inequalities for pregnant Black women. The Chief Midwifery Officer has formulated a four-point action plan to better support these women during the Covid-19 pandemic, which is very welcome. These actions must be implemented as a matter of urgency.
(Paragraph 48)

13. As noted above, this is an issue the Government takes extremely seriously and agrees that the NHS should implement action urgently from its operationally independent position. National, regional and clinical network teams are providing considerable support to ensure full implementation of all four actions by every Local Maternity System in England. The NHS is monitoring the progress with the implementation of the four actions by Local Maternity Systems through regular assurance exercises.

14. We also revised guidance in December 2020 so that, further to a risk assessment, a woman can have access to support from a person of her choosing at all stages of her maternity journey. At the same time it is our priority to prevent and control Covid-19 infection and keep women and staff safe. Many trusts have already found creative solutions to overcome remaining challenges and they have maximised the support that pregnant women can receive throughout their pregnancy.

Recommendation 9: The lessons learned review proposed in our recent report on the human rights impact of Covid-19 measures, and any subsequent public inquiry must prioritise consideration of why Black people have experienced higher mortality from the virus. For example, it should examine decisions taken about the allocation of PPE when it became known that those from Black, Asian and minority ethnic backgrounds were more at risk from the virus and look at how the employment and housing situations of Black people have made them more vulnerable. (Paragraph 52)

15. In response to the disproportionate impact of the Covid-19 pandemic, the Government commissioned Public Health England to conduct an epidemiological review to analyse how different factors can impact on people's health outcomes from Covid-19. The report of this review, *Disparities in the risk and outcomes of COVID-19*,¹ was published on 2 June 2020.

16. Following this, the Prime Minister asked the Minister for Equalities, Kemi Badenoch MP, to lead cross Government work to address the disparities highlighted by the review. The Terms of Reference for this work were published on GOV.UK on 4 June.² This work involves reviewing the effectiveness and impact of current actions being undertaken by relevant Government departments to directly lessen disparities in infection and death rates of Covid-19 and commissioning further data, research and analysis to improve our understanding of the causes of these disparities.

17. On 22 October, the Minister for Equalities published her first quarterly report to the Prime Minister and the Health Secretary. The report concluded that a range of socioeconomic and geographical factors such as occupational exposure, population density, household composition, together with pre-existing health conditions contribute to the higher infection and mortality rates for ethnic minority groups. A part of the excess risk remains unexplained for some groups and work is underway to fill these gaps in the evidence base.

18. The report included an ambitious set of recommendations to ensure that our cross-Government response keeps ethnic minority people safe, including:

- Mandating the recording of ethnicity data as part of the death certification process, as this is the only way we will be able to establish a complete picture of the impact of the virus on ethnic minority groups.
- Appointing two expert advisors on Covid and ethnicity, Dr Raghieb Ali and Professor Keith Neal, who are bringing huge expertise from the fields of medicine, epidemiology and clinical research to the Government's work going forward.

1 https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf

2 <https://www.gov.uk/Government/news/next-steps-for-work-on-covid-19-disparities-announced>

- Learning what works well locally through a review of the actions taken by local authorities and Directors of Public Health to protect those most at risk.
- Supporting the development and deployment of a risk model to understand individual risk, from research commissioned by the Chief Medical Officer

19. The Government's response to the pandemic will continue to be driven by the latest evidence. What is starting to emerge is that the second wave is not impacting all ethnic minority groups in the same way as the first. For example the latest intensive care data shows that the proportion of people from Black ethnic backgrounds in intensive care with Covid-19 in the second wave has fallen notably since the first wave; but the percentage of Asian people in intensive care with Covid-19 in the second wave has slightly increased since the first wave. It is important that our response to the pandemic continues to be driven by the latest evidence.

20. Additionally, analysis commissioned by the Race Disparity Unit and published by Public Health England in December, looked at the relationship between pre-existing health conditions, Covid-19 and ethnicity in terms of diagnosis, deaths and survival rates. One of the key findings from this is that the Black African and Black Caribbean groups are at no greater risk of dying, once infected, than the White group.

21. The Committee also drew attention to the risks of Covid-19 for those living in multi-generational households. The Government is issuing guidance to help prevent transmission of Covid-19 within households, and will highlight this through a number of communications channels to reach those most at risk. It is also worth noting that research from the University of Cambridge suggests that people live in multigenerational households not only because of affordability, but also for reasons related to companionship and culture.

22. The Minister for Equalities will publish her second quarterly report in the coming weeks, as part of her year-long review.

Recommendation 10: We call for the recommendations from the Lammy Review to be implemented as a matter of priority. (Paragraph 61)

23. The then Conservative Government commissioned an opposition MP, David Lammy, to examine racial disparities in the Criminal Justice system. The Government has accepted 33 out of 35 of the Lammy Review recommendations and has consistently and openly reported against actions it committed to take.

Recommendation 11: The police must regularly poll Black people to find out their levels of confidence in the police to protect their human rights. They must publish the findings of this polling and use it to set a benchmark and a target to increase the confidence that Black people have in the police to protect their human rights. The police must also set a target to increase the number of Black police officers and publish the percentage of Black police officers in each force by seniority. (Paragraph 68)

24. The Government expects the police to respect and protect every citizen's human rights, whatever their ethnicity. However it is also pertinent to note that confidence in police is not solely down to police themselves, but also other factors outside their control including media reporting, historical bias and use of statistics, which also have a significant

effect on how people perceive policing.

25. It is for police forces to consider whether they wish to conduct further local polling on confidence, trust and fair treatment within their force area, in addition to the substantial polling on confidence in the police that already takes place at a national level.

26. The Crime Survey for England and Wales (CSEW) provides the best source of data on trends in public perceptions of the police. Confidence in local police in the year to 31 March 2020 among those from a Black background (64%) was lower than confidence among those from White, Asian and “Other” backgrounds. Confidence was highest among those from an Asian background (77%). There is wide variation between different groups. For example, confidence in the police amongst Black Africans was 69% compared to 54% for Black Caribbean (Crime Survey England & Wales, 2019/20).

27. Confidence in policing across all communities is vital to the success of the long-established system of policing by consent. HMICFRS’s regular all-force PEEL inspections assess how well forces understand the needs of, and engage with, their diverse communities. The Home Office recognises that confidence among some groups, including Black groups, is below the national average and that more needs to be done to improve trust in policing in these groups. That is why the Government is working hard to deliver the diverse police workforce that our communities need by coordinating efforts between Government and policing to not only attract more diverse candidates into policing, but to ensure it is a career where all recruits can thrive.

28. As part of the police uplift the Home Office now publishes data on the ethnicity of police officers on a quarterly basis. This shows data for the total workforce and new joiners in each force including specific data on the number of black officers.

29. The Government is clear that the 20,000 officer uplift is a once in a generation opportunity to support all forces to become more representative of the communities they serve. Sharing best practice, engagement with police associations, upskilling recruitment teams and enhanced data capture are just some of the efforts being made to improve police diversity and inclusion.

30. Some forces have chosen to set local targets to drive diverse recruitment forward. For example, the Metropolitan Police has set itself a target of recruiting 40% of its recruits from ethnic minority communities by 2022/23, the West Midlands Police and Crime Commissioner has set his force a target of recruiting 1,000 ethnic minority officers over the next three years and Leicestershire police is seeking to recruit 25% of recruits from an ethnic minority background. Whilst this is a decision made by Police and Crime Commissioners and Chief Constables, the Government is committed to supporting local force ambitions.

31. In addition, the Commission on Race and Ethnic Disparities, established by the Prime Minister in July 2020, is also considering Crime and Policing as one of its priority areas. It has taken an evidence-led approach to its work, taking into account relevant reviews, and is due to report to the Prime Minister by the end of February 2021

Recommendation 12: Recommendations from the Angiolini Review referencing institutional racism, race or discrimination must be responded to and taken forward as a matter of urgency. (Paragraph 74)

32. The Independent Review of Deaths and Serious Incidents in Police Custody (“the Angiolini Review”) was published on 30 October 2017. The then Government published a response to this on the same day. The review made 110 recommendations across Government and the police. The majority of these recommendations have currently been delivered (65) and a further 20 recommendations delivered in part.

33. It is important to note that the Angiolini Review showed that White people make up 86% of those who died in police custody over the last five years prior to 2017, with 14 % from other ethnic backgrounds. This is in line with population shares but not with the shares of those arrested. The Review acknowledged that “the proportion of black people dying in police custody was lower than the proportion arrested for notifiable offences (6% and 8% respectively)”.

34. Using data from 1998/99–2008/09³ the review states “a disproportionate number of people from BAME communities have died following the use of force”.⁴ Sixteen out of 333 deaths were classed by the IPCC as being “restraint-related”. Of the 16 “restraint-related” deaths, 12 people were White, three were Black and one was Asian. With such small numbers, no firm conclusion can easily be made as to whether there is a correlation between ethnicity and deaths caused by restraint. The post-mortem reports in all these deaths include restraint as a cause of death, however some of these deaths may have been down to several factors. It would have been for the coroner, as an independent judicial office holder, to determine the cause of death in each case. While the statistics presented are correct, they are somewhat dated, stemming from between 1998/99 to 2008/9.

35. Following recommendation 104 of the Review, the Home Office is working closely with the IOPC to examine how they can improve the presentation and accessibility of information regarding the relationship between ethnicity and restraint related deaths. Recent IOPC statistics for deaths in or following police custody⁵ include deaths where use of restraint, or other types of force, are present; however, restraint or force did not necessarily contribute to these deaths.

36. The Review also made nine recommendations specific to ethnicity: seven of these have been completed, one has been delivered in part and one is in progress. An update on progress in addressing recommendations was published in December 2018. The Government has committed to providing a further update in early 2021.

37. The majority of ethnicity recommendations were directed at the Home Office and the IOPC and work done in response includes:

- Police use of force data is now collected and monitored annually by the Home Office and broken down by ethnicity. As data quality improves, this will provide an evidence base to support the development of tactics, training and equipment to enhance the safety of all.
- There will be mandatory ethnic monitoring of Gypsy Roma and Traveller

3 https://webarchive.nationalarchives.gov.uk/20170914112706tf_/http://www.ipcc.gov.uk/page/deaths-custody-study

4 http://data.parliament.uk/DepositedPapers/Files/DEP2012-1687/Deaths_In_Custody_Report_0811.pdf

5 https://policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201920.pdf

communities in England and Wales by police forces in their ethnic monitoring systems from April 2021.

- The IOPC have expanded their programme of discrimination training for operational staff. Since August 2020, more than 70 investigative staff and casework managers have been trained nationally to lead and support race discrimination work. The training is designed to improve technical knowledge and covers the overarching principles and practicalities of investigating race-based discrimination.
- IOPC now provides an ethnic breakdown not only of deaths that follow arrest, but also of other restraint-related deaths that are independently investigated.

38. The report of the Angiolini Review suggests '*there is evidence of disproportionate deaths of BAME people in restraint related deaths*' and in response to Dame Elish's restraint-related recommendations, the College of Policing (CoP) and National Police Chiefs Council (NPCC) released a video, entitled '60 Seconds to Save a Life', which has helped officers to consider the risks of restraint and act quickly where there could be potential risks to health. NPCC and CoP have also embedded risk and best practice associated with restraint, positional asphyxia and acute behavioural disturbance in national police training through the National Personal Safety Manual an Authorised Professional Practice on Detention and Custody. The CoP have also published national evidence-based guidelines for policing on conflict management, including de-escalation and negotiations skills. The recent NPCC and CoP Officer and Staff Safety Review encouraged Chief Constables to implement these guidelines and support further trials.

39. Finally, many of the recommendations related to race are associated with improved training and this is continually evolving. There are likely to be further ways that training can be developed to address racial stereotyping and ensuring those who are conducting investigations are also aware of this. For example, the CoP has training to address the historical context of the relationship between policing and minority communities.

40. In addition, Michael Lockwood, Director General, Independent Office for Police Conduct (IOPC), has responded separately to the JCHR's report; therefore, any references to the five ethnicity-related recommendations directed to the IOPC are referenced in their response (and were referenced as part of their initial response to the review⁶).

Recommendation 13: The Government should give serious thought to establishing a Commissioner or Office of Article 2 compliance, to ensure that the correct processes are followed in cases requiring Article 2 ECHR investigations, without relying on bereaved families for ensuring appropriate follow-up. (Paragraph 75)

41. As the Government made clear in its response to the Angiolini Review, we do not consider that a new and distinct Commissioner or Office for Article 2 Compliance is the most effective means of driving compliance with Article 2 of the European Convention on Human Rights (ECHR).

42. Existing agencies have a role to play here and their collation and dissemination of learning in this area must be made more effective, rather than duplicating this function

6 https://webarchive.nationalarchives.gov.uk/20180226131942/https://www.ipcc.gov.uk/sites/default/files/Documents/research_stats/IPCC_response_to_Angiolini_Oct2017.pdf

in a separate Office for Article 2 Compliance. Coroners, inspectorates, independent watchdogs (such as the IOPC) and the Ministerial Council on Deaths in Custody should work towards strengthening their collaboration in this regard, and the Government will lead conversations as to how this is best achieved.

43. Any death or serious injury during police custody or during or as a result of contact with the police must already be referred to the IOPC and such matters are investigated independently. As the IOPC's own response to this report notes, it is empowered to make learning recommendations and, since 2014, the police are required to publish their responses. Since 2018, the IOPC has introduced a thematic, focussed approach to investigations, including one on race issues. The Government also wants to see closer working between the College of Policing and HMICFRS. The guidance on post-incident procedures, referred to in the IOPC's response, was produced in discussion with the NPCC and the College.

44. The Ministerial Council on Deaths in Custody already exists as a means of coordinating policy, and disseminating learning for incidents of deaths in state custody in England and Wales. The Ministerial Council on Deaths in Custody began work in April 2009, and is jointly funded by the Ministry of Justice, Department of Health and the Home Office. Its purpose is 'to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales'. The most recent Ministerial Board for Deaths in Custody discussed coroners' Prevention of Future Death Reports, which are issued when a coroner believes operations or policies highlighted in an investigation inquest could be reviewed or changed to save lives in the future. Agencies will now work closely together to assess how cross-sector learning can be facilitated.

45. The IOPC has a concordat with HMICFRS and the College of Policing that 'captures and formalises arrangements for collaborative working between our organisations'. They also work with other organisations to produce 'Learning the Lessons' bulletins each year. These are bulletins which use case studies from IOPC investigations to illustrate good practice and learning. IOPC and HMICFRS also share learning in relation to deaths in custody and related risk factors custody prior to custody inspections. This informs the focus of the inspection and also whether specific forces require more regular checks.

46. Paragraph 28A of Schedule 3 of the Police Reform Act 2002, which came into effect in October 2014 following amendments made through the Anti Social Behaviour, Crime and Policing Act 2014, strengthened the powers of the IOPC to issue formal learning recommendations to police forces which they are required to respond to. Policing bodies are required to respond to learning identified by the IOPC within 56 days of receipt of a recommendation. The recommendation and the response are required to be published on the IOPC website

Recommendation 14: We expect the Government to fulfil its promise to implement the recommendations from the Windrush Lessons Learned Review, in full, as a matter of urgency. Focus must be placed on securing the cultural changes needed to ensure that people are treated with humanity and not treated unfairly because of their race. (Paragraph 82)

47. The Home Secretary has apologised unreservedly to victims of the Windrush scandal and their families for the injustice, hardship and suffering they endured at the hands of successive Governments over several decades. The Government is determined to right the wrongs and ensure nothing like this happens again.

48. The Home Secretary accepted Wendy Williams' *Windrush Lessons Learned Review's* important findings and published a Comprehensive Improvement Plan in September setting out the work underway across the Home Office to deliver the lasting and meaningful change the Windrush generation deserve.

49. The Home Office is taking swift and decisive action to make amends and to build a better department. The department is working at pace to transform its culture, and the Home Secretary is leading an unprecedented programme of change to ensure the Home Office truly represents all the parts of the community it serves, putting people at the heart of the reforms the Home Office is making.

50. This includes carrying out a departmental wide culture assessment, designed to enable the department to understand the unwritten rules and assumptions that characterise the department's culture. This assessment has now concluded, and the Home Office has worked with an external provider to analyse the results of the assessment, which will inform the design of future interventions. This programme of transformational culture change within the department is being sponsored by the Permanent Secretary.

51. The Home Office is already a very different place. The department is listening to community leaders and external organisations and acting on their feedback. The department is addressing issues that have built up over decades, and the full root and branch reforms will not happen overnight. The department will continue to listen and act carefully over the months and years ahead to build a Home Office fit for the future, one that serves every corner of society.

Recommendation 15: The Home Office urgently needs to rebuild trust with those communities affected by the Windrush scandal by fixing the compensation scheme, including by lowering the standard of proof for evidential requirements to "the balance of probabilities"; and ensuring that those affected receive the compensation that they are entitled to without further delay. (Paragraph 85)

52. The Home Office is working to ensure members of the Windrush generation are properly compensated for the losses and impacts they suffered. Since April 2019, the Windrush Compensation Scheme has paid or offered more than £8 million, with more than half of that offered in the six weeks since the scheme was overhauled in December. More offers are being made each week. The department publishes data on a monthly basis.⁷

53. The department is processing claims as quickly as possible. The first payment was made within four months of the scheme launching, and the department is making interim payments where parts of a claim can be resolved more easily than others.

54. However, while engaging with members of the generation and the cross-Government working group, it became clearer that the department needed to take immediate action to go further and faster. That is why the Home Secretary announced on Monday 14 December a system of improvements to the scheme. These include:

7 <https://www.gov.uk/Government/publications/windrush-compensation-scheme-data-january-2021>

- Raising the minimum award from £250 to £10,000 for anyone who can show an impact on their life under the terms of the scheme.
- Raising the maximum award an individual can receive for impact on life from £10,000 to £100,000 (with options for even higher awards in exceptional circumstances).
- Raising impact on life payments at every level so that everyone will be paid more in this category.
- Introducing a new early payment which means that as soon as someone can show an impact on life under the terms of the Scheme, they will receive a minimum £10,000 payment.

Provisional figures show that since the 15 December, the scheme has made offers worth more than £4.5 million. This is more than had been offered in the first 19 months of the scheme.

- The compensation scheme has been designed to be as clear and simple as possible. In October 2020 the department changed the Scheme so that it now operates on the balance of probabilities throughout the Scheme. This means caseworkers will look to be satisfied if it is ‘more likely than not’ that the losses and impacts being claimed for were incurred. (The department no longer uses references to ‘satisfied so as to be sure’, which previously applied in a limited number of categories).
- Throughout the claims process, individuals are given a named caseworker for them to contact with any questions or queries. Individuals are asked to provide as much information and evidence as they can, so the best assessment of their claim and personal circumstances and experiences can be made. A small number of individuals have already been awarded compensation for elements they did not originally claim for, demonstrating the department’s commitment to work closely with claimants to ensure they receive the compensation to which they are entitled. But it is important that the Home Office is spending taxpayers’ money appropriately and therefore a minimum level of information and evidence is required.
- The Windrush generation and their families have made an immeasurable contribution to the social, cultural and economic life of this country. The Home Office has put people at the heart of the compensation scheme, and the reforms the department is making in response to the Lessons Learned Review. The Home Office will continue to listen to feedback from stakeholders and communities and make changes to ensure the Windrush Compensation Scheme is operating as effectively as possible.

Recommendation 16: The Government must consult on the implementation of automatic voter registration as a means of increasing democratic participation among Black people and other ethnic minorities and reducing the registration gap between Black and white people. (Paragraph 90)

- The Government acknowledges the importance of increasing democratic participation among Black people and other ethnic minorities and reducing the registration gap between Black and White people. The Government encourages everyone who is eligible to register to vote.
- Electoral Registration Officers (EROs) have statutory responsibility for maintaining complete and accurate electoral registers for their areas. The Government's role is to remove any barriers to registration and ensure that EROs have the tools they need.
- Registering to vote has never been easier or more convenient. It can be done online in as few as five minutes, or paper forms are available for those that prefer. Recent elections have been run on the largest ever electoral registers.
- The Government's opposition to automatic registration is on record and there are no plans to consult on its introduction. Automatic registration contradicts the principle that individuals are properly responsible for registering themselves and should not have it done for them, perhaps even without their knowledge. It is also not at all clear that someone automatically registered would choose to use their vote.
- Automatic registration using data sets to identify people and add them to the electoral register could raise significant privacy and security concerns. It would also risk introducing errors and inaccuracies to the registers, creating unwarranted opportunities for electoral fraud. The Government is committed to protecting the integrity of our democracy.

Recommendation 17: There is a perception among the Black community that the replacement of the Commission for Racial Equality (CRE) with the Equality and Human Rights Commission (EHRC) has resulted in a weaker focus on race equality issues than was previously the case. There are currently no Black commissioners on the EHRC. This has left the Black community without a clear visible champion for their rights. At national level there is no organisation whose priority it is to champion race equality and lead the drive for progress. (Paragraph 100)

55. The EHRC was intentionally established under the last Labour Government by the current chair of the JCHR, with a broad remit, to enable it to take a cross-cutting approach to all the protected characteristics which make up equality law; the present Government does not dissent from that aspiration of its predecessor.

56. The Government rejects any idea that EHRC Board appointments should operate on some sort of quota system, or that the Board must in some way represent a microcosm of all the protected characteristics in the 2010 Act. Nonetheless, the Government recognises the importance of ensuring diverse leadership and that the views of different groups, including black people are properly represented on the EHRC Board. The EHRC's board currently has a black commissioner in Lord Ribeiro as well as a diverse non-executive board, with almost one third of the commissioners (including the chair) from ethnic minority backgrounds. As such, the EHRC board is one of the most ethnically diverse of all arms-length bodies. This Government is committed to ensuring that diversity, including racial representation, continues to be at the forefront of any future public appointments campaigns.

Recommendation 18: For the EHRC to be, and be seen to be, an effective enforcer of Black people’s human rights: i) Black people must be represented at the top level of the organisation including as commissioners; ii) It must have adequate resources, to which end we urge the Government to consider restoring the Commission’s budget to previous levels; and iii) Government must harmonise the Commission’s human rights enforcement powers in line with its powers in relation to equality, so that it can undertake investigations where it is suspected that an organisation has breached the Human Rights Act and provide legal assistance to individuals in Human Rights Act cases. (Paragraph 101)

57. The response to the previous recommendation noted the position as it relates to the EHRC’s Board—which includes a black Commissioner—and key work areas. Senior staffing decisions, with any related diversity targets, are a matter for the EHRC itself 1—though again, we note strongly that the key here is diversity, not an approach based on quotas or pro-rata racial representation.

58. The Government remains of the view that the Commission’s budget is at adequate levels. £17.1m per year was identified in a 2012 budget review as the minimum amount required for the EHRC to discharge its full range of legislative functions. In some areas, for example production of *Is Britain Fairer?* reports under Section 12 of the Equality Act 2006, the EHRC continues to do more than its statutory duties require.

59. The EHRC already has a range of important human rights powers and duties. It is accredited at the United Nations with “A” status by the Global Alliance of National Human Rights Institutions. This means it fully meets the requirements to protect human rights in Great Britain including carrying out inquiries, where appropriate. The 2018 Tailored Review did not recommend that human rights enforcement powers were necessary for the EHRC; and argued that the EHRC should focus on resolving issues of effectiveness and impact.

60. The UK continues to have strong human rights protections within a comprehensive and well-established constitutional and legal system. The protections contained in our domestic legal framework mean that individuals can uphold their rights in a UK court, with legal aid available for cases that are within scope, and for those that aren’t funding may still be available through the Exceptional Case Funding scheme. In addition to this, the EHRC continues to have the power to provide legal assistance to victims of discrimination, which can include the provision of legal representation and assistance to individuals in cases with an equality and human rights element.

Recommendation 19: The UK has lacked capacity in this area since the Commission for Racial Equality was folded into the EHRC. The re-creation of a body along these lines must be considered as a matter of urgency. Such a body should also provide infrastructure to drive forward change at local level, fulfilling a similar role to that previously performed by the race equality councils that were set up in partnership with the Commission for Racial Equality. (Paragraph 102)

61. The Government does not agree that race should be treated differently from other protected characteristics in the Equality Act. The logic of this would appear to suggest that there is no reason for the EHRC to continue to operate, and that separate organisations should protect the interests of each protected characteristic. The Government has worked

to ensure that complementary rather than replacement bodies should take forward race issues, working with and alongside the EHRC as necessary.

62. These include the CRED, whose work is detailed elsewhere in this response.

Recommendation 20: The Government should consider whether changes are required to equality legislation to make it more effective as a tool to enforce Black people’s human rights. This should include consideration of whether more focused and strategic specific duties under the public sector equality duty (PSED) are needed, as has previously been recommended by the Women and Equalities Committee. We support this and also suggest that particular consideration is given to the inclusion of a requirement for public authorities to take action to address identified racial inequalities. The EHRC must take a more proactive approach to ensuring that public bodies comply with the requirements of the PSED. (Paragraph 106)

63. The specific duties under the Equality Act 2010 are set out in regulations which vary across England, Scotland and Wales and were brought into effect from September 2011 onwards. The specific duties play an important role in underpinning the main Public Sector Equality Duty, focussing organisations’ efforts around equality objectives, and providing transparency through the publication of data. The system is intentionally designed to require organisations to set their own equality objectives, focussing on the issues of most relevance within their sectors.

64. The Government does not believe that it is necessary, or would be helpful, to introduce an additional requirement for public authorities to take action to address identified racial inequalities. The PSED already requires that due regard be given to identifying racial inequalities, and to the need to remove or minimise disadvantages suffered as a result of race. Furthermore, the Equality Act 2010 as a whole—and the PSED within it—work on the principle that all protected characteristics are equal and must be treated as such, as set out in the above response. Isolating a single protected characteristic for differential treatment would disrupt the balance of rights and protections, and consideration of a single characteristic in isolation would risk perverse outcomes disadvantaging other groups. The PSEDs requirement to give due regard to all protected characteristics is specifically designed to avoid these risks.

65. The EHRC has enforcement powers that allow it to assess a public body’s compliance with the Public Sector Equality Duty (PSED). The Government supports the EHRC’s use of these powers to play a enforcement role. This was recently seen in its high-profile assessment of how and whether the Home Office complied with the PSED in developing, implementing and monitoring ‘hostile environment’ immigration policies.

Recommendation 21: The Office for Civil Society must consider what can be done to support the further development of independent Black-led voluntary and community sector organisations. (Paragraph 108)

66. The Office for Civil Society continues to engage with Black-led organisations through two key stakeholder groups: the Minister for Civil Society’s Ethnic Minority Roundtable and which shares and discusses the impact of Covid-19 on the community; and BAME VCSE Commissioning Taskforce chaired by the VCSE Crown Representative, Claire Dove CBE and Kunle Olulode MBE (Chief Executive of Voice4Change).

67. The Ethnic Minority Roundtable gives the Minister a regular channel to hear directly from BAME led organisations and those working with BAME communities. Its aim is to build networks and collaboration between different organisations within the BAME VCSE sector and the Government.

68. This aims to support the ethnic minority VCSE sector through improving access to Government contracts and grants.

69. The VCSE Crown Representative's BAME VCSE Commissioning Task Force ("BAME Commissioning Taskforce") supports the ethnic minority VCSE sector to sustainability through improving access to Government contracts and grants. It has met monthly from 15 July 2020 for an initial six months, at which point the progress and future of the group will be reviewed, however it is likely to be extended.

70. The Taskforce aims to support the ethnic minority VCSE sector to sustainability through improving access to Government contracts and grants. It is working to increase contract readiness in the sector and with public sector commissioners to improve access for ethnic minority VCSE organisations.

71. The Taskforce brings together representatives from the ethnic minority VCSE sector, the VCSE Crown Representative and officials from the Department for Digital, Culture, Media and Sport, in addition to officials from other Government departments where appropriate.

Recommendation 22: While the work of the Race Disparity Audit was ground-breaking and very valuable in bringing together the available data, we are concerned that gaps in data collection and analysis remain and act as a barrier to the enforcement of Black people's human rights. The race equality strategy we propose must have at its heart a cross-Government commitment to improved data collection on racial inequality.
(Paragraph 111)

72. The Race Disparity Unit (RDU) is committed to improving the quality of ethnicity data across Government—the RDU outlined its plans for improving the quality of ethnicity data and filling data gaps in its quality improvement plan⁸ published in April this year.

73. The specific data gaps highlighted in the report are for the Home Office and Ministry of Justice but the RDU can work with these departments to fill those gaps.

8 <https://www.gov.uk/Government/publications/quality-improvement-plan-Government-ethnicity-data/quality-improvement-plan-Government-ethnicity-data>

Appendix 2: Equality and Human Rights Commission Response

Introduction

1. The Equality and Human Rights Commission (**‘the Commission’**) is Great Britain’s National Equality Body and an UN-accredited National Human Rights Institution.⁹ We operate independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights.

2. We seek to maximise our impact by working to address the multiple intersectional barriers faced by people in Britain today. The priorities we identified for our 2019–2021 Strategic Plan therefore focus on equality and human rights issues faced by people sharing different protected characteristics, including race, across key areas of life such as justice, education and employment.¹⁰

3. In July 2020, as the unequal impacts of the coronavirus pandemic on ethnic minorities became clear, we launched a dedicated race programme that uses the full range of powers and levers at our disposal to ensure that race inequalities are acknowledged, measured and reduced. A major driver of the programme is the mounting evidence that the unequal impacts of Covid-19 are linked to long-standing and structural inequalities faced by ethnic minorities across many areas of life, from employment, education, housing and justice.¹¹

4. We therefore welcome the work that the Joint Committee on Human Rights (**‘the Committee’**) has done to shine a light on Black people’s human rights and the persistence of racial inequalities. In particular, we share the Committee’s concern about the lack of progress in implementing the findings of numerous reviews into racial inequality. We also strongly believe in the need for urgent action to address this through the development and implementation of a comprehensive cross-Government race equality strategy.

5. We have been recommending a comprehensive, coordinated and long-term race equality strategy since 2017, when we published our Roadmap to Race Equality.¹² Our Roadmap highlighted the entrenched, cumulative nature of racial disadvantage and emphasised that only a race equality strategy that recognises the inter-relationship between inequalities across different areas of life would be able to address this.¹³ We are currently updating the Roadmap in light of the challenges raised by the pandemic and will publish our revised priorities for a national strategy in early 2021.

6. In this submission, we respond to the specific recommendations that the Committee has addressed to the Commission. We also provide comments on some of the Committee’s wider recommendations, particularly where they relate to our role and to strengthening the Equality Act 2010.

9 In Scotland, we have a shared remit with the [Scottish Human Rights Commission](#) on human rights issues.

10 Equality and Human Rights Commission (June 2019), [Strategic plan: 2019 to 2021](#).

11 Public Health England (June 2020), [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#).

12 Equality and Human Rights Commission (2017) [A roadmap to race equality](#). Our Roadmap was co-produced with the Runnymede Trust, Operation Black Vote, the Black Training and Enterprise Group and Business in the Community as a response to the Government’s race disparity audit.

13 Scotland already has a race equality strategy: [A fairer Scotland for all: race equality action plan and highlight report 2017 – 2021](#); and we welcome the Welsh Government commitment to develop and deliver a Wales race action plan: [Welsh Parliament plenary](#) (June 3 2020), para 108.

Monitoring perceptions of human rights amongst Black people

7. The Committee's report addressed the following recommendation to the Commission in relation to our monitoring functions:

The Equality and Human Rights Commission must undertake to run an annual opinion survey on whether Black people feel their human rights are equally protected, so that issues can be identified, and progress checked.
(Paragraph 23)

8. The Commission has a statutory duty under the Equality Act 2006 to report to the UK Parliament on progress towards equality and human rights in Britain.¹⁴ We discharge this duty through our 'Is Britain Fairer?' series of reports, which consider progress in relation to equality and human rights in a wide range of sectors. We also produce specific reports for England, Wales and Scotland.¹⁵

9. We share the Committee's interest in understanding and addressing the effects of racism in relation to the protection of human rights and in hearing directly from affected groups about their experiences.

10. However, we do not think that undertaking an annual survey on whether Black people feel their human rights are equally protected would be the most effective use of our limited resources. Instead we are prioritising a more targeted approach based on collecting and analysing a range of data to measure the experiences and outcomes of different groups in particular sectors. This includes, but is not limited to data on public attitudes.

11. Research that we commissioned in 2018 into public attitudes to human rights found that a significant proportion of the general public do not feel confident that they know a lot about human rights. However, when prompted, many of the people concerned supported specific human rights issues, such as the right to healthcare and education.¹⁶

12. We therefore believe that understanding people's experience of human rights requires a more targeted analysis, for example, focusing on people's perception of particular sectors or services. For example, the measurement framework we developed for our 'Is Britain Fairer?' series includes a measure of people's confidence in the criminal justice system.¹⁷ In 2018, only 54% of Black Caribbean adults in England and Wales had a perception that the criminal justice system is fair, compared with an average of 68%.

13. Another issue which affects people's experience of human rights is the prevalence of prejudiced attitudes. In 2018, we ran a nationally representative survey of prejudice and discrimination in Britain, the first one for over a decade.¹⁸ The survey found that 64% of people from a Black ethnic background in Britain had experienced race-based prejudice, compared with an average of 42% across the population.

14. The purpose of our 2018 prejudice survey was to create a model for other surveys

14 EA 2006, s 12.

15 Equality and Human Rights Commission (2018), [Is Britain Fairer?](#)

16 Equality and Human Rights Commission (2018), [Talking about human rights: how to identify and engage a range of audiences.](#)

17 Equality and Human Rights Commission (2017), [Measurement framework for equality and human rights.](#)

18 Equality and Human Rights Commission (2018), [Developing a national barometer of prejudice and discrimination in Britain.](#)

of this kind. Delivering such a survey on a national scale and across all protected characteristics would require quality control and governance procedures that only a UK Statistics Authority can provide. In our final report presenting the results of our 2018 survey, we asked the UK Government to carry forward this work.¹⁹

15. In addition, our research and inquiry work regularly involves the collection of primary evidence in order to capture the lived experiences of particular groups.

16. For example, our inquiry into racial harassment in universities included a call for evidence from staff and students with direct experience of being racially harassed across universities in England, Scotland and Wales, in addition to roundtable discussions and interviews to explore people's professional views and experiences.²⁰ We also sought the views of individuals and organisations representing members of the Windrush generation as part of our recent PSED assessment of Home Office hostile environment policies.²¹

17. We will, moreover, continue to ensure that the expertise of representative groups and the views and experiences of Black people, who are, of course, not a homogeneous group, inform the development and delivery of the projects within our race programme. We have an external stakeholder advisory group for our inquiry into the treatment and experiences of ethnic minority workers in lower-paid roles in the health and social care sectors, and a stakeholder reference group which includes representatives from race organisations.

Role of the Equality and Human Rights Commission

18. The Committee addressed a series of recommendations to the UK Government that relate to the effectiveness of the Commission's work, that we respond to in turn below:

For the EHRC to be, and to be seen to be, an effective enforcer of Black people's human rights:

i. Black people must be represented at the top level of the organisation including as commissioners;

ii. It must have adequate resources, to which end we urge the Government to consider restoring the Commission's budget to previous levels; and

iii. Government must harmonise the Commission's human rights enforcement powers in line with its powers in relation to equality, so that it can undertake investigations where it is suspected that an organisation has breached the Human Rights Act and provide legal assistance to individuals in Human Rights Act cases. (Paragraph 101)

19. Diverse boards provide a wider range of experience and perspectives and can help to improve decision-making and effectiveness, and reduce unconscious biases within organisations. This is particularly important for the Commission, given our role. Whilst the Equality Act 2006 requires the Secretary of State to appoint our Commissioners, we would like a greater role in these appointments. This role could be similar to that which

19 Equality and Human Rights Commission (2018), Research report 119: [Developing a national barometer of prejudice and discrimination](#).

20 Equality and Human Rights Commission (2019), [Tackling racial harassment: Universities challenged](#).

21 Equality and Human Rights Commission (2020), [Assessment of hostile environment policies](#).

we play in appointing our own Chief Executive, subject to the approval of the Secretary of State, or the Chair could be responsible for appointing the rest of the Board.

20. In November 2020, the Minister for Women and Equalities announced the appointment of four new Commissioners to our Board, bringing a wide range of skills and experience with them. These appointments include Lord Ribeiro of Achimota and Ovington, who has been appointed for 12 months. With these appointments, our board now exceeds the Government's aim for 14% of all public appointments to come from ethnic minority backgrounds by 2022.²²

21. In terms of our staff, the Commission's Inclusion Programme for the period 2020–2023 aims to create a truly inclusive workplace, with an increased focus on positive action and attracting and developing diverse talent. The programme is informed by a human rights-based approach that prioritises people's participation in decision-making. It includes a specific target for our senior workforce to reflect the diversity of Great Britain by 31 March 2023, including by offering training and mentoring opportunities to junior colleagues from ethnic minority backgrounds.

22. We agree that we could have greater impact if we were given greater powers and resources. Since 2010, we have experienced significant funding cuts amounting to 70% of our budget, which has inevitably meant a reduction in the scale and volume of our work across all protected characteristics groups, including race. The Commission's budget for 2019/20 (which covers our work on human rights as well as all protected characteristics) is £17.43m. To compare, in its final full year of operation (2006/07), the Commission for Racial Equality (CRE) had a budget of £19.1m.

23. We are therefore keen to ensure our current budget is protected and welcome the Committee's recommendation to Government that it consider restoring our budget to previous levels. An increased budget would allow the Commission to expand our work on race equality, including enforcement of the Equality Act 2010, for example by increasing the provision of legal assistance to individuals with discrimination cases. We have successfully used these legal powers to assist individuals in a number of recent cases involving the protected characteristic of race. Indeed, over the last three years, almost one in five legal cases we supported either wholly or partly addressed issues of race.²³

24. We also agree that the Commission's less extensive enforcement powers in relation to human rights limit our ability to protect Black people's rights effectively. While we can provide legal assistance to individuals in Equality Act 2010 proceedings, we cannot do so in human rights cases unless the claimant is also complaining of a breach of the Equality Act 2010.²⁴

25. Similarly, although we have the power to undertake an investigation where we suspect an organisation has committed an unlawful act under the Equality Act 2010, this power does not extend to enabling us to investigate suspected breaches of human rights law. We therefore welcome the Committee's recommendation to Government that it should

22 HM Government (2019), [Public Appointments Diversity Action Plan 2019](#).

23 This is based on data for cases we were involved in that closed between April 2017 and July 2020 and includes cases where race has been flagged as a relevant protected characteristic. The figure is over one in four if we include cases that had a potential relevance across all protected characteristics (for example, we were involved in a case challenging tribunal fees that had a positive impact across all discrimination claims. We give a number of examples of these cases below.

24 EA 2006, s 28.

harmonise our human rights enforcement powers in line with our powers in relation to equality.

26. Our ability to use our enforcement powers with maximum efficiency would also be enhanced by a power to levy fines against individuals or bodies who commit unlawful acts. This power would be especially useful if the government legislates to require employers to report on ethnicity employment and/or pay gaps.

27. The Committee additionally recommended the re-creation of a national body whose priority it would be to focus on race equality:

Even if the EHRC's capacity to promote and protect Black people's human rights is improved as we recommend, we nevertheless believe that a need would remain for a high profile organisation at national level, whose priority is to focus on race equality and lead the drive for progress. The UK has lacked capacity in this area since the Commission for Racial Equality was folded into the EHRC. The re-creation of a body along these lines must be considered as a matter of urgency. Such a body should also provide infrastructure to drive forward change at local level, fulfilling a similar role to that previously performed by the race equality councils that were set up in partnership with the Commission for Racial Equality.
(Paragraph 102)

28. We support the Committee's desire to strengthen the work of organisations that champion Black people's human rights. However, it is our view that progress on race equality can be achieved more effectively by increasing our own resources and powers, as discussed above, and by supporting the further development of independent voluntary sector organisations led by ethnic minorities.

29. It is the breadth of our statutory powers that makes us uniquely placed to achieve impact by deploying our various levers in a complementary way. Our compliance, litigation and enforcement activity consists of a spectrum of interventions aimed at driving improved compliance with the law, from providing information and advice to challenging breaches of the law in the courts. Our policy and human rights monitoring work delivers expert advice to Government and policy-makers on the compatibility of their work with equality and human rights law.

30. The breadth of our remit, spanning both human rights and equality for all groups sharing protected characteristics under the Equality Act 2010, allows us to address problems as they are experienced by people in real life, in multifaceted and intersecting ways. The breadth of our remit also enables us to work strategically to address systemic issues related to the protection and promotion of equality and human rights.

31. We strongly agree with the UK Government's Tailored Review that we have the greatest impact when we use all of our powers in combination to achieve systemic change.²⁵ The race programme that we launched in 2020 aims to do this by utilising all of the levers at our disposal in an integrated fashion to ensure that persistent and structural racial inequalities are addressed. This programme includes:

- Enforcement work, such as our above mentioned, and now completed, assessment

25 Equality and Human Rights Commission (November 2018), [Tailored Review](#).

of the Home Office's compliance with the Public Sector Equality Duty in relation to the impact of the 'hostile environment' policy agenda on Black members of the Windrush generation. Our legal and compliance work to follow up on this assessment includes drawing up an enforceable agreement with the Home Office on actions that it should take to implement the recommendations of our assessment, and drawing out wider learnings for other government departments and public bodies. On this second point, we have already been in contact with the Department for Health and Social Care, and are exploring other opportunities across Government.

- Monitoring work to track where action by government is needed, including through our upcoming report to the UN on the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in England and Wales, our online searchable Human Rights Tracker, and our flagship report on equality and human rights in Great Britain – *Is Britain Fairer?* In October 2020, as part of our *Is Britain Fairer?* research, we published a report which brought together the emerging evidence on the impact of coronavirus across key areas of life, including the particular impact for ethnic minorities.²⁶ We are planning to introduce a modular approach to our *Is Britain Fairer?* report series, which will allow us to explore specific issues in depth in a more timely manner, including in relation to race equality.
- Expert advice to strengthen the legal and policy framework for protecting and promoting equality and human rights for ethnic minorities. This includes refreshing our Roadmap to Race Equality to ensure that it reflects the key actions that government should prioritise after the pandemic, including measures to strengthen the Public Sector Equality Duty (see paras 40 to 45, below).
- An inquiry into the treatment and experiences of ethnic minority workers in lower-paid roles in the health and social care sectors. This inquiry will improve our understanding of how this might have contributed to the disproportionate infection rates and deaths of certain ethnic minorities from coronavirus.

32. Finally, we strongly support the Committee's recommendation for the UK Government to strengthen the further development of Black-led voluntary and community sector organisations. These organisations are doing extremely important work in spite of adverse financial circumstances. For example, in a recent parliamentary briefing we highlighted the disproportionate impact of funding cuts on specialist 'by and for' services for ethnic minority survivors of domestic abuse.²⁷ Ensuring sufficient, sustainable long-term funding for community organisations and specialist services of this kind must be a priority.

33. Part of our remit as a National Human Rights Institution is to empower and support civil society to hold government to account for its human rights obligations. We do this by supporting civil society organisations in England and Wales to engage with UN human rights processes as a means of asserting those rights. In 2021, we will be funding a project that seeks to empower and enable civil society organisations to prepare an independent

26 Equality and Human Rights Commission (October 2020), [How coronavirus has affected equality and human rights](#).

27 Equality and Human Rights Commission (November 2020), [Briefing: Survival, recovery and justice: specialist services for survivors of domestic abuse](#).

review for the UN of the measures taken by the UK and Welsh Governments to implement CERD.

34. The Committee's final recommendation in relation to strengthening the effectiveness of the Commission concerns our work to improve compliance with the Public Sector Equality Duty:

The EHRC must take a more proactive approach to ensuring that public bodies comply with the requirements of the PSED. (Paragraph 106)

35. We have significantly increased our enforcement activity in recent years, including in ensuring that public bodies comply with the PSED. This year, as mentioned above, the Commission used its power under section 31 of the Equality Act to find that, in developing and implementing 'hostile environment' immigration policies, the Home Office did not comply with the PSED. We presented a series of findings and recommendations to help support a positive culture and stronger capability around PSED compliance,²⁸ which have wider application to other government departments to help embed the PSED in policy formation, development, implementation and review.⁷ We are currently developing a strategy to support this wider learning process.

36. We have also pursued a robust approach to enforcing other provisions of the Equality Act 2010 in relation to race. This work has included:

- Challenging discriminatory adoption practices:²⁹ We funded the case of *Mander v Royal Borough of Windsor and Maidenhead* brought by a British couple of Sikh Indian heritage. The council told the couple in 2016 that, although they would be suitable adoptive parents, they could not make an application because White couples would be given priority, as they only had White children who were available to adopt. The Department of Education subsequently wrote to all council Directors of Children's Services, referencing the case, and warning them about potential unlawful discrimination based on race.³⁰
- Afro and braided hair: This year, we supported the case of Ruby Williams. Ruby, who was 14 at the time, was repeatedly sent home from school because of her afro hair. Although the school did not accept liability, Ruby received an out-of-court settlement after we funded a race discrimination claim on her behalf.³¹ The school also agreed to sign an agreement under section 23 of the Equality Act 2006 to implement a new hairstyle policy.
- Racial harassment in higher education: In October 2019, we published an inquiry that revealed that racial harassment was occurring at alarmingly high rates across British universities.³² In light of our inquiry and recommendations, Universities UK published new guidance in November 2020 to tackle this issue, which contains practical steps that all universities leaders are encouraged to implement immediately.³³

28 Equality and Human Rights Commission (2020), [Public Sector Equality Duty assessment of hostile environment policies](#).

29 Equality and Human Rights Commission (2019), '[Manders win race adoption case!JN](#)'.

30 Letter from Michelle Donelan MP, Parliamentary Under-Secretary of State for Children and Families (16 January 2020), [Adoption as a permanence option](#).

31 Equality and Human Rights Commission (2020), '[Impact 2019-20](#)'.

32 Equality and Human Rights Commission (October 2019), [Tackling racial harassment: universities challenged](#).

33 Universities UK (November 2020), [Tackling racial harassment in higher education](#).

Strengthening the Equality Act

37. The Committee also made a number of recommendations to strengthen the legal framework for enforcing the human rights of ethnic minority groups.

The Government should consider whether changes are required to equality legislation to make it more effective as a tool to enforce Black people's human rights. This should include consideration of whether more focused and strategic specific duties under the public sector equality duty (PSED) are needed, as has previously been recommended by the Women and Equalities Committee. We support this and also suggest that particular consideration is given to the inclusion of a requirement for public authorities to take action to address identified racial inequalities.
(Paragraph 106)

38. We agree with the Committee's recommendation that the UK Government should consider whether changes are required to equality legislation to make it a more effective tool to enforce Black people's human rights. This should include commencing provisions under the Equality Act 2010 regarding socio-economic inequalities and intersectional discrimination (under the 'dual characteristics' provisions).

39. We have also argued for the implementation of section 106 of the Equality Act 2010, so that political parties are required to publish diversity data about their candidates to encourage wider participation in our democratic processes.

40. In relation to the PSED, we agree with the Committee's view that the duty should be strengthened by developing more focussed and strategic duties. In particular, we have recommended that the requirement on public authorities to set equality objectives/outcomes should be amended to drive a more strategic response that targets the most pressing inequalities.

41. We have identified four core issues with the way many public authorities currently set their equality objectives to comply with the PSED, which mean that it is not reaching its potential:

- Reliance on tacit knowledge of equality issues rather than robust evidence.
- Focus on 'low-hanging fruit' rather than targeting the most persistent inequalities.
- Disproportionate attention directed at internally-focused, capacity-building objectives.
- Lack of transparency in what actions are being taken to achieve objectives.

42. To address this, we recommend placing Ministers under a requirement to publish evidence-based and ambitious equality priorities (including race priorities) for their department and/or relevant sectors.

43. Public authorities would then be required to publish objectives in pursuit of these equality priorities, unless they can explain why context justifies a different approach. In seeking to meet these objectives, we think that public authorities should be required to make

greater use of positive action measures and public procurement. We also recommend that public bodies should be required to publish actions plans and measurement frameworks to track progress, using guidance from Ministers. Bodies with responsibility for regulating, inspecting or auditing public authorities should be required to oversee progress towards equality objectives.

44. We have been active in seeking and reflecting stakeholder views on these issues. In 2020, we organised a series of roundtables with civil society and academics, regulators and inspectorates, and duty bearers to test our PSED reform proposals, where broad support was expressed.

45. The Women and Equalities Committee has endorsed the core principles of our proposals for PSED reform.³⁴ More recently, we have raised these proposals with the Home Affairs Select Committee's Macpherson '21 years on' inquiry, due to report shortly.³⁵

46. Our PSED reform proposals seek to deliver on the duty's original vision: to drive concerted action to tackle entrenched inequalities and shift the burden away from individuals challenging discrimination in the courts toward duty-bearers. The proposals will also allow us to better enforce compliance with the PSED by duty-bearers, a task which is hindered by the flexible nature of the current specific duties.

47. Finally, even with reform to the PSED, there remain significant barriers for individuals accessing redress when their rights are breached, which also need to be addressed. A key aspect of this is ensuring that individuals have the means to fund legal representation.

48. In our inquiry into access to legal aid for discrimination cases, we flagged that there was a disparity in positive outcomes for white and ethnic minority clients of Civil Legal Advice's telephone Gateway service.³⁶ We recommended that Civil Legal Advice take steps to understand the cause(s) of the disparity between positive outcomes for white and ethnic minority clients, and put measures in place to mitigate against them. Further, the Government should ensure that the financial eligibility thresholds to qualify for legal aid are set so that only those who can genuinely afford to pay for their own legal representation are excluded from legal aid.

49. To conclude, we welcome the Committee's report and recommendations to strengthen both the Commission and the Equality Act 2010. We believe these will be important steps towards reducing racial inequality and improving access to human rights for Black people in Britain, and we stand ready to fully play our part in this work.

34 Women and Equalities Committee (July 2019), [Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission](#).

35 Home Affairs Select Committee (2020), [MacPherson Report – 21 years on inquiry](#); Equality and Human Rights Commission (July 2020), [Evidence to the Home Affairs Select Committee inquiry on the Macpherson Report: twenty-one years on](#).

36 Equality and Human Rights Commission (June 2019), [Access to legal aid for discrimination cases](#).