

# NMN Submission to the WEC inquiry into putting equalities at the heart of Government

## About us

Nordic Model Now! is a secular feminist grassroots women's group campaigning for the Nordic Model, the equality and human rights-based approach to prostitution. All members are unpaid volunteers and the group includes survivors of prostitution.

## New approaches & initiatives

There is a lot of good sense in Liz Truss's statement. We agree that the Government needs to address poverty and regional disadvantage. We agree that identity politics, postmodernism, and loud and well-funded lobby groups have distorted the public narrative and have led to negative consequences for many ordinary people.

However, while everyone is an individual, it is also a fact that many aspects of our lives are determined not only by where we grow up, but also by our sex, ethnicity and whether we are disabled.

Successive Conservative governments, and the preceding Coalition government, have not implemented, properly or at all, many measures in the Equality Act 2010 (EA) that were designed specifically to ameliorate many of the problems that Liz Truss lays out.

For example, in recognition that socioeconomic inequality can sometimes have a greater negative impact on people's lives than sex and ethnicity, the EA introduced the public sector equality duty (PSED) that, among other things, required strategic public bodies to consider how their decisions might reduce socioeconomic inequality.

But the Coalition government effectively scrapped this socioeconomic duty. This is unfortunate, because if it had been implemented effectively, much of the regional inequality that Liz Truss sets out could have been rectified over the last 11 years.

We would therefore urge the Government to bring the socioeconomic duty into force immediately, along with the EA measures that address intersectional or combined discrimination.

The PSED has its roots in failures following the murder of Stephen Lawrence, a young Black student, in 1993 and the subsequent Macpherson inquiry into these failures. This found that the problem was less that individuals within the public bodies were racist but that the institutions themselves and their policies were racist.

Macpherson explained it like this: “It is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any sections of our communities.”

This understanding led to the introduction of measures in the Race Relations (Amendment) Act 2000 that for the first time placed not just a negative duty – not to commit discriminatory acts against individuals – but a positive duty to “give due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity.” This was soon followed by similar duties in respect of disability and sex, and in 2010 these were replaced by the PSED that applies to all nine protected characteristics in the EA.

However, the PSED is weak, legal challenges are hard to bring and are seldom successful, and there has been a lack of political will to implement it thoroughly or at all. Most government departments and public bodies do not follow either its letter or its spirit.

For example, [every year](#)<sup>1</sup> since 2010, the Treasury has failed to meaningfully consider the impact of its budgets on women, disabled people, and those from minority ethnic communities – let alone to consider measures that would reduce the inequality they experience – or even to carry out effective equality impact assessments.

The [GEO’s guidance](#) on the PSED states that to comply with the duty, equality issues must be thoroughly considered **throughout policy development, review and assessment**. The more the policy affects discrimination, equality of opportunity, good relations, and historic disadvantages, the more important it is that the PSED is fully implemented. It appears that compliance with this guidance is the exception rather than the rule.

As a result, since 2010, there has been a very serious deterioration in the socioeconomic position of [women](#),<sup>2</sup> particularly disabled women, and Black, Asian and women from other minority ethnic groups, and of people living in the [poorer regions](#)<sup>3</sup> of the UK. This trend has [accelerated](#)<sup>4</sup> in the past year as a result of Government measures in response to Covid-19.

Women’s lives are different from men’s for a variety of reasons, including how children are socialised, biological reproductive functions, the unique nature of the mother-child bond and the work associated with raising children, gender stereotyping, the pay gap, the long history of men’s systematic advantaging at women’s expense, the palpable misogyny that pervades our culture, the way porn eroticises violence against women, men’s greater propensity for violence – whatever that is caused by – and women’s smaller average body size and muscle mass.

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<sup>1</sup> <http://wbg.org.uk/>

<sup>2</sup> <http://wbg.org.uk/resources/the-impact-of-austerity-on-women/>

<sup>3</sup> <http://geographical.co.uk/uk/item/3906-a-country-divided-why-england-s-north-south-divide-is-getting-worse>

<sup>4</sup> <http://wbg.org.uk/media/press-releases/first-results-from-new-study-examining-the-impact-of-covid-19-on-working-class-women-in-the-uk-published-today/>

In a previous [submission](#)<sup>5</sup> we provided case studies that showed that when provisions are gender-neutral and do not recognise and address the actual realities of women's lives, those provisions invariably benefit men at the expense of women, and are therefore likely to exacerbate inequality. To achieve sex equality, provisions need to address the historic and structural nature of the inequality between the sexes and all of the complex realities.

We believe that the solution is to strengthen the PSED and insist on its full and thorough implementation across all Government departments, local authorities and public bodies. If this had already been done, we do not believe that some of the catastrophes that Liz Truss mentions – the failure to defend single-sex spaces, the toleration of antisemitism, and the grooming and sexual exploitation of girls in Rotherham and elsewhere – would have continued for so long.

## Compliance with the UN Conventions

We have seen no evidence that the GEO is effective in ensuring compliance with international obligations under the UN Conventions, including CEDAW and SDG5.

The full provisions of CEDAW are not incorporated into domestic law, and where they are, they are mostly ineffective. This is demonstrated by the fact that since 2010 the Government has introduced many [measures](#)<sup>6</sup> that directly or indirectly discriminate against women – in direct contravention of CEDAW Article 2 and SDG5.

The CEDAW Committee recommended, in its 2019 [concluding observations](#),<sup>7</sup> that the UK incorporate the provisions of CEDAW into its domestic legislation without delay, just as it had recommended in 1999, 2008 and 2013. And yet it appears that neither the Government nor the GEO has made plans to do so.

When asked by the CEDAW Committee about the steps taken to incorporate the provisions of the Convention into national law, the Government [stated](#)<sup>8</sup> that it “does not agree that the Equality Act 2010 should incorporate all the provisions of the CEDAW Convention.” This demonstrates an unwillingness to ensure the Convention is complied with – because clearly

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<sup>5</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/enforcing-the-equality-act-the-law-and-the-role-of-the-equality-and-human-rights-commission/written/90911.pdf>

<sup>6</sup> <http://nordicmodelnow.org/2018/04/10/submission-to-the-women-equalities-committees-inquiry-on-the-implementation-of-sdg5/>

<sup>7</sup>

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en)

<sup>8</sup>

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhslDcROIUTvLRFDjh6%2fx1pWCB5ZF4s%2f992XLJyWYavQTIRkAGwdlQ35C2TLtaicAkALju2vh3KQxB9FLr%2f4o4D2ZknuH2vHmI3FQI%2fvJa9LKetgA4MuebtJMNtvG2ehX7g%3d%3d>

the EA alone cannot address all of the complex realities and the myriad ramifications of the historical oppression of women.

It appears that the GEO has not issued a formal response to the Committee's concluding observations, even though the Government is required to provide the Committee with written information by March this year about the implementation of four of the recommendations.

The CEDAW Committee made many other recommendations. If the GEO was doing its job, surely now, two years later, at least some of these recommendations – or at least plans for them – would be implemented?

This is an abrogation of the GEO's responsibilities and of the Government's obligations under international law.

Using the examples of prostitution and surrogacy, two issues that impact women very differently from men, we show that without a gender mainstreaming approach to wider legislation and policy and the implementation of the provisions of CEDAW in domestic law and policy, women are inevitably failed and discriminated against in contravention of CEDAW.

## Prostitution

CEDAW Article 6 deals with prostitution as follows:

*“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”*

This implicitly positions prostitution as a form of violence or discrimination against women and [places](#)<sup>9</sup> an obligation on the Government to fight all third-party profiteering from it. We do not believe that legislation in England and Wales is conformant with Article 6 and nor are the [police guidelines](#)<sup>10</sup> and the [CPS guidelines](#).<sup>11</sup> The latter appear to condone police assuring brothels they can operate with impunity provided certain 'ground rules' are observed.

Clearly such failures to comply with CEDAW cannot be fixed through the Equality Act. What is required is a systematic examination of all legislation in the light of all of the articles of CEDAW so that there is a thorough understanding of the current position and what needs to change. In the meantime, Government departments and public bodies must be reminded of their duty to comply with CEDAW as fully as possible within the current legislation.

For example, the GEO could make it clear to both the police and the CPS that pimps and brothel keepers should no longer be given impunity under any circumstances. New guidelines

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<sup>9</sup> <http://nordicmodelnow.org/facts-about-prostitution/fact-cedaw-requires-countries-to-fight-pimping/>

<sup>10</sup> <http://nordicmodelnow.org/2019/04/29/a-sexist-prism-national-police-guidance-on-policing-prostitution/>

<sup>11</sup> <http://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution>

could be drawn up that prioritise the policing of all forms of pimping, brothel keeping and third-party profiteering from women's prostitution, while decriminalising those selling sex, and deterring men from purchasing sexual services (for example, through zero tolerance of kerb crawling and public information campaigns), as required by Article 9 of the [Palermo Trafficking Protocol](#) (PTP).<sup>12</sup>

Prostitution is a practice of male dominance that [tends to lead](#)<sup>13</sup> to an increase in men harassing women and girls in public places and is connected with [attitudes](#)<sup>14</sup> that make rape and domestic violence more likely.

Therefore, any policy that normalises or condones the system of prostitution, as the NPCC guidance does, surely contradicts Article 9 of the PTP, Article 6 of CEDAW, and the PSED requirement to have due regard to the need to tackle discrimination against women and to foster good relations between men and women.

An FOI request revealed that the NPCC did not comply with the PSED or consider the implications of CEDAW and the PTP. For more on this, see our [analysis of the NPCC guidance](#).<sup>15</sup>

Another example comes from Leeds, which operates a so-called decriminalised red-light zone in Holbeck.

While the rules claim that pimps, trafficking, drugs, coercion and organised crime are not tolerated, in practice they are all rife and apparently condoned – while the women who are involved in prostitution are subject to arrest, ASBOs, cautions and even prison sentences. And yet the kerb crawlers, who drive the whole thing and cause terror to the local women and children, have more or less total impunity, as we explain in [our report](#).<sup>16</sup>

This clearly contravenes Article 6 of CEDAW and Article 9 of the PTP. And yet there is no evidence that Leeds City Council has considered this nor that it has met its obligations under the PSED. It recently commissioned an [‘independent’ review](#)<sup>17</sup> of the zone. This also failed to investigate the equality impact of the scheme – in contravention of the Council's obligations under the PSED.

In her statement on new approaches, Liz Truss rejected the capture of public bodies by loud lobby groups. We believe that Leeds City Council is an example of this phenomenon and that

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<sup>12</sup> <http://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

<sup>13</sup> <http://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

<sup>14</sup> <http://nordicmodelnow.org/facts-about-prostitution/fact-buying-sex-makes-men-more-prone-to-violence-against-women/>

<sup>15</sup> <http://nordicmodelnow.org/2019/04/29/a-sexist-prism-national-police-guidance-on-policing-prostitution/>

<sup>16</sup> <http://nordicmodelnow.org/2019/08/17/the-holbeck-red-light-zone-condoms-sex-offenders-and-cars-full-of-jeering-men/>

<sup>17</sup> <http://nordicmodelnow.org/2020/07/11/nmn-response-to-the-independent-review-of-the-holbeck-red-light-zone-in-leeds/>

it has been captured by well-funded lobbyists for the full decriminalisation of the sex trade and for prostitution to be considered normal work. We believe that something similar has happened in the NPCC. We do not believe that this could happen so easily and so totally if the PSED had been followed, because of its requirement to consider the impact on all relevant groups.

That the GEO has been utterly silent on these issues shows that it is not fulfilling its role in ensuring that the UK complies with CEDAW and the PTP or that public bodies are complying with the PSED.

We urge the Government and the GEO to give their full support to Dame Diana Johnson's Sexual Exploitation Bill, which if implemented fully and properly would bring England and Wales into line with Article 6 of CEDAW and Article 9 of the PTP.

There is also an urgent need to address the Universal Credit system to ensure that women are not put in a situation where they have no alternative but to resort to prostitution or accepting "sex for rent" offers.

## Surrogacy

Like prostitution, surrogacy involves the instrumentalization of women's bodies. A huge industry that profits from this has developed since CEDAW was adopted by the UN in 1979. Had that industry existed then at the scale it does now, we have little doubt that CEDAW would explicitly prohibit third party profiteering from women's surrogacy. This history and CEDAW defining maternity as a social good, suggests that Article 6 should be taken as implicitly prohibiting profiteering from surrogacy.

Without public consultation or debate, the Department for Health and Social Care (DHSC) has issued [guidance](#)<sup>18</sup> that states that "the Government supports surrogacy as part of the range of assisted conception options."

We suspect that this is another case of capture of an institution by loud and well-funded lobby groups that represent a rapacious and exploitative industry and sections of the LGBT community that claim that gay men have a 'human right' to surrogacy.

The 'Property, family and trust law' section of the Law Commission is currently undertaking a surrogacy project. The commissioner is Professor Nicholas Hopkins, whose chief area of interest and expertise is "law as it applies to land." He has no experience or expertise in women's and children's rights.

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[http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843890/Surrogacy\\_guidance\\_for\\_intended\\_parents\\_and\\_surrogates.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843890/Surrogacy_guidance_for_intended_parents_and_surrogates.pdf)

This appears to be a contravention of the [protocol](#)<sup>19</sup> between the Government and the Law Commission, which states that the Law Commission should only take on work for which they “have or have access to the relevant experience”?

The law commissioners could have ameliorated their lack of expertise and experience by consulting widely with relevant experts in women’s and children’s health, welfare and human rights, but it seems that they did not do this during the critical phase when they were drawing up their proposals. Instead, they were [mostly advised](#)<sup>20</sup> by those who have a financial stake in a flourishing industry and well-funded lobby groups.

The [consultation paper](#)<sup>21</sup> admits that it is unlikely that commercial surrogacy could ever conform to CEDAW and then proceeds to ignore this. Similarly, it mentions obligations under the [UNCRC](#)<sup>22</sup> and its first optional protocol and the recommendations of the UN Special Rapporteur on the sale and sexual exploitation of children, but then engages smoke and mirrors to pretend that their proposals do not conflict with these obligations when clearly, they do.

Moreover, the consultation paper (e.g. on page 85) suggests that obligations under ratified human rights conventions are not legally binding. The UK has ratified the Vienna Law of Treaties, which means that under international law we are legally bound to comply with the terms of a treaty on its ratification – particularly when drawing up proposals for new legislation.

In response to a request that they are conscientious in fulfilling their obligations under the PSED, Professor Hopkins said: “We will use the points raised in the public consultation to inform our final recommendations to Government. At that stage, we will also conduct an impact assessment of our recommendations, including looking specifically at the impact on equality.”

However, as noted earlier, the PSED requires that equality issues are considered throughout a project and not simply considered at the end.

For a summary of our key concerns, see the [open letter](#)<sup>23</sup> we sent during the consultation.

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<sup>19</sup> <http://www.lawcom.gov.uk/document/protocol-between-the-lord-chancellor-on-behalf-of-the-government-and-the-law-commission/>

<sup>20</sup> <http://nordicmodelnow.org/2020/09/06/what-foi-requests-revealed-about-the-law-commissions-surrogacy-consultation/>

<sup>21</sup> <http://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/Surrogacy-consultation-paper.pdf>

<sup>22</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>23</sup> <http://nordicmodelnow.org/2019/10/11/open-letter-to-the-uk-and-scottish-law-commissioners-about-the-surrogacy-consultation/>

This suggests that the GEO has failed to work with the Law Commission to ensure they do not put forward recommendations or draft legislation that conflicts with the UK's obligations under the UN Conventions and to ensure that they implement the PSED in all their projects.

This is another example of the GEO abrogating its responsibilities.

## The structure and function of the GEO

It should be clear from the above that the GEO is not effective in its role of improving equality for women and reducing the discrimination and disadvantage they face. This is hardly surprising as the [About Us page](#)<sup>24</sup> on the GEO website states that their priorities regarding women are solely concerned with women's advancement in the workplace and the elimination of the gender pay gap. While these are important, workplace issues make up only a small part of the inequality facing women.

The GEO's stated priorities regarding LGB&T people, in contrast, are broad-based and holistic, and specifically include addressing the discrimination and inequalities LGB&T people face, and eliminating homophobic, biphobic and transphobic (HBT) bullying in schools.

The sexual harassment of girls by boys is now at [epidemic levels](#)<sup>25</sup> in schools, but the GEO does not consider this a priority – even though: girls make up a far greater proportion of the school population than LGB&T youth; many girls are also lesbians; and some (perhaps most) HBT bullying is directed at those who do not conform to gender stereotypes, which are themselves part of the mechanism by which male supremacy and female subordination are maintained and enforced. In other words, addressing boys' sexual harassment of girls is likely to have a positive knock-on impact on bullying of LGB&T children.

We have seen no evidence that the GEO has made any effective attempts to ensure Government measures do not lead to any worsening of the inequality between the sexes.

## Recommendations

1. Full support for Dame Diana Johnson's Sexual Exploitation Bill.
2. Implement the CEDAW Committee's recommendations in full without delay, including establishing a national oversight mechanism to coordinate and monitor the implementation of the Convention.
3. Immediately bring into force the EA provisions relating to the PSED on socioeconomic inequalities and combined discrimination.

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<sup>24</sup> <http://www.gov.uk/government/organisations/government-equalities-office/about>

<sup>25</sup> <http://ukfeminista.org.uk/wp-content/uploads/2017/12/Report-Its-just-everywhere.pdf>



4. Take immediate measures to ensure the **effective application** of the PSED across all Government departments, local authorities, and public bodies.
5. Strengthen the PSED so that it can be enforced and any failures can be addressed effectively and in a timely manner.
6. The DHSC should urgently reconsider its unconditional support for surrogacy and the Law Commission must understand that no recommendations that contradict CEDAW and the UNCRC and its first optional protocol can be accepted.

*February 2021*