

Witness Name: Marcial Boo

Statement No.: 1

Exhibits: MB/1-MB/119

Dated: 03 July 2023

## **UK COVID-19 INQUIRY**

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### **WITNESS STATEMENT OF MARCIAL BOO**

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I, Marcial Boo of the Equality and Human Rights Commission, Arndale House, The Arndale Centre, Manchester, M4 3AQ, will say as follows: -

#### **A Introduction**

1. I make this statement in my capacity as Chief Executive Officer ('CEO') of the Equality and Human Rights Commission ('EHRC'; formally the Commission for Equality and Human Rights), in response to the request by the UK Covid-19 Inquiry ('the Inquiry') for evidence relating to its Module 2, pursuant to Rule 9 of the Inquiry Rules 2006. References in this statement to "we" and "our" refer to the EHRC collectively.
2. I have worked at the EHRC, as CEO, since 20 September 2021. I was therefore in post for the latter part of the period that the Inquiry is considering in Module 2 (January 2020 to February 2022; 'the specified period'). I have overall responsibility for the operation of the EHRC, reporting directly to the Board of Commissioners. I

sit on the Board as a Commissioner ex officio. In making this statement, I have drawn on knowledge and expertise from teams across the EHRC.

**B Content of this statement**

3. The Inquiry has requested a statement from the EHRC in Module 2 to better understand the EHRC's involvement in the government's response to the pandemic. Where I refer to 'government' in this statement, I refer to the UK Government, unless stated otherwise. The EHRC is also providing witness evidence, at the Inquiry's request, in relation to Modules 1 and 2B (to date).
4. In this statement, I will focus on issues relevant to Module 2, namely core political and administrative decision-making of the government, including in relation to decision-making about Non-Pharmaceutical Interventions ('NPIs'). These are listed by the Inquiry as: the national lockdowns; local and regional restrictions; circuit breakers; working from home; the opening or closure of schools; social-distancing; the use of face coverings; and the use of border controls. As such, this statement is not intended to be a complete picture of all of the EHRC's work in relation to the pandemic.
5. This statement is divided into the following sections:
  - 5.1. The EHRC (paragraphs 6 to 14);
  - 5.2. Summary of the EHRC's work between January 2020 and February 2022 (paragraphs 15 to 22);
  - 5.3. Engagement with government (paragraphs 23 to 31);
  - 5.4. Engagement with non-governmental stakeholders (paragraph 32);
  - 5.5. Areas of focus:
    - 5.5.1. The public health and coronavirus legislation and regulations (paragraphs 34 to 41);
    - 5.5.2. Public health communications and public confidence (paragraphs 42 to 46);

- 5.5.3. Health and social care (paragraphs 47 to 72);
- 5.5.4. Access to food and other essentials (paragraphs 73 to 78);
- 5.5.5. Education (paragraphs 79 to 94);
- 5.5.6. Work (paragraphs 95 to 120);
- 5.5.7. Access to justice (paragraphs 121 to 124);
- 5.5.8. Institutions (paragraphs 125 to 129);
- 5.5.9. Domestic abuse (paragraphs 130 to 133);
- 5.5.10. Ethnic minorities (paragraphs 134 to 141);
- 5.5.11. Transport (paragraphs 142 to 146);
- 5.5.12. Other significant work (paragraphs 147 to 155);
- 5.6. EHRC inquiries and enforcement powers;
  - 5.6.1. Inclusive Justice inquiry (paragraphs 156 to 158);
  - 5.6.2. Inquiry into racial inequality in health and social care workplaces (paragraph 159);
  - 5.6.3. Enforcement (paragraphs 160 to 161);
- 5.7. Monitoring the impact of the pandemic (paragraphs 162 to 166);
- 5.8. Lessons learned (paragraphs 167 to 182);
  - 5.8.1. The PSED (paragraphs 179 to 182)

## **C The EHRC**

- 6. The EHRC is Britain's national equality and human rights body. It is a statutory body established under the Equality Act 2006 ('EA 2006'). It operates independently of the UK, Scottish and Welsh Governments to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It enforces

the Equality Act 2010 ('EA 2010') and encourages compliance with the Human Rights Act 1998 ('the HRA'). It is accredited at UN level as an 'A status' National Human Rights Institution ('NHRI') in recognition of its independence, powers and performance.

7. We have unique duties and powers which are set out in Part 1 of the EA 2006. Pursuant to section 3 of the EA 2006, our general duty is to encourage and support the development of a society in which: (a) people's ability to achieve their potential is not limited by prejudice or discrimination; (b) there is respect for and protection of each individual's human rights; (c) there is respect for the dignity and worth of each individual; (d) each individual has an equal opportunity to participate in society; and (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.
8. As an independent and impartial body, the EHRC is not directly involved in any formal advisory groups and does not participate as of right in any government administrative processes, but does so on request. Our role is to promote understanding and engagement with equality and human rights issues, to encourage compliance with the law, and to use our authority and influence to secure improvements in policy, practice and the law where necessary. This involves regulating employers and service providers across Britain, whether private, public or third sector. While we actively participate in debates across equality and human rights issues, and seek to foster good relations with and between stakeholders, it is not our role to be an advocacy or campaigning organisation. The EHRC's work generally has not, and does not, include epidemic or pandemic preparedness, as this issue is outside our explicit remit.
9. We regulate equality across the three nations of Great Britain and we have a human rights mandate in Scotland in relation to matters reserved to the UK Parliament. We take a three nations approach to our work, to ensure that our action to improve equality and human rights is relevant to the devolved contexts of Scotland and Wales, with assistance from our Scotland and Wales statutory Committees, and to devolved decision makers in England. In practice, this means regular discussion and information sharing between staff in our Great Britain, Scotland and Wales teams. In the specified period, this would have involved discussion and information sharing



on the government's response to the pandemic as issues emerged. The Scottish Human Rights Commission has a mandate to promote and protect human rights in Scotland where they fall within the competence of the Scottish Parliament.

10. Our funding is provided by the Government Equalities Office ('GEO'), which is part of the Cabinet Office, and we are accountable to Parliament through the Minister for Women and Equalities and the Women and Equalities Committee. We appear before the Women and Equalities Committee to give oral evidence as required and at least annually.
11. Responsibility for the strategic oversight of the EHRC lies with the Board of Commissioners. The Chair and Commissioners are public appointments made by the Minister for Women and Equalities.
12. There are also four committees which help guide our work: two statutory committees, the Scotland Committee and the Wales Committee; and two non-statutory advisory committees, the Audit and Risk Assurance Committee and the People and Workspace Committee. During the specified period, we also had a Disability Advisory Committee.
13. The EHRC's operations are overseen by a leadership team consisting of the following:
  - 13.1. CEO (currently myself, Marcial Boo);
  - 13.2. Chief Operating Officer (currently Cath Denholm);
  - 13.3. Chief Strategy and Policy Officer (currently Melanie Field);
  - 13.4. Chief Regulator (currently Jackie Killeen);
  - 13.5. Director of Policy, Human Rights and Three Nations (currently Katherine Perks and Rachel Robinson (acting) - job share);
  - 13.6. Director of Finance, Procurement, Planning, Performance and Governance (currently Bill Malloy);
  - 13.7. Director of Communications (currently Moya Alcock);

13.8. Director of Legal (currently Adam Sowerbutts);

13.9. Director of People and Infrastructure (currently Joe Corcos).

14. The EHRC staff is made up of a number of teams reporting to the above listed directors. At the start of the Covid-19 pandemic we employed some 210 staff, and we now employ some 225 staff.

#### **D Summary of the EHRC's work between January 2020 and February 2022**

15. Like other organisations, we began to consider the potential impacts of the pandemic in early 2020. The period up to September 2020 could be described as an emergency response period, with the EHRC engaging on new and complex issues as they arose.
16. In April 2020, we formed a steering group to lead our initial response to the pandemic. This was led by our then Director of Policy, Human Rights and Three Nations (Alasdair MacDonald) and overseen by Melanie Field in her capacity as Chief Strategy and Policy Officer. It was comprised of a number of key individuals including our Director of Regulation, our then Director of Evidence and Strategy, our Head of Wales and our Head of Scotland. The steering group was responsible for: assessing emerging impacts of the pandemic, and adjusting the strategic approach as required; ensuring that stakeholder views were properly considered and reflected in our work; and monitoring and refining the impact on our wider Business and Strategic Plans. We redirected internal resource, including by deprioritising one of our existing strategic areas (transport, around September 2020) to ensure that we had capacity to effectively advise governments and others on equality and human rights issues related to the pandemic.
17. On 9 April 2020, we published a statement from our then Chair of Commissioners, David Isaac, explaining how we would respond to the pandemic. We stated that we would: work closely with stakeholders and partners to monitor developments; provide expertise to governments across the three nations; and remind all carrying out public functions of their obligations under the Public Sector Equality Duty ('PSED'). We went on to make a number of public statements on pandemic-related issues arising throughout the specified period.

18. In summary, our responsive work between April and September 2020 included the following, as detailed further below:
  - 18.1. Producing detailed research and analysis through a cross-cutting report on the impact of the pandemic on different groups (“How coronavirus has affected equality and human rights”, part of our “Is Britain Fairer?” report series (our ‘October 2020 IBF report’). **[MB/1 - INQ000185225]**;
  - 18.2. Submitting evidence to a wide range of parliamentary committees on the impact of the pandemic;
  - 18.3. Advising No10 to ensure that British Sign Language (‘BSL’) interpretation was provided for all key public statements;
  - 18.4. Influencing the British Medical Association (‘BMA’) and other bodies to ensure that an overly broad approach to the use of Do Not Attempt Cardiopulmonary Resuscitation (‘DNACPR’) orders was not adopted;
  - 18.5. Contributing to Public Health England (‘PHE’) and other public bodies’ work on the impact of the pandemic on different ethnic minority groups.
  - 18.6. Partnering with other regulators and stakeholders, such as the Care Quality Commission (‘CQC’), on the serious impacts of Covid-19 on older people in social care settings;
  - 18.7. Working with the Department for Environment, Food and Rural Affairs (‘DEFRA’) and major supermarkets to ensure that disabled and older people were able to safely access food shopping;
  - 18.8. Engaging with exam bodies to ensure that particular groups were not disadvantaged by predicted grading; and
  - 18.9. Working with the Department for Business, Energy and Industrial Strategy (‘BEIS’) on its approach to return to work policy.
19. By around September 2020, the EHRC – on the recommendation of the steering group – decided to focus on a smaller number of strategic Covid-19 related issues: the impact on ethnic minority groups, and social care. Both led to long-term



programmes of work embedded in our Strategic and Business Plans, including an inquiry into decision-making in social care and a dedicated race legal support fund.

20. In October 2020 we published our October 2020 IBF report. **[MB/1 - INQ000185225]**  
The report covered the areas of: work; poverty; education; social care; and justice and personal security. We made targeted recommendations for the UK, Scottish and Welsh Governments. We would have highlighted the report to a range of governmental and non-governmental stakeholders, including: a number of parliamentary committees; and Ministers (including Liz Truss MP (then Minister for Women and Equalities), Matt Hancock MP (then Secretary of State for Health and Social Care), Nick Gibb MP (then Minister for School Standards) and Robert Buckland MP (then Secretary of State for Justice)).
21. Throughout the specified period, we continued to engage on relevant policy issues as they emerged, such as vaccine passports, and whether long Covid amounts to a disability under the EA 2010.
22. Our 2020-21 Impact Report, published on 10 May 2021, summarises some of our work in this period. **[MB/2 - INQ000185245]**

## **E Engagement with government**

23. Our remit requires us to engage regularly with government at various levels. We have a key role in advising government on equality and human rights issues. We are not routinely expressly invited by the government to provide guidance, advice or briefings. I am not aware that, during the specified period, we received any formal communications seeking our advice on: the identification of at-risk and vulnerable groups and/or those with different protected characteristics during the pandemic; public health and coronavirus legislation and regulations; public health communications; and the decision-making about NPIs. However we regularly offer advice to government, and during the specified period we did so in relation to its response to the pandemic, in the manner described below. When providing our advice to government at various levels, we stressed the importance of compliance with the PSED, which provides a clear legal framework to ensure that equality considerations are taken into account by public decision-makers at all times,

including in crises. We made equivalent arguments in relation to human rights standards.

24. Our Framework Document with the Cabinet Office, dated November 2019, provides for regular engagement at ministerial and departmental level. **[MB/3 - INQ000185256]** The Framework Document is currently under review. In the specified period, regular contact between the EHRC and the Cabinet Office was conducted in line with the parameters for engagement set out within the Framework Document. For example there were:

24.1. Annual meetings between the Minister for Women and Equalities and the EHRC Chair and CEO around the time of publication of the EHRC's Annual Report and Accounts, to review the previous year's performance;

24.2. Monthly meetings between the GEO Director and our CEO, as part of our "no surprises" agreement with GEO.

25. In accordance with the Framework Document and more generally, our regular engagement with government pre-dated the specified period. During the specified period, that engagement would have continued with a renewed focus, on pandemic related issues. As such, I am not aware that there were many meetings with government which were specifically set up to discuss the government's response to the pandemic; instead, we would have used our existing engagement opportunities to advise government on pandemic related issues. Examples of our meetings with government in the specified period include the following.

25.1. Regular meetings with the Minister for Women and Equalities/Minister for Equalities (for example, meetings with Liz Truss MP on 3 December 2020; and with Kemi Badenoch MP on 14 July 2020, 15 June 2021 and 2 September 2021 and 18 January 2022). These meetings were used to discuss a variety of issues, both related and unrelated to the pandemic. At the meeting on 14 July 2020, we discussed work the EHRC was doing in the employment context. **[MB/4 - INQ000213342]**

25.2. We met our senior sponsor, Marcus Bell (director of the Equality Hub in the Cabinet Office) on a monthly basis, and continue to do so. As with our



meetings with the Minister for Women and Equalities, these meetings covered a wide range of matters, both related to the pandemic and unrelated.

- 25.3. We had regular contact with the GEO, in addition to that described above. For example, we corresponded with the GEO on a fortnightly basis, providing information on the impact of the pandemic on protected characteristic groups. GEO contacts were sent our monthly newsletter on equality and human rights issues.
- 25.4. We also met regularly with the Policy Unit at 10 Downing Street, regarding matters relating to the pandemic and matters unrelated, on dates including 23 July 2020, 24 September 2020, 26 November 2020, 25 May 2021, 25 August 2021 and 21 January 2022. Issues relating to the pandemic were discussed at the meetings on 23 July 2020, 24 September 2020 and 26 November 2020. **[MB/5 - INQ000213343]**, **[MB/6 - INQ000213344]** and **[MB/7 - INQ000213345]**
- 25.5. We have an on-going relationship with the Department of Health and Social Care ('DHSC'). During the period in question, we met with DHSC on dates including 9 November and 14 December 2020 and on 8 February, 14 April, 11 May and 5 July 2021.
- 25.6. On 1 September 2020, we met with the newly formed Government Equality Hub to share information on our projects, including the updates on our analysis of Covid-19 evidence provided by GEO. I understand that our Chairwoman attended an annual Equality Hub meeting on 6 December 2021.
- 25.7. We did not, to my knowledge, have engagement with SAGE, or the Forced Marriage Unit or the Interpersonal Abuse Unit in the Home Office, other than some correspondence in relation to the Domestic Abuse Bill in late 2020 and early 2021.
- 25.8. We have always had dealings with the Disability Unit, as their work links closely with ours. They spoke at our Disability Advisory Committee meeting in February 2021, and a colleague spoke to them about strategy in March 2020 just as the pandemic was beginning. We do not have regular meetings

per se, but do engage on relevant issues (for example, in relation to the Convention on the Rights of Disabled Persons).

25.9. We have a similar relationship with the Race Disparity Unit. We met with Tony Sewell, Chair of the Commission on Race and Ethnic Disparities, on 10 December 2020 in relation to the Commission's report on race and ethnic disparities. We have also worked with the Race Disparity Unit to improve the availability of data and understanding of race inequalities across all areas of life, including during the pandemic.

25.10. We have some engagement with the Social Mobility Commission. During the specified period, we met representatives of the Social Mobility Commission to discuss the key findings in our October 2020 IBF report. As far as I am aware, this was the only engagement we had in this period.

26. The agenda for the meetings were usually agreed with the relevant government counterpart. Our practice would have been to keep our own record of the meetings in the form of minutes/summary minutes/read outs. Those records would have noted disagreement where relevant. We sometimes provided presentations in meetings with government bodies. For example, we provided briefings and presentations to the Cabinet Office (in June 2021) and to the Department for Education ('DfE') (in November 2021) on compliance with the PSED. **[MB/8 - INQ000213346]** and **[MB/9 - INQ000213348]** These related to the general application of the PSED and were not specifically tailored to the response to the pandemic.

27. Throughout this statement, I have set out the areas of concern the EHRC raised with the government, directly or indirectly, during the pandemic. There would have been occasions when the government did not follow our advice, or took a different course of action from that which we advised or recommended. As set out in our statement, our advice and recommendations throughout the relevant period were extensive and wide ranging; and it would not be practicable to list here each instance where the government did not follow them. By way of example, the government did not follow our April 2020 advice in relation to BSL interpreting (see paragraph 42 below). In the adult social care context, we recommended in our evidence of 13 July 2020 to the Joint Committee on Human Rights (see paragraph 59 below) that the government should incorporate the right to independent living (as enshrined in

Article 19 of the UN Convention on the Rights of Persons with Disabilities) into domestic law to protect the rights of disabled and older people during and in the aftermath of the pandemic. This recommendation was not followed. In the employment context, the government declined to amend its guidance on return to work in response to concerns we raised with officials at BEIS (see paragraph 109 below).

28. The EHRC also engaged extensively with parliamentary committees (including joint and select committees) during the pandemic. A list of parliamentary committees to which we provided relevant evidence is at Annex A. These committees are important fora in which we share our expertise and advice and seek to have impact on decision-making. We also maintain relationships and share our expertise with other MPs and Peers including Shadow Ministers. Our parliamentary briefings are published on our website and routinely shared with: GEO, relevant parliamentary committees, relevant government departments and individual parliamentarians.
29. As part of our remit, we have a particularly close relationship with the Women and Equalities Committee, which oversees our work from a parliamentary perspective. We met with the Women and Equalities Committee on various dates, including on 20 May 2020, on 7 September 2020, where we discussed the coronavirus sub-inquiries and agreed to work together on long term reform on race and care, and on 7 December 2020 where we briefed the Committee on our work with the Home Office. We also met with the Chair of the Committee, Caroline Nokes MP, on 21 July 2021 to discuss the Women and Equalities Committee's current inquiries and our new strategic plan. We have fortnightly catch ups with the clerks to the Committee to discuss respective priorities and share information.
30. Considerable correspondence was sent by the EHRC to Ministers and government departments during the relevant period. Examples of this are given below where relevant.
31. As far as I am aware, there would have been no informal or private communication between the EHRC and the government about the government's response to Covid-19.



## **F Engagement with non-governmental stakeholders**

32. We regularly engage with a very wide range of non-governmental stakeholders, to inform our work and amplify its impact. I have referred to some of these stakeholders below by way of example. During the specified period, our relationships with such stakeholders would have enabled us to identify and monitor the impacts of the pandemic on protected characteristic groups and human rights. Evidence collated from a range of stakeholders informed our evidence and advice, such as that provided to parliamentary committees.

## **G Areas of focus**

33. In this part of the statement, I will address the Inquiry's questions in the context of a number of key issues which emerged over the course of the pandemic.

### ***The public health and coronavirus legislation and regulations***

34. On 18 March 2020, our Chief Strategy and Policy Officer, Melanie Field, gave evidence to the Women and Equalities Committee, on the work of the EHRC. **[MB/10 - INQ000185267]** In the context of the anticipated emergency legislation (the Coronavirus Bill), she emphasised the need to consider how the government's response to the pandemic was implemented for individuals with particular needs, barriers or challenges.
35. On 19 March 2020, the EHRC's then Chair of Commissioners, David Isaac, wrote to the then Prime Minister Boris Johnson MP, highlighting a number of human rights and equality implications likely to arise from emergency coronavirus legislation and other measures. A copy of that letter was sent to MPs on the same day and a summary was published on our website. **[MB/11 - INQ000185278]**
36. On 23 March 2020, the first national lockdown was announced. On the same day, we briefed the House of Commons and House of Lords on the Coronavirus Bill. **[MB/12 - INQ000185289]** Our briefing highlighted the following aspects of the legislation with equality and human rights implications: measures for detaining people suspected of carrying Covid-19; relaxing safeguards on detention set out in the Mental Health Act; the risks, to disabled people, older people and those living with mental health conditions, presented by the suspension of the Care Act 2014

and redeployment of care professionals to respond to Covid-19; the impact of school closures on families, and the dispensation for councils to reduce support for pupils with special educational needs; access to a fair trial for people who could find it difficult to participate fully in proceedings using courtroom video and audio links; and economic support for gig economy workers and women. The Coronavirus Act 2020 received Royal Assent on 25 March 2020, and the law came into force on 26 March 2020.

37. On 1 May 2020, in our written evidence to the Women and Equalities Committee's inquiry 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics', we raised concerns about the disproportionate impact of the guidance relating to – and the policing of – the restrictions imposed under the emergency legislation, on groups with particular protected characteristics. **[MB/13 - INQ000185300]** We called for the Home Office to work with the National Police Chiefs' Council, College of Policing, Association of Police and Crime Commissioners and police forces in England and Wales to mitigate any disproportionate or discriminatory enforcement of the new restrictions. On 5 May 2020, we wrote to Kit Malthouse MP, Minister of State for Crime and Policing, drawing his attention to relevant recommendations in our evidence to the Committee. **[MB/14 - INQ000185311]**
38. On 20 May 2020, we wrote to Liz Truss MP, Minister for Women and Equalities, asking her, among other things, to publish the equalities assessment prepared to accompany the Coronavirus Act 2020; and to ensure that statutory reports to Parliament required by section 97 of the Coronavirus Act 2020 addressed the impact of the legislation on equality and human rights, and reflected the views and experiences of groups sharing protected characteristics. **[MB/15 - INQ000185226]**
39. We raised concerns about disproportionate enforcement of the emergency legislation on a number of subsequent occasions, including:
  - 39.1. In our written evidence dated 3 July 2020 to the Home Affairs Committee's inquiry 'The Macpherson Report: twenty-two years on', in which we recommended that the Home Office work with police authorities to avoid the disproportionate policing of restrictions introduced under the legislation for particular groups, including ethnic minority groups; **[MB/16 - INQ000185236]**



- 39.2. In our written evidence dated 10 July 2020 to the Women and Equalities Committee's inquiry on 'Unequal Impact? Coronavirus and BAME people'; **[MB/17 - INQ000185237]**
- 39.3. On 29 January 2021, in our written evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications of long lockdowns'. **[MB/18 - INQ000185238]**
40. On 24 September 2020, we provided a briefing for the Coronavirus Act 2020 Six Month Review Debate in the House of Commons. **[MB/19 - INQ000185239]** In doing so, we expressed our concern about the significant equality and human rights implications of the measures introduced under the Act, particularly for those who were already disadvantaged. We made a number of recommendations relating to: scrutiny of legislation; changes to adult social care; disabled children in education; challenging mental health detention; and disproportionate impacts on ethnic minorities.
41. On 30 September 2020, we wrote to Caroline Nokes MP, Chair of the Women and Equalities Committee, in response to a query she had raised about the government's Equality Impact Assessment ('EIA') of the Coronavirus Act 2020. **[MB/20 - INQ000185240]** We set out a number of provisional thoughts on the adequacy of the EIA.

***Public health communications and public confidence***

42. On 30 April 2020, we wrote to the Prime Minister Boris Johnson MP expressing concerns about the lack of live BSL interpretation at the daily televised coronavirus briefings. **[MB/21 - INQ000185241]** In response, we received a letter dated 23 June 2020, from Lord Agnew, Minister of State for HM Treasury and the Cabinet Office, indicating that, in accordance with PHE guidelines, a BSL interpreter could not be safely included in the briefing room, and pointing to provisions available on other channels **[MB/22 - INQ000185242]** On or around 23 June 2020, the government announced that the daily press conferences would cease and be replaced by "ad hoc" televised briefings to "coincide with significant announcements".
43. On 13 July 2020, in our evidence to the Women and Equalities Committee inquiry on 'Unequal impact? Coronavirus, disability and access to services', we set out our

concerns about inaccessible government communications relating to public health and critical changes in support, including a lack of guidance in 'Easy-Read' or alternative formats. **[MB/23 - INQ000185243]** We recommended that the government ensure that all information related to the pandemic, either in printed form or published online, was accessible to disabled people, including by providing BSL interpreters during televised press announcements, publishing materials in alternative formats, and proactively reaching out to people affected – including in respect of all major announcements on the recovery process, and announcements made in preparation for a potential second wave of Covid-19. In the same submission, we highlighted concerns about the accessibility of the government's test and trace system, and recommended that this was urgently reviewed to ensure it was accessible to disabled people across impairment types.

44. On 14 July 2020, in our written evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications', in relation to the privacy implications of the NHS test and trace service, we again raised concerns about the accessibility of the test and trace service. **[MB/24 - INQ000185244]**
45. We supported a challenge to the DHSC by Sarah Leadbetter – who is registered blind – in relation to inaccessible shielding letters sent to her during the pandemic. The case settled in March 2021, with the DHSC agreeing to amend its practice and implement a new communication system.
46. Otherwise, I am not aware of any particular surveys or research carried out by the EHRC regarding the accessibility or clarity of public health communication for groups with a protected characteristic and their confidence regarding public health communications.

### ***Health and social care***

47. Throughout the specified period, we engaged extensively on health and social care issues with a wide range of NHS, governmental and non-governmental bodies.
48. On 1 April 2020, we submitted a brief submission to the Health and Social Care Committee inquiry on 'Delivering core NHS and care services during the pandemic and beyond'. **[MB/25 - INQ000185246]** We asked the Committee to consider the

extent to which the government and public bodies were taking a human rights-based approach and applying the PSED to decisions about health and social care. We subsequently provided a more detailed submission dated 7 May 2020, which made a number of recommendations addressing: compliance with the PSED; data collection; compliance with human rights obligations; steps to tackle health inequalities; mental health provisions; and social care. **[MB/26 - INQ000185247]**

49. On 8 April 2020, our then CEO Rebecca Hilsenrath met with a senior member of staff at the CQC to raise concerns about a number of issues, including discharges of patients to care homes. We maintained a relationship with the CQC throughout the pandemic, meeting with them as often as weekly at certain points. Rebecca Hilsenrath continued to meet with her contact at CQC on a monthly basis. In May 2020, we raised concerns with the CQC that the deaths of patients with learning disability and autism were not being accurately recorded, following some inaccuracies in published data, and as a result, CQC committed to refining their method of data collection, and publishing new data.
50. On 15 April 2020, we met with a senior civil servant at the DHSC in relation to the new Mental Health Bill, which at that time was being postponed. At that meeting we discussed proposed changes to Mental Health Act provisions which could be made under the Coronavirus Act, if required.
51. In a letter dated 23 April 2020, we wrote to the BMA setting out our concern that their guidance on 'COVID-19 – ethical issues' did not make clear, as it did with regard to older people, that non-pertinent health conditions or impairments must not play a part in decision-making with regards to disabled people. **[MB/27 - INQ000185248]** We also expressed our concern that the application of a 'capacity to benefit quickly test' would be indirectly discriminatory, as disabled people with certain underlying health conditions could have unequal access to critical care as compared to non-disabled people, even when they are assessed as likely to respond well to treatment. The BMA responded promptly, by letter dated 24 April 2020, to indicate that they were updating their guidance and that the updated guidance – to be published imminently – would address the questions of discrimination we had raised. **[MB/28 - INQ000185249]**



52. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 set out concerns and recommendations about a number of issues including: the application of DNACPR notices to older or disabled people in care or residential homes without proper consultation; the disproportionate impact on disabled and older people of easements to the Care Act provided in the Coronavirus Act 2020; monitoring and oversight of Covid-19 cases and deaths in care homes; disproportionate impacts on ethnic minorities, including healthcare professionals; the impact of the reprioritisation of health services on groups including trans people and cancer patients, who had appointments and surgeries delayed or cancelled; and shortages in personal protective equipment ('PPE'). **[MB/13 - INQ000185300]**
53. In May 2020, we met PHE to discuss their Covid-19 review, 'Disparities in the risk and outcomes of COVID', overseen by Professor Kevin Fenton. We had requested to be involved in the review, and were engaged at a relatively late stage in the work PHE did looking at mortality rates for certain ethnic minority groups. We shared information in relation to evidence and offered our expertise on the impact of Covid-19 on particular groups. We also pressed for the report to take a broader approach, but this was not possible due to the timeframes involved. As a consequence of our involvement with this review, in August 2020, we received a letter from Kemi Badenoch MP, inviting us to participate in further stakeholder engagement. **[MB/29 - INQ000185250]**
54. On 7 May 2020, we wrote to Mathew Gould, then CEO of NHSX (responsible for NHS technology, digital and data) to express our equality and human rights concerns about the proposed NHS contact tracing app – in particular accessibility, and privacy concerns. We received a response on 24 May 2020, indicating that NHSX would welcome our input on this issue. We went on to meet NHSX officials, discussing significant equality challenges in connection with the development of the app and the wider contact tracing programme. We also communicated our concerns to the government's Centre for Data Ethics and Innovation. In June 2020 the plans to implement a centralised data model for the app were scrapped, following concerns raised by a range of interested parties, including the EHRC.

55. On 1 June 2020, we wrote to Matt Hancock MP, then Secretary of State for Health and Social Care, making a number of recommendations to ensure that the government's domestic and international human rights obligations were met and groups sharing protected characteristics were not left further behind during and following the pandemic. **[MB/30 - INQ000185251]** On 19 June 2020, we wrote to Nadine Dorries MP, Minister of State for Health and Social Care, setting out our concerns that detention under the Mental Health Act may be increasing, in light of recent changes to NHS England's 'Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during coronavirus pandemic', which allowed for 'temporary departures from the Mental Health Act Code of Practice'. **[MB/31 - INQ000185252]** We took the opportunity to highlight recommendations we had made in evidence to the Women and Equalities Committee and the Health and Social Care Committee. In response, by email of 20 July 2020, Nadine Dorries' office indicated that she was not in a position to meet us to discuss our letter. **[MB/32 - INQ000213341]**
56. On 2 July 2020, our former Chair, David Isaac, gave oral evidence to the Lords Public Services Committee inquiry on 'Public services: lessons from coronavirus' **[MB/33 - INQ000185253]** He raised social care and older people who live in residential care as particular areas of concern, and emphasised the importance of the PSED. Following this, the EHRC provided written evidence, on 28 July 2020, to the Lords COVID-19 Committee inquiry on 'Life beyond Covid', making a number of recommendations for policy measures to be taken by government and other public bodies to guard against further entrenching inequalities across Britain and to learn lessons from experiences during the pandemic in readiness for a potential second wave. **[MB/34 - INQ000185254]** We made specific recommendations in respect of: strengthening the PSED; addressing socio-economic disadvantage; and concerns relating to ethnic minorities, disabled and older people.
57. Our written evidence dated 10 July 2020 to the Women and Equalities Committee's inquiry on 'Unequal impact? Coronavirus and BAME people' set out a number of recommendations to the government, aimed at reducing the health inequalities experienced by different ethnic minority groups. **[MB/17 - INQ000185237]**



58. On 13 July 2020, in our evidence to the Women and Equalities Committee's inquiry on 'Unequal impact? Coronavirus, disability and access to services', we made a number of recommendations in relation to changes in adult social care, mental health services and detention and access to healthcare services. **[MB/23 – INQ000185243]**
59. On the same day, we also provided evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications', focussing on adult social care and the right to independent living. **[MB/35 - INQ000185255]** We provided further evidence to this inquiry on 14 July 2020, focussing on the privacy implications of the NHS test and trace service **[MB/24 - INQ000185244]**, and on 24 July 2020, focusing on older people in residential social care **[MB/36 - INQ000185257]**.
60. On 25 August 2020, we met the head of the Social Care Sector Covid-19 Taskforce in relation to supporting delivery of the Social Care Action Plan and Care Home Support Package. We highlighted equality and human rights considerations and sought assurance that these would be incorporated into plans. We continued to engage with DHSC officials thereafter.
61. On 2 September 2020, we delivered a PSED related webinar on equality considerations during the pandemic and the recovery, entitled 'Ensuring your coronavirus response is inclusive of all'. Over 200 people attended the event from a range of health and social care sectors and their feedback was excellent. The recording is available on YouTube.
62. We provided briefings on equality and human rights in residential care in England and in Wales during coronavirus in October 2020. **[MB/37 - INQ000185258]** and **[MB/38 - INQ000185259]** Each briefing provided a detailed analysis of the equality and human rights aspects of residential care during the pandemic, and made a number of detailed recommendations. In England, we shared the briefing with a range of: stakeholders with influence over health and social care (including the Local Government Association, DHSC, NHS England, PHE and Healthwatch England); regulators, inspectorate or ombudsperson organisations (including the CQC, Local Government and Social Care Ombudsman, Parliamentary Health Service Ombudsman, and the Health and Safety Executive ('HSE')) and organisations

representing service providers and service users (including Care England, the Relatives and Residents Association, Skills for Care and Silver Voices). We then discussed the briefings with the DHSC in November, December and February 2021.

63. We provided expert input into the CQC's review of the DNACPR decisions during the pandemic, which had been requested by the DHSC and was published in October 2020.
64. We provided a briefing for a Westminster Hall debate, "The effect of the COVID-19 outbreak on people affected by dementia", on 12 November 2020. As the briefing highlighted, people living with dementia made up approximately 70 per cent of UK care home residents. The briefing covered similar ground to the October 2020 briefings. **[MB/39 - INQ000185260]**
65. On 10 March 2021, our Chair of Commissioners, Baroness Kishwer Falkner, gave oral evidence to the Joint Committee on Human Rights' inquiry on 'The Government's Independent Human Rights Act Review'. **[MB/40 - INQ000185263]** The evidence touched on the issue of rights to visits in care homes, in the context of the balance between Articles 2 and 8 of the European Convention on Human Rights ('ECHR'). By letter dated 21 April 2021, we provided further information on this issue to the Chair of the Committee, Harriet Harman MP. **[MB/41 - INQ000185264]**
66. In April 2021 we published a detailed response to the white paper on reforming the Mental Health Act. Within the response, we explained that we shared the CQC's concern that reduced access to services during the pandemic may have increased the risk of coercive pathways into mental health services, potentially exacerbating the overrepresentation of some Black and ethnic minority groups in detention. **[MB/42 - INQ000185261]**
67. On 21 May 2021 we provided a response to the DHSC's consultation on making vaccination a condition of deployment in older adult care homes. We expressed the view that it would be reasonable to require care home staff to be vaccinated in order to work directly with older and disabled people, subject to some important safeguards to ensure the requirement remained proportionate and to minimise the

risk of unlawful discrimination or breaches of care workers' human rights, and made a number of related recommendations. **[MB/43 - INQ000185262]**

68. On 15 September 2021 we provided evidence to the UN, in response to the Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler. We focused on social care and access to digital services **[MB/44 - INQ000185265]**
69. On 11 January 2021 we provided written evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications', focusing on the impact of long lockdowns on care home visits. **[MB/45 - INQ000185266]** On 12 November 2021 we provided a written response to the Joint Committee on Human Rights' inquiry on 'Protecting Human Rights in Care Settings', which included a section on lessons that could be learned from the pandemic to prevent breaches of human rights legislation in the future. **[MB/46 - INQ000185268]**
70. In January 2021, NHS England asked us to exempt NHS organisations from having to meet their PSED specific duty reporting deadlines, so that they could focus on responding to the pandemic. These specific reporting duties require NHS organisations to publish certain information, and are ancillary to the PSED. We responded to say that we could not exempt NHS organisations from the reporting duties, but that we could give a guarantee that we would not monitor or take action against any for non-compliance with these specific duty requirements.
71. In February 2021, our Chief Strategy and Policy Office, Melanie Field, spoke at an All Party Parliamentary Group event on Adult Social Care and care homes. She expressed our view that blanket bans on visits to care homes should be replaced by individual risk assessments, which consider the full range of human rights of care home residents and take account of differing circumstances; and our concern that this advice had not been heeded. She mentioned a set of short videos we had produced to share with the public, raising awareness of the importance of upholding the human rights of those living in care and sharing the powerful stories of some families who have been separated during the pandemic. These are available on YouTube.



72. On 21 December 2021, we wrote to Michelle Dyson, Director General of Adult Social Care at the DHSC, expressing concern about the new government guidance on care home visits (published on 15 December 2021). **[MB/47 - INQ000185269]**

***Access to food and other essentials***

73. From an early stage, we were concerned about access to food and other essentials for particular groups. On 21 April 2020, we wrote to Helen Dickenson, CEO of the British Retail Consortium, to draw her attention to the particular issues faced by disabled people and people in vulnerable situations in accessing essentials such as food and medicine. **[MB/48 - INQ000185270]** A response was provided on 28 April 2020. **[MB/49 - INQ000185271]** That response failed to acknowledge the legal obligations on retailers to make reasonable adjustments for disabled people under the EA 2010 and the rights of disabled people to live independently. We therefore wrote again, in an open letter, on 7 May 2020. **[MB/50 - INQ000185272]**
74. In the meantime, our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 asked the government to work with the British Retail Consortium and supermarkets to update and implement guidance on who is considered to be at high risk; and ensure that policies relating to access to shops accommodated the needs of carers or those living in unsafe households; and that reasonable adjustments are made to enable disabled and older people access. **[MB/13 - INQ000185300]**
75. On 7 May 2020, we wrote to George Eustice MP, Secretary of State for DEFRA, setting out our concerns about access to food and other essential items, particularly for disabled people, and individuals who fell outside the government's list of people who were high risk, or 'clinically extremely vulnerable'. **[MB/51 - INQ000185273]** We explained that we were reviewing over 300 claims shared with us by Fry Law, which included grounds for action against supermarkets regarding a failure to make reasonable adjustments online and in-store. We sought assurance that DEFRA, the British Retail Consortium, supermarkets and organisations representing disabled and older people were working together to ensure that disabled and older people had access to food and other essentials; and recommended that related policies be

published, together with details of how equality implications had been considered. As a consequence of our concern we met with Minister of State, Victoria Prentis MP, and the British Retail Consortium on 15 May 2020. At that meeting, we offered to assist the British Retail Consortium in producing guidance for its members on meeting the needs of older and disabled customers, with support from the Minister. Following engagement with the British Retail Consortium, we decided to publish our own guidance for retailers.

76. Our evidence to the Women and Equalities Committee's inquiry on 'Unequal impact? Coronavirus, disability and access to services' on 13 July 2020 recommended that the government should continue to work with the British Retail Consortium and supermarkets to ensure that social distancing measures did not disadvantage disabled people, taking into account both visible and hidden impairments. **[MB/23 - INQ000185243]**
77. On 3 September 2020, we launched guidance on retailers' legal responsibility to disabled customers, making clear that the requirement not to discriminate against customers extended to any measures introduced as a result of the pandemic. **[MB/52 - INQ000185274]** The guidance was sent to Chief Executives of supermarkets and retail consortiums alongside a letter from our then CEO, Rebecca Hilsenrath, outlining their legal obligations to help disabled customers. The retail sector welcomed the guidance, with business groups such as the Association of Convenience Stores sharing it with their members. Our assistance in this area was noted by Victoria Prentis MP in her evidence to the Women and Equalities Committee on 2 September 2020.
78. On 18 January 2021, we wrote to Chief Executives of supermarkets and retailers asking them to ensure that their policies regarding mask-wearing complied with the law, in particular their legal responsibilities towards disabled customers. **[MB/53 - INQ000185275]**

### ***Education***

79. From an early stage, we sought to ensure that changes to education provision did not exacerbate existing inequalities or impact disproportionately upon students with different protected characteristics. On a number of occasions, we provided



responses to consultations conducted by Ofqual and the DfE about exceptional arrangements for assessments. In particular, we responded:

- 79.1. On 29 April 2020, to Ofqual's consultation on specified general qualifications – GCSEs, AS, A levels, Extended Project Qualifications and the Advanced Extension Award; **[MB/54 - INQ000185276]**
- 79.2. On 7 May 2020, to Ofqual's consultation on awarding vocational and technical qualifications in summer 2020; **[MB/55 - INQ000185277]**
- 79.3. On 8 June 2020, to Ofqual's consultation on an additional GCSE, AS and A level exam series in autumn 2020; **[MB/56 - INQ000185279]**
- 79.4. On 14 July 2020, to Ofqual's consultation on statutory guidance in relation to appeals under the GQCovid regulatory framework; **[MB/57 - INQ000185280]**
- 79.5. On 16 July 2020, to Ofqual's consultation on proposed changes to the assessment of GCSEs, AS and A levels in 2021; **[MB/58 - INQ000185281]**
- 79.6. On 18 September 2020, to Ofqual's consultation on arrangements for the assessment and awarding of Vocational and Technical and Other General Qualifications in 2020/2021; **[MB/59 - INQ000185282]**
- 79.7. On 15 January 2021, to a DfE and Ofqual consultation on how GCSE, AS and A level grades should be awarded in summer 2021; **[MB/60 - INQ000185283]**
- 79.8. On 21 April 2021, to Ofqual's consultation on statutory guidance in relation to appeals under the General Qualifications Alternative Awarding (GQAA) regulatory framework; and **[MB/61 - INQ000185284]**
- 79.9. On 30 September 2021, to a DfE and Ofqual consultation on contingency arrangements: GCSE, AS, A level, Project and AEA. **[MB/62 - INQ000185285]**

80. In the context of the above-listed responses, we raised concerns about a wide range of issues, including: the risk that pre-existing attainment gaps would be widened; the risk of conscious or unconscious bias in teacher predicted grades; the disaggregation of equality analysis data by protected characteristic; the impact on disabled learners of exam only grading; the impact of remote learning on different groups; and the differential impact of changes to the spoken language assessment procedures in GCSE English. We also had meetings with Ofqual about making exceptional arrangements for assessment in light of the cancellation of examinations in summer 2020.
81. In response to our recommendations, Ofqual revised its guidance in relation to teacher assessed grades, removing a recommendation that a uniform approach should be taken and instead advising that students should be assessed on the content they had been taught. Ofqual also engaged with stakeholders advocating for Gypsy, Roma and Traveller learners.
82. On 21 May 2020, we wrote to Gavin Williamson MP, Secretary of State for Education, making recommendations with a view to reducing the adverse impact of the pandemic on the education of children and young people with different protected characteristics. **[MB/63 - INQ000185286]**
83. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 made recommendations in respect of: the disproportionate impact of school closures on children with special educational needs and disability ('SEND'); access to online learning; approaches to predicted grading; children eligible for free school meals; and safeguarding of children at risk. **[MB/13 - INQ000185300]**
84. On 29 May 2020, we provided evidence to the Education Committee inquiry on 'The impact of COVID-19 on education and children's services'. **[MB/64 - INQ000185287]**
85. In our written evidence dated 10 July 2020 to the Women and Equalities Committee's inquiry on 'Unequal Impact? Coronavirus and BAME people', we explained that initial evidence suggested that some of the government measures to

contain the pandemic may have exacerbated pre-existing racial inequalities in education, and made recommendations to address this. **[MB/17 - INQ000185237]**

86. Our evidence to the Women and Equalities Committee inquiry on 'Unequal impact? Coronavirus, disability and access to services' on 13 July 2020 set out recommendations to the government in relation to special educational needs and disabilities provision and reasonable adjustments in relation to exams. **[MB/23 - INQ000185243]**
87. In August and November 2020, we met senior civil servants at the DfE to discuss: the equality implications of the decision to re-open schools and colleges; the impact of Covid-19 on exclusion rates; SEND; face coverings; and the plan for summer exams in 2021.
88. On 20 November 2020 we published our report to the UN Committee on the Rights of the Child, setting out progress on the implementation of the Convention on the Rights of the Child in Great Britain since the last review in 2016. The submission included material setting out our concern about the impact, both short and long term, of the pandemic on children's rights, well-being and futures, in relation to education as well as a number of other areas. **[MB/65 - INQ000185288]** We shared the report with Gavin Williamson MP, in his capacity as Secretary of State for Education, on the same day.
89. On 11 March 2021, we wrote to Sir Kevan Collins, recently appointed Education Recovery Commissioner, highlighting the content of our October 2020 IBF report in relation to disproportionate impacts of school closures and remote learning on particular disadvantaged groups. **[MB/66 - INQ000185290]** On 26 May 2021, our Chairwoman, Baroness Kishwer Falkner, met Sir Kevan to discuss post-pandemic issues affecting education and his work on returning to pre-pandemic levels of attainment for school children. This led to our attendance at the education recovery meetings in August and October 2021, at which we stressed the importance of ensuring that consideration of different protected characteristics and the PSED play a role. We gave a presentation on the PSED in November 2021.
90. On 18 March 2021, we provided evidence to the Public Accounts Committee inquiry into 'COVID-19: Education', which focused on the first period of school closures from



March to September 2020, including the particular question on the extent to which the DfE “effectively supported vulnerable and disadvantaged children”. **[MB/67 - INQ000185291]**

91. On 28 January 2022, we provided evidence to the Education Committee on its inquiry into ‘Education challenges facing children and young people from Gypsy, Roma and Traveller Backgrounds’. **[MB/68 - INQ000185292]** We explained the pandemic had exacerbated many of the challenges faced by this group and created some new ones, and raised our concern that there were significant evidence gaps in relation to actual learning loss experienced by these groups and the impact of the pandemic on their attainment.
92. On 31 January 2022 we wrote to Robert Halfon MP in his capacity as the Chair of the Education Committee, setting out our concerns about learning loss and catch up, with reference to the impact on particular protected characteristic groups. **[MB/69 - INQ000185293]** We emphasised the need for data to be gathered on this issue, as part of the government’s compliance with the PSED, and invited the Committee to further consider the matter in future evidence sessions.
93. We are continuing to engage in detail with the DfE in relation to education recovery post-pandemic, with particular reference to impacts on protected characteristic and disadvantaged groups. We have sought assurance from the DfE about how they are complying with the PSED in the development and delivery of the education recovery programme. We have advised them as to the application of the PSED and production of equality impact assessments. In response to our recommendation, the DfE amended guidance for school-led tutoring, so that the guidance directed schools to assess the efficacy of education recovery activities with reference to protected characteristic groups. We have been asking DfE to provide data and analysis regarding access to and outcomes from education recovery measures for protected characteristic groups, in order to demonstrate PSED compliance. This information has not yet been provided.

94. Our work on education issues during the specified period was informed by our engagement with a number of stakeholders, including the Alliance for Inclusive Education, Race on the Agenda and the NASUWT.

### **Work**

95. At the start of the specified period, we had regular engagement on issues affecting workers with a number of governmental and non-governmental organisations. That engagement continued throughout the specified period. We worked with organisations including: BEIS; the Department for Work and Pensions ('DWP'); the Cabinet Office; HM Revenue & Customs ('HMRC'); ACAS; the Trade Union Congress; UNISON; the Chartered Institute of Personnel and Development; the Centre for Ageing Better; Working Families; the Confederation of British Industry; the Recruitment and Employment Federation; the Federation of Small Businesses; Equally Ours; HSE; and the British Chambers of Commerce.
96. In discussion with our stakeholders, we considered a wide range of issues affecting workers during the pandemic, including: the impact of remote working on disabled people, women and those with caring responsibilities; implications of government initiatives such as the Coronavirus Job Retention Scheme (or furlough) and the Self-Employment Income Support Scheme on people with different protected characteristics; the emerging challenge of long Covid; and return to work.
97. In our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020, we highlighted concerns about: pregnancy and maternity and the furlough scheme; the impact on gig economy workers, employees in low-paid industries, and the self-employed; and Universal Credit waiting times.  
**[MB/13 - INQ000185300]**
98. On 6 May 2020, we had a stakeholder round table meeting to identify trends seen by organisations including ACAS and the Equality Advisory and Support Service (EASS). This highlighted concerns about commuting and mental health, as well as masks, home working and people who had been shielding. It also highlighted concerns about equal pay and pregnancy discrimination.

99. In May 2020 we published guidance for employers in relation to Covid-19. The guidance reminded employers of their legal obligations to make sure that their decisions in response to the pandemic did not discriminate against employees with different protected characteristics, including pregnant employees and those on maternity leave. It was shared and recommended widely by the UK, Scottish and Welsh Governments, professional bodies, charities and numerous law firms specialising in employment law in the UK. It was also included in an employer toolkit produced by the Westminster Women and Work All Party Parliamentary Group.
100. The government's compliance with the PSED was also a key concern for many stakeholders. Following correspondence from the TUC in April 2020, on 5 May 2020 we wrote to the then Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma MP, raising the PSED and setting out our concerns regarding the impact of the pandemic on workers with particular protected characteristics. **[MB/70 - INQ000185322]** We requested that government consider extending access to the furlough scheme, and, by introducing a right to request furlough, address some of the issues facing women and disabled people in particular. On 3 June 2020 we received a response to our letter dated 5 May 2020, from Paul Scully MP, Minister for Small Business, Consumers and Labour Markets **[MB/71 - INQ000185294]** EHRC representatives met and corresponded frequently with BEIS officials during the specified period, setting out our concerns regarding possible failure to comply with the PSED, but did not receive any indication that the PSED was being used effectively to inform and drive BEIS' pandemic response, despite the best efforts of very junior department staff. We eventually secured a meeting in May 2020 with the then Director of Social Distancing and Safer Work. However this failed to provide us with any real reassurance, and in the event the meeting was attended on behalf of BEIS by two deputy directors.
101. On 14 May 2020, we provided evidence to the Welsh Affairs Committee's consultation on 'The Welsh economy and Covid-19', making a number of recommendations to the UK and Welsh Governments, with a focus on employment issues. **[MB/72 - INQ000185295]**
102. On 15 May 2020, we wrote to the Director General for Business Sectors at BEIS (Sarah Munby), in respect of the government's coronavirus return to work strategy



and associated guidance. **[MB/73 - INQ000185296]** We expressed our concern that the government's recovery strategy and associated guidance had been subject to limited consultation, and included only limited reference to equality considerations.

103. On 28 May 2020, we provided written evidence to the Business, Energy and Industrial Strategy Committee inquiry on 'The impact of coronavirus on businesses and workers'. **[MB/74 - INQ000185297]** We made 26 key recommendations to the government across a range of employment related issues.
104. In June 2020 we convened a round table of key stakeholders to reflect on the equality and human rights implications of government actions to support employers and workers during and after lockdown, and to explore options for collaboration to provide further advice and support for employers and workers. We reconvened this group for a follow up discussion in September 2020 to consider government plans for economic recovery and the Plan for Jobs, discussing issues such as recruitment discrimination.
105. On 6 July 2020, we responded to the Women and Work All Party Parliamentary Group's call for evidence on the impact of the Covid-19 crisis on women in the workplace. **[MB/75 - INQ000185298]**
106. On 13 July 2020, our evidence to the Women and Equalities Committee's inquiry on 'Unequal Impact? Coronavirus and the gendered economic impact' made several recommendations to mitigate the impact of the pandemic on women, with a particular focus on the employment context. **[MB/76 - INQ000185299]**
107. On 3 August 2020, we responded to BEIS' consultation on carer's leave, highlighting issues exacerbated by the pandemic. **[MB/77 - INQ000185301]**
108. On 11 August 2020, we met BEIS representatives regarding the department's pandemic response and progress on earlier commitments such as flexible working, pregnancy and maternity discrimination and family friendly policies.
109. Our engagement with stakeholders identified particular issues with the government's return to work guidance, including in relation to a failure to reflect the needs of disabled people and the impact of childcare (evidence had indicated that women were bearing the brunt of childcare, and were being penalised by employers, either

being refused furlough, forced onto furlough or being made redundant). We raised this with BEIS officials, setting out the department's obligation under the PSED, but were unable to secure any changes. Instead they directed us to the DfE in relation to childcare, and offered us an opportunity to comment on future guidance, including the re-opening of places of worship.

110. We saw more positive engagement and consideration from BEIS in relation to the impact of remote and hybrid working. From September 2020, we participated in the BEIS sponsored and CIPD-led Flexible Working Taskforce which was reconvened to consider the impact of the pandemic on flexible working. As part of that group, we advised on the equality and human rights implications of ACAS guidance on hybrid working, and, during 2021, more detailed taskforce guidance on inclusion and fairness in hybrid working.
111. On 5 November 2020, we wrote to Rishi Sunak MP, then Chancellor of the Exchequer, about the importance of childcare in securing economic recovery. **[MB/78 - INQ000185302]**
112. On 20 November 2020 we responded to the DWP's call for evidence in relation to good practice on in-work progression in low pay sectors, noting that the pandemic was having a huge impact on employment, particularly on workers in low paid sectors or in insecure work, and on future labour market options for Britain's workers. **[MB/79 - INQ000185303]**
113. On 8 January 2021, we submitted evidence to the Work and Pensions Committee's inquiry on the 'Disability Employment Gap'. **[MB/80 - INQ000185304]** This covered the increase in poverty and material deprivation for disabled people throughout the coronavirus pandemic, and the subsequent rise in unemployment and underemployment, which risked further entrenching these inequalities. We made a number of recommendations, including that the government take steps to minimise the ongoing- socio-economic impact of the pandemic on disabled people.
114. On 19 January 2021 we made a submission to the Covid Recovery Commission's consultation, focussing on employment issues. **[MB/81 - INQ000185305]**
115. On 4 February 2021, we wrote to Kwasi Kwarteng MP, then Secretary of State for Business, Energy and Industrial Strategy, highlighting the targeted

recommendations relating to work in our October 2020 IBF report. **[MB/82 - INQ000185306]** Kwasi Kwarteng responded by letter dated 19 February 2021 **[MB/83 - INQ000213347]** We met with him on 21 April 2021 with a view to improving engagement between EHRC and BEIS. We then met with the permanent secretary Sarah Munby on 10 May 2021 to brief her on the department's responsibilities under the PSED.

116. On 26 February 2021, we provided evidence to BEIS' consultation on measures to extend the ban on exclusivity clauses in contracts of employment, addressing specific questions on the impact of the pandemic. **[MB/84 - INQ000185307]**
117. On 8 March 2021, we wrote to the Permanent Secretary at BEIS on the issue of mitigating the impact of Covid-19 on equality for women in the workplace. **[MB/85 - INQ000185308]** We expressed concern about the department's responses to some specific issues we had identified, particularly on the use of the PSED to understand and mitigate the risk of deepening inequalities faced by women in the workplace.
118. We published 'Coronavirus (COVID-19) guidance for employers' on our website on 1 September 2021. **[MB/86 - INQ000185309]**
119. In July 2022, we provided written evidence to the Business, Energy and Industrial Strategy Committee's inquiry on post-pandemic economic growth and the UK's labour market. **[MB/87 - INQ000185310]**
120. We engaged with a number of stakeholders on the interrelated issues of mandatory vaccinations and 'Covid-status certification' or 'vaccine passports', which raised a number of equality and human rights concerns. Our position on these issues was reflected in our response to the Cabinet Office's Covid status certification review on 1 April 2021 **[MB/88 - INQ000185312]**. In that response, we set out the key equalities and human rights concerns and recommended that any implementation of a Covid status certification system should be proportionate and measured, contain exemptions and be accompanied by clear guidance for employers and service providers. We also recommended that hard to reach groups should be prioritised for engagement, and particular attention should be given to those ineligible for vaccination at that stage because of a protected characteristic. On 21 May 2021, we responded to the DHSC's consultation on making vaccination a



condition of deployment in older adult care homes. **[MB/43 - INQ000185262]** We made a number of recommendations, including that the government should continue to take steps to engage with groups with low vaccine uptake to understand the underlying reasons. The government softened its approach to vaccine passports, and in fact mandatory vaccine passports were only in force for a short period between 8 December 2021 and 27 January 2022 in England, in response to an increase in numbers of cases of Covid-19.

### ***Access to justice***

121. In response to the pandemic, the Ministry of Justice ('MOJ') announced a significant expansion in the use of phone and video hearings. In light of that announcement, to inform decision-making and mitigate risks to disabled people, in April 2020 we published an interim evidence report for our ongoing 'Inclusive justice' inquiry. I describe this in section H.
122. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 set out our early concerns about the risks to effective participation by some disabled people of the rapid expansion of video and telephone hearings across courts and tribunals, and made a number of recommendations in respect of access to legal advice and information and legal aid. **[MB/13 - INQ000185300]**
123. On 9 September 2020, we gave evidence to the Lords Constitution Committee's inquiry into 'Constitutional implications of COVID-19'. **[MB/89 - INQ000185313]** We made recommendations in respect of: virtual proceedings, outcomes, research and data; and juries.
124. In January 2021, we provided feedback to HM Courts and Tribunals Service on its equality impact assessment on changes to the operation of courts, which related in part to consequences of the pandemic.

### ***Institutions***

125. On 21 April 2020, we provided written evidence to the Home Affairs Committee's inquiry on 'Home Office preparedness for Covid-19 (Coronavirus)'. **[MB/90 -**

**INQ000185314]** Our evidence highlighted the particular impact of Covid-19 on people who were subject to immigration detention, and people experiencing domestic abuse.

126. On 31 March 2020, we wrote to Chris Philp MP, Parliamentary Undersecretary of State for the Home Office and MOJ to express our concerns about pressures affecting the immigration detention system. **[MB/91- INQ000185315]** On or before 15 June 2020, Chris Philp MP wrote to us setting out the government's position in response. **[MB/92 - INQ000213349]**
127. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020: raised our early concerns about detention under the Mental Health Act; called for the MOJ to expedite appropriate release from prisons and youth custody; and called for the Home Office to continue to release people held in immigration removal centres – and avoid further detentions where necessary – particular for those at heightened risk of harm. **[MB/13 - INQ000185300]**
128. On 17 June 2020, we submitted written evidence to the Joint Committee on Human Rights' inquiry on 'The Government's response to Covid-19: human rights implications', focussing on women in prison. **[MB/93 - INQ000185316]** We made recommendations with a view to protecting the rights and health of women in prison, and their children, during the pandemic.
129. From June 2020, we corresponded a number of times with Lucy Frazer MP, then Minister for Prisons, and senior civil servants on the exceptional arrangements for the deployment of PAVA spray in prisons during the pandemic. We were concerned that the MOJ's equality impact assessment and wider evidence pointed to the likelihood of disproportionate use on people sharing protected characteristics; and that appropriate safeguards were not in place. We agreed to fund a judicial review challenge to the proposed roll out of PAVA. Following our involvement, the judicial review was withdrawn in October 2020 with the MOJ agreeing to introduce a number of measures in respect of the use and monitoring of PAVA.

### ***Domestic abuse***

130. In April 2020, we provided a briefing for the Second Reading of the Domestic Abuse Bill **[MB/94 - INQ000185317]**. We wrote to a number of MPs, including Victoria Atkins MP and Alex Chalk MP, Parliamentary Under Secretaries of State for Justice, to express our concerns that violence against women and girls and domestic violence generally increase during epidemics and times of crisis; and that the pandemic was placing much greater pressure on police, NHS, local authorities and specialist services that might otherwise help to identify and respond to this. We went on to provide a number of other briefings in relation to the Domestic Abuse Bill.
131. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 referred to evidence indicating that domestic abuse was increasing during the pandemic, with large rises in calls to helplines and reports that domestic homicides have more than doubled. **[MB/13 - INQ000185300]** It called for the government to ensure that the duty to prevent and protect against violence against women and girls was built into planning at all levels, and made recommendations in relation to domestic abuse support services and policing.
132. On 16 September 2020, we responded to the government's review of employment rights for survivors of domestic abuse (coordinated by BEIS), making specific recommendations of steps to be taken during the pandemic. **[MB/95 - INQ000185318]**
133. In November 2020, we provided a parliamentary briefing entitled 'Survival, Recovery and Justice: specialist services for survivors of domestic abuse', setting out issues which had been exacerbated by the pandemic. **[MB/96 - INQ000185319]**

### ***Ethnic minorities***

134. In accordance with our remit, our advice, evidence and briefings throughout the specified period focussed on the impact of the pandemic on protected characteristic groups. In addition to the work referred to elsewhere in this statement, the following work had a specific focus on impacts on ethnic minorities.



135. Our written evidence to the Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics' on 1 May 2020 raised a number of concerns and made recommendations in relation to disparate impact on ethnic minorities. **[MB/13 - INQ000185300]** It also made a specific recommendation that the government direct local authorities and other partners to take steps to protect accommodation provisions for Gypsy, Roma and Traveller groups.
136. On 5 June 2020, we wrote to Kemi Badenoch MP, then Parliamentary Under-Secretary of State (Minister for Equalities), to offer the EHRC's support in addressing race inequalities highlighted by the pandemic. **[MB/97 - INQ000185320]** We went on to have meetings with Kemi Badenoch in July 2020.
137. On 15 June 2020, we held a stakeholder roundtable meeting on race, which included a discussion of issues related to the pandemic. The issues covered were wide ranging, and included the ethnicity pay gap, post-pandemic catch up for children from ethnic minorities, and stop and search. We went on to launch our Race Legal Support Fund, which is on-going.
138. On 18 June 2020, we provided a briefing for the House of Commons debate on the effect of Coronavirus on Black, Asian and Minority Ethnic communities. **[MB/98 - INQ000185321]**
139. Our written evidence dated 10 July 2020 to the Women and Equalities Committee's inquiry on 'Unequal Impact? Coronavirus and BAME people', made a number of recommendations aimed at reducing disproportionate impacts on ethnic minority groups in healthcare, education, housing and the justice system. **[MB/17 - INQ000185237]**
140. On 20 July 2020 our then Chair of Commissioners David Isaac and our then CEO Rebecca Hilsenrath gave oral evidence to the Joint Committee on Human Rights' inquiry on 'Black people, racism and human rights'. **[MB/99 - INQ000185323]** This touched on our proposed inquiry into race issues arising from Covid-19 (which became our inquiry into racial inequality in health and social care workplaces – see further below). This was supplemented by written evidence on 22 September 2020. **[MB/100 - INQ000185324]**

141. On 30 November 2020, we provided evidence to the Commission on Race and Ethnic Disparities ('CRED'), explaining that the pandemic had exposed and exacerbated structural inequalities across a range of fields. **[MB/101 - INQ000185325]**

### ***Transport***

142. As mentioned above, in response to the pandemic, we de-prioritised our work on transport, which was one of our pre-existing strategic priorities. Nevertheless, we continued to provide expert advice on transport related issues as they arose, including in the following contexts.
143. In April 2020, we had held discussions with the RMT Union, and listened to their concerns about difficulties caused by the pandemic, including lack of staffing at ticket offices, and accessibility assistance on trains being unavailable because of social distancing. Shortly thereafter, on 19 May 2020, we wrote to Grant Shapps MP, Secretary of State for Transport, recommending steps to mitigate the impact of the pandemic on disabled people (including rail passengers) in transport, in line with the PSED. **[MB/102 - INQ000185326]** We received a response by letter dated 28 May 2020. **[MB/103 - INQ000213339]**
144. On 16 June 2020, we submitted written evidence to the Transport Committee inquiry on 'Coronavirus: implications for transport', focusing on the needs of disabled passengers. **[MB/104 - INQ000185327]**
145. Our evidence to the Women and Equalities Committee inquiry on 'Unequal impact? Coronavirus, disability and access to services' on 13 July 2020 recommended that the Department of Transport take action in relation to rail passenger assistance and face coverings and review the effect of the pandemic on the substantive commitments and timescales in its Inclusive Transport Strategy. **[MB/23 - INQ000185243]**
146. On 27 July 2020, we met Chris Heaton-Harris MP, then Minister for Rail, to discuss the impact of the pandemic on the commitments made by the Department for Transport in relation to the Inclusive Transport Strategy, which should also have taken into account the new challenges caused by the pandemic.

### ***Other significant work***

147. In June 2020, we called on the UK Parliament to extend remote participation for MPs. The government subsequently passed a motion extending the provision for proxy voting and indicated that they would consider further changes.
148. On 12 October 2020, we published guidance for relevant authorities in England on the PSED in the context of the pandemic. **[MB/105 - INQ000185328]**
149. On 23 October 2020, we wrote as part of the UK Independent Mechanism ('UKIM'); comprised of the EHRC, the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission) to Justin Tomlinson MP, in his capacity as Minister of State for Disabled People, Health and Work, to ask that future pandemic planning and the development of national disability strategies across the UK were shaped by the rights and obligations set out in the UN Convention on the Rights of Persons with Disabilities ('UN CRPD'). **[MB/106 - INQ000185329]** Justin Tomlinson MP set out of the government's position in response by letter dated 14 December 2020. **[MB/107 - INQ000213340]**
150. In a briefing dated 12 February 2021 on the Development of the National Disability Strategy, we identified a number of issues affecting disabled people and stated that the strategy should set out clear and comprehensive action to be taken across government to address the inequalities that have been exacerbated by the pandemic. **[MB/108 - INQ000185330]**
151. On 14 April 2021, our Chairwoman, Baroness Kishwer Falkner, and I both gave oral evidence to the Women and Equalities Committee, in a session titled "The role of the GEO: embedding equalities across Government". Topics covered in that session included the government's response to the pandemic. **[MB/109 - INQ000185331]**
152. On 26 May 2021 we provided evidence to the UN Secretary-General's report on national human rights institutions, which included a section on the impact of the pandemic. **[MB/110 - INQ000185332]**
153. On 1 July 2021, we made a joint submission with the Northern Ireland Human Rights Commission to the UN Special Rapporteur on the right to privacy identifying various



privacy concerns arising out of the government's response to the pandemic. **[MB/111 - INQ000185227]**

154. On 20 July 2021, we provided written evidence to the Treasury Committee inquiry into 'An equal recovery'. **[MB/112 - INQ000185228]** Our evidence made a number of recommendations with a view to combatting inequalities which had been exacerbated as a result of the pandemic, with particular focus on disability, gender and race inequality and regional inequality. Earlier that year, we had presented to the Treasury on the PSED in the context of its 'Build back better' plan.
155. In September 2021 we provided a joint submission, with the Scottish Human Rights Commission, for a half-day UN panel discussion on deepening inequalities exacerbated by the Covid-19 pandemic and their implications for the realisation of human rights. **[MB/113 - INQ000185229]**

## **H EHRC inquiries and enforcement powers**

### ***Inclusive Justice inquiry***

156. The EHRC has a power to conduct formal inquiries under section 16 of the EA 2006. We have not conducted an inquiry specifically into the impact of the government's response to the pandemic on groups with a protected characteristic. However the following inquiries addressed issues of relevance to the pandemic.
157. In March 2019, we launched our inquiry "Inclusive justice: a system designed for all", to understand the experiences of disabled defendants and accused people in the criminal justice system. As mentioned above, on 22 April 2020, we published an interim evidence report in response to the announcement of a significant expansion of the use of phone and video hearings, as a result of the pandemic. **[MB/114 - INQ000185230]** We met officials from the MOJ and HM Courts and Tribunals Service to discuss the report. On 20 April 2020, we wrote to Robert Buckland MP (then Secretary of State for Justice), sharing an advance, embargoed copy of the report **[MB/115 - INQ000185231]**. The letter was copied to a number of other Ministers and the Lord Chief Justice. On 14 May 2020, Robert Buckland MP responded to indicate that the MOJ would be carefully monitoring the impact of the

emergency provisions for video hearings, and putting steps into place to mitigate the worst impacts. **[MB/116 - INQ000185232]**

158. On 11 June 2020, we published our full report. **[MB/117 - INQ000185233]**. The report was shared with key stakeholders and a number of MPs, including: Robert Buckland MP, (then Secretary of State for Justice); Lucy Frazer MP (then Minister for Prisons); and Kit Malthouse MP (then Minister for Crime and Policing). We had a number of follow up meetings with officials from the Ministry of Justice and HM Courts and Tribunals Service to discuss progress on the recommendations made. In a letter dated 13 November 2020, Robert Buckland MP provided a response to the recommendations we had made, noting that a number had been accepted and explaining the MOJ's position in respect of those which had not been accepted. **[MB/118 - INQ000185234]** The recommendations were discussed at length at the Autism All Party Parliamentary Group, chaired by Robert Buckland, on 19 November 2020.

***Inquiry into racial inequality in health and social care workplaces***

159. In June 2020, we announced a proposed inquiry into the impact of Covid-19 on ethnic minorities. The focus of the inquiry was developed at scoping stage and in October 2020, we formally launched an inquiry into racial inequality in health and social care workplaces. The inquiry's terms of reference, as published on our website, included the following: "This inquiry will seek to understand how certain ethnic groups working in lower paid roles have been more impacted by COVID-19 and what work related factors contributed to this. We want to hear about a broad range of experiences, to identify specific issues for particular ethnic groups, and, where applicable, to understand the impact of immigration status." In November 2020, we wrote to a number of MPs to notify them of the inquiry, including Alok Sharma MP (then Secretary of State for Business, Energy and Industrial Strategy), Liz Truss MP (then Minister for Women and Equalities), Matt Hancock MP (then Secretary of State for Health and Social Care), and Thérèse Coffey MP (then Secretary of State for Work and Pensions). The inquiry looked at the experiences and treatment of ethnic minority workers in lower paid roles in the health and social care sectors and documented wider work issues highlighted by the Covid-19 pandemic. Our report was published on 9 June 2022. **[MB/119 - INQ000185235]**

The report contains details of our methodology, which included extensive engagement with key stakeholders including government officials, race stakeholders, local authority organisations, health and social care organisations and trade unions. The purpose of this engagement was to inform our inquiry and did not involve us advising government officials. Following the publication of the report in 2022, we have engaged with key government departments to ensure that our recommendations are taken forward. This includes engagement with officials from BEIS, DHSC, the Cabinet Office, the Scottish Government, Welsh Government and also HMRC's National Minimum Wage Team, the Gangmasters and Labour Abuse Authority and the Employment Agencies Standards Inspectorate.

### ***Enforcement***

160. The EHRC has a range of regulatory tools and levers to respond to equality and human rights concerns. In particular, the EHRC has enforcement powers pursuant to the EA 2006 (sections 20 to 32), including to investigate breaches of the EA 2010 and to enter into legally binding agreements where we think there has been such a breach. The EHRC did consider whether to take enforcement action in relation to the government's response to the pandemic. For example, we engaged with some businesses in respect of their refusal to allow the medically exempt to access supermarkets and shops because they did not wear a face covering. However, we did not formally use our legal powers in relation to the government's response to the pandemic.
161. The EHRC is responsible for enforcing The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, which require certain employers to publish their gender pay gap information each year. We have powers to take enforcement action against relevant employers that fail to comply with their gender pay gap reporting duties. Relevant public sector employers are normally required to publish their gender pay gap information by 30 March each year. Relevant private and voluntary sector employers are normally required to publish their gender pay gap information by 4 April each year. In March 2020, in view of the pandemic's impact on business, the government and EHRC agreed that enforcement action should be suspended for the 2019/20 reporting year (for which publication was due in March



or April 2020). The following year, in February 2021, we decided to defer enforcement of the relevant regulations for a further six months. The EHRC's enforcement of the Regulations recommenced on 5 October 2021.

## **I Monitoring the impact of the pandemic**

162. Throughout the specified period and since, we have monitored the impact of the pandemic on equality and human rights through our engagement with governmental and non-governmental stakeholders, as described above.
163. We use our published Measurement Framework (which is available on our website) to produce our statutory reports under section 12 of the EA 2006. The Measurement Framework enables us to measure progress across six domains of life (education, work, living standards, health, participation, and justice and personal security). It enabled us to produce an evidence synthesis for our October 2020 IBF report, highlighting emerging trends from the data and qualitative research into impacts for particular groups.
164. We do not produce our own data sets. We use existing Office for National Statistics ('ONS') and other data sets and undertake secondary analysis to look at trends for particular protected characteristic groups. During the specified period, we engaged with the ONS and other data stakeholders on a number of occasions, to share information on the impact of the pandemic on protected characteristic groups. Those stakeholders included representatives from GEO, the Race Disparity Unit, the Cabinet Office and the MOJ, as well as other governmental and non-governmental bodies.
165. As part of our role as an NHRI, we monitor and report on progress in England and Wales against seven UN treaties protecting human rights and equality (the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination ('CERD'), the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Universal Periodic Review). We disseminate our findings in our Human Rights

Tracker, which is published on our website and shared widely with relevant stakeholders, including governmental stakeholders (GEO, the Department for Levelling Up, Housing and Communities, the MOJ, the DfE and the Foreign, Commonwealth and Development Office).

166. In the course of this work, we have reported on the impact of the pandemic on the UK's compliance with relevant international human rights obligations. An overarching impact of the pandemic has been that there have been delays to the operation of the UN treaty monitoring system (for example, there has been a significant, ongoing, delay in the submission of the government's latest report on CERD).

## **J Lessons learned**

167. As with any area of public policy and service delivery, equality and human rights should be at the heart of emergency responses. Emergency legislation, guidance and government policy in response to a pandemic such as Covid-19 – as well as the effects of the pandemic itself – have the potential to exacerbate existing inequalities and particularly affect those with certain protected characteristics or who are in vulnerable situations. I have taken this request to provide a statement to the Inquiry as an opportunity to reflect on the EHRC's overall engagement with the government during the period of the pandemic. The EHRC is one of a range of statutory and other actors seeking to influence complex policy considerations and the delivery of public services. Attributing impact to one organisation is not always possible. In the difficult and unusual circumstances caused by the pandemic, attribution is even more challenging. I can nonetheless state that much advice was given by the EHRC on a range of topics relevant to the pandemic, and that some decisions made by the government on those topics were subject to amendment following our engagement or advice.
168. It is my view that, for the most part, the EHRC worked well with government, providing advice and guidance through a number of routes. Our on-going relationships with particular government departments were particularly useful for this, as were our engagements with parliamentary committees. One lesson for the EHRC is that investing in building and maintaining relationships with government

departments, as well as maintaining our reputation for impartial expert advice, will maximise our impact in influencing public policy, which is particularly of value in creating the conditions for us to be impactful in an emergency situation.

169. This is because decisions during the pandemic were perforce made quickly. Where the EHRC did not already have relationships with relevant bodies, it was more difficult for our advice and guidance to be heard in a timely manner. For example, the BMA's need to amend its guidance on DNACPR notices may not have been necessary had we been able to advise on the guidance at an earlier stage. By contrast, our on-going relationship with DfE allowed us to feed equality and human rights considerations into exceptional arrangements for assessments and with education recovery from an early stage.
170. One of the most significant lessons for all parties is that, in a climate of fast-paced and critical decision-making, the particular needs of individuals and groups with protected characteristics, and those in vulnerable situations, may be less likely to be at the forefront of decision makers' consideration processes. The same is true of human rights.
171. Our advice would be that decision makers must routinely consider the needs of, and impacts of decisions on, everyone who is likely to be affected by a public policy decision, no matter how routine or how time-pressured. This is in fact a legal requirement on all public bodies under the PSED. If this consideration of the needs of people with different protected characteristics is built into all decision-making, it will be less likely that this vital step will be missed when decisions have to be made at pace, and less likely that important public policy decisions affecting people's lives and livelihoods will be ineffective, or less effective, for some groups – often those already experiencing disadvantage.
172. We would also advise that in time- or resource-pressured situations where decision makers do not have time to undertake thorough consultations with representative groups, the EHRC should be a utilised source of expertise and guidance on equality and human rights law which is available to decision makers. We strongly recommend that, in circumstances where the government is operating under pressure, it should avail itself of our expertise on matters relating to protected characteristic groups and human rights issues to inform its decision-making.



173. In relation to whether groups with protected characteristics were adequately considered by decision makers, in my view such groups were not considered as part of every decision that was taken. Where the EHRC identified this as an issue, we used our powers to seek to influence government thinking and practice. As explained above, we intend that this should be the starting point for policy makers, and that policy makers ask for our expert assistance at an early stage when making decisions, to ensure the needs and impacts on such groups are routinely considered so that public policy works for everyone.
174. During the pandemic, we accepted that it was not necessarily practicable for formal, written equality impact assessments to be undertaken on all decisions. It is important to note, however, that the PSED remained a duty which should have been complied with at all times by decision makers. It is a “due regard” duty, meaning that proper, reasonable consideration must be given to the need to achieve its aims. I recognise that at times of extreme pressure the regard that is due may be less than under normal circumstances. However, due regard cannot be no regard at all.
175. A major theme of all of our engagement with the government was that consideration of the impacts of decisions on all groups should be at the heart of decision making, and that the different needs and circumstances of, and effects on, different groups thus needed to be understood. If decision makers lack capacity to consider those impacts, then the EHRC, as Britain’s statutory equality regulator, stands ready to advise.
176. As well as the consideration of needs for groups with particular protected characteristics, another potential gap that we have identified is routine consideration of policy decisions through a human rights lens. An important theme of many of our parliamentary briefings was to highlight that there is an existing framework which can be used to help balance the needs and rights of different groups and individuals, which is set out in the human rights framework, including the ECHR, as incorporated by the HRA. The importance of the human rights framework in guiding policy responses which strike an appropriate balance between the right to life and, say, the rights to liberty, to private and family life, to a fair trial and freedom of assembly, cannot be over-emphasised in the context of a pandemic.

177. An example of where a human rights lens may have been useful is in relation to the Article 8 right to a family life. During the first lockdown, blanket rules were laid down which considered the Article 8 right to a family life of one group of people, the children of separated parents, but did not consider the Article 8 rights of a different group of people, disabled people living in care homes. In that example, children of separated parents were able to visit the family members who did not live with them, but the disabled person was not allowed family member visitors. If a human rights lens had been applied to those blanket rules, and each group considered accordingly, these issues may have been identified more promptly.
178. We therefore also strongly recommend that, in future situations where decisions must be made quickly on matters that may have human rights implications, policy makers should also seek the advice of the relevant National Human Rights Institutions in the UK, including the EHRC which has responsibility for all human rights monitoring in England and Wales and for reserved matters in Scotland.

### ***The PSED***

179. In relation to the PSED, an important lesson for decision makers is that, when public policy decisions are being made, they must routinely think about the full range of people affected by those decisions, including people with protected characteristics or from particular groups. Doing this will avoid the risk of developing or implementing policies which have negative or unintended consequences for particular groups.
180. We recommend that, in order to comply with the PSED, the government should routinely seek views on the likely different impacts of proposals on different groups, where pressure of time allows, and ensure that impacts are monitored and steps are taken to mitigate any adverse impacts on particular groups. It should also continue to scrutinise decision-making and policy impacts through the lens of the human rights framework. In doing so, it should work with, and seek advice and guidance from, other bodies such as the EHRC, on the impact of its decisions on particular groups or individuals.
181. During the Covid-19 pandemic, it became apparent that the people who suffered the worst effects of the pandemic itself, and of decisions made by the government in response to it, were those who in many cases already experienced disadvantage.

The existing inequalities in our society create the conditions that can lead to further disadvantage in times of crisis. An example is the disproportionate impact on people from particular ethnic minority communities, the reasons for which are complex and multi-faceted, but in part resulted from the disproportionate presence of ethnic minorities in low-paid and front-line jobs and over-crowded housing, and low levels of trust in official advice and institutions. A more equal society will be a more resilient society in the face of a future emergency.

182. The pandemic also revealed some views within our society which arguably betrayed underlying prejudice, and which could be addressed by placing greater value on equality and human rights for all residents of Britain. For example, the manner in which the needs and rights of older people, or disabled people, or those in care homes or in receipt of social care, were provided for in some cases suggested a lower value placed on their rights than those of others. A further example relates to the disproportionate and potentially long-lasting impact of pandemic measures on children and young people, including those from groups already subject to disadvantage, considered against their needs and rights.

### **Statement of Truth**

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

**Signed:** Personal Data \_\_\_\_\_

**Dated:** \_\_\_\_03 July 2023\_\_\_\_\_



## Annex A: Parliamentary committee evidence

Date of EHRC evidence	Committee	Inquiry/sub-inquiry	Exhibit
18 March 2020	Women and Equalities Committee	Work of the Equalities and Human Rights Commission	MB/10
1 April 2020	Health and Social Care Committee	Delivering core NHS and care Services during the pandemic and beyond	MB/25
21 April 2020	Home Affairs Committee	Home Office preparedness for Covid-19 (Coronavirus)	MB/90
1 May 2020	Women and Equalities Committee	Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics	MB/13
7 May 2020	Health and Social Care Committee	Delivering Core NHS and Care Services during the Pandemic and Beyond	MB/26
14 May 2020	Welsh Affairs Committee	The Welsh economy and Covid-19	MB/72
28 May 2020	Business, Energy and Industrial Strategy Committee	The impact of coronavirus on businesses and workers	MB/74
29 May 2020	Education Committee	The impact of COVID-19 on education and children's services	MB/64
16 June 2020	Transport Committee	Coronavirus: implications for transport	MB/104
17 June 2020	Joint Committee on Human Rights	The Government's response to Covid-19: human rights implications (women in prison)	MB/93
2 July 2020	Lords Public Services Committee	Public services: lessons from coronavirus	MB/33
3 July 2020	Home Affairs Committee	The Macpherson Report: twenty-two years on	MB/16
10 July 2020	Women and Equalities Committee	Unequal impact? Coronavirus and BAME people	MB/17
13 July 2020	Women and Equalities Committee	Unequal impact? Coronavirus, disability and access to services	MB/23
13 July 2020	Women and Equalities Committee	Unequal impact?: Coronavirus and the gendered economic impact	MB/76
13 July 2020	Joint Committee on Human Rights	The Government's response to Covid-19: human rights implications (adult social care and the right to independent living)	MB/35

14 July 2020	Joint Committee on Human Rights	The Government's response to Covid-19: human rights implications (the privacy implications of the NHS Test and Trace service)	MB/24
20 July 2020	Joint Committee on Human Rights	Black people, racism and human rights	MB/99
24 July 2020	Joint Committee on Human Rights	The Government's response to Covid-19: human rights implications (older people in residential social care)	MB/36
28 July 2020	Lords COVID-19 Committee	Life beyond COVID	MB/34
9 September 2020	Lords Constitution Committee	Constitutional implications of Covid-19	MB/89
22 September 2020	Joint Committee on Human Rights	Black people, racism and human rights	MB/100
8 January 2021	Work and Pensions Committee	Disability employment gap	MB/80
11 January 2021	Joint Committee on Human Rights	The Government's response to COVID-19: human rights implications of long lockdown (care home visits)	MB/45
29 January 2021	Joint Committee on Human Rights	The Government's response to Covid-19: human rights implications of long lockdown	MB/18
10 March 2021	Joint Committee on Human Rights	The Government's Independent Human Rights Act Review	MB/40
18 March 2021	Public Accounts Committee	COVID-19: Education	MB/67
14 April 2021	Women and Equalities Committee	The role of GEO: embedding equalities across government	MB/109
20 July 2021	Treasury Committee	An equal recovery	MB/113
12 November 2021	Joint Committee on Human Rights	Protecting human rights in care settings	MB/46
28 January 2022	Education Committee	Education challenges facing children and young people from Gypsy, Roma and Traveller backgrounds	MB/68
July 2022	Business, Energy and Industrial Strategy Committee	Post-pandemic economic growth: UK labour markets	MB/87