

Franet National contribution to the Fundamental Rights Report 2020

United Kingdom

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Franet country study: policy and legal highlights 2019

Issues in the fundamental rights institutional landscape	No important development in 2019.
EU Charter of Fundamental Rights	No important development in 2019.
Equality and non-discrimination	Legal aid provisions in discrimination cases – in February 2019, the Ministry of Justice announced that it would remove the mandatory requirement to go through the Civil Legal Aid Telephone Service before receiving face to face advice in discrimination cases as it had been preventing certain vulnerable individuals from receiving help.
Racism, xenophobia & Roma integration	Monitoring of progress on promoting Roma integration: Gypsies Roma and Travellers organisations are challenging bans on unauthorized camps granted by courts to local councils in a context of governmental crackdown against unauthorized camps. Other developments include the announcement of a national strategy to tackle inequalities faced by Gypsy, Roma and Traveller communities, which is yet to be published by the Ministry of Housing Communities and Local Government.
Asylum & migration	Legal Aid Information Dissemination: a coalition of NGOs published guidance on how to access Exceptional Case Funding for people supporting separated and unaccompanied children following its reinstatement by the Government after a successful legal challenge. The guidance aims to raise awareness across all agencies working with separated and unaccompanied children who require legal assistance.
Data protection and digital society	SA's activities: The Information Commissioner's Office reported on their activities during 2019, an 'unprecedented year' with a record number of people raising data protection concerns. New policy and legal developments with regard to artificial intelligence and big data: The use of live facial recognition technology by the South Wales police forces as part of a trial was deemed lawful by the High Court .
Rights of the child	Age of Criminal Responsibility Raised in Scotland: landmark legislation was introduced to increase the age of criminal responsibility in Scotland which prior to <i>The Age of Criminal Responsibility (Scotland) Act 2019 Act</i> was eight years old. Following the passing of the Act, the age of responsibility is now 12 years old. Additionally, the Age of Criminal Responsibility Advisory Group will continue to consider whether the age of responsibility should be raised further.
Access to justice, including victims of crime	Increased funding for rape centres: in March 2019 a 10% increase in funding for rape centres in England and Wales was announced to support 79 centres across the country. The funding will be used to the recipient centres to fund a range of support services, and counselling. Specific funding has also been allocated to provide support for male victims of rape following a significant rise in reporting such crimes, money will be used to fund a national helpline and webchat service and provided to Police and Crime Commissions to fund male support centres.
Convention on the Rights of Persons with Disability	National Disability Strategy to be developed in 2020: The UK Government announced the launch of a National Disability Strategy to be developed in 2020. The UK Government have submitted two follow up reports to the 2017 UN CRPD

	<p>report:</p> <ul style="list-style-type: none">• UK state follow-up report (submitted September 2019)• UK state follow-up report on independent living, employment, living standards and social protection (submitted September 2019)
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Chapter 1. Equality and non-discrimination

1. Legal and policy developments in 2019 relevant to combating discrimination based on gender identity, religion or belief, disability, age or sexual orientation

In February 2019, the Ministry of Justice (MoJ) published its *Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*¹ which introduced a number of changes to legal aid provision for, *inter alia*, employment discrimination cases. One significant change of LASPO was the creation of the Civil Legal Aid telephone service which potential claimants would need to go through before being able to access face-to-face advice. Based on evidence submitted to the MoJ through the review, they noted that the mandatory nature of this process can prevent certain vulnerable individuals from accessing legal services to which they are entitled. Accordingly, the Government announced that they will removed the mandatory requirement from the telephone gateway for, *inter alia*, discrimination cases by Spring 2020.² A report³ published by the Equality and Human Rights Commission (EHRC) in June 2019, welcomed the action by the government but found that more needed to be done to secure access to justice for victims of employment discrimination. For example, the EHRC noted that evidence had shown misunderstanding about how the funding rules apply to discrimination cases. One area of misunderstanding identified by the EHRC was the prevalence of cases being treated as “primarily for damages” rather than having “significant wider public interest”. This is significant as IT is harder for the former to satisfy the qualification test. Accordingly, the EHRC recommended that the Government amend the guidance for civil legal aid to “recognise the importance to the individual and to society of challenging discrimination, and advise that, as a general rule, a discrimination claim that seeks other remedies in addition to damages should not be assumed to be ‘primarily a claim for damages’”.⁴

On 17 October 2019, the EHRC launched new guidance for employers on the confidentiality agreements in discrimination cases.⁵ The guidance aims to make it clear to employers when such agreements can be legally used and outlines good practice for their use. In doing so the EHRC hope to improve understanding and transparency on issues of discrimination in the work place in order to identify and tackle systemic problems and ensure that confidentiality agreements are not used to cover up discriminatory actions.

On 22 November 2019, the Welsh Government published a consultation⁶ on commencing the Socio-economic duty contained in Part of the Equality Act 2010. Part 1 of the Equality Act is yet to be commenced, it imposes a socio-economic duty on public bodies to consider how their decision might

¹ UK, Ministry of Justice (2019), “Guidance: Post-Implementation Review of Part 1 of LASPO”, 7 February 2019, available at: www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo.

² UK Ministry of Justice (2019), *Legal Support: The Way Ahead An action plan to deliver better support to people experiencing legal problems*, February 2019, at p. 15, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777036/legal-support-the-way-ahead.pdf.

³ UK, Equality and Human Rights Commission (2019), *Access to legal aid for discrimination cases*, June 2019, available at: www.equalityhumanrights.com/sites/default/files/access-to-legal-aid-for-discrimination-cases-our-legal-aid-inquiry.pdf.

⁴ UK, Equality and Human Rights Commission (2019), *Access to legal aid for discrimination cases*, June 2019, available at: www.equalityhumanrights.com/sites/default/files/access-to-legal-aid-for-discrimination-cases-our-legal-aid-inquiry.pdf.

⁵ UK, Equality and Human Rights Commission (2019), *The use of confidentiality agreements in discrimination cases*, 17 October 2019, available at: www.equalityhumanrights.com/en/publication-download/use-confidentiality-agreements-discrimination-cases.

⁶ UK, Welsh Government (2010), *A More Equal Wales –Commencing the Socioeconomic Duty*, 22 November 2019, available at: <https://gov.wales/sites/default/files/consultations/2019-11/a-more-equal-wales-commencing-the-socio-economic-duty.pdf>.

help to reduce inequalities associated with socio-economic disadvantage.⁷ The Welsh Government are launching the consultation in light of the UK's potential exit from the European Union and the uncertainty that will bring in relation to equality and human rights and absence of protections for EU regulation. The consultation seeks views on which public bodies should be encompassed by the duty and how they would go about delivering the duty.

2. Research findings, studies or surveys on either experiences of discrimination or rights awareness

On 1 March 2019, the EHRC launched a legal inquiry into disability discrimination in the criminal justice system.⁸ The inquiry focuses mainly on cognitive impairments, mental health conditions and neuro-diverse conditions and seeks to identify better practice for identifying disabled defendants. It will also: assess the types of adjustments used to enable participation in the criminal justice system and assess whether they can be improved; identify barriers to providing adjustments and determine ways of overcoming them; and investigate the effects modernising of court procedures on this group. It will be informed by interviews with defendants and criminal justice professionals as well as information gathered from third sector bodies and relevant academic experts. An online survey for court staff was also open from 1 March to 15 September 2019.

On 4 March 2019, the EHRC co-published a report analysing the use of positive action in apprenticeships to drive diversity and boost representation of women, ethnic minorities and persons with disabilities.⁹ The primary methodology was desk-based research for the report which was supplemented by the views of academics, government representatives, sector bodies, and employers gathered during a roundtable discussion. The research found that whilst women are well represented in apprenticeships they are over-represented in the poorer paid industries and under-represented in better paid industries. Similarly, an under-representation of ethnic minorities and persons with disabilities was documented with, for example, 87.2% of apprenticeships starts in England in 2071/18 being white people. Statistics also uncovered that 11.2% of apprenticeships starts in England in 2071/18 were persons with learning difficulties and/or disabilities and/or health problems. With the Family Resources Survey showing that 19% of working age adults have a disability this latter statistic could disclose and under-representation of persons with disabilities, owing to differences in data collection methodologies. However the report concluded that further research would have to be undertaken to confirm this. With respect to the use of positive action, made lawful by virtue of the Equality Act 2010,¹⁰ the research found a number of examples in relation to gender but far fewer aimed at boosting representation of ethnic minorities and persons with disabilities. The studies roundtable discussion identified employers' lack of awareness and/or confidence to implement effective positive action measures as the primary barrier to its use.¹¹ In light of the research findings the EHRC recommended that governments (across the UK) hold apprenticeship providers to account

⁷ UK, HM Government (2010), *Equality Act 2010*, 8 April 2010, Part 1, available at: www.legislation.gov.uk/ukpga/2010/15/part/1.

⁸ UK, Equality and Human Rights Commission (2019), "Inquiry: Does the criminal justice system treat disabled people fairly?", 1 March 2019, available at: www.equalityhumanrights.com/en/inquiries-and-investigations/inquiry-does-criminal-justice-system-treat-disabled-people-fairly.

⁹ UK, Equality and Human Rights Commission (2019), *Exploring positive action as a tool to address under-representation in apprenticeships*, March 2019, available at: www.equalityhumanrights.com/sites/default/files/research-report-123-positive-action-apprenticeships.pdf.

¹⁰ UK, HM Government (2010), *Equality Act 2010*, 8 April 2010, Part 11 Chapter 2, available at: www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/2.

¹¹ UK, Equality and Human Rights Commission (2019), *Exploring positive action as a tool to address under-representation in apprenticeships*, March 2019, at p. 8, available at: www.equalityhumanrights.com/sites/default/files/research-report-123-positive-action-apprenticeships.pdf.

via funding mechanisms which would require them to set and meet targets using positive action provisions and to use public procurement to advance equality of opportunity. They further recommended that employers monitor recruitment, retention and progression by ethnicity, disability and gender and that they use positive action mechanisms to address any disparities recorded. Finally, they recommended that sector bodies promote the use of positive action in apprenticeships and that they themselves at the EHRC provide information and guidance on the use of positive action.¹²

On 9 May 2019, the EHRC published their report, *Is England Fairer?*¹³ The report examines differences in outcomes in the spheres of education; work; health; and living standards for peoples with protected characteristics. It also takes a geographical view of how such outcomes vary across the country. In education, the report concluded that, *inter alia*, disabled people aged 16 to 18 were more likely than non-disabled people not to be in education, employment or training. Furthermore, disabled people were less likely than non-disabled people to hold degree-level qualifications. In health, fewer disabled people reported good health than non-disabled people and women, disabled people, and LGBT+ persons were more likely to report poor mental health than the national average (and men, non-disabled people and heterosexual people respectively).¹⁴ Disabled people were also found to experience severe inequality in living standards. The report found that disabled people were more likely to live in poverty and experience severe material deprivation and people with mental health and behavioural or social impairments were more likely to experience poverty than non-disabled people.¹⁵ Disabled people and Muslims were less likely to be employed and Muslims were found to be more likely employed in insecure roles.

¹² UK, Equality and Human Rights Commission (2019), *Exploring positive action as a tool to address under-representation in apprenticeships*, March 2019, at p. 9, available at: www.equalityhumanrights.com/sites/default/files/research-report-123-positive-action-apprenticeships.pdf.

¹³ UK, Equality and Human Rights Commission (2019), *Is England Fairer?*, 9 May 2019, available at: www.equalityhumanrights.com/sites/default/files/is-england-fairer-2018.pdf.

¹⁴ UK, Equality and Human Rights Commission (2019), *Is England Fairer?*, 9 May 2019, at p. 4, available at: www.equalityhumanrights.com/sites/default/files/is-england-fairer-2018.pdf.

¹⁵ UK, Equality and Human Rights Commission (2019), *Is England Fairer?*, 9 May 2019, at p. 5, available at: www.equalityhumanrights.com/sites/default/files/is-england-fairer-2018.pdf.

Chapter 2. Racism, xenophobia and related intolerance

1. Legal, policy developments and measures relating to the application of the Racial Equality Directive

On 1 February 2019, the Government launched measures to drive change in tackling ethnic disparity in universities.¹⁶ Measures include:

- Using Access to Participation plans to hold universities to account via scrutiny by the Office for Students;
- Putting pressure on university league tables to include progress in tackling access and attainment disparities;
- Development of a new website to replace Unistats that will provide better information for students and take into account the needs of disadvantaged students;
- Reducing ethnic disparities in research and innovation funding;
- Reviewing the Race Equality Charter;
- Encouraging institutions to address race disparities in their workforce;
- Gathering evidence on what works to improve ethnic minority access and success.¹⁷

On 15 February 2019, the Government published its annual stop and search figures.¹⁸ The statistics cover April 2017 to March 2018. Whilst figures show a fall in the use of stop and search across all ethnic groups, the rate at which its use decreased varied between groups and disproportionate use for certain ethnic groups is clear. The figures showed that black people were nine times more likely than a white person to be stopped and searched, Asian people were twice as likely and non-British and non-Irish white people were three times more likely as their White British counterparts. Each ethnic group was broken down into further groups and all three Black ethnic groups (Black Caribbean; Black African; and Black other) saw the highest rates of stop and search use.

On 7 May 2019, the Centre for Data Ethics and Innovation (CDEI) commissioned a review on bias in algorithmic decision making. CDEI is an independent body that advises the UK Government on the ethical dimensions of AI and data-driven technology. The review seeks to ensure that when AI is used for algorithmic decision making it does not reinforce or introduce biases, the terms of reference offer the example of racial bias in the parole decisions. The review will be carried out across four sectors which were identified as having high potential impact on individuals stemming from decision making in that area and where there has been a historic evidence of bias: financial services; crime and justice; recruitment; and local government.¹⁹ The review aims to produce operational codes of practice for the trialling of algorithmic decision making tools, bias tests and procurement guidelines.

On 27 June 2019, the Governments' Race Disparity Unit announced that it will produce a series of summaries to make the Ethnicity facts and figures website²⁰ more accessible. In doing so the Unit acknowledged the importance of the wealth of data held in the 170 web pages housed under the

¹⁶ UK, HM Government (2019), "Universities must do more to tackle ethnic disparity", 1 February 2019, available at: www.gov.uk/government/news/universities-must-do-more-to-tackle-ethnic-disparity.

¹⁷ UK, HM Government (2019), "Universities must do more to tackle ethnic disparity", 1 February 2019, available at: www.gov.uk/government/news/universities-must-do-more-to-tackle-ethnic-disparity.

¹⁸ UK, HM Government ("019), "Stop and search", 15 February 2019, available at: www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest.

¹⁹ UK, Race Disparity Unit (2019), *Centre for Data Ethics and Innovation: Review on bias in algorithmic decision making*, 7 May 2019, available at: www.gov.uk/government/publications/the-centre-for-data-ethics-and-innovation-calls-for-evidence-on-online-targeting-and-bias-in-algorithmic-decision-making/centre-for-data-ethics-and-innovation-review-on-bias-in-algorithmic-decision-making.

²⁰ UK, Race Disparity Unit, "Ethnicity facts and figures", available at: www.ethnicity-facts-figures.service.gov.uk.

website but noted the need for overviews of what that data tells us. Summaries will be produced by ethnic group and by topic. The first summary²¹ published by the Unit provided a summary of statistics about Black Caribbean people in England and Wales under the following categories:

- Population;
- Education;
- Stop and search;
- Arrests;
- Fear of crime;
- Home ownership and renting;
- Mental health.

On 6 December 2019, Oxford County Court ruled in the case of *Mander and Mander v The Royal Borough of Windsor & Maidenhead and Adopt Berkshire & Reading*.²² The claimants were a Sikh couple of Indian heritage who had been told by the defendants that they would be suitable adoptive parents but as there were only white children available for adoption they could not make an application as white couple would be given priority. The court ruled that the treatment of the Manders amounted to direct discrimination on the grounds of race under the Equality Act 2010. The couple received damages including special damages for the pecuniary losses arising from them having to proceed with an inter-country adoption.

2. Legal, policy developments and measures relating to the application of the Framework Decision on Racism and Xenophobia

On 18 March 2019, the Ministry of Housing, Communities and Local Government published guidance for local authorities on the ways in which they can understand, engage and reassure their communities in the lead up to and following Brexit.²³ The Guidance was issued in acknowledgment that EU citizens may require particular support during the Brexit transition. The Guidance has four sections:

- Effective community engagement
- Supporting the EU Settlement Scheme
- Working to tackle hate crime
- Responding to incidents in the community.

The Guidance notes the importance of working to tackle hate crime in the community owing to the rise in hate incidents following the 2016 referendum and the spikes in hate crime after trigger incidents. It notes the possibility of such a rise occurring again when the UK formally leaves the European Union and the damage that living in fear of hate crime can have on individuals and communities. The Guidance states that ensuring hate crime is tackled and community tensions are minimised requires a proactive engagement and effective collaboration across local and national government as well as partner organisations and communities. It advises local authorities to:

- Appoint a central point of contact for information, advice and support on hate crime.

²¹ UK, Race Disparity Unit (2019), “Black Caribbean ethnic group: facts and figures”, 27 June 2019, available at: www.gov.uk/government/publications/ethnicity-facts-and-figures-black-caribbean-ethnic-group/black-caribbean-ethnic-group-facts-and-figures.

²² UK, *Mander and Mander v The Royal Borough of Windsor & Maidenhead and Adopt Berkshire & Reading* [2019], available at: www.judiciary.uk/wp-content/uploads/2019/12/Mander-Mander-v-RBWM-Adopt-Berkshire-FINAL-Judgment-C01RG184.pdf.

²³ UK, Ministry of Housing, Communities and Local Government (2019), “Community engagement and Brexit: guidance for local authorities”, 18 March 2019, available at: www.gov.uk/guidance/community-engagement-and-eu-exit-guidance-for-local-authorities#working-to-tackle-hate-crime.

- Engage with hate crime lead officers in local police forces and the Crown Prosecution Service in order to feed into the national oversight of hate crime trends and to receive key updates from it.
- Engage with, and be aware of, specialist hate crime reporting centres.
- Ensure that local community safety partnerships (CSPs) actively assess their readiness for any raised tensions.
- Engage regularly with local faith and community groups in order to obtain information on specific concerns regarding the UK's exit from the EU.
- Utilise local authority staff as a route to communicating key messages into communities.
- Use social media to reassure communities with an emphasis on personal safety and to signpost online hate crime reporting channels.
- Ensure quick responses to incidents, such as removing graffiti as quickly as possible.²⁴

The Guidance also advises that all relevant staff be aware of third-party reporting portals/centres for hate crime and that they have direct contact details for the local hate crime lead police officers. It is also advised that information about hate crime support agencies be clear and accessible and that a handling plan is put in place in the event of a spike in hate incidents. Monitoring is also highlighted as an important factor in tackling hate crime in the community and access to the latest hate crime statistics is advised as well as analysis of any rise in such incidents following the referendum. Finally, the Guidance sets out information on reporting hate crime and support services.

On 10 July 2019, the Law Commission published their Annual Report 2018-19. In the report, the Commission announced that they had launched a project in March 2019 that will review the adequacy and parity of protection offered by the law relating to hate crime and to make recommendations for its reform. The report also details the findings from their review²⁵ into the law relating to abusive and offensive online communications. The review was informed by victims, charities, MPs, tech companies, the CPS and lawyers as well as a cross-jurisdictional analysis. In light of their findings the Commission proposed, *inter alia*, the reform and consolidation of existing criminal laws dealing with offensive and abusive communications online with specific reference to glorification of violent crime.²⁶

On 8 October 2019, the College of Policing published a consultation on proposed changes to the Hate Crime Operational Guidance.²⁷ The new proposals include, *inter alia*: that hate crime should always receive a priority response; the need for appropriate flagging of off and online hate crime; and provides advice to officers when dealing with non-crime hate incidents and the need to balance police response and freedoms of individuals under the Human Rights Act.

²⁴ UK, Ministry of Housing, Communities and Local Government (2019), "Community engagement and Brexit: guidance for local authorities", 18 March 2019, at Hate Crime, available at: www.gov.uk/guidance/community-engagement-and-eu-exit-guidance-for-local-authorities#working-to-tackle-hate-crime.

²⁵ UK, Law Commission (2018), "Abusive and Offensive Online Communications", 1 November 2018, available at: www.lawcom.gov.uk/abusive-and-offensive-online-communications/.

²⁶ UK, Law Commission (2019) *Annual Report 2018-19*, 10 July 2019, p. 19, available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/07/6.5613_LC_Annual-ReportAccounts-201819_WEB.pdf.

²⁷ UK, College of Policing (2019), *Hate Crime Operational Guidance: Consultation*, 8 October 2019, available at: http://library.college.police.uk/docs/appref/C20411019_Hate%20Crime%20Operational%20Guidance.pdf.

Chapter 3. Roma integration

1. Measures and developments addressing Roma/Travellers segregation

Healthcare

The NGO Friends Families and Travellers published²⁸ in March 2019 the findings of their research²⁹ on the registration of vulnerable persons at General Practitioners' (GP) practices. They found that nearly half of the 50 practices they visited refused to register patients who did not have a fixed address or proof of identity, despite the fact that they had been rated as 'good' or 'outstanding' by the Care Quality Commission for their work with 'people whose circumstances may make them vulnerable'. Friends Families and Travellers called on the government to address issues for Travellers registering at GP practices once and for all. Around 10,000 Gypsies, Travellers and Roma (GTR) people live on unauthorized encampments and 70,000 on authorized sites. All of them travel periodically and experience barriers to accessing primary care.

Despite this finding, two local initiatives were launched in early 2019 in order to improve GTR communities' access to healthcare.

- In Doncaster, the NHS Doncaster's Clinical Commissioning Group (CCG) launched a study in 2017 to understand how GT communities' health needs can be better met, considering that their life expectancy is on average 20 years shorter than the rest of the population³⁰. In 2019, there were around 4,000-6,000 Gypsies and Travellers (GT) people living in the Doncaster area. Engagement with GT people was an important part of the process. The CCG asked Violet Cannon, Director of York Traveller Trust, to lead the project and to recruit three trainee GT journalists to ensure that the project was culturally sensitive. Interviewees were asked to answer the following questions prepared by the journalists³¹:
 1. What stops you from accessing healthcare?
 2. What would you not be comfortable talking to a healthcare professional about?
 3. What do you think is the biggest healthcare issue for Gypsies and Travellers?
 4. What would make healthcare services better for you?
 5. What do you think the settled community can learn from the GT community?

As part of this study, journalists also made short films in order to highlight what the problems are and how these communities can improve their health and wellbeing. The research was published in March 2019. Main findings included: most interviewees had experienced prejudice by front line members of staff; nearly all of the people interviewed said they would not feel comfortable talking to a health service professional if they were of the opposite sex to them; there is a strong level of stigma around discussing sexual health; this stigma is intensified further when a GT person is asked to discuss anything regarding their health with someone of the opposite sex; health and social care staff across Doncaster needed specific training around GT culture and how to engage with people from the communities; the importance of the use of language when discussing healthcare issues with the communities,

²⁸ UK, Friends Families and Travellers (2019), *Friends Families and Travellers calls on government to address issues for Travellers registering at GP practices once and for all*, 20 March 2019, available at: <https://www.gypsy-traveller.org/news/friends-families-and-travellers-calls-on-government-to-address-issues-for-travellers-registering-at-gp-practices-once-and-for-all/>

²⁹ UK, Friends Families and Travellers (2019), *No room at the inn: How easy is it for nomadic Gypsies and Travellers to access primary care?*, 20 March 2019, available at: <https://www.gypsy-traveller.org/wp-content/uploads/2019/03/No-room-at-the-inn-findings-from-mystery-shopping-GP-practices.pdf>

³⁰ UK, Travellers' Time (2019), *NHS in Doncaster explores why Gypsy and Traveller communities have a shorter life expectancy*, 20 February 2019, available at: <https://www.travellerstimes.org.uk/news/2019/02/nhs-doncaster-explores-why-gypsy-and-traveller-communities-have-shorter-life>

³¹ UK, NHS Doncaster (2019), *Report of our engagement with Gypsy and Traveller Communities in Doncaster*, 25 April 2019, available at: <http://www.doncasterccg.nhs.uk/11617/report-co-produced-from-our-engagement-with-the-gypsy-and-traveller-communities-in-doncaster/>

with a particular emphasis on avoiding words perceived as ‘dirty’ by GT families. Findings³² will inform and help to direct how the CCG and Council involve GT voices in their commissioning practices over the next two years.

- Following the GRT Health Conference organised by Children and Family Health Surrey (CFHS) and held on Thursday 31 January 2019 in Surrey to explore the health issues faced by local GRT communities, the new Surrey-wide GRT health project was launched in April 2019.³³ Project workers are a specialist GRT team and partner with a range of health and other agencies such as Maternity services, the new Primary Care Networks, Children’s and Adults Social Services, Diabetes UK, Cancer support services.³⁴ They deliver their services onsite and train NHS staff and partner agencies across Surrey to improve their engagement with GRT communities and to help reduce the inequalities the GRT communities face trying to access healthcare.

Housing

Over the past year, there has been an increase in the number of injunctions granted by UK courts to local councils to ban unauthorised camps on public land. Applications were made by local councils against “persons unknown”. As a consequence, cases were therefore undefended, with the exception of *Bromley v Persons Unknown*. In this case, the London Gypsies and Travellers group were allowed to intervene and they successfully challenged the ban on camping on public land. The group had registered 34 injunctions granted nationwide³⁵ and thus argued that the cumulative effects of such bans would soon leave GTR communities pursuing their traditional nomadic life with nowhere to go except for private land. While the court recognised that the Borough of Bromley was pursuing a legitimate aim, the injunction sought was not proportionate. In reaching its decision, the court considered the cumulative effects of such bans and the fact that in *Bromley v Person Unknown*, the borough had not sought an alternative solution for GTR communities. This decision was appealed by the Borough of Bromley and the appeal was rejected on the grounds that “the judge considered all of the relevant factors when undertaking her proportionality exercise”³⁶. London Gypsies and Travellers had launched a crowdfunding campaign to ‘end racist injunctions’ and help fund the case.³⁷ They believed that the injunctions breach the Equality Act because GTR communities will be most affected by them as they effectively criminalise a way of life and punish people regardless of how they behave.³⁸

This case is important as it takes place in a context of governmental crackdown against unauthorized camps. Indeed, the Government proposed in November 2019 to give the police more powers to “arrest

³² UK, NHS Doncaster and Co:Create (2019), *Gypsies and Travellers in Doncaster: engaging the communities on the topic of health and accessing health services*, March 2019, available at: <http://www.doncasterccg.nhs.uk/wp-content/uploads/2019/04/Gypsies-and-Travellers-in-Doncaster-Report.pdf>

³³ UK, Travellers’ Time (2019), *Gypsy, Roma and Traveller health conference helps plan for new Surrey-wide health project*, 12 February 2019, available at: <https://www.travellerstimes.org.uk/news/2019/02/gypsy-roma-and-traveller-health-conference-helps-plan-new-surrey-wide-health-project>

³⁴ UK, NHS Doncaster (2019), *First ever NHS-led Gypsy, Roma and Traveller Health outreach programme successfully launched across Surrey*, available at: <https://childrenshealthsurrey.nhs.uk/news/first-ever-gypsy-roma-and-traveller-health-outreach-programme-successfully-launched-across-surrey>

³⁵ UK, High Court (2019), *Bromley v Persons Unknown*, [2019] EWHC 1675 (QB), 17 May 2019, para. 9, available at: <https://www.gardencourtchambers.co.uk/news/high-court-rules-against-local-authority-encampment-ban>

³⁶ UK, Court of Appeal (2020), *Bromley v Persons Unknown*, [2020] EWCA Civ 12, Case No: A2/2019/1328, 21 January 2020, available at: <https://t.co/qngwnz2O6n>

³⁷ UK, Travellers Time (2019), *Crowdfunder launched to support legal challenge against ‘RACIST’ anti-Traveller injunctions*, 14 November 2019, available at: <https://www.travellerstimes.org.uk/news/2019/11/crowdfunder-launched-support-legal-challenge-against-racist-anti-traveller-injunctions>

³⁸ UK, Travellers Time (2019), *LondonGypsyTrav - Challenging councils that criminalise Gypsies and Travellers*, available at: <https://www.travellerstimes.org.uk/news/2019/11/crowdfunder-launched-support-legal-challenge-against-racist-anti-traveller-injunctions>

and seize the property and vehicles of people who set up unauthorised caravan sites³⁹. Such proposal was described as “inhumane” by leading Gypsy and Travellers’ rights campaigners.⁴⁰

England

The Equality and Human Rights Commission published in September 2019 a report⁴¹ assessing the impact of the change of definition of ‘gypsies and travellers’, as specified in the Planning Policy for Traveller Sites 2015, on local planning authorities’ plans for the provision of GTR pitches in England. The revised definition no longer includes those who have ceased travelling permanently for any reason, including old age or disability. Researchers identified twenty local planning authorities and observed that, before 2015, the total assessed needs were 1,584 pitches. After 2015, the assessed needs fell to 345 pitches.⁴² This means that the new definition of ‘gypsies and travellers’ in the Planning Policy for Traveller Sites 2015 has led to a reduction of accommodation need according to new assessments conducted by local planning authorities. This was further aggravated by the repeal of the duty to specifically assess Gypsy and Traveller accommodation needs and its replacement with a more general duty to assess the need for caravan sites in the assessment of a general housing need.⁴³

Northern Ireland

The Northern Ireland Human Rights Commission published in June 2019 a progress report on the implementation of Travellers’ accommodation recommendations⁴⁴ set out in the investigation report *Out of Sight, Out of Mind: Travellers’ Accommodation in Northern Ireland*.⁴⁵ Although the lack of the Northern Ireland Executive led to the effective implementation of very few recommendations, the Northern Ireland Human Rights Commission welcomed the updated draft design guide for Travellers’ sites of the Department for Communities, and the engagement of housing associations and Northern Ireland Housing Executive with GTR communities. Further, the Commission noted that no evictions had taken place from any Travellers site in the ownership of the Northern Ireland Executive in the past twelve months and that all local councils were active members of the Local Government Partnership on Travellers Issues. However, the Commission highlighted the lack of funding for Travellers support groups and the fact that legal reforms were stalled due to a lack of the Northern Ireland Executive. As a consequence, private landlords were still paid significant amounts of housing

³⁹ UK, Home Office, Ministry of Housing, Communities & Local Government, and The Rt Hon Priti Patel (2019) *Government consults on new police powers to criminalise unauthorised encampments*, available at: <https://www.gov.uk/government/news/government-consults-on-new-police-powers-to-criminalise-unauthorised-encampments>

⁴⁰ UK, Travellers Times (2019), *Gypsies and Travellers react to “inhumane” Government crackdown on unauthorised camps*, 12 November 2019, available at: <https://www.travellerstimes.org.uk/news/2019/11/gypsies-and-travellers-react-inhumane-government-crackdown-unauthorised-camps>

⁴¹ UK, Equality and Human Rights Commission (2019), *Gypsy and Traveller sites: the revised planning definition’s impact on assessing accommodation needs*, September 2019, available at: https://www.equalityhumanrights.com/sites/default/files/190909_gypsy_and_traveller_sites_-_impact_of_the_revised_definition_-_final.pdf

⁴² UK, , Equality and Human Rights Commission (2019), *Gypsy and Traveller sites: the revised planning definition’s impact on assessing accommodation needs*, September 2019, p. 7, available at: https://www.equalityhumanrights.com/sites/default/files/190909_gypsy_and_traveller_sites_-_impact_of_the_revised_definition_-_final.pdf

⁴³ UK, Equality and Human Rights Commission (2019), *Gypsy and Traveller sites: the revised planning definition’s impact on assessing accommodation needs*, September 2019, p. 37, available at: https://www.equalityhumanrights.com/sites/default/files/190909_gypsy_and_traveller_sites_-_impact_of_the_revised_definition_-_final.pdf

⁴⁴ UK, Northern Ireland Human Rights Commission (2019), *Implementation of Travellers’ Accommodation Recommendations*, June 2019, available at: http://www.nihrc.org/uploads/publications/12_Month_Progress_Report-FINAL_%28007%29.pdf

⁴⁵ UK, Northern Ireland Human Rights Commission (2018), *Out of Sight, Out of Mind: Travellers’ Accommodation in Northern Ireland*, March 2018, available at: http://www.nihrc.org/uploads/publications/Out_of_Sight%2C_Out_of_Mind%3A_Travellers_Accommodation_in_Northern_Ireland_-_Executive_Summary.pdf

benefits for their provision of sub-standards caravans and other accommodations to Travellers. The Northern Ireland Human Rights Commission regretted that no legal provisions had been made to assess the quality of housing provided by private landlords in connection with the public money paid out, or for the Northern Ireland Executive to provide accommodation to GTR communities directly, with a rent set at an appropriate and affordable level.

2. Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion

In April 2019, the Women and Equalities Committee published a report⁴⁶ setting out a number of recommendations to tackle inequalities facing Gypsy, Roma and Traveller communities. The report focused on education, healthcare, Roma-specific issues, discrimination and hate crime, and violence against women and girls.

The Committee recommended the government to:

- Ensure that children do not miss education and that local authorities review their processes to identify such children
- Ensure that children have access to suitable education when home educated
- Consider piloting a pupil passport scheme with rapid evaluation to ensure that when children move schools or move into home education, their records and history travel with them
- Inspect schools for gender and racial stereotyping or signs of sexism or racism from either pupils or staff
- Have a plan for how schools will have conversations with Gypsy, Roma and Traveller parents about what relationship and sex education involves and what parents' options are for their children, short of removing them from school
- Ensure that GRT people have access to healthcare, in collaboration with Gypsy, Roma and Traveller people who have the best knowledge of where unequal treatment maybe taking place
- Train maternity and pre-natal staff to refer GRT women to other health services that may be beneficial to them
- Monitor that local authorities ensure that Gypsy, Roma and Traveller women have access to a single, trusted contact who provides them with the information and support they need
- Ensure that both GRT boys and girls are taught what abuse is and how to challenge it.

After years of campaigning, and following the publication of the report of the Women and Equalities Committee published in April 2019, the Ministry of Housing, Communities and Local Government launched a national strategy to tackle inequalities faced by Gypsy, Roma and Traveller communities.⁴⁷ The launch of this new strategy was announced publicly by Communities Minister Lord Bourne on 6 June 2019. However, the strategy is yet to be fully developed and published, as explained by a representative of the Ministry of Housing, Communities and Local Government: ‘we are still very much in the early stages of developing the strategy and are yet to produce any written documents for publication. However, over the coming months we will be engaging with a wide range

⁴⁶ UK, House of Commons - Women and Equalities Committee (2019), *Tackling inequalities faced by Gypsy, Roma and Traveller communities - Report Summary*, 5 April 2019, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/report-summary.html#heading-3>

⁴⁷ UK, Ministry of Housing, Communities and Local Government (2019), *New national strategy to tackle Gypsy, Roma and Traveller inequalities*, 6 June 2019 available at: <https://www.gov.uk/government/news/new-national-strategy-to-tackle-gypsy-roma-and-traveller-inequalities>

of stakeholders to help inform the development of the strategy.⁴⁸ Friends Families and Travellers welcomed the announcement and recommended⁴⁹ that:

- Government officials meaningfully engage with members of Gypsy, Roma and Traveller communities
- The Government allocate the resources needed to deliver real change
- The strategy has high-level commitment and clear lines of accountability
- The strategy addresses the root causes of inequality in Gypsy, Roma and Traveller communities

The Ministry of Housing, Communities and Local Government announced in its response⁵⁰ to the report of the Women and Equalities Committee that it has provided £200,000 of funding between six projects aiming to improve outcomes for Gypsy, Roma and Traveller communities in the areas of educational attainment, health and social integration and has also funded 22 projects which support Roma communities across England through the Controlling Migration Fund.⁵¹ In addition, the department has provided funding to two projects to improve the reporting of hate crime by Gypsy, Roma and Traveller communities. In a letter to the Chair of the Women and Equalities Committee of the House of Commons,⁵² Communities Minister Lord Bourne provided a detailed list of these projects, which were in fact launched and funded in previous years:

- The Hate Crime projects #OperationReportHate and True Vision started in 2016 and were funded until 2018, and the Herts GATE project was funded in 2017-2019. For further details, please refer to last year's latest submission.
- Six pilot projects to support GRT communities in the areas of health, education and integration were launched in 2018 and funded in 2018-2019. For further details, please refer to last year's latest submission.
- The 22 Controlling Migration Fund projects were funded in 2017-2018.

The Government agreed that GRT communities are worse off than the general population in terms of financial resources, health, and education. It agreed that these issues must be tackled and announced that it would work with GRT key stakeholders to improve data collection within these communities. Regarding education, the Government also indicated that it had taken steps to support local authorities and make sure that they identify children in their area who are not registered at school and do not receive adequate education. This was done through amendments to the Education Regulations 2006 made in 2016. A study of the achievements made following the amendments was ongoing and the report will guide further work in this area. However, the Government announced that it will not

⁴⁸ UK, Ministry of Housing, Communities and Local Government, *Answer to Freedom of Information Request*, 23 October 2019

⁴⁹ UK, Friends Families and Travellers (2019), *The devil is in the detail: Four tests the national strategy for Gypsies, Travellers and Roma must pass to be a success*, 18 July 2019, available at: <https://www.gypsy-traveller.org/blog/the-devil-is-in-the-detail-four-tests-the-national-strategy-for-gypsies-travellers-and-roma-must-pass-to-be-a-success/>

⁵⁰ UK, House of Commons, Women and Equalities Committee (2019), *Tackling inequalities faced by Gypsy, Roma and Traveller communities: Government and Ofsted response to the Committee's Seventh Report of Session 2017-19*, September 2019, p. 2, para. 8, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/2411/2411.pdf>

⁵¹ UK, House of Commons - Women and Equalities Committee (2019), *Tackling inequalities faced by Gypsy, Roma and Traveller communities: Government and Ofsted response to the Committee's Seventh Report of Session 2017-19*, 2 July 2019, p.1 available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/2411/2411.pdf>

⁵² UK, Ministry of Housing, Communities and Local Government (2019), *Letter to Maria Miller MP, Chair of the Women and Equalities Committee of the House of Commons*, 22 January 2019, available at: <https://www.parliament.uk/documents/commons-committees/women-and-equalities/Correspondence/190122-Minister-State-MHCLG-GRT-evidence-session.pdf>

provide further powers for local authorities to monitor the suitability of home education.⁵³ Regarding sex education, the Government will strengthen requirements for schools to consult parents on their Sex and Relationship Education policy. In terms of gender equality, the Government will also consult on potential measures for support for victims of domestic-based violence, including GRT victims and their children, in accommodation-based services for domestic abuse across England. It also committed to reaching 75% of women from ethnic minorities to receive continuity of care from their midwife throughout their pregnancy, labour and postnatal period by 2024.

Scotland

The Scottish government have published a strategy⁵⁴ to improve the lives of GRT communities living in Scotland in partnership with the Convention of Scottish Local Authorities (COSLA). In 2019-2021, they committed to:

- Provide more and better accommodation
- Improve access to public services
- Ensure that GRT communities have access to better income in and out of work
- Tackle racism and discrimination
- Improve GRT communities' representation at the national and local level.

This will be achieved through consultations with GRT communities and various forms of investments in GRT sites (up to £2m between 2019-2020 and 2020-2021)⁵⁵. Other activities include training public sector staff on how to support GRT people to access services fairly and recruiting GRT community health workers⁵⁶, supporting financially Gypsy/Roma/Traveller, History Month and creating a Local Leaders' network of politicians from across Scotland to champion Gypsy/Traveller's rights, help to deliver the action plan in local communities and supporting local actions.⁵⁷

⁵³ UK, House of Commons, Women and Equalities Committee (2019), *Tackling inequalities faced by Gypsy, Roma and Traveller communities: Government and Ofsted response to the Committee's Seventh Report of Session 2017–19*, September 2019, para. 30, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/2411/2411.pdf>

⁵⁴ UK, Scottish Government (2019), *Improving the Lives of Scotland's Gypsy/Travellers (2019-2021)*, October 2019, available at: <https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/>

⁵⁵ UK, Scottish Government (2019), *Improving the Lives of Scotland's Gypsy/Travellers (2019-2021)*, October 2019, p. 13, available at: <https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/>

⁵⁶ UK, Scottish Government (2019), *Improving the Lives of Scotland's Gypsy/Travellers (2019-2021)*, October 2019, p. 14, available at: <https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/>

⁵⁷ UK, Scottish Government (2019), *Improving the Lives of Scotland's Gypsy/Travellers (2019-2021)*, October 2019, p. 16, available at: <https://www.gov.scot/publications/improving-lives-scotlands-gypsy-travellers-2019-2021/>

Chapter 4. Asylum, visas, migration, borders and integration

Unaccompanied children reaching the age of majority

Area of support	Description
<p>Residence permit <i>Reception conditions Directive (article 6 and 7) and Qualification Directive (articles 24 and 31)</i></p>	<p>By virtue of Paragraphs 352ZC to F of the <i>Immigration Rules</i>⁵⁸, unaccompanied asylum seeking children who are not granted refugee status are granted Unaccompanied Asylum Seeking Child (UASC) leave for a period of 30 months or, if sooner, until they are 17 and half years old.</p> <p>On turning 17 and half, the child would need to apply for an extension of their leave to remain. This could be a fresh claim for asylum or an application for humanitarian protection, discretionary leave to remain or leave under the Immigration Rules e.g. an Article 8 ECHR claim. If the further application is made prior to the individuals turning 18 they are considered a child and the decision maker must take into account their duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009⁵⁹ and the child's best interests as dictated by the UN Convention on the Rights of the Child. This includes a duty to not remove any unaccompanied child from the UK unless the Secretary of State is satisfied that there are safe and adequate receptions arrangements in place in the country to which the child is being transferred. The application to extend their leave to remain must be made prior to the UASC leave expiring otherwise it can affect the support they are entitled to.</p>
<p>Guardianship (<i>representative under Reception Conditions Directive Article 24.1</i>)</p>	<p>There is no guardianship system in the UK, rather an unaccompanied child would fall under the care of the local authority who owe the same duty of care to them as UK nationals and all other children in their jurisdiction. When an unaccompanied child comes to the attention of any authority they have a duty to refer that child to the relevant local authority.</p>

⁵⁸ UK, Home Office, The Immigration Rules, Part 11: Asylum, Paragraphs 352ZC to F, available at: www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum.

⁵⁹ UK, HM Government (2009), *Borders, Citizenship and Immigration Act 2009*, 21 July 2009, Section 55, available at: www.legislation.gov.uk/ukpga/2009/11/section/55.

	<p>On turning 18, young people who have been looked after can continue to receive support from the local authority under two categories, “former relevant children” and “qualifying children”. To qualify as a former relevant child, a young person must have been supported (provided with accommodation) by the local authority under Section 20 Children Act 1989 for at least 13 weeks after their 14th birthday and have been continued to be looked after until their 18th birthday or been looked after reaching 16 years old.⁶⁰ Such young people are entitled to a personal adviser and financial assistance until they reach the age of 21 or if they are pursuing further education or training. Young persons that received less than 13 weeks support from the local authority are “qualifying children” and are only entitled to advice, assistance and befriending from the local authority.</p>
<p>Accommodation <i>Reception Conditions Directive Article 24.2</i></p>	<p>By virtue of Section 23C (4) (c) of the Children Act 1989, the local authority has a duty to give a former relevant child (as defined above), <i>inter alia</i>, “other assistance, to the extent that his welfare requires it”.⁶¹ This has been interpreted by the courts in the case of <i>R (S.O.) v London Borough of Barking and Dagenham</i>⁶² to include accommodation where appropriate.</p> <p>If the young person has submitted a claim or fresh claim for asylum then they would be eligible for accommodation under the National Asylum Support Service by virtue of Section 95 of the Immigration and Asylum ACT 1999.⁶³</p>
<p>Return <i>Return Directive, Article 10</i></p>	<p>There are no specific provisions to prepare unaccompanied children for return procedures; however their social worker has a general ongoing duty, as outlined above, to support an unaccompanied child before and after they turn 18. This should include informing the child or young person of the return procedure; that they may be liable to be detained and where applicable support them through the applications process for voluntary return.</p>

⁶⁰ UK, HM Government (1989) *Children Act 1989*, 16 November 1989, Section 23C, available at: www.legislation.gov.uk/ukpga/1989/41/section/23C.

⁶¹ UK, HM Government (1989) *Children Act 1989*, 16 November 1989, Section 23C (4) (c), available at: www.legislation.gov.uk/ukpga/1989/41/section/23C.

⁶² UK, *R (S.O.) v London Borough of Barking and Dagenham* [2010] EWCA Civ 1101, available at: www.bailii.org/ew/cases/EWCA/Civ/2010/1101.html.

⁶³ UK, HM Government (1999), *Immigration and Asylum Act 1999*, 11 November 1999, Section 95, available at: www.legislation.gov.uk/ukpga/1999/33/section/95.

Others	There are no special permissions to stay other than applying for discretionary leave outside the Immigration Rules on “compelling compassionate” grounds. ⁶⁴
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⁶⁴ UK, Home Office (2018), *Leave outside the Immigration Rules*, February 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684049/lotr-compelling-compassionate-grounds-v1.0ext.pdf.

Chapter 5. Information society, data protection

1. Activities developed and launched by national data protection supervisory authorities (SAs) to implement and enforce the GDPR

The Information Commissioner's Office (ICO) has published its 2018-2019 annual report, covering the period July 2018-July 2019. The ICO qualified the past year as “unprecedented”,⁶⁵ with a record number of people raising data protection concerns. The ICO registered a significant increase in visits to their website, with a total of 17.5m sessions (a 58% increase on 2017-18) from 9.5m users (a 72% increase).⁶⁶ The most viewed documents were the ICO's guide to GDPR (15m views⁶⁷) and the data protection self-assessment toolkit.⁶⁸ Through their helpline, live chat and live text services, the ICO received 471,224 contacts, a 66% increase from 2017-2018.⁶⁹

Further, they also received more than 6500 cases over the reporting period, more than in any previous years. Two third of cases were closed within 30 days, which means that there has been an improvement in terms of the time spent for case resolution.⁷⁰ This improvement is due to the fact that the ICO grew in size, with a workforce increasing from 505 to more than 700 staff in 2018-2019. New positions had a specific focus on handling data protection complaints and customer contact: the Data Protection Complaints Directorate, which was already the biggest department, and the Customer Contact department both doubled in size.⁷¹ The ICO is expecting to grow further, with an anticipated 825 full time equivalent staff in 2020-2021.⁷² The ICO will benefit until March 2021 from flexibility in the way they pay their staff to make sure that they recruit and retain high quality staff. They also raised by 7% all salaries in April 2018 to bring salaries in line with the public sector average. The financial resources of the ICO arise partly from the data protection fee that a number of organisations need to pay. In 2018-2019, the number of these organisation rose by 16% and the fee income increased by 84%.⁷³ Finally, the ICO created a new

⁶⁵ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.9

⁶⁶ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.16

⁶⁷ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.19

⁶⁸ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.16

⁶⁹ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.17

⁷⁰ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.10

⁷¹ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.10, 46

⁷² UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.46

⁷³ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.45

Executive Directorate for Technology Policy and Evaluation, developed a Technology Strategy to deal with complex areas,⁷⁴ and a new High Priority Investigations and Intelligence Directorate.⁷⁵

The ICO conducted a number of investigations, but the majority took place under the Data Protection Act 1998 rather than under GDPR and the Data Protection Act 2018. They reported a record-number of penalties under the Data Protection Act 1998 in 2018/2019, with fines totalling £3,010,610.⁷⁶ The first enforcement notice taken under the Data Protection Act 2018 ordered Aggregate IQ, a Canadian data broker, to delete certain personal data it held about UK citizens and residents.⁷⁷ Major investigations included the use of mobile phone extraction for policing purposes (following a complaint from Privacy International), the right to data protection of victims of rape or sexual assault, and the use of live facial recognition technology by law enforcement authorities as well as public and private sector bodies.⁷⁸ In addition, the ICO launched several own motion investigations into opaque or invisible processing of personal information which have not received significant public complaints.⁷⁹

Finally, the ICO has been working on the development of four statutory codes, as required under the Data Protection Act 2018. These codes will focus on age appropriate design, data sharing, direct marketing, and data protection and journalism.⁸⁰ The Age Appropriate Design Code will focus on children protection and set standards that providers of online services and apps will be expected to meet when children use their services or when they process children's personal data.⁸¹

The ICO launched in 2017⁸² a Grants Programme to fund projects aiming at promoting and supporting independent, innovative research and solutions focused on privacy and data protection issues. Awards are for a minimum £20,000 and a maximum £100,000. Research institutions and civil society organisations are encouraged to apply. In 2018-2019, the following institutions were awarded a grant under this program:⁸³

- Connection at St Martin's in the Field: 'Data Rights Inclusion for Homeless People' - £21,197

⁷⁴ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.10

⁷⁵ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.26

⁷⁶ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.24

⁷⁷ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.25

⁷⁸ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.27

⁷⁹ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.17

⁸⁰ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.19

⁸¹ UK, Information Commissioner's Office (2019), *Information Commissioner's Annual Report and Financial Statements 2018-19*, 8 July 2019, p.20

⁸² UK, Information Commissioner's Office (2017), *ICO launches Grants Programme to promote data protection and privacy research*, 6 June 2017, available at: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/06/ico-launches-grants-programme-to-promote-data-protection-and-privacy-research/>

⁸³ UK, Information Commissioner's Office (2019), *Protecting the data rights of homeless people among new projects supported by the ICO Grants Programme*, 5 April 2019, available at: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/04/protecting-the-data-rights-of-homeless-people-among-new-projects-supported-by-the-ico-grants-programme/>

- Oxford University: ‘Informing the Future of Data Protection by Design and by Default in Smart Homes’ - £81,290.46
- PHG Foundation: ‘The Impact of GDPR and DPA2018 on Regulating Genomic Technologies in Healthcare’ - £72,924
- Cardiff University: ‘Developing scalable training for UK researchers in the use of routine public sector data informed by public and professional stakeholders’ - £99,804

2. Artificial intelligence and big data

MS	Actor*	Type**	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
UK	ICO	Draft Code	<p>This code aims to ensure that online services use children’s data in ways that support the rights of the child to:</p> <ul style="list-style-type: none"> • Freedom of expression • Freedom of thought, conscience and religion • Freedom of association • Privacy • Access information from the media (with appropriate protection from information and material injurious to their well-being) • Play and engage in recreational activities 	Yes	Yes Children’s rights	UK, Information Commissioner’s Office (2019), Age appropriate design: a code of practice for online services - Consultation document

		<p>appropriate to their age</p> <ul style="list-style-type: none"> • Protection from economic, sexual or other forms of exploitation⁸⁴ <p>These obligations arise from the ICO’s duty to have regard to the UK’s obligations under the UNCRC in drafting the code.⁸⁵ Information society services must always have the best interest of the child in mind when they design and develop online services likely to be accessed by a child as defined by the UNCRC (‘a person under the age of 18’).⁸⁶</p> <p>The draft code contains practical guidance on how to comply with 16 standards of age-appropriate design for information society services likely to be accessed by children:</p> <ol style="list-style-type: none"> 1. Best interest of the child: should be a primary consideration when developing online services that children will be likely to use 2. Age-appropriate application: apply these standards to all users unless there is evidence of robust age-verification mechanisms to distinguish adults from children 3. Transparency: privacy information must be in concise, prominent and clear language suited to the 			
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⁸⁴ UK, Information Commissioner’s Office (2019), *Age appropriate design: a code of practice for online services - Consultation document*, p.6

⁸⁵ UK, Information Commissioner’s Office (2019), *Age appropriate design: a code of practice for online services - Consultation document*, p.19

⁸⁶ UK, Information Commissioner’s Office (2019), *Age appropriate design: a code of practice for online services - Consultation document*, p.17

		<p>age of children</p> <ol style="list-style-type: none"> 4. Detrimental use of data: do not use children’s data in a way which could be detrimental to their wellbeing or goes against other codes of practice, regulations or Government advice 5. Policies and community standards: uphold own standards and policies 6. Default settings: must be ‘high privacy’ by default unless there is a good reason not to do so, taking into account the best interest of the child 7. Data minimisation: collect and retain only the minimum amount of children’s personal data 8. Data sharing: no disclosure of children’s data unless there is a good reason not to do so, taking into account the best interest of the child 9. Geolocation: must be switch off by default. There must be an obvious sign for children when their location tracking is active 10. Parental controls: children should be aware of the fact that they can be/are being monitored by their parents through an obvious sign 11. Profiling: should be switched off by default except if there are appropriate measures to protect the child from harmful effects 12. Nudge techniques: should not be used to lead or encourage children to provide unnecessary personal data or weaken or turn off their privacy protection 13. Connected toys and devices: must comply with the draft code 14. Online tools: must provide accessible tools to help children exercise their data protection rights and report concerns 15. Data protection impact assessments: must be 			
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			undertaken to assess and mitigate risks to children 16. Governance and accountability: policies in place must demonstrate how information society services comply with data protection obligations			
UK	Academia	Report	<p>The report identifies significant flaws with the way live facial recognition (LFR) technology was trialed in London by the Metropolitan Police Service. The key concerns raised in the report are:</p> <ul style="list-style-type: none"> •Police deployment of LFR technology may be held unlawful if challenged before the courts because there is no explicit legal authorisation for the use of LFR in domestic law. •The Metropolitan Police did not appear to engage effectively with the ‘necessary in a democratic society’ test established by human rights law. LFR was approached in a manner similar to traditional CCTV, therefore failing to take into account factors such as the intrusive nature of LFR, and the use of biometric processing. •There were numerous operational failures including inconsistencies in the process of officers verifying a match made by the technology and difficulties in defining and obtaining consent of those affected. •Across the six trials that were evaluated, the LFR technology made 42 matches – in only eight of those matches can the report authors say with absolute confidence the technology got it right. •Criteria for including people on the ‘watchlist’ were 	Yes	Yes Right to privacy	<p>UK, The Human Rights, Big Data and Technology Project (2019), <i>Independent Report on the London Metropolitan Police Service’s Trial of Live Facial Recognition Technology</i>, by Prof. Fussey and Dr. Murray, July 2019</p> <p>Available at: https://48ba3m4eh2bf2sksp43rq8kk-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/London-Met-Police-Trial-of-Facial-Recognition-Tech-Report.pdf</p>

			<p>not clearly defined, and there was significant ambiguity over the categories of people the LFR trials intended to identify.</p> <ul style="list-style-type: none"> •There were issues with the accuracy of the ‘watchlist’. For example, people were stopped despite the fact their case had already been addressed. 			
UK	NGO, Liberty	Report	<p>The report <i>Policing by Machine</i> reveals that 14 forces are using, have previously used or are planning to use algorithms which ‘map’ future crime or predict who will commit or be a victim of crime. These predictions are based on biased police data.</p> <p>The report identified the following key issues:</p> <ul style="list-style-type: none"> • police use algorithms which entrench pre-existing discrimination, directing officers to patrol areas which are already disproportionately over-policed • police use offensive profiling to assess a person’s chances of victimisation, vulnerability, being reported missing or being the victim of domestic violence or a sexual offence • a severe lack of transparency regarding how predictive algorithms reach their decisions: even the police do not understand how the machines come to their conclusions • the significant risk of ‘automation bias’ – accepting the indecipherable recommendation of the machine as correct. 	Yes	Yes Right to privacy Non- discrimination	<p>UK, Liberty (2019), <i>Policing By Machine – Predictive Policing And The Threat To Our Rights</i>, January 2019</p> <p>Available at: https://www.libertyhumanrights.org.uk/sites/default/files/LIB%2011%20Predictive%20Policing%20Report%20WEB.pdf</p>
UK	Royal United Services Institute	Report	<p>The findings of this report commissioned by the Centre for Data Ethics and Innovation (CDEI) suggest that ‘there is an absence of consistent guidelines for the use of automation and algorithms, which may be leading to</p>	Yes	Non- discrimination	<p>UK, Alexander Babuta and Marion Oswald (2019), <i>Briefing Paper – Data Analytics and Algorithmic Bias in Policing</i>, September 2019,</p>

			discrimination in police work.’ A new draft code of practice should specify clear responsibilities for policing bodies regarding scrutiny, regulation and enforcement of these new standards.			available at: https://www.gov.uk/government/publications/report-commissioned-by-cdei-calls-for-measures-to-address-bias-in-police-use-of-data-analytics
UK	NGO, Liberty	Blog	In this blog, Liberty highlighted the threats to human rights triggered by the digital welfare State. Liberty argued that if left unchallenged, the new digital welfare State will: (1) undermine privacy and data protection rights Liberty denounced the fact that information recorded by the State is now accessible to different public, including sometimes private bodies. (2) entrench inequality and discrimination Digital profiling and surveillance will affect disproportionately those who interact frequently with the State, who are usually people in poverty, disabled people and older people (3) erode accountability 1 in 3 local authorities in the UK use algorithms to make welfare decisions. These decisions are difficult to understand and therefore challenge. Human discretion and professional judgement is surrendered entirely.	Yes	Welfare, Data protection, privacy, non- discrimination	UK, Liberty (2019), <i>How The Digital Welfare State Threatens Our Rights</i> , by Josphe Maggs, 22 October 2019, available at: https://www.libertyhumanrights.org.uk/news/blog/how-digital-welfare-state-threatens-our-rights

UK	NGO Liberty	Press release	Liberty uncovered through Freedom of Information Requests that the police had created a database to record every single referrals made through the platform Prevent by civil servants. Referrals are made on the basis of what civil servants interpret as potential signs of religious extremism. Every police force can add people to the database, which the Home Office can access. People entered into the database are not notified. Nobody knows how the information is used, if it is shared with other governmental agencies and how long the information is held for.	Yes	Privacy, minority rights	UK, Liberty (2019), <i>Liberty Uncovers Secret Prevent Database</i> , 7 October 2019, available at: https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/liberty-uncovers-secret-prevent-database
UK	NGO Liberty	Court case	Liberty represented Ed Bridge, who challenged the use of Automated Facial Recognition (AFR) technology by the South Wales Police as part of a trial since 2017. The central issue was whether the legal regime in the UK was adequate to ensure the appropriate and non-arbitrary use of AFR in a free society. Although the Court recognised that the use of AFR technology does entail infringement of Article 8(1) of those affected, the claim was dismissed on all grounds as the Court was satisfied that the current legal regime was adequate to ensure the appropriate and non-arbitrary use of AFR, and that the South Wales Police's use of AFR had been consistent with the requirements of the Human Rights Act and the data protection legislation.	Yes	Privacy rights, data protection rights	<i>R. (on the application of Bridges) v Chief Constable of South Wales</i> 04/09/2019 Case No: CO/4085/2018 [2019] EWHC 2341 (Admin), 2019 WL 04179616
UK	ICO	Blog	In this blog, the ICO issued a number of recommendations to police forced using live facial recognition technology: <ul style="list-style-type: none"> •Carry out a data protection impact assessment and update this for each deployment •Produce a bespoke 'appropriate policy document' to 	Yes	Non-discrimination on the basis of race or sex	UK, Information Commissioner's Office (2019), <i>Blog: Live facial recognition technology - data protection law applies</i> , 9 July 2019, available at: https://ico.org.uk/about-the-

			cover the deployments - it should set out why, where, when and how the technology is being used. •Ensure the algorithms within the software do not treat the race or sex of individuals unfairly.			ico/news-and-events/news-and-blogs/2019/07/blog-live-facial-recognition-technology-data-protection-law-applies/
UK	ICO	Report	<p>The Information Commissioner’s Office (ICO) delivered the conclusions of its investigation into the use of Automated Facial Recognition (AFR) technology used as part of a trial by the South Wales Police since 2017.</p> <p>The ICO clarified that:</p> <ul style="list-style-type: none"> - data protection law applies to the use of live facial recognition - such use for law enforcement purposes constitutes ‘sensitive processing’ (s35 (8)(b) DPA 2018) - Prior to using live facial recognition technology, a Data Protection Impact Assessment and an appropriate policy document must be in place. - Sensitive processing must apply irrespective of whether the image matches a person on a watchlist - Controllers must identify a lawful basis for the use of live facial recognition <p>The ICO called on the Government to introduce at the earliest opportunity a statutory binding code of practice to provide further safeguards addressing specifically issues arising from the use of biometric technology. This would provide clear boundaries in terms of proportionality and strict necessity and would improve consistency.</p> <p>The ICO said they would publish specific guidance on appropriate policy documents in the near future and to</p>	Yes	Privacy rights	<p>UK, Information Commissioner’s Office (2019), <i>The use of live facial recognition technology by law enforcement in public places</i>, 31 October 2019, available at: https://ico.org.uk/media/about-the-ico/documents/2616184/live-frt-law-enforcement-opinion-20191031.pdf</p>

			issue an Opinion on LFR use by private sector organisations.			
UK	Science And Technology Committee (Commons)	Report	<p>The report highlights a number of issues in respect of biometrics and forensics in the UK. It raised in particular the issues of retention of custody images of of unconvicted individuals. Such images should be reviewed and deleted every six years and the report found that it was unclear whether the police was unaware of this requirement of whether they were struggling to comply. This issue was of specific relevance in a context of growing use of live facial recognition as part of trials by the police. Indeed, images kept in police databases form the basis of ‘watchlist’ for automatic facial recognition technology.</p> <p>The report further highlighted growing evidence from respected, independent bodies that the lack of legislation surrounding the use of automatic facial recognition has called the legal basis of the trials into question.</p> <p>The Committee called on the Government ‘to issue a moratorium on the current use of facial recognition technology and no further trials should take place until a legislative framework has been introduced and guidance on trial protocols, and an oversight and evaluation system, has been established.’</p>	Yes	Privacy	<p>UK, House of Commons, Science and Technology Committee (2019), <i>The work of the Biometrics Commissioner and the Forensic Science Regulator</i>, Nineteenth Report of Session 2017–19, 18 July 2019, available at: https://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/news-parliament-2017/biometrics-commissioner-forensic-science-regulator-report-publication-17-19/</p>
UK	Centre for Data Ethics and Innovation	Report	<p>The Centre for Data Ethics and Innovation (CDEI) published a series of short thematic reports on issues of public concern in respect of artificial intelligence. The first report is on <i>Deepfakes and Audio-visual Disinformation</i>, defined as ‘visual and audio content</p>	Yes	Privacy	<p>UK, Centre for Data Ethics and Innovation (2019) <i>Deepfakes and Audio-visual Disinformation</i>, CDEI Snapshot Series, September 2019, available at:</p>

	Innovation		<p>that has been manipulated using advanced software to change how a person, object or environment is presented'. It can take the form of face-replacement, face re-enactment, face generation or speech synthesis.</p> <p>A number of key issues were identified, including:</p> <ul style="list-style-type: none"> - The use of face-replacement in pornography which can cause great distress to victims - The use of manipulated footages which could undermine democracies - The use of manipulated footages which could trigger the inadmissibility of visual communication evidence in criminal investigations and trials <p>The CDEI advised the UK Government to include deepfakes on its ongoing analysis of disinformation; the Research Councils to fund research into new detection methods and the media to invest in deepfake detection tools to prevent the dissemination of disinformation.</p>			https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831179/Snapshot Paper - Deepfakes and Audiovisual Disinformation.pdf
UK	Centre for Data Ethics and Innovation	Report	<p>The second report of the CDEI's series is on <i>Smart Speakers and Voice Assistants</i>, now estimated to be used in 1 in 5 homes in the UK. Voice-enabled devices free people's hands since they can give verbal instructions instead of typing them. This raised concerns as to devices supposedly listening to private conversations and sharing recordings from people's most intimate environments. Indeed, the device is constantly active and waiting for the wakeword to begin recording and streaming audio to the cloud for analysis and storage. People use speakers and voice assistants to support relatively basic tasks like providing entertainment and retrieving information.</p>	Yes	Privacy	<p>UK, Centre for Data Ethics and Innovation (2019) <i>Smart Speakers and Voice Assistants</i>, CDEI Snapshot Series, September 2019, available at:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831180/Snapshot Paper - Smart Speakers and Voice Assistants.pdf</p>

		<p>CDEI observed a number of issues:</p> <ul style="list-style-type: none"> • media reports have highlighted the tendency of voice-enabled devices to wrongly detect the wake-word and begin recording and in such instances, data is erroneously collected and sent to the cloud for processing and storage. • Companies such as Amazon and Google have admitted that real persons had access to recording samples to review and improve speech recognition <p>Amazon is also using speech recognition to try to detect people's health or level of fatigue and sell them medicine. Further public services are now partnering with smart speakers and Amazon and the UK Government announced Amazon smart speakers devices will use the NHS website (nhs.uk) to provide information to users seeking health advice in July 2019. The CDEI observed that such partnerships strengthened the case for clarity as to how the data collected is used and how users can control what is shared.</p> <p>The CDEI considered that:</p> <ul style="list-style-type: none"> - 'Industry and technology developers should work to explain in clear and accessible formats how the devices work, what data is collected, where it is stored, and how it is used, including any user profiling.' - 'Users should be provided with more meaningful control over how data collected via smart speakers is used and shared, including with third party developers and contractors.' - Regulatory bodies should keep abreast and gather 			
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			evidence about the impact of such technology - Users should try asking their voice assistants questions about what data is collected and what is done with it.			
UK	Centre for Data Ethics and Innovation	Report	<p>CDEI observed that artificial intelligence was expected to alter several dimensions of the personal insurance industry including customer onboarding, pricing, and claims management. CDEI found that deployed responsibly and in competitive markets, AI could reduce prices; lead to fairer outcomes, open up insurances to new groups. However, at least three criticisms can be made:</p> <ol style="list-style-type: none"> 1. the collection of large data troves which could infringe on customers' privacy rights 2. hyper personalised risks assessments which would leave some individuals as 'uninsurable' 3. New forms of nudging to alter customers' behaviour, for example by informing them about the flood or crime risks of different properties, or by recommending low-risk travel routes to drivers and rewarding them with lower premiums for following such advice. <p>CDEI considered that insurers should assess whether tighter controls need to be in place on the use of personal characteristics in pricing and that 'society should have a say in any decision on where to redraw the boundary between acceptable and unacceptable forms of discrimination.'</p> <p>These measures depend on sector-wide commitment to transparency and insurers should build trust with customers and regulatory bodies through greater</p>	Yes	Privacy, non-discrimination	UK, Centre for Data Ethics and Innovation (2019) <i>AI and Personal Insurance</i> , CDEI Snapshot Series, September 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833203/AI_and_Insurance_-_WEB.pdf

			disclosure.			
UK	Office for Artificial Intelligence and Alan Turing Institute	Report	<p>This guidance aims at making sure that the impact of AI projects is positive and does not unintentionally harm those affected by it:</p> <ul style="list-style-type: none"> •misuse •questionable design •unintended negative consequences <p>Recommendations include:</p> <ul style="list-style-type: none"> •governance procedures and protocols must be produced for each project using AI, following a careful ad hoc evaluation of social and ethical impacts <p>Building a culture of responsible innovation so that AI projects are:</p> <ul style="list-style-type: none"> • ethically permissible • fair and non-discriminatory • worthy of public trust • justifiable <ul style="list-style-type: none"> •process-based governance framework should provide teams with an idea of their role and governance action; the relevant stages of the workflow, explicit timeframes for evaluation and monitoring, clear and well-defined protocols for logging activity) <ul style="list-style-type: none"> •the lack of accountability of the AI system itself creates a need for a set of actionable principles tailored to the design and use of AI systems: <ul style="list-style-type: none"> • fairness (data, design, outcome and implementation) • accountability (there should be a continuous chain of responsibility for all roles involved in 	Yes	Non-discrimination	<p>Leslie, D. (2019). Understanding artificial intelligence ethics and safety: A guide for the responsible design and implementation of AI systems in the public sector. <i>The Alan Turing Institute</i>. Available at: https://doi.org/10.5281/zenodo.3240529</p>

			<p>the design and implementation lifecycle of the project)</p> <ul style="list-style-type: none"> • sustainability • transparency (designers should be able to ‘justify the ethical permissibility, the discriminatory non-harm, and the public trustworthiness’ of AI systems’ outcome and of the processes behind their design and use; they should also ‘explain to affected stakeholders how and why a model performed the way it did in a specific context’) 			
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*For the actors, please pick from the following suggestions:

- Government/ Parliamentary
- DPA
- NGO/Other Non Profit
- Academia
- Domestic Courts
- Business
- Independent State Institution
- Other

** for the type, please pick from the following suggestions:

- National Draft Acts / Adopted Acts
- report/study
- other projects

3. Data retention

In *R (National Council for Civil Liberties) v Secretary of State for the Home Department* [2018] EWHC 975 (Admin); [2019] QB 481, the Court gave judgment on the first part of the Claimant’s challenge to the Investigatory Powers Act 2016. Liberty challenged Part 4 of the Investigatory Powers Act 2016 (IPA 2016) under EU law, which allowed the Government to order private companies to store communications data, including internet history, so that State agencies could access it. Liberty won this challenge in April 2018 and the High Court requested that Part 4 of the IPA 2016 be amended by 1 November 2018⁸⁷. The Government complied with the judgement and introduced The Data Retention and Acquisition Regulations 2018 to restrict the purposes for which the Secretary of State may give a notice to a telecommunications or postal operator requiring the retention of communications data (see para. 87 (1) (a)) as follows:

“87 Powers to require retention of certain data

(1) The Secretary of State may, by notice (a “retention notice”) and subject as follows, require a telecommunications operator to retain relevant communications data if-

(a) the Secretary of State considers that the requirement is necessary and proportionate for one or more of the following purposes-

- (i) in the interests of national security,*
 - (ii) for the applicable crime purpose (see subsection (10A)),*
 - (iii) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,*
 - (iv) in the interests of public safety,*
 - (v) for the purpose of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health,*
 - (vi) to assist investigations into alleged miscarriages of justice, and*
- (b) the decision to give the notice has been approved by a Judicial Commissioner.”*

In June 2019, the Court then examined the second part of Liberty’s challenge⁸⁸, which arose under the Human Rights Act 1998. Liberty challenged several parts of the IPA 2016 ‘which all have in common the fact that they concern “bulk” powers rather than powers which are directed at any particular individual

⁸⁷ UK, High Court, *R (National Council for Civil Liberties) v Secretary of State for the Home Department* [2018] EWHC 975 (Admin); [2019] QB 481, 27 April 2018, available at: <https://www.judiciary.uk/wp-content/uploads/2018/04/liberty-v-home-office-judgment.pdf>

⁸⁸ UK, High Court, *R (on the Application of National Council for Civil Liberties (Liberty)) v. Secretary of State for the Home Department* [2019] EWHC 2057 (Admin), 29 July 2019, available at: <https://www.judiciary.uk/wp-content/uploads/2019/07/Liberty-judgment-Final.pdf>

who may be a potential subject of interest (sometimes called “targeted” surveillance).’ However, Liberty’s challenge was unsuccessful and a declaration of incompatibility under section 4 of the Human Rights Act 1998 in respect of the Investigatory Powers Act 2016 was refused. This was because there existed *‘inter-locking safeguards against the possible abuse of power, including the creation of the office of the Investigatory Powers Commissioner.’*

Chapter 6. Rights of the child

1. Procedural safeguards for children who are suspects in criminal proceedings

Legislative changes	<p>On 16 May 2019, the <i>Offensive Weapons Act 2019</i> came into force. Part 2 of the Act creates a new Knife Crime Prevention Order (KCPO).⁸⁹ The creation of such orders was in response to the sharp increase of knife crime seen in the UK and in part was based on the idea of shifting the focus from a punitive response to early intervention. KCPOs are a form of civil order that can aim to address factors in the lives of the individual under the order that may increase their chances of offending. They can also prohibit certain activities, impose geographical restrictions and curfews. KCPOs can be ordered against children over the age of 12. By virtue of Section 15 (5) of the Act however, the person making an application for a KCPO against a child must consult the relevant Youth Offending Team prior to making the application.⁹⁰ In August 2019, the Home Office published a consultation on their guidance for the operation of KCPOs. This closed on 25 September 2019, the same day the Standing Committee for Youth Justice published their response⁹¹ to the consultation which expressed concerns with regard to how KCPOs could adversely impact on children and young people. In particular, they recommended that the Home Office issue specific guidance on the use of KCPOs for children and that it should be stated in that guidance that the need to safeguard children and young people must be of paramount importance and that multi-agency safeguarding partnerships should inform the KCPO process.</p>
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⁸⁹ UK HM Government (2019), *Offensive Weapons Act 2019*, 16 May 2019, available at: www.legislation.gov.uk/ukpga/2019/17/part/2/enacted.

⁹⁰ UK HM Government (2019), *Offensive Weapons Act 2019*, 16 May 2019, Section 15 (5), available at: www.legislation.gov.uk/ukpga/2019/17/section/15/enacted.

⁹¹ UK, Standing Committee for Youth Justice (2019), “SCYJ responds to Home Office consultation on Knife Crime Prevention Order guidance”, 25 September 2019, available at: <http://scyj.org.uk/2019/09/scyj-responds-to-home-office-consultation-on-knife-crime-prevention-order-guidance/>.

	<p>On 11 June 2019, the <i>Age of Criminal Responsibility (Scotland) Act (2019)</i>,⁹² received Royal Assent which increased the age of criminal responsibility in Scotland from 8 to 12 years old. The operation of the Act will be reviewed by the Age of Criminal Responsibility Advisory Group that was established in April 2019.⁹³ The Advisory Group will also consider raising the age even further in the future.</p>
<p>Policy developments</p>	<p>On 25 June 2019, a debate was opened in the House of Commons by an MP who called for child imprisonment to be abolished.⁹⁴</p> <p>In July 2019, Public Health England published guidance on <i>Collaborative Approaches to Preventing Offending and Re-Offending In Children (CAPRICORN)</i>.⁹⁵ The guidance establishes the CAPRICORN Framework⁹⁶ with the aim of bringing together local level organisations in the field of, <i>inter alia</i>, health, education, social care and law enforcement in order to prevent youth offending and re-offending. The framework is based on a dual approach that addressed structural and environmental determinants and the need to support individual children and families.</p> <p>In September 2019, the Youth Justice Legal Centre and the Howard League for Penal Reform published guidance for lawyers representing looked after children at the police station.⁹⁷ It provides a step by step guide to the key legal principles and practical stages that have particular relevance to looked-after children who are disproportionately represented in the criminal justice system. It provides guidance for effective methods of communication and how to establish rapport and trust.</p>

⁹² UK, Scottish Parliament (2019), *Age of Criminal Responsibility (Scotland) Act (2019)*, 11 June 2019, available at: www.legislation.gov.uk/asp/2019/7/contents/enacted.

⁹³ UK, Scottish Government (2019), “Age of Criminal Responsibility Advisory Group”, 29 April 2019, available at: www.gov.scot/groups/age-of-criminal-responsibility-advisory-group/.

⁹⁴ UK, UK Parliament (2019), Hansard: 25 June 2019 Volume 662 Column 265WH, available at: <https://hansard.parliament.uk/Commons/2019-06-25/debates/CBCB2E4A-520F-4FAD-A445-C3C36CABF611/ChildImprisonment>.

⁹⁵ UK, Public Health England (2019), Collaborative approaches to preventing offending and re-offending in children (CAPRICORN): A resource for local health & justice system leaders to support collaborative working for children and young people with complex needs, July 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828228/CAPRICORN_resource.pdf.

⁹⁶ UK, Public Health England (2019), Collaborative approaches to preventing offending and re-offending in children (CAPRICORN): A resource for local health & justice system leaders to support collaborative working for children and young people with complex needs, July 2019, Page 30, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828228/CAPRICORN_resource.pdf.

⁹⁷ Youth Justice Legal Centre and the Howard League for Penal Reform (2019), Representing looked-after children at the police station: a step-by-step guide for lawyers, September 2019, available at: https://justforkidslaw.org/sites/default/files/fields/download/Joint-guide-children-in-care-for-web_0.pdf.

<p>Other measures or initiatives</p>	<p>On 18 April 2019, the Joint Committee on Human Rights published findings from its inquiry into youth detention: solitary confinement and restraint.⁹⁸ The inquiry sought to assess whether there are appropriate limits and effective safeguards in place in relation to the practices of restraint and separation in the youth detention. The following three overarching questions led the inquiry:</p> <ul style="list-style-type: none"> ▪ Does the use of restraint and segregation in youth detention lead to children’s rights being commonly breached? ▪ Is the guidance on restraint and segregation compliant with human rights standards? ▪ Is the Government doing enough to ensure rights compliant standards are applied across the estate, including in privately run institutions? <p>The inquiry found that the rates of use of restraints was unacceptably high and not always justified on the grounds of “last resort” or to prevent harm. Furthermore, evidence showed that BAME children are particularly affected by the use of restraint. The adverse physical and psychological impacts of restraint were noted by the Committee that found the use of restraint can amount to inhuman or degrading treatment in breach of children’s rights. The Committee recommended that the use of pain-inducing restraints and restraint for “good order and discipline” in Young Offender Institutions be prohibited.⁹⁹</p> <p>Regarding separation, the Committee concluded that separating children from human contact for more than a few hours at a time can be harmful to them and can amount to inhuman or degrading treatment. The Committee also noted the incomplete data on the separation of children in custodial and hospital settings and recommended that all institutions regulate and monitor its use and publish data annually.¹⁰⁰</p> <p>Finally, the Committee noted incidents where the separation of children can “drift” into what amounts to be solitary confinement in breach of children’s rights. Accordingly, the Committee recommended that every decision, or review of a decision, that would extend a period of separation to over 72 hours be reported to the appropriate Minister on a monthly basis.¹⁰¹</p>
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⁹⁸ UK, Joint Committee on Human Rights (2019), *Youth detention: solitary confinement and restraint*, 18 April 2019, available at: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/99402.htm>.

⁹⁹ UK, Joint Committee on Human Rights (2019), *Youth detention: solitary confinement and restraint*, 18 April 2019, Conclusions and Recommendations, available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/99408.htm#_idTextAnchor060.

¹⁰⁰ UK, Joint Committee on Human Rights (2019), *Youth detention: solitary confinement and restraint*, 18 April 2019, Conclusions and Recommendations, available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/99408.htm#_idTextAnchor060.

¹⁰¹ UK, Joint Committee on Human Rights (2019), *Youth detention: solitary confinement and restraint*, 18 April 2019, Conclusions and Recommendations, available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/99408.htm#_idTextAnchor060.

2. Legal and policy measures or initiatives developed about child internet safety

In April 2019, the Government published its *Online Harms White Paper* which outlines their proposals to implement the Audiovisual Media Services Directive (AVMSD).¹⁰² The new regulatory framework set out in the White Paper would establish a new statutory duty of care for companies to take more responsibility for the safety of their users and to tackle harm caused by content or activity on their services. An independent regulator will be charged with enforcing compliance of that duty who will also produce codes of practice on how companies can comply with this new legal duty. A specific code of practice on child sexual exploitation will be produced by the regulator that requires signing off by the Home Secretary. This framework aims to be implemented before the AVMSD transposition date of 20 September 2020. The UK government has however indicated that they would like to put in place interim measures to offer protection on video-sharing platforms. In July 2019, a consultation was opened to seek feedback from relevant stakeholders on the government's plans in relation to appropriate measures to be taken; powers for information gathering, sanctions for breaches redress for victims, funding and the impact on business.¹⁰³

On 22 October 2019, the Children's Commissioner published a report entitled *Gaming the system*¹⁰⁴ looking into the experiences of children who play games online. The Commissioner's report unveiled concerns related to how children are spending money when playing online games and calls for changes to gambling laws to protect children who had expressed concerns of their spending.

¹⁰² UK, HM Government (2019), *Online Harms White Paper*, 8 April 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf.

¹⁰³ UK, Department for Digital, Culture, Media and Sport (2019), *Audiovisual Media Services: interim approach to implementing requirements relating to Video Sharing Platforms: Consultation Document*, July 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820196/AVMSD_VSP_Consultation_Document.pdf.

¹⁰⁴ UK, Children's Commissioner (2019), *Gaming the system*, 22 October 2019, available at: www.childrenscommissioner.gov.uk/publication/gaming-the-system/.

Chapter 7. Access to justice including crime victims

1. Victims' Rights Directive

In April 2019, the Victims' Commissioner published a report into the experiences of victims of anti-social behaviour (ASB) offences.¹⁰⁵ The report highlights the high levels of ASB and the significant impact they have on their victims as well as failing of criminal justice professionals treat such offences with the severity required. In the report the Victims' Commissioner sets out her objections to the view that ASB is "low-level" crime and finds the term itself perpetuates this notion. It makes a number of recommendations on how to improve the experiences of victims of these types of offences, including:

- A review of the Victims' Code of Practice so that it recognises the impact of victims of persistent ASB, including the "three complaints" threshold to activate the Community Trigger;
- Measures aimed at tackling the currently inadequate responses to 101 (non-emergency services telephone line) calls;
- Involving victims in resolution meetings;
- Home Office consideration of implementing in law the Scottish system in England for such offences which provides the police with the opportunity to serve warnings, fines and seize noisy equipment.

In the August 2019, the new Victims' Commissioner wrote to the Home Secretary to call for improvements in support for victims of ASB based on the findings of the April report.¹⁰⁶

In June 2019, the Victims' Commissioner published her Strategic Plan for 2019 – 2022.¹⁰⁷ The plans set out five strategic aims:

- To ensure good treatment for all victims of crime by working with criminal justice agencies with a particular focus on treatment in the court room;
- Monitor and report on criminal justice agencies' compliance with the Code of Practice for Victims of Crime and Witness Charter and make recommendations based on any deficits identified;
- Ensure the interests of victims and witnesses are considered at all when proposals for development or change to the criminal justice system and victim support services are being made;
- Construct through interviews with victims and professionals and communicate a view of victims of the criminal justice system to be taken into account in the review and challenges of decisions by policy makers;
- Identify and promote good practice and excellence in victims' services.¹⁰⁸

On 17 July 2019, the Ministry of Justice opened a consultation that aims to gather information in order to strengthen the Code of Practice for Victims of Crime.¹⁰⁹ Based on findings that the

¹⁰⁵ UK, Victims' Commissioner (2019), *Anti-Social Behaviour: Living a Nightmare*, April 2019, available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/04/ASB-report.pdf>.

¹⁰⁶ UK, Victims' Commissioner (2019) Letter to Home Secretary, August 2019, available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/09/Letter-to-Home-Secretary-on-Anti-Social-Behaviour.pdf>.

¹⁰⁷ UK, Victims' Commissioner (2019). Victims' Commissioner for England and Wales Strategy June 2019-June 2022, June 2019, available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/08/VC-Strategy-2019-to-2022.pdf>.

¹⁰⁸ UK, Victims' Commissioner (2019). Victims' Commissioner for England and Wales Strategy June 2019-June 2022, June 2019, at p.p. 2 -3, available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/08/VC-Strategy-2019-to-2022.pdf>.

Code is too complex and is inconsistently applied which has led to victims missing out on support, the Ministry sought views from victims, criminal justice professionals (CJPs) and charities on how to make the Code clearer and more accessible. The consultation sought responses on a number of proposals, including:

- Greater clarity around victims' rights, particularly in relation to information entitlements and victim impact statements;
- Greater awareness that support services are also available to victims who do not report their crime or withdraw from the criminal justice process;
- Creation of short and user friendly guidance on the Code;
- Creation of a guide for CJPs to help them understand and deliver their obligations under the Code;
- Revise the categories of victims entitled to an enhanced service with a view to making it simple and a stronger focus on identifying and meeting the needs of the victim.¹¹⁰

2. Violence against women

In March 2019, the Government refreshed its Ending Violence against Women and Girls strategy.¹¹¹ The refreshed strategy outlines 54 new actions under the categories of prevention; provision of services; partnership working; and pursuing perpetrators.¹¹² Such actions include:

- Commissioning research into *inter alia*: engaging men and boys on gender issues and healthy relationships; and what links exist between consumption of online pornography and harmful attitudes towards women (prevention);
- Introduce a new statutory Code of Practice for employers on sexual harassment, developed by the Equality and Human Rights Commission (prevention);
- Gather regular data on the prevalence and nature of sexual harassment (prevention);
- Collaboration with online dating apps to raise awareness of violence against women amongst their users (prevention);
- Introduce a new Domestic Violence Commissioner by virtue of the Domestic Violence Bill (2019) (provision of services);
- Develop guidance on best practice for multi-agency arrangements for risk assessment and safeguarding (partnership working);
- Tackle upskirting through the Voyeurism (Offences) (No. 2) Bill, and work with the College of Policing to provide guidance to police officers (pursuing perpetrators);
- Explore the use of conditional cautions for domestic violence (pursuing perpetrators);
- Fund improvements to in-court support for victims of domestic violence in the family courts (pursuing perpetrators).

¹⁰⁹ UK, Ministry of Justice 2019, "New rights for victims of crime", 17 July 2019, available at: www.gov.uk/government/news/new-rights-for-victims-of-crime.

¹¹⁰ UK, Ministry of Justice 2019, "New rights for victims of crime", 17 July 2019, available at: www.gov.uk/government/news/new-rights-for-victims-of-crime.

¹¹¹ UK HM Government (2019), *Ending Violence against Women and Girls 2016 -2020: Strategy Refresh*, March 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783596/VAWG_Strategy_Refresh_Web_Accessible.pdf.

¹¹² UK HM Government (2019), *Ending Violence against Women and Girls 2016 -2020: Strategy Refresh*, March 2019, at p.p. 42 – 44, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783596/VAWG_Strategy_Refresh_Web_Accessible.pdf.

On 22 March 2019, the Ministry of Justice announced plans to increase funding for rape centres in England and Wales. The announcement pledged a 10% increase of funding with services receiving £24 million over three years.¹¹³ The funds will go to 79 support centres¹¹⁴ resulting in, for the first time, government funded services in all 42 Police and Crime Commissioner areas in England and Wales. On 18 September 2019, the Ministry of Justice announced that it will increase funding by a further £5 million for specialist support services for victims of rape and sexual abuse, £1 million of which will be used to recruit more Independent Sexual Violence Advisors (ISVAs).¹¹⁵ ISVAs, provide who are act as liaison with criminal justice professionals as well as support and advise victims, will have to start working to new national standards that will be put in place to ensure that victims across the country and receiving the same level of support.

On 9 May 2019, *The Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019*¹¹⁶ were made. The Regulations will come into force 1 September 2020 and will make relationships education compulsory in primary schools and Relationship and Sex education compulsory in secondary schools. In 25 June 2019, the Department for Education published statutory guidance for education providers on how they can comply with their new legal duty.¹¹⁷

On 16 July 2019, the *Domestic Abuse Bill*¹¹⁸ was introduced to the House of Commons for its First Reading. The Bill sets out the creation of a new Domestic Abuse Commissioner who's mandate would be to encourage good practice in, *inter alia*, the prevention of domestic violence and the prevention, detection, investigation and prosecution of offences involving domestic abuse and the provision of support to victims of domestic violence. On 18 September 2019, Nicole Jacobs, former Chief Executive Officer at charity Standing Together Against Domestic Violence, was designated as the Domestic Abuse Commission.¹¹⁹ The Bill also requires a Framework document to be created by the Home Secretary setting out governance, funding and staffing; and matters relating to the exercise of the Commissioner's functions. An Advisory Board is also required under the Bill, to be comprised of 6 to 10 member with at least one person representing the following categories:

- victims of domestic abuse;
- charities and voluntary organisations in the sector (in England);
- health care service providers (in England);
- social care service providers (in England); and

¹¹³ UK, Ministry of Justice (2019), "Funding boost for victims of rape and sexual abuse", 22 March 2019, available at: www.gov.uk/government/news/funding-boost-for-victims-of-rape-and-sexual-abuse.

¹¹⁴ UK, Ministry of Justice (2019), "Supporting recovery: how increased funding for rape support services will be spent", 22 March 2019, available at: <https://medium.com/@MoJGovUK/supporting-recovery-how-increased-funding-for-rape-support-services-will-be-spent-f7b21d4e1f6d>.

¹¹⁵ UK, Ministry of Justice (2019), "£5m increase for rape and sexual abuse victims", 18 September 2019, available at: www.gov.uk/government/news/5m-increase-for-rape-and-sexual-abuse-victims.

¹¹⁶ UK, HM Government (2019), *The Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019*, 9 May 2019, available at: www.legislation.gov.uk/uksi/2019/924/contents/made.

¹¹⁷ UK, Department for Education (2019), *Relationships Education, Relationships and Sex Education (RSE) and Health Education Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers*, 25 July 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf.

¹¹⁸ UK, HM Parliament (2019), *Domestic Abuse Bill (HC Bill 422)*, available at: https://publications.parliament.uk/pa/bills/cbill/2017-2019/0422/cbill_2017-20190422_en_1.htm

¹¹⁹ UK, HM Government (2019), "UK's first Domestic Abuse Commissioner announced as government pledges to tackle crime", 18 September 2019, available at: www.gov.uk/government/news/uks-first-domestic-abuse-commissioner-announced-as-government-pledges-to-tackle-crime.

- policing and criminal justice.

On 12 September 2019, the Crown Prosecution Service published its *Annual Violence against Women and Girls* report.¹²⁰ One concerning figure emerging from the report was the record low for CPS decisions to prosecute rape with 1,758 decisions to charge in 2018/19 down from 2,822 in 2017/18. The 2018/19 figure also discloses a 55% decrease over five years but coincides with yearly increases in the numbers of rapes being reported to police. The Victims' Commissioner responded in an open letter that blamed, in part, attitudes towards the "merits test" in the CPS for the abandonment of cases that were viewed as "harder".¹²¹ The CPS also noted with concern the drop in rape charges but noted in their report that it is not due to a change in policy and set out four factors that they believe contributed to the drop:

- a reduction in the number of referrals from the police to the CPS;
- an increase in the use and volume of digital data which is more time consuming to investigate thus creating a longer period of time with the police before reaching the CPS;
- an increase in the use of pre-charge consultations between the CPS and police where action plans are created to identify further work required for a charging decision to be made which takes longer but intends to create stronger cases; and
- increases in the number of cases where the police did not respond to early investigative advice or requests for more information.¹²²

In light of these factors the CPS took a number of actions to improve prosecution performance, including: producing a Psychological Evidence Toolkit¹²³ for prosecutors explaining the impact of a range of psychological conditions, including those linked with trauma; mandatory training podcasts covering cross examination of complainants about their sexual history; conducting a survey on how changes in sexual behaviour and digital evidence impact on rape prosecutions; and training on handling of vulnerable witnesses.¹²⁴ Further training and guidance is planned by the CPS.¹²⁵ In relation to the sharp fall in decisions to charge rape cases, an investigation by *The Gazette*, a publication by the Law Society, disclosed that between 2016 and 2018 the CPS had imposed targets on staff that were "not appropriate" and may have served as a "perverse incentives" that deterred them from charging in more complex cases. In 2016, the CPS added asked caseworkers to consider a conviction rate target when making a charging decision. This was in addition to the existing two stage public interest and likelihood of conviction test. The new component was referred to as the "level of ambition". The "level of ambition" took the form of the percentage of charges that end in conviction which the CPS intended to reach by the end of the year. For rape cases that percentage was set at 60%. Information about this target was not

¹²⁰ UK, Crown Prosecution Service (2019), *Annual Violence against Women and Girls 2019-19*, 12 September 2019, available at: www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf.

¹²¹ UK, Victims' Commissioner (2019) *Victims' Commissioner responds as CPS rape charges slump to lowest ever despite huge rise in reports*, 12 September 2019, available at: <https://victimscommissioner.org.uk/news/vcs-response-to-the-cps-violence-against-women-and-girls-report-2018-19/>.

¹²² UK, Crown Prosecution Service (2019), *Annual Violence against Women and Girls 2019-19*, 12 September 2019, at p.15, available at: www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf.

¹²³ UK, Crown Prosecution Service (2019), "Psychological Evidence Toolkit - A guide for Crown Prosecutors", 11 September 2019, available at: www.cps.gov.uk/legal-guidance/psychological-evidence-toolkit-guide-crown-prosecutors.

¹²⁴ UK, Crown Prosecution Service (2019), *Annual Violence against Women and Girls 2019-19*, 12 September 2019, at p.15, available at: www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf.

¹²⁵ UK, Crown Prosecution Service (2019), *Annual Violence against Women and Girls 2019-19*, 12 September 2019, at p.15 -16, available at: www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf.

included in the CPS's annual Violence Against Women and Girl reports between 2016 and 2018. The CPS claimed the targets ceased to be used in April 2018 however the CPS' inspectorate continued to use them to measure the services performance in May 2019.¹²⁶

In April 2017, the *Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017*¹²⁷ was passed. Section 1 of the act requires the Home Secretary to take steps to enable ratification of the Istanbul Convention and Section 2 requires the Home Secretary to report to parliament annually on the progress towards ratification. On 31 October 2019, the Home Office published their third progress report relating to the UK's ratification of the Istanbul Convention.¹²⁸ Regarding the provisions of the Istanbul Convention relating to extraterritorial jurisdiction, the update reports that the necessary legislative updates were intended to be made via the Domestic Abuse Bill. The Bill however, as explained above fell with the dissolution of parliament on 6 November 2019 in the run up to the December 2019 General Election.

In relation to migrant victims of domestic violence, the report notes the recommendations of the Joint Committee on the Draft of the Domestic Abuse Bill who recommended extended support services to migrant survivors of abuse.¹²⁹ Accordingly, the Home Office have recorded the compliance with Article 4(3) as "under review". The report cites a number of other issues that the Domestic Violence Bill would have addressed in relation to the Istanbul Convention prior to it falling. It further cites the abovementioned *Ending Violence against Women and Girls strategy* as part of their work towards ratifying the Convention. On 28 January 2020, the Court of Appeal (Criminal Division) ruled in the case of *R v Richards*. The defendant in the case was found guilty of voyeurism under Sections 67 and 68 of the Sexual Offences Act 2003¹³⁰ after he filmed himself having sex with two women who had consented to sex in exchange for money but had not given consent to being filmed. The effect of the case has reopened a previous decision of the Crown Prosecution Service (CPS) not to prosecute a man for rape despite the police investigation uncovering footage that her attacker had filmed of her naked and unconscious. Following the ruling in *R v Richards*, the CPS have acknowledged that their decision not to prosecute in the previous case had been unlawful and confirmed that they will reconsider the decision.¹³¹

¹²⁶ UK, The Law Society Gazette (2019), "Exclusive: 'perverse incentive' contributed to slump in rape charges", 13 November 2019,

¹²⁷ UK, HM Parliament (2017), *Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017*, 27 April 2017, Section 2, available at: www.legislation.gov.uk/ukpga/2017/18/section/2.

¹²⁸ UK, Home Office (2019), *Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2019 Report on Progress*, October 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843509/CCS0919132732-001_Istanbul_Convention_2019_Report_Option_A_Web_Accessible.pdf.

¹²⁹ Joint Committee On The Draft Domestic Abuse Bill (2019), *Domestic Abuse Bill*, July 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817556/CCS0619467038-001_Domestic_Abuse_Bill_Print_Web_Accessible.pdf.

¹³⁰ UK, HM Government (2003), *Sexual Offences Act 2003*, 20 November 2003, Sections 67 and 68, available at: www.legislation.gov.uk/ukpga/2003/42/introduction.

¹³¹ UK, Centre for Women's Justice ()

Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

1. CRPD policy & legal developments

In September 2019, the UK Government has submitted to the UN CRPD two follow up reports: one¹³² responding to the recommendations made by the Committee in August 2017 and one¹³³ responding specifically to recommendation 114, paragraph 74.

The UK Government committed to ‘creating a society that works for everyone, where all are included and can participate fully’¹³⁴ by first promoting equality at the centre of Government. It announced new Regional Stakeholder Networks in England charged with engaging with disabled people and relevant organisations to draw on their views and engage them in shaping policies and services. Further, 18 Sector Champions were appointed to raise awareness of the needs of disabled customers and ‘encourage their sectors to improve the accessibility and quality of their services and facilities for disabled people.’

The Government also committed to improving employment opportunities and indicated that as of the first quarter of 2019, 3.9 million working age disabled people were in employment in the UK. The Government will innovate to support disabled persons who are already in employment and will engage with employers to encourage them to recruit, train and retain disabled persons, including apprentices. It also indicated that the UK Civil Service’s ambition ‘is to be the UK’s most inclusive employer and building disability inclusion is an integral part of creating “A Brilliant Civil Service”.’

In education, the Government committed to removing barriers to learning and participation for children with learning difficulties. Specifically, ‘the Welsh Government are providing £20m package of funding to deliver the Additional Learning Needs (ALN) Transformation Programme. This Programme, starting beginning of 2020, will ensure children and young people aged 0-25 with additional learning needs are provided for within an inclusive education system.’ Measures are also being taken in Northern Ireland, where ‘draft regulations based on the [Special Educational Needs and Disabilities] Act [2016] will be finalised in 2019 with a draft Code of Practice which will provide practical guidance for schools’. In Higher Education, disabled students’ allowances are available to ensure that disabled students have access to equipment, software and personal support. The Scottish Government provided £2.8m in 2018/19

¹³² UK, Department for Work and Pensions, Office for Disability Issues (2019), *2019 Progress Report on the UK’s vision to build a society which is fully inclusive of disabled people*, September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fFCO%2fGBR%2f37315&Lang=en

¹³³ UK, Department for Work and Pensions, Office for Disability Issues (2019), *The United Kingdom of Great Britain and Northern Ireland’s 2019 response to select concluding observations of the United Nations Committee on the Rights of Persons with Disabilities: Response to recommendation in paragraph 74*, September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1%2fAdd.2&Lang=en

¹³⁴ UK, Department for Work and Pensions, Office for Disability Issues (2019), *2019 Progress Report on the UK’s vision to build a society which is fully inclusive of disabled people*, September 2019, p. 1 available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fFCO%2fGBR%2f37315&Lang=en

to support disabled students and the Welsh Government committed to carry out a review of Disabled Students' Allowances policy in Wales to ensure funding is being targeted effectively. The Government also committed to better transports for all to eliminate 'barriers and offer equal access to everyone by 2030'. 73 rail stations will receive a share of £300m committed to the Access for All programme which provides accessibility improvements. Further, the Government recognised 'that inaccessible public spaces, such as visitor attractions and retail businesses, limit disabled people's participation in social life'. The Government is working to make inclusive retail experience and heritage attractions, including museums and historic sites and monuments. In terms of access to healthcare, the Government committed to provide 'the highest quality health service in the world, built on the guiding principles of the NHS: that access to healthcare is based on need and not the ability to pay' and to reduce the health gap between disabled people and non-disabled people. It will focus specifically on autism to make sure that more organisations can make reasonable adjustments and on mental health care. It indicated that it is looking to reform the Mental Health Act so that people subject to it have greater autonomy and influence over their care. The Government has already accepted some of the recommendations made following an independent review into the Act. These include:

- 'to give people more choice and control, through new statutory advance choice documents,
- to allow people to choose who can act for them,
- and to take forward recommendations made by the review to tackle the disproportionate number of people from BAME groups who are detained under the Act, including establishing a new race equality framework for NHS mental health services.'

In its response to recommendation 114, paragraph 74, the UK Government further emphasized its announcement made in June 2019: a 'Green Paper on health and disability support, to enable a conversation about building a welfare system for the future that is an ally of disabled people.' The UK Government announced that it 'will spend over £55bn in 2019-2020 on benefits to support disabled people and those with health conditions – more than ever before'. Since April 2019 Citizen Advice England and Wales and Scotland have been delivering the new 'Help to Claim' support to ensure that disabled persons on benefits can claim what they are entitled to and make sure that they receive the full correct payment on time.

Further, in England, the Government 'promotes Personal Health Budgets, giving disabled people more choice and control over how money is spent on their health and wellbeing needs.' Such budgets will be made available to a larger group of people, including people who leave hospital after having been detained under the Mental Health Act 1983 and those who access wheelchair services.

In terms of independent living, the Ministry of Housing, Communities and Local Government will consult on raising mandatory accessibility standards for all new homes in autumn 2019. In Scotland, the Care and Repair Scotland fund provided £10m directly to housing associations to provide adaptations to disabled tenants so that they can continue to live at home. The Welsh Government has provided £27m per annum to local authorities to support disabled peoples' independent living through housing adaptations.

In terms of access to justice, the Government published an Action Plan following the review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The Action Plan 'removed the requirement for applicants in debt, discrimination [...] cases to first seek advice through a telephone service, and reinstated immediate access to face to face legal advice.' In 2018/2019, the Welsh Government provided £6m for projects providing social welfare rights-based advice, 'most of which went towards supporting disabled people. Over the year, advice projects helped over 77,000 people secure over £53m in income gains.'

Finally, the Government indicated that the Office for National Statistics 'will develop a national outcomes dashboard for disabled people to increase transparency and accountability, and drive focused action on tackling the barriers that disabled people face.' This is part of the Government's commitment 'to strengthen the evidence base on disability and improve engagement with disabled people and their organisations.'

The Government have announced the launch of a National Disability Strategy in 2020 ‘to transform the lives of disabled people, ensuring they have access to opportunities and are able to achieve their potential’.¹³⁵

2. CRPD monitoring at national level

The Equality and Human Rights Commission has announced a new project¹³⁶ to support individuals who have experienced discrimination while using, or attempting to use, public transport. The new scheme will use all available routes to assist in resolving complaints, including offering advice and help with correspondence, or providing funding for legal support and will consider complaints involving a range of disabilities, including mental health conditions.

Table: Structures set up for the implementation and monitoring of the CRPD

EUMS	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
UK	Department of Work and Pensions, Office for Disability Issues		Equality and Human Rights Commission (England and Wales); Scottish Human Rights Commission ; Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland

¹³⁵ UK, Prime Minister’s Office (2019) *The Queen’s Speech*, p. 62 available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

¹³⁶ UK, Equality and Human Rights Commission (2019), *Watchdog warning to transport operators*, 26 September 2019, available at: <https://www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/legal-support-project/legal-support-project-help-transport-discrimination>

Annex 1 – Promising Practices

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one example of a rights awareness campaign held in your country in 2019 relevant to equality and non-discrimination, preferably one conducted by a national equality body. Where no such campaign was held, please provide an example of a promising practice implemented in 2019 in your country (this could include innovative initiatives at local level) to combat discrimination on any one of the following grounds: religion or belief, disability, age, sexual orientation, gender identity or sex characteristics. Where relevant, always highlight any relevance or reference to multiple discrimination.
Title (original language)	Legal Support Project
Organisation (original language)	Equality and Human Rights Commission
Government / Civil society	Monitoring body
Funding body	Equality and Human Rights Commission
Reference (incl. url, where available)	UK, Equality and Human Rights Commission, “Legal support project: held with transport discrimination claims“, available at: www.equalityhumanrights.com/en/gwaith-achos-cyfreithiol/legal-support-project/legal-support-project-help-transport-discrimination .
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	September 2019.
Type of initiative	Advise service.
Main target group	Persons with disabilities and victims of age discrimination.
Indicate level of implementation: Local/Regional/National	Regional (England, Scotland and Wales).
Brief description (max. 1000 chars)	The project provides funding and legal assistance for persons who have experienced disability or age discrimination perpetrated by transport providers. The EHRC will provide help laid out under Section 28 of the Equality Act 2006 including: supporting persons submitting complaints to a transport operator, ombudsman or other complaints body; offering or funding legal advice; funding legal representation in court; and funding disbursements. The project will cover complaints of discrimination regarding the provision of transport under Part 3 of the Equality Act 2010 (including, inter alia, taxis, buses, trains, underground services, hire vehicles) but does not cover: air travel; anything on board boats or ferries; • roads, road layout or pavements; or planning decisions on transport infrastructure. Applications can be made by solicitors and advisors working for NGOs. Support will be offered when the EHRC deem that the individual concerned would not otherwise be able to access justice. The incident of discrimination must have occurred within six months prior to contacting the EHRC.
Highlight any element of the actions that is transferable (max. 500 chars)	Monitoring bodies can provide similar legal assistance in other contexts.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	The practice falls under the mandate of the EHRC.

Give reasons why you consider the practice as having concrete measurable impact	The impact of the project will be able to be measured by the numbers of people supported under it and the number of success cases and/or complaints that get resolved.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Equality monitoring bodies can provide similar legal assistance in other Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	N/A.
Explain, if applicable, how the practice provides for review and assessment.	N/A.

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide one example of a promising practice to address discriminatory ethnic profiling within law enforcement agencies and other relevant national authorities. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	Call Hate Out
Organisation (original language)	Stop Hate UK
Government / Civil society	Civil Society
Funding body	Government – funded by the Building a Stronger Britain Together (BSBT) programme
Reference (incl. url, where available)	UK, Stop Hate UK (2019), „Call Hate Out“, available at: www.stophateuk.org/call-hate-out/ .
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	7 July 2019
Type of initiative	Helpline
Main target group	Persons with one or more protected characteristic.
Indicate level of implementation: Local/Regional/National	Regional – England
Brief description (max. 1000 chars)	The Call Hate Out helpline is a service for victims and witnesses of hate crime who are under the age of 18 years old. The helpline will provide advice, support and help callers with what their next steps could be. The helpline is part of a wider campaign by Stop Hate UK who go into schools to engage young people in issues relating to hate crime and inform them of mechanisms for support and reporting. They are promoting the new helpline during their school visits, as the helpline is still within six months of its creation, they have thus far received 24 calls. Stop Hate UK hope to increase usage as they further publicise the service to the young people they

	are working with.
Highlight any element of the actions that is transferable (max. 500 chars)	Targeted helplines for persons experiencing certain categories of crime could be used in other settings.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	Stop Hate UK announced that the new initiative is a long-term commitment.
Give reasons why you consider the practice as having concrete measurable impact	Numbers of calls received and individuals supported can be used to measure the services impact.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Targeted hate crime helplines for persons under the age of 18 could easily be replicable by NGOs or law enforcement authorities in other Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	N/A
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	ROMA INTEGRATION Please provide one example of promising practice in relation to addressing a Roma/Travellers segregation at either national, regional or local. These could be (not limited to) in the area of segregation in education, residential segregation, segregation in healthcare services or in employment.
Title (original language)	Good Practice Guide for improving outcomes for Gypsy, Roma and Traveller children in education.
Title (EN)	
Organisation (original language)	The Traveller Movement
Organisation (EN)	
Government / Civil society	Civil Society
Funding body	Esmee Fairbairn Foundation (£95,000)
Reference (incl. url, where available)	UK, Traveller Movement (2019) <i>Good Practice Guide for improving outcomes for Gypsy, Roma and Traveller children in education</i> , April 2019 available at: https://www.travellerstimes.org.uk/news/2019/05/gypsy-roma-and-traveller-education-celebrating-good-practice UK, Esmee Fairbairn Foundation, <i>the Traveller Movement</i> , available at: https://esmeefairbairn.org.uk/the-traveller-movement
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	April 2019 – publication of the report 2016-2019 – Traveller Movement’s Education Project

Type of initiative	The good practice guide provides information on how to support Gypsy, Roma and Traveller (GRT) pupils in mainstream education, and provides examples of what good schools are doing to support their GRT pupils.
Main target group	Schools and other educational bodies
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The guide is the result of a three-year advocacy project led by the Traveller Movement and which aimed at supporting GRT children to get into, stay and get better treatment in school. The project also aimed at challenging bullying and harrasment in schools. It provided around 160 families with advice, support and advocacy as well as support over the phone, writing letters to schools and attending meetings to act as advocates for GRT parents. The best practices observed as part of this project were collected and analysed in the Good Practice Guide for improving outcomes for Gypsy, Roma and Traveller children in education, with a view to demonstrate some of the barriers Gypsy and Traveller parents are faced with in the education system, and shed light on the complexity of the cases and the amount of time required to work on them. ¹³⁷
Highlight any element of the actions that is transferable (max. 500 chars)	GRT-led initiative
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The guide provides with invaluable information as to the kind of support GRT families need and how to implement it, in different settings and throughout the years. The fact that the best practices were published in a guide will allow policy-makers and education professionals to bring about change at their level. The good practices guide was presented at the Education Roundtable 'After the race disparity audit - exploring the educational outcomes for Gypsy, Roma and Traveller children' at the House of Lords on April 30th 2019. ¹³⁸
Give reasons why you consider the practice as having concrete measurable impact	The project ran during three years and effectively supported around 160 GRT families and their children to stay in school and make sure that they can receive suitable education in safe environments. Concrete measurable impact was observed and described after a careful analysis of cases supported by the project in the guide. The guide itself provides policy-makers and education workers with the evidence and tools needed to improve the experience of GRT children at school and make sure that they receive suitable education.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	The project and guide could be transferable to other member states through GRT NGOs or civil society organisations which have similar advocacy and research goals.
Explain, if applicable,	The project was created and led by GRT community members through the

¹³⁷ UK, Traveller Movement (2019) *Good Practice Guide for improving outcomes for Gypsy, Roma and Traveller children in education*, April 2019, p.15 available at: <https://www.travellerstimes.org.uk/news/2019/05/gypsy-roma-and-traveller-education-celebrating-good-practice>

¹³⁸ UK, Traveller Movement (2019), *Education Roundtable, After the race disparity audit - exploring the educational outcomes for Gypsy, Roma and Traveller children*, House of Lords, April 30th 2019 available at: <https://travellermovement.org.uk/education?download=124:education-roundtable-report-2019>

how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Traveller Movement and involved GRT people at every stage of the process. They acted as a link between schools and GRT families and as advocates for children. They identified what was the best practices according to them and to members of their community.
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	Asylum, visas, migration borders and integration Please provide a promising practice on the support provided to unaccompanied children when reaching majority.
Title or short description of promising practice in original language and in English	Guidance on supporting separated and unaccompanied children to access legal aid in immigration cases
Organisation (Government / Civil society) in charge of promising practise (original language/English)	Civil Society – the guidance was produced by a collation of civil society organisations made up of: Coram Children’s Legal Centre, The Children’s Society, Islington Law Centre, Just For Kids Law and MiCLU.
Funding body	Unknown
Reference (incl. url, where available)	UK, Children’s Legal Centre (2019), <i>Guidance on supporting separated and unaccompanied children to access legal aid in immigration cases</i> , July 2019, available at: www.childrenslegalcentre.com/wp-content/uploads/2019/07/NGO-briefing-on-interim-ECF-Guidance-July-2019-FINAL.pdf .
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	July 2019
Main target group	Professionals and care providers supporting migrant children.
(around 1000 characters)	Following a successful legal challenge in 2018, the Government have been forced to reinstate legal aid for unaccompanied and separated children requiring legal advice and representation in relation to all non-asylum immigration matters. Accordingly, in July 2019, a coalition of children’s rights organisations produced guidance on how to access Exceptional Case Funding for people supporting separated and unaccompanied children. Raising awareness and building capacity of social workers and other professionals working with unaccompanied and separated children is a critically important factor to ensure that they are receiving legal advice and representation at the appropriate time.
Indicate level of implementation: Local/Regional/National	Regional – England and Wales
Indicate success factors – why has the practice effectively promoted integration?	N/A

If the initial funding of the initiative ended, how has the initiative been continued/followed-up?	N/A
Explain, if applicable, how the practice is being reviewed and assessed.	N/A
Does the initiative apply to both asylum seekers and protection status holders – and/or support the transition from one to the other?	Y
Does the initiative specifically support persons in need of international protection as they turn 18? If so, which type of support is provided?	N

Thematic area	INFORMATION SOCIETY, DATA PROTECTION Please provide one example of a promising practice in relation to one of the topic addressed in this Chapter
Title (original language)	Practitioner Award for Excellence in Data Protection
Title (EN)	
Organisation (original language)	Information Commissioner's Office
Organisation (EN)	
Government / Civil society	Independent public body
Funding body	Information Commissioner's Office
Reference (incl. url, where available)	UK, Information Commissioners' Office (2018), Practitioner Award for Excellence in Data Protection, available at: https://ico.org.uk/about-the-ico/news-and-events/practitioner-award/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2018 - ongoing
Type of initiative	Award
Main target group	Every organisation that has to comply with data protection
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Information Commissioner's Office introduced the Practitioner Award for Excellence in Data Protection in 2018 to recognise those practitioners who go above and beyond when it comes to data protection. The award is judged by an in-house panel. Nominees have shown inspiring data protection practice and leadership, particularly in the areas of accountability and privacy by design, and have made good use of the resources available from the ICO to help organisations live up to their obligations and inspire public trust and confidence in how they handle personal information. The winner of the inaugural award was Esther Watt, Data Protection Officer at North Keveston Council in Lincolnshire. The winner of the

	second award was Mikko Niva, Group Policy Officer at Vodafone Group Services Ltd based in London.
Highlight any element of the actions that is transferable (max. 500 chars)	Similar awards and ceremony can be replicated by national authorities in charge of monitoring data protection elsewhere.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The practice highlights and rewards the best data protection practices in the business world and can be an incentive for businesses to comply with the law since customers' trust is important.
Give reasons why you consider the practice as having concrete measurable impact	The practice sets high standards for data protection within organisations. Such standards can then be replicated by other organisations.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	The practice could be replicated by national organs similar to the Information Commissioners' Office within other EU Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	N/A
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	RIGHTS OF THE CHILD Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter.
Title (original language)	Advice for parents during the summer holidays
Organisation (original language)	UK Safer Internet Centre
Government / Civil society	Civil society
Funding body	Information ot publicaly available.
Reference (incl. url, where available)	UK, UK Safer Internet Centre, available at: www.saferinternet.org.uk/blog/tags/summer%20holidays .
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	23 July 2019
Type of initiative	Awareness raising
Main target group	Parents
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Via a series of blog posts, the UK Sfer Internet Centre issued guidance relating to keeping children safe online during the summer holidays when they have more time to be online. The guides offer tips to parents with

	<p>regard to the following:</p> <ul style="list-style-type: none"> • Social media use • Sharing images online • Gaming • Balancing screen time • Keeping children happy and safe online.
Highlight any element of the actions that is transferable (max. 500 chars)	Issuing guidance on best practice for internet safety can be used in settings outside of child internet safety.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	The guidance will continue to be of use beyond the summer holiday period for helping parents keep their children safe on line.
Give reasons why you consider the practice as having concrete measurable impact	N/A
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Children’s rights of internet safety organisations in other Member states could also consider issuing advice to parents during times when children are at great risk of being harmed online.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	N/A
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	<p>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</p> <p>Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter</p>
Title (original language)	Tampon Tax Fund 2019/20
Organisation (original language)	Department for Digital, Culture, Media & Sport
Government / Civil society	Government
Funding body	Government
Reference (incl. url, where available)	UK, Department for Digital, Culture, Media & Sport (2019), <i>Tampon Tax Fund application form: 2019-2020 funding round</i> , available at: www.gov.uk/government/publications/tampon-tax-fund-application-form-2019-2020-funding-round .
Indicate the start date of the promising practice and the finishing date if it	Spring 2019

has ceased to exist	
Type of initiative	Project funding initiative
Main target group	Disadvantaged women and girls
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>This initiative provides funding for projects that aim to improve the lives of women and girls. The funds are generated from VAT on sanitary products. Projects should focus on either: violence against women and girls (VAWG), homelessness and rough sleeping, music or fall under the fundings general programme. The fund is open for applications from UK based organisations and each project can apply for up to £1 million and have varying stipulations under each focus area.</p> <p>Under the VAWG focus area applicants should be organisations that support women and girls affected by or at risk of violence or abuse including:</p> <ul style="list-style-type: none"> • Domestic violence and abuse; • Sexual violence; • 'honourbased' violence; • Stalking; • Prostitution and sex work. <p>Projects must be in line with the delivery of the Government's VAWG Strategy in that they either aim to prevent violence and abuse; provide services to keep victims safe and offer support; or facilitate partnership working between specialist support organisations to ensure that services are flexible and responsive to the victim's experience. Under this category favour will be given to projects that:</p> <ul style="list-style-type: none"> • Address the needs of women with multiple disadvantages and complex needs; • Consider the needs of, and encourage engagement with, a diverse range of victims, including hard to reach groups; • Develop tools that have the potential to be rolled out nationally, where a gap has been identified; • Provide specialist services that are not commissioned locally due to low density of users, but where the service would benefit women across a wider cross Local Authority area. <p>Projects funded under the latest round include:</p> <ul style="list-style-type: none"> • £1,294,002 to Comic Relief towards an ongoing grants programme for projects working to end violence against women and girls; • £1,191,818 to Gamcare to support women who have problems with gambling or are affected by domestic violence related to gambling. • £1,140,000 to Crisis UK and Hestia to help homeless female survivors of modern slavery; • £1,092,194 to SACRO, a Scottish Project providing support to female sex workers who use the internet to find their clients; • £1,090,000 to Southall Black Sisters for their „Recourse to Safety“ project which supports women with no recourse to public funds who have been abused by providing safe accommodation, subsistence, counselling, immigration advice and community awareness-raising; and • £1,000,000 to Changing Lives „STAGE“ Project that supports vulnerable women who have been victims of grooming for sexual exploitation.
Highlight any element of the actions that is transferable (max. 500 chars)	Providing funding opportunities open for applications from civil society is a model that can be used in many other settings.

Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The Government has made a commitment to divert funds from VAT of women's sanitary products to this cause.
Give reasons why you consider the practice as having concrete measurable impact	Details of the projects funded are publicised on the Government's website and each project is evaluated for its impact.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Other states that tax women's sanitary products could set up similar funding channels.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	N/A.
Explain, if applicable, how the practice provides for review and assessment.	The stipulations of the funding include monitoring and evaluation. Applications must list outputs and outcomes and explain the data collection and monitoring systems that will enable evaluation of the project.

Thematic area	Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)
	Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
	No promising practice has been identified for this thematic area.

Annex 2 – Case law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination on any one of the following grounds: gender identity, religion or belief, disability, age, or sexual orientation. Where relevant, always highlight any relevance or reference to multiple discrimination in the case you report
Decision date	13 November 2019
Reference details	<i>RR v Secretary of State for Work and Pensions</i> [2019] UKSC 52, available at: www.bailii.org/uk/cases/UKSC/2019/52.html .
Key facts of the case (max. 500 chars)	The case related to the removal of the spare room subsidy (known as “the bedroom tax”) in 2013 by Regulation B13 amending the Housing Benefit Regulations 2006. In November 2016, a Judicial Review was brought before the Supreme Court (<i>R (Carmichael) v Secretary of State for Work and Pensions</i> [2016] UKSC 58) ¹³⁹ against the bedroom tax. In that case the Supreme Court ruled that Regulation B13 was discriminatory contrary to Article 14 ECHR as it did not cater for a situation where a tenant had a transparent medical need for an additional bedroom. Accordingly, new Regulations were introduced in 2017 ¹⁴⁰ to enforce the judgement, however the Regulations did not apply retrospectively. In this case before the Supreme Court, the appellant lived with his severely disabled partner in a two bedroom house. The appellant’s local authority assessed the couple as only being in need of one bedroom and therefore applied the 14% reduction in their housing benefits, as provided for under Regulation B13, to take effect on 1 April 2013 – the period between the introduction of Regulation B13 in April 2013 and the April 2017 Regulations that implemented the ruling in <i>Carmichael</i> .
Main reasoning/argumentation (max. 500 chars)	In passing its judgment, the Court noted the clear distinction drawn in the Human Rights Act 1998 (the HRA) between primary and subordinate legislation in both Section 6 which relates to the requirement for public authorities to act in way which is compliant with the ECHR and Section 3 regarding obligations of interpretation. The Court further noted the precedent that, where possible, provisions of subordinate legislation that result in a breach of a ECHR right must be disregarded. The Court held therefore that an individual who is unjustifiably discriminated against is entitled to the full housing allowance they would have been entitled to had the discrimination not occurred and a decision by a Local Authority to deny such an individual of full housing allowance would be unlawful by virtue of Section 6 HRA.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Court had to decide what effect the <i>Carmichael</i> had on decisions relating to housing benefits between April 2013 and April 2017 and whether Regulation B13 in its original form should be applied.

¹³⁹ UK, *R (Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58, available at: www.bailii.org/uk/cases/UKSC/2016/58.html.

¹⁴⁰ UK, HM Government (2017), *The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017*, 1 April 2017, available at: www.legislation.gov.uk/uksi/2017/213/introduction/made.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Claimant was entitled to the full housing allowance he had been deprived of.
Key quotation in original language and translated into English with reference details (max. 500 chars)	[W]here discrimination has been found, a legislator may choose between levelling up and levelling down, but a decision-maker can only level up: if claimant A is entitled to housing benefit of £X and claimant B is only entitled to housing benefit of £X-Y, and the difference in treatment is unjustifiably discriminatory, the decision-maker must find that claimant B is also entitled to benefit of £X. ... As that great judge, Lord Bingham of Cornhill, put it in Attorney General's Reference (No 2 of 2001) [2003] UKHL 68; [2004] 2 AC 72 , 92, "I cannot accept that it can ever be proper for a court, whose purpose is to uphold, vindicate and apply the law, to act in a manner which a statute (here, section 6 of the Human Rights Act 1998) declares to be unlawful".

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide the most relevant high court decision concerning the application of either the Racial Equality Directive, the Framework Decision on racism and xenophobia, or relevant to addressing racism, xenophobia and other forms of intolerance more generally.
Decision date	5 June 2019
Reference details	R v Bitton (David) [2019] EWCA Crim 1372
Key facts of the case (max. 500 chars)	In May 2016, the month leading up to referendum on leaving the European Union, the appellant had published 86 messages on his public Twitter account that contained offensive and inappropriate terms and which expressed pro-Brexit, Islamophobic, anti-immigration, Anti-Semitic and racist sentiments. Examples of such tweets are as follows: "That's right. When we blow up 50 mosques you will soon get in your smelly houses and shut your curry breath mouth."; "Stay in the EU. Will get a lot of Muslims killed; we hate them."; and "Mass Murder the Muslims at Dover." The appellant pleaded guilty to six offences publishing written material that was threatening, abusive or insulting with intent to stir up racial hatred and was sentenced to four years imprisonment. The sentence included a reduction at the maximum credit for having pled guilty at the earliest opportunity, meaning that the sentence of six years identified by the sentencing judge as the appropriate sentence was reduced to four.
Main reasoning/argumentation (max. 500 chars)	Counsel for the appellant argued that the sentence of four years' imprisonment was manifestly excessive because, inter alia, the circumstances of the offences did not merit a starting point of six years, the sentence did not adequately take his personal mitigation into account and cited cases involved identical offences and indicated a lower level of sentence as being appropriate. The Court of Appeal, in line with previous case law, identified the following factors as being relevant considerations when sentencing offences of publishing written material that are threatening, abusive or insulting with intent to stir up racial hatred: (i) the nature of the publication and the intent behind it; (ii) the need to deter others; (iii) the number of people who saw the material; and. (iv) the consequences of them having seen it.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sentencing considerations for offences of publishing written material that are threatening, abusive or insulting with intent to stir up racial hatred.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The case resulted in a reduction of a four year sentence for the appellant to a two year sentence (having identified the six year starting point as excessive). Although this appeal led to the reduction of the custodial sentence of the appellant, it has contributed to the growing body of case law that acts as an indicator for the appropriate type of sentence for this type of offense and shows that a lengthy custodial sentence remains important as, inter alia, a need to deter others from such actions.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“The tweets that the appellant published were of an utterly vile nature. No right thinking person could consider them to be anything other than abhorrent. The publication of this kind of material is corrosive to our society and highly damaging ... We have, however, concluded that the length of sentence after a trial that the Recorder identified as being appropriate was simply too long. Appalling though the tweets were, such a sentence is out of line with the cases to which we have referred ... Whilst his outpourings on Twitter are properly to be condemned as utterly reprehensible, the sentence passed by the Recorder is simply too long when examined in the context of the other cases to which we have referred.”

Thematic area	ROMA INTEGRATION Please provide the most relevant high court decision addressing violations of fundamental rights of Roma in the context of education, employment, health, housing, etc. In particular, focus on cases where discrimination or segregation (not limited to segregation in education or housing) are addressed.
Decision date	17 May 2019
Reference details	London Borough of Bromley (Claimant) v Persons Unknown (Defendants) The High Court of Justice – Queen's Bench Division Intervenor: London Gypsies and Travellers Neutral Citation Number: [2019] EWHC 1675 (QB)
Key facts of the case (max. 500 chars)	The London Borough of Bromley sought an injunction banning unauthorized camps and occupation and/or deposit of waste on land owned or managed by Bromley London Borough Council under the Town and Country Planning Act 1990. It argued that injunctions banning unauthorised camps from public land granted to other local councils had had a displacement effect and GRT communities had moved to Bromley from other boroughs. This led the claimant to seek a similar injunction, recognising a de facto boroughwide exclusion, save that GRT communities could still go onto private land, cemeteries and highways which were not subject to the order. London Gypsies and Travellers were allowed to intervene in the case.
Main reasoning/argumentation (max. 500 chars)	The Court observed that GRT communities were protected as a minority under the Equality Act 2010 and that their right to respect for a person's private and family life, home and correspondence was guaranteed under the Human Rights Act 1998. Interference with such right must be done in accordance with the law, in the pursuit of a legitimate aim and must be necessary in a democratic society, i.e. proportionate to the aim pursued. The Court acknowledged the fact that unauthorized camps had caused harm to the Council and to residents and therefore considered that the injunction sought pursued a legitimate aim. However, it considered that, by indirectly targeting GRT communities, the injunction blurred the distinction between the small minority of GRT communities engaged in criminal activities and the others. Further, the Court observed that the claimant had not carried out

	any impact assessment on GRT communities, who did not have any other lawful alternative such as transit sites, nor had it considered the best interest of the children who would be affected by the injunction. Thus, the injunction sought was not proportionate to the legitimate aim pursued.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Injunctions to ban unauthorized camps must be proportionate to the legitimate aim pursued and their cumulative effect must be taken into account when assessing the impact of such injunctions on the right of GRT communities to pursue their traditional nomadic way of life.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Local councils cannot seek injunctions to ban unauthorized camps without carrying out an impact assessment on GRT communities and taking into account the best interest of the children who might be affected. The case was appealed by the claimant. The appeal will be heard on 3 December 2019. The appeal was dismissed by the Court of Appeal since “the judge considered all of the relevant factors when undertaking her proportionality exercise. She did not have regard to anything irrelevant. She came to a conclusion which she was entitled to reach.” ¹⁴¹ The Court also set out guidance for local councils seeking similar injunctions: they should provide evidence that other suitable alternative housing or transit sites are available; and they should assess the impact of the injunction sought by engaging with GRT communities, taking into account the needs, vulnerability and lifestyle of the community. ¹⁴²
Key quotation in original language and translated into English with reference details (max. 500 chars)	10. Whilst these injunctions, taken purely individually, were no doubt entirely properly granted on the evidence and submissions before the court, given the scale on which injunctions are now being sought by local authorities and have apparently been granted, their cumulative effect does now merit consideration. 11. If the effect of each injunction is to cause difficulties instead for the next borough, which in turn achieves an injunction because of the difficulties it then has, there is the potential, in time, for all or most of the green spaces and public car parks in England and Wales to become subject to injunctions. 17. [...] I am told that there are no authorised transit sites available for nomadic Gypsies and Travellers anywhere in London, including Bromley, which then raises the question of where they are to go. 53. [...] It seems to me that the cumulative effect of the injunctions being granted does give rise to a need to revisit the relevance of the fact that difficulties are going to be caused for other local authorities as a factor in relation to whether to grant an injunction.

Thematic area	INFORMATION SOCIETY, DATA PROTECTION Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter
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¹⁴¹ UK, Court of Appeal (2020), *Bromley v Persons Unknown*, [2020] EWCA Civ 12, Case No: A2/2019/1328, 21 January 2020, available at: <https://t.co/qngwnz2O6n>

¹⁴² UK, Garden Court Chambers (2020), Landmark Court of Appeal judgment criticises the use of wide injunctions which target Gypsy and Traveller encampments, by Marc Willers QC and Tessa Buchanan, 21 January 2020, available at: <https://www.gardencourtchambers.co.uk/news/landmark-court-of-appeal-judgment-criticises-the-use-of-wide-injunctions-which-target-gypsy-and-traveller-encampments>

Decision date	15 May 2019
Reference details	<i>R (on the application of Privacy International) (Appellant) v Investigatory Powers Tribunal and others (Respondents)</i> Easter Term [2019] UKSC 22 On appeal from: [2017] EWCA Civ 1868 Available at: https://www.supremecourt.uk/cases/docs/uksc-2018-0004-judgment.pdf
Key facts of the case (max. 500 chars)	The Investigatory Powers Tribunal is a specialist tribunal established under the Regulation of Investigatory Powers Act 2000. One of its principal functions was to determine proceedings against the intelligence services in respect of breaches of human rights and complaints about the interception of communications, in a way which enabled these claims to be examined judicially without the risk of disclosure of secret matters. In May 2016, Privacy International filed a claim for judicial review in the UK High Court, challenging a decision by the Investigatory Powers Tribunal sanctioning the UK Government's use of general warrants to hack inside and outside the UK. In February 2017, the High Court held that decisions of the IPT were not amenable to judicial review. In November 2017, the Court of Appeal upheld the decision of the High Court. In May 2019, Privacy International won their appeal to the UK Supreme Court.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court had to determine: <ol style="list-style-type: none"> 1. whether the High Court had jurisdiction to quash a judgement of the Investigatory Powers Tribunal for error of law; 2. whether Parliament may by statute 'oust' the supervisory jurisdiction of the High Court to quash the decision of an inferior court or of a tribunal of limited statutory jurisdiction. <p>With respect to the first issue, the Supreme Court did not accept the argument that the IPT's decisions could not be reviewed for security purposes. It found that the tribunal itself was able to organise its procedures to ensure that a material point of law could be considered separately without threatening any security interests. Further, the potential for overlap with legal issues which may be considered by ordinary courts was of such importance that IPT could not be allowed to develop their own 'local law' without scope for further review. The law applied by a specialist tribunal could not develop in isolation; it must conform to the general law of the land.</p> <p>Further, with respect to the second issue, the Supreme Court found that the 'special status of the IPT may be a reason for restricting the grant of permission for judicial review, but not for excluding it altogether'. This was because, in virtue of the constitutional principle of the rule of law, it was ultimately for the courts, not the legislature, to determine the limits set by the rule of law to the power to exclude review.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The High Court has jurisdiction to review decisions of the Investigatory Powers Tribunals. Parliament may not 'oust' the supervisory jurisdiction of the High Court to quash the decision of an inferior court or of a tribunal of limited statutory jurisdiction.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Important IPT decisions on surveillance and intelligence agencies can be challenged.
Key quotation in original language and translated into English with reference details	126. The special status of the IPT (like that of the Upper Tribunal) may be a reason for restricting the grant of permission for judicial review, but not for excluding it altogether. 131. The critical step taken by this court in <i>Cart</i> was to confirm, what was

(max. 500 chars)	<p>perhaps implicit in some of the earlier cases, that it is ultimately for the courts, not the legislature, to determine the limits set by the rule of law to the power to exclude review.</p> <p>132. This proposition should be seen as based, not on such elusive concepts as jurisdiction (wide or narrow), ultra vires, or nullity, but rather as a natural application of the constitutional principle of the rule of law (as affirmed by section 1 of the 2005 Act), and as an essential counterpart to the power of Parliament to make law. The constitutional roles both of Parliament, as the maker of the law, and of the High Court, and ultimately of the appellate courts, as the guardians and interpreters of that law, are thus respected.</p> <p>139. [...] the law applied by the specialist tribunal is not developed in isolation ('a local law'), but conforms to the general law of the land. [...] It applies with particular force in the present context where there is a significant overlap between jurisdictions of the IPT and of the ordinary courts. The present case is a good example. The legal issue decided by the IPT is not only one of general public importance, but also has possible implications for legal rights and remedies going beyond the scope of the IPT's remit. Consistent application of the rule of law requires such an issue to be susceptible in appropriate cases to review by ordinary courts.</p> <p>144. In conclusion on the second issue, although it is not necessary to decide the point, I see a strong case for holding that, consistently with the rule of law, binding effect cannot be given to a clause which purports wholly to exclude the supervisory jurisdiction of the High Court to review a decision of an inferior court or tribunal, whether for excess or abuse of jurisdiction, or error of law. In all cases, regardless of the words used, it should remain ultimately a matter for the court to determine the extent to which such a clause should be upheld, having regard to its purpose and statutory context, and the nature and importance of the legal issue in question; and to determine the level of scrutiny required by the rule of law.</p>
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Thematic area	RIGHTS OF THE CHILD
	Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter.
Decision date	29 July 2019
Reference details	<i>RXG v Ministry of Justice</i> [2019] EWHC 2026 (QB), available at: www.bailii.org/ew/cases/EWHC/QB/2019/2026.html .
Key facts of the case (max. 500 chars)	In 2015, the Claimant, RXG, pleaded guilty to two offences of inciting terrorism overseas that took place in March 2015 when he was 14 years old; the murder of police officers at an ANZAC Parade and the beheading of another person. Neither attack however took place. He was handed down a life sentence with a minimum term of 5 years and reporting restrictions were imposed to prevent him from being identified during the trial. Those restrictions were then extended by the trial to prevent RXG's identity from being made public whilst he was under the age of 18. In 2017, he was diagnosed with high functioning autism. In 2018, in advance of his 18th birthday, he sought a contra mundum injunction to continue the reporting restrictions indefinitely.
Main reasoning/argumentation (max. 500 chars)	In English law, statutory provisions relating to the anonymity of children in criminal proceedings cease to have effect when they turn 18. Changes to the same pieces of legislation came into force in 2015 that provided lifetime anonymity to witnesses under the age of 18, no such provision was added for child defendants. Prior to 2015, a common law principle had been established that contra mundum reporting restrictions could be granted under Articles 2, 3, 8 and 10 of the ECHR. The Court held that the statutory changes in 2015 did not override this principle and that contra mundum reporting restrictions could still be granted. Regarding Articles 2 and 3

	ECHR, the court further found that RXG had not established a real and immediate risk of serious harm if his identity were to be revealed. They concluded however that, by identifying RXG on his 18th birthday he would receive significant media attention and be exposed to long-term harm to his rehabilitation in breach of his Article 8 rights and therefore fell under the category of exceptional cases that would qualify for contra mundum reporting restriction.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Changes to the law in 2015 did not prevent the extension of anonymity orders for young offenders past their 18th birthday.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	RXG was granted an extension of his anonymity order.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“We are satisfied that RXG's case is an exceptional one. The evidence does not demonstrate a threat that engages Articles 2 and/or 3. However, there is compelling evidence that identifying RXG is likely to cause him serious harm and to interfere significantly with his Article 8 rights in the manner identified above. We acknowledge that any prohibition on the identification of a defendant in criminal proceedings is a serious matter and represents a significant interference with the open justice principle. It does so in this case, notwithstanding that RXG's trial was in public and all the facts pertaining to his offending, except for his identity, were therefore in the public domain. Nevertheless, on the evidence before us, in our judgment, it is both necessary and proportionate to make such an order.”

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide the most relevant high court decisions in relation to one of the topic ad-dressed in this Chapter..
Decision date	17 September 2017
Reference details	<i>A Local Authority v JB (Capacity: Consent to Sexual Relations and Contact with Ors)</i> [2019] EWCOP 39, available at: www.bailii.org/ew/cases/EWCOP/2019/39.html .
Key facts of the case (max. 500 chars)	The respondent was a 36 year old man with autism combined with impaired cognition who lived in a supported residential placement. He was subject to a care plan which significantly limited his access to the local community, social media and the internet. These restrictions were primarily put in place in order to prevent him from being sexually inappropriate to women based on evidence that he lacked insight and ability to communicate with women he found attractive. Although he had never been convicted of a criminal offence it was felt that such interactions would be a risk to vulnerable women and exposed the respondent to a risk of interaction with the criminal justice system. The respondent felt that these restrictions interfered with his rights to a private and family life as he wanted a sexual relationship. A capacity assessment was undertaken which found the respondent had the capacity to consent to sexual relations but that he did not understand or weigh "highly pertinent factors in ensuring he engaged in lawful sexual activity".
Main reasoning/argumentation (max. 500 chars)	The applicant argued that, under Section 3 (1) of the Mental Capacity Act 2005, a person is unable to make a decision for themselves if they are unable to understand the information relevant to the decision. In applying that test for capacity to consent to sexual relations, the applicant argued that includes being able to understand that the other person engaging in the sexual activity must give their consent and being able to understand if that

	consent has been given. The respondent argued that the claimants argument was raising the bar for what is required under Section 3 (1) and that the consent of others is not relevant.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The test for capacity to consent to sexual relations under the Mental Capacity Act 2005 does not include considerations of whether the individual can understand if another person has given consent.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	N/A
Key quotation in original language and translated into English with reference details (max. 500 chars)	“Here, in JB's case, the perceived risk is to the 'safety' of those women with whom he may attempt to have sexual relations. That risk flows from the present formulation of the law (which I have confirmed) that there is no requirement within information relevant to the decision within section 3(1) of the MCA 2005 that P must specifically understand that, absent consent, attempting sexual relations with another person is likely to breach the criminal law.”

Thematic area	Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
Decision date	16 August 2019
Reference details	Mr A Britliff v Birmingham City Council Appeal No. UKEAT/0291/18/BA Employment Appeal Tribunal (EAT) 2019 WL 03870041
Key facts of the case (max. 500 chars)	The claimant was dismissed after nine years of service for a reason related to capability arising from his long term ill health. He claimed that his dismissal was unfair and discriminatory on the basis of his disability. He asserted that he was disabled as he suffered from severe sleep apnoea and anxiety and therefore met the definition of disability under Article 1 of the CRPD. Thus, he alleged that he met the definition of disability under the Equality Act 2010 and the EU Directive 2000/78, as, according to him, they must be read and understood in accordance with the CRPD. Further, the claimant relied on Miller to argue that by virtue of the European Communities (Definition of Treaties) (United Nations Convention on the Rights of Persons with Disabilities) Order 2009, the CRPD was directly enforceable in domestic courts and tribunals. In Miller, Supreme Court justices said that the 1972 Act "authorises a dynamic process by which, without further primary legislation (and, in some cases, even without any domestic legislation) EU law not only becomes a source of UK law, but actually takes precedence over all domestic sources of UK law, including statutes".
Main reasoning/argumentation (max. 500 chars)	The EAT recalled that domestic litigation may rely on provisions of EU law directly rather than as an aid. However, instruments relied upon must be sufficiently clear and precise, unconditional and unqualified so as to be directly invoked and enforced. The EAT found that the CRPD had indirect effect as the CJEU had held that the CRPD might be relied upon for the purposes of interpreting the EU Directive 2000/78. However, the language of the CRPD did not meet the

	<p>test of being sufficiently clear and precise, unconditional and unqualified so as to have direct effect.</p> <p>Further, the EAT found that Miller was not authority for the proposition that the 1972 Act gave all provisions of EU Treaties direct effect in UK law. Rights arising under such treaties must be given direct effect by the appropriate mechanisms.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Employment Appeal Tribunal (EAT) upheld a tribunal's finding that the European Communities (Definition of Treaties) (United Nations Convention on the Rights of Persons with Disabilities) Order 2009 did not have direct effect, nor did it incorporate the Convention on the Rights of Persons with Disabilities into UK law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claimant could not rely on the provisions of the CRPD for the purposes of his claims based on unfair dismissal and disability discrimination.
Key quotation in original language and translated into English with reference details (max. 500 chars)	<p>It is common ground between the parties that for the purposes of an Equality Act 2010 claim the 2006 United Nations Convention on the Rights of Persons with Disabilities has indirect effect.</p> <p>16. Thus the UN Convention may be used by the claimant as an interpretive aid to construction but it is not, as submitted by the claimant, a source of substantive domestic legal rights. There are no 'free standing' rights under the UN Convention. The CRDP Order 2009 is not of direct effect. It does not incorporate the UN Convention into UK law. The CRDP Order 2009 does not provide the claimant with a route to claim for disability discrimination outside of the EqA 2010."</p> <p>33. It is well-established, and has never been disputed by the Respondent, that, in any field in which there is applicable EU law, UK Courts and Tribunals have an interpretative obligation, that is, an obligation to construe and apply domestic legislation so far as possible in a manner that gives effect to EU law.</p> <p>35. The concept of direct effect postulates a distinct doctrine, namely that a party to domestic litigation may be able, in some cases, to rely on a provision of EU law not merely as an aid to interpretation of the domestic statute, but directly. But EU law places limits on this doctrine. In particular, the instrument relied upon must be sufficiently clear and precise, unconditional and unqualified, so as to be capable of being directly invoked and enforced.</p> <p>46. In my judgment, the language of the CRPD, in particular of the Articles I have cited earlier in this decision, does not meet the test of being sufficiently clear and precise, unconditional and unqualified so as to be amenable to the doctrine of direct effect.</p> <p>53. [...] the general nature and character of the CRPD, is such that it is intended to lay down general principles, and is not apt, in any of its provisions, to have direct effect.</p> <p>59. There is nothing in Miller to suggest a revisiting of the long-established understanding of the doctrines of direct and indirect effect.</p> <p>61. The Claimant's argument depends, I think, on a fundamental misreading of section 2(1). It does not, as he seems to contend, in and of itself, give all provisions of all EU Treaties, direct effect in UK law; rather, it requires the rights, etc., created by or arising under them (whatever they, in the given case, may be), to be given effect by the appropriate mechanisms.</p>

