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# Strengthening and advancing equality and human rights in Wales

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## Strengthening and advancing equality and human rights in Wales

### Research report

Authors: Simon Hoffman, Sarah Nason, Rosie Beacock, Ele Hicks (with contribution by Rhian Croke)

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Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government.

For further information please contact:

Steven Macey

Communities Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Email: [SocialJusticeResearch@gov.wales](mailto:SocialJusticeResearch@gov.wales)

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Table 2: Recommendations and who they are aimed at

## Glossary

AJTC	Administrative Justice and Tribunals Council
BAME	Black, Asian and Minority Ethnic communities
CAJTW	Committee on Administrative Justice and Tribunals in Wales
CCfW	Children’s Commissioner for Wales
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CoJ	Commission on Justice in Wales
CRC	Convention on the Rights of the Child
CRIA	Child Rights Impact Assessment
CRPD	Convention on the Rights of Persons with Disabilities (we use the acronym CRDP to recognise that this convention is now commonly referred to as the Convention on the Rights of Disabled People)
CRDP	See above
CYPEC	Children, Young People and Education Committee
DIHR	Danish Institute for Human Rights
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
EHRE	Equality and Human Rights Exchange
EIA	Equality Impact Assessment
EU	European Union
EYST	Ethnic Youth Support Team
FGC	Future Generations Commissioner
GER	Gender Equality Review
GER/WG	GER Well-being and Equality Working Group

HRC	Human Rights Committee
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIA	Integrated Impact Assessment
LGBTQ+	Lesbian, gay, bisexual, transgender and queer people and other identities
MoJ	Ministry of Justice
MS	Member of the Senedd
NAN	National Advice Network Wales
NAW	National Assembly for Wales
n.d.	No date
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OECD	Organisation for Economic Cooperation and Development
OPC	Older People's Commissioner for Wales
PLP	Public Law Project
PSB	Public Services Boards
PSED	Public Sector Equality Duty
PSOW	Public Services Ombudsman Wales
RAN	Regional Advice Network
RPB	Regional Partnership Board
SHRC	Scottish Human Rights Commission
UN	United Nations
UNCRC	United Nations Committee on the Rights of the Child
UNGA	United Nations General Assembly
UNSDG	United Nations Sustainable Development Group
UK	United Kingdom
UKAJI	UK Administrative Justice Institute
WSED	Wales Specific Equality Duties

*UK/Welsh legislation*

ALNA 2018	Additional Learning Needs and Educational Tribunal (Wales) Act 2018
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EA 2006	Equality Act 2006
EA 2010	Equality Act 2010
GoWA 2006	Government of Wales Act 2006
HRA 1998	Human Rights Act 1998
LASPO 2012	Legal Aid, Sentencing and Punishment of Offenders Act 2012
RCYPM 2011	Rights of Children and young Persons (Wales) Measure 2011
SSWA 2014	Social Services and Well-being (Wales) Act 2014
VAWDASVA 2015	Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015
WFGA 2015	Well-being of Future Generations (Wales) Act 2015

## 1. Introduction

1.1. In November 2018 the then Leader of the House and Chief Whip (Julie James MS) stated that the Welsh Government would commission research to examine how to strengthen and advance equality and human rights in Wales. A workshop with stakeholders in February 2019 concluded that a distinctively Welsh approach is needed to deliver a just and equal society, where people are able to exercise their rights. This workshop identified the need to better understand how existing Welsh statutory frameworks protect equality and human rights, and for research to examine options to strengthen guidance, improve monitoring, and provide for meaningful enforcement. In January 2020 the Welsh Government commissioned research to examine options to strengthen and advance equality and human rights in Wales.

1.2. Since the outset of devolution, the Welsh Government has taken an approach to equality and human rights which differs from that of the UK Government. In addition to the distinctively Welsh legislative and policy landscape, the research is set in the context of a number of developments with potential to impact on equality and human rights in Wales. In particular:

- The Welsh Government commenced the socio-economic duty under Part 1, section 1 of the Equality Act 2010 (EA 2010) on 31 March 2021. This applies to strategic decisions by Welsh Ministers and relevant public authorities.
- In 2018, the Welsh Government commissioned a Gender Equality Review (GER) to explore how Welsh Ministers might ensure gender equality (Chwarae Teg 2018 and 2019). The recommendations from the GER have been accepted by the Welsh Government.
- As part of the GER, in 2019, a Well-being and Equality Working Group (GER/WG) made recommendations to strengthen the regulatory framework on equality in Wales (Parken 2019).
- In 2018, the Equality and Human Rights Commission's (EHRC) 'Is Wales Fairer?' report recommended a review of Wales Specific Equality Duties (WSEDs) to address the key challenges for equality in Wales (EHRC 2018a).
- As of 31<sup>st</sup> January 2020, the UK left the European Union (EU). This has potential to diminish the protection of equality and human rights provided by EU law.

- The UK Government is reviewing the Human Rights Act 1998 (HRA 1998) which may result in a weakening of human rights protections in the UK and Wales.
- The Covid-19 pandemic has highlighted a number of weaknesses in equality and human rights protections.

## **2. Concepts: Equality, human rights and well-being**

2.1. Equality and human rights, but also well-being, are key pillars of public policy in Wales. While there are connections, these concepts are not the same. This section briefly introduces each concept, and some of the connections between them.

### *Equality*

2.2. Equality of opportunity begins from the premise that governments should take action to 'level the playing field' so that everyone has equal access to goods, services, benefits etc. An equity approach recognises that existing inequalities prevent some people from gaining access to resources or opportunities, and provides groups and individuals who share certain characteristics with access to resources etc. through positive action (Parken 2018, 2019). Positive action requires public bodies to give due consideration to how they can exercise their functions to advance and promote equality of opportunity as a core objective (ibid; Hepple Report 1990; O'Conneide 2005).

### *Human Rights*

2.3. Human rights are rights guaranteed to everyone in the UK, including under 'core' United Nations (UN) human rights treaties as well as the European Convention on Human Rights (ECHR). Core UN treaties include:

- International Covenant on Civil and Political Rights (ICCPR).
- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Convention on the Elimination of all Forms of Racial Discrimination (CERD).
- Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).
- Convention on the Rights of the Child (CRC).

- Convention on the Rights of Persons with Disabilities: we use the acronym CRDP to recognise that this convention is now commonly referred to as the 'Convention on the Rights of Disabled People'.

2.4. These treaties provide a range of human rights for individuals and groups, including entitlements to resources and services, which should be available without discrimination. It is recognised that some groups may be subject to particular forms of discrimination and special protection is made for their human rights, for example, CEDAW, CERD, the CRC, and the CRDP.

2.5. Human rights have been described as a 'solemn commitment' and the 'first priority' of all governments (Vienna Declaration and Programme of Action 1993). Governments (at all levels) are required to perform human rights obligations 'in good faith' (Article 26, Vienna Convention on the Law of Treaties 1969), and to respect, protect and fulfil rights.

- To **respect rights** means government should not breach human rights.
- To **protect rights** means government should protect individuals from having their rights breached by third parties, including businesses or corporations.
- To **fulfil rights** means government should ensure resources, services etc. so that individuals are able to take advantage of their rights.

2.6. Human rights are an opportunity to introduce standards to public policy to frame action by public authorities. Detailed guidance on how human rights should be put into effect is available from UN Treaty Bodies as 'General Comments' or 'General Recommendations', as well as country based recommendations referred to as 'Concluding Observations'. This guidance is a useful reference for public policy and may be accessed via the website of the Office of the High Commissioner for Human Rights (OHCHR):

<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

2.7. Socio-economic rights set out in the ICESCR, and included in other treaties such as the CRC, CRDP and CEDAW are significant as they align with devolved competences, for example, in the fields of health, social care, education, or housing. Human rights in these areas afford protections against socio-economic disadvantage

and are relevant to the implementation of social policy and the socio-economic duty in Wales.

### *Well-being*

2.8. Well-being may be approached in different ways. At the individual, social, and community level it may be understood as ‘how people feel and how they function, both on a personal and a social level, and how they evaluate their lives as a whole’ (New Economics Foundation 2012: 6). Well-being as the basis of public policy provides an opportunity for people-centred policy (OECD 2013; Helliwell *et al* (eds) 2016). However, well-being may also focus on the ‘self’, and has been criticised as having potential to divert attention away from the obligation on government to make provision for general well-being (Ehrenrich 2009; White 2017).

### *Making connections: Equality, human rights and well-being*

2.9. Non-discrimination is a principle of international human rights (for example, Article 2, ICCPR and Article 2, ICESCR). The link between (in)equality and human rights is well-established as ‘inequality is both a cause and result of failures in human rights protection’ (JustFair 2018: 8). Human rights treaties recognise discrimination and disadvantage experienced by different social groups, for example, women (CEDAW), disabled people (CRDP), and groups disadvantaged by racial discrimination (CERD), and numerous articles in various treaties reference equality. Despite these connections, equality and human rights are often dealt with as discrete aspects of public policy, with limited attention being given to how they may be integrated (JustFair 2018).

2.10. The UN resolution, ‘Transforming our world: the 2030 Agenda for Sustainable Development’ (UNGA 2015) declares a vision of a world where:

‘physical, mental and social well-being are assured’ and of ‘universal respect for human rights...equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity’ (ibid: 3).

The 2030 Agenda describes a relationship between equality, human rights and well-being based around the 2030 sustainable development goals. The 2030 Agenda is

about targets, timelines, human rights, and State responsibilities, with a focus on human well-being, supported by economic, social, and environmental objectives. More than 90 per cent of the sustainable development goals are embedded in human rights treaties; and, failure to embed human rights in policy-making means that the goals cannot be met (DIHR 2018). The UN Committee on Economic Social and Cultural Rights (CESCR), has confirmed the relationship between sustainable development and socio-economic human rights, which it describes as a 'fundamental pillar' of the 2030 Agenda and sustainable development (UN CESCR 2019: para. 4). Human rights therefore provide a framework for sustainable development with a focus on equality and non-discrimination (DIHR 2018; Hoffman 2019a).

### **3. Methodology**

3.1. The research was led by Swansea University and Bangor University, in collaboration with Diverse Cymru and Young Wales. An advisory group provided specialist input to support the research. A mixed-methods approach was used to ensure a broad range of data from different sources. The key themes for examination with stakeholders (professional and people with lived experience) were determined by the research aim and research objectives established by the Welsh Government.

#### *Research aim*

3.2. The aim of the research is to develop a clear understanding of the existing legislation and statutory guidance frameworks relating to equality and human rights in Wales, and determine if, and to what extent, changes to existing legislation/statutory guidance, and/or the introduction of new legislation/statutory guidance, is required to strengthen and advance equality and human rights (Welsh Government 2019a)

#### *Research objectives*

3.3. The research objectives were:

- To develop a clear understanding of existing legislation and statutory guidance frameworks to determine if and to what extent these are relevant to the protection and promotion of equality and human rights in Wales.
- To explore whether there is evidence that making changes to existing legislation and statutory guidance frameworks would serve to strengthen and advance equality and human rights in Wales.
- To explore whether there is evidence that introducing new legislation and powers, including the incorporation of further UN conventions into Welsh law and/or the possibility of a Welsh Human Rights Act, would serve to strengthen and advance equality and human rights in Wales.
- To assess whether any new legislation and powers would serve to undermine and/or add further complexity to the existing legislative framework in Wales.

- To compare and contrast the options of making changes to existing legislation and statutory guidance frameworks with introducing new legislation and powers, in terms of strengthening and advancing equality and human rights in Wales.
- To make evidence-based recommendations detailing how to strengthen and advance equality and human rights in Wales.

#### *Literature review*

3.4. We carried out a literature review focused on primary source materials (legislation, policy, guidance etc) and secondary materials (academic literature, reports, commentaries etc), as well as grey literature (reports by non-governmental organisations, national human rights institutions etc.). This was limited to publications in English. We applied our own knowledge to identify sources for initial examination and included recommendations from Welsh Government officials supporting the research, as well as from our Advisory Group. The literature review was enlarged through keyword searches of online databases and using references in source materials, and through recommendations from interested stakeholders. This review continued through all stages of the research.

3.5. The initial literature review provided a number of key themes for examination with stakeholders, these were: the role and importance of legislation to prioritise equality and human rights in public policy; the need for processes to be introduced to give effect to equality and human rights through public policy and action; accountability and enforcement; and, the importance of raising awareness of equality and human rights to build support in the public domain. These themes were taken into account in developing the research questions to be addressed with research participants.

3.6. Initially it was planned to conduct ‘in-person’ interviews and other engagement events, however these had to be revised to ‘online’ methods because of the Covid-19 pandemic.

#### *Evidence from professional stakeholders*

3.7. This strand of the research was carried out jointly by Swansea University and Bangor University using the following methods:

- **Online survey:** a bilingual (Welsh and English, Appendix 1) survey was sent using SurveyMonkey to professional stakeholders working or researching in the fields of equalities and/or human rights in Wales, via networks identified through discussion with the Advisory Group and Welsh Government officials. A link to a survey using a mix of open-ended and closed questions was distributed via network coordinators. The survey was anonymous, and responses aggregated for the purpose of analysis. A total of 117 respondents completed the survey (not all respondents answered all questions). The data was analysed making use of the SurveyMonkey online data management tool.
- **Interviews with professional stakeholders:** interviews were carried out with professional stakeholders to provide qualitative insights to enrich the data (interview questions are at Appendix 2). Interviewees were identified through discussion with the Advisory Group and Welsh Government officials. Interviews were carried out between April 2020 and November 2020, with the option of an interview in Welsh or English. We interviewed 23 professional stakeholders from the public, non-governmental, and academic sectors (one interviewee providing a written response). Interview transcripts were sent to interviewees for comment. We applied a process of reflexive coding to the transcripts taking the research objectives as guiding themes. (See Appendix 3 for interviewees by organisation.)
- **Workshops with professional stakeholders:** to supplement the interview data online workshops were held with professional stakeholders (the workshop questions are at Appendix 2). Workshop participants were identified through discussion with the Advisory Group and Welsh Government officials. Workshops were held between April 2020 and November 2020, including a Welsh language workshop. A total of 33 professional stakeholders took part in the workshops from the public, non-governmental, legal professional and academic sectors. Notes were taken of each workshop and sent to participants for comment. (See Appendix 4 for workshop participants by organisation.)

3.8. Ethical approval for research carried out by Swansea University and Bangor University was given by the Swansea University Hillary Rodham Clinton School of Law Ethics Committee.

### *Forum meetings*

3.9. The research team was sent the minutes of online meetings held by standing forums convened by the Welsh Government on race, disability, older people, and faith (forums discussed the questions asked at the workshops, see Appendix 2).

### *Evidence from children and young people*

3.10. In August and September 2020, Young Wales carried out two online focus groups with young people aged between 14 and 19. The purpose of the focus groups was to engage young people in an in-depth conversation on the research objectives. A total of 30 participants took part in the focus groups. Young Wales has prepared a report on the focus group findings (Richards and Waites 2020), available from: [s.hoffman@swansea.ac.uk](mailto:s.hoffman@swansea.ac.uk).

3.11. This strand of the research was conducted by Young Wales adopting the National Participation Standards and good practice, and subject to Children in Wales safeguarding policy, and consent to participate was sought from each participant. Young Wales did not collect any personal data from children and young people for the purposes of this research.

### *Evidence from people with lived experience*

3.12. This strand of the research was undertaken by Diverse Cymru. A total of 43 people attended Diverse Cymru online engagement events between September 2020 and October 2020. In addition, Diverse Cymru carried out 3 telephone interviews and a bilingual online survey (Welsh and English) which received 19 responses. Diverse Cymru also carried out 4 interviews with organisations representing groups that were under-represented in the other engagement events: Trans and non-binary people; Lesbian, Gay, and Bisexual people; Gypsies and Travellers; and women who had experienced domestic abuse. Diverse Cymru carried out additional research with people with diverse characteristics beyond the scope of the current research, and has prepared a report on the findings (Diverse Cymru 2021). This is available from: [research@diverse.cymru](mailto:research@diverse.cymru).

3.13. The research methods, questions and proposals for engagement and monitoring were designed taking account of Diverse Cymru's safeguarding, data protection, involvement, and equality and diversity policies.

*Note on the timing of the research*

3.14. The research with participants took place in 2020, and was completed by the end of November 2020. Since the evidence was collected the Welsh Government has introduced updated statutory guidance on the socio-economic duty in March 2021. This guidance is discussed at 6.31 - 6.32: because of the date of introduction, it is not dealt with in the evidence from research participants.

3.15. The evidence from research participants on Covid-19 (discussed below, 'Findings: Covid-19') reflects the position in November 2020. The Welsh Government's response to the Covid-19 pandemic has been ongoing and it should be noted that as the public policy situation is dynamic and evolving, the evidence in this report should be read alongside other, more recent evidence, to provide additional insights into how the Welsh Government's response to the pandemic has been perceived by stakeholders.

*How we present our findings*

3.16. The data from all research methods was analysed to identify common concerns and issues consistently raised across all participants, as well as any areas of disagreement.

3.17. After the next sub-section 'Note on recommendations' the report discusses the findings from our literature review and our fieldwork with research participants, our conclusions and recommendations. The research findings are discussed under 8 main headings, these are:

- Legislation.
- Human rights incorporation.
- The implementation gap.
- Impact assessment.
- Monitoring.
- Accountability and enforcement.

- Raising awareness.
- Covid-19.

*Note on recommendations*

3.18. Our recommendations draw on the totality of the evidence, focusing on the data and insights under each of 8 main headings (above). We have chosen to provide detailed recommendations which include steps to be taken to ensure that each recommendation is effectively implemented.

3.19. At the end of the discussion under each of the 8 main headings we indicate which of our recommendations is most relevant to the issues under discussion. Also, Table 1 shows how the recommendations are grouped, and how these groupings related to the substantive evidence sections throughout the report. It is important to note, that when developing our recommendations, we took account of all findings, from all sections of our report. Our research findings and conclusions should be viewed holistically to inform thinking on how to strengthen and advance equality and human rights in Wales: they are interdependent and inter-related.

3.20. In carrying out our research we identified not only the Welsh Government, but also public authorities, the EHRC, Welsh Commissioners and some regulators and inspectorates as having a contribution to make toward advancing equality and human rights. We have acknowledged this by directing some of our recommendations to those bodies. Table 2 shows which recommendations are directed at which body.

## 4. Findings: Legislation

### *Context*

4.1. Statute, regulations, statutory and non-statutory guidance have been introduced in Wales that frame equality and human rights, and well-being. The Government of Wales Act 2006 (GoWA 2006) requires Welsh Ministers to make arrangements 'with a view to securing' that they exercise their functions with 'due regard' to the principle that there should be equality of opportunity for all people (section 77). The GoWA 2006 gives Welsh Ministers a general power to promote or improve the economic well-being of Wales, the social well-being of Wales, and the environmental well-being of Wales (section 60). This legislation also prohibits Welsh Ministers from exercising their functions in a way which is incompatible with the ECHR or the UK's international obligations (which include human rights obligations) (sections 80 and 81). Similarly, the Senedd has no competence to act in a manner which is incompatible with the ECHR or the UK's international obligations (sections 108A and 114, and schedule 7A, GoWA 2006). The HRA 1998 (Section 6) prohibits the Senedd, Welsh Ministers, and public authorities in Wales acting in a manner which is incompatible with rights guaranteed by the ECHR.

4.2. Section 149 of the EA 2010 sets out the Public Sector Equality Duty (PSED) which requires an authority listed under Schedule 19 of the legislation to have 'due regard' to the need to eliminate discrimination, harassment, and victimisation; to advance equality of opportunity; and, to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or, sexual orientation (sections 4-12, EA 2010). Welsh Ministers and other listed public authorities in Wales are required to comply with the PSED.

4.3. The WSEDs impose specific equality duties on Welsh listed authorities to 'enable better performance' of the PSED (Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (No.1064 W.155), introduced by Welsh Ministers under section 153, EA 2010). The WSEDs require listed public authorities to set equality objectives, to prepare a Strategic Equality Plan, to engage with people with protected

characteristics when setting objectives, and to assess the impact of policies and practices on their ability to comply with the general PSED duty, i.e. an Equality Impact Assessment (EIA).

4.4. Part 1, section 1 of the EA 2010 sets out a 'socio-economic duty'. This requires a relevant authority (i.e. a listed authority), when making strategic decisions to have 'due regard' to the desirability of exercising their functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. This came into effect in Wales on 31 March 2021 (Welsh Government 2020a).

4.5. The Welsh Government and the Senedd are able to direct and influence equality and human rights practices through legislation and policy. However, these powers are asymmetrical. Schedule 7A of the GoWA 2006 largely reserves legislation on 'equal opportunities' to the UK Parliament (section N1). In contrast, schedule 7A confirms that the Senedd has competence to 'observe and implement' international human rights in devolved areas, which gives scope to embed human rights through primary legislation (para. 10).

4.6. In 2011, the National Assembly Wales (NAW) (as it then was) passed the Rights of Children and Young Persons (Wales) Measure (RCYPM 2011). This requires Welsh Ministers to have 'due regard' to the CRC (and specified articles of its 1<sup>st</sup> and 2<sup>nd</sup> Optional Protocols) when exercising their functions (section 1). The Senedd has enacted the Social Services and Well-being (Wales) Act 2014 (SSWA 2014) which requires relevant persons to have 'due regard' to CRC and CRDP when exercising functions under the legislation; and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNA 2018) which requires relevant authorities to have 'due regard' to the CRC and CRDP when exercising functions under that legislation.

4.7. The Well-being of Future Generations (Wales) Act 2015 (WFGA 2015) establishes seven well-being goals: a prosperous Wales; a resilient Wales; a more equal Wales; a healthier Wales; a Wales of cohesive communities; a Wales of vibrant culture and thriving Welsh language; and, a globally responsible Wales

(section 4). The concept of well-being in the WFGA 2015 draws from the use of well-being in the GoWA 2006 (including community and social well-being). Under the WFGA 2015 certain public bodies in Wales, including Welsh Ministers are required to carry out sustainable development. As part of carrying out sustainable development they must set well-being objectives which are designed to maximise their contribution to the achievement of the well-being goals, and to take all reasonable steps to achieve those objectives (section 3, WFGA 2015). The WFGA 2015 establishes Public Services Boards (PSBs) which are required to assess the well-being of a local area and set well-being objectives to contribute to the well-being goals (Part 2).

4.8. Under the WFGA 2015, relevant public bodies (including Welsh Ministers), and all PSBs must set well-being objectives in order to carry out sustainable development, which is defined as the process of ‘improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle’ (sections 2 and 3). The sustainable development principle means acting in a manner which ‘seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs’ (section 5). Welsh Ministers, public bodies and PSBs are otherwise free to determine their own well-being objectives.

4.9. The concept of well-being is also used in the SSWA 2014. Any person or authority which exercises functions under the legislation is required to promote the well-being of individuals or carers who need care and support (section 5). Section 2 of the SSWA 2014 states that in relation to a person, well-being includes ‘securing rights and entitlements’. Statutory guidance under the WFGA 2015 differentiates between the well-being of Wales as dealt with in that legislation, and the well-being of individuals under the SSWA 2014 (Welsh Government 2016a).

4.10. The WFGA 2015 does not include human rights amongst the well-being goals for Wales. While the setting of well-being goals has potential to support human rights, PSB and relevant authorities will need to identify and make connections with, for example, the 2030 Agenda in order to promote individual well-being to ‘realise the

rights of those left behind by poverty, social exclusion and marginalisation' (UN CESCR 2019: para. 6).

4.11. It has been noted as part of the GER that Welsh legislation on equality, human rights, and well-being has come about piecemeal with little alignment between the legislative frameworks (Parken 2019). Well-being and equality are often organisationally siloed in the work of public authorities, which is compounded as different authorities are under different duties depending on context, as well as geographical and demographic footprint: the WFGA 2015 applies to 44 public bodies and 19 PSBs; 73 authorities are subject to the WSEDs, but no additional requirements are placed on PSBs; there is also misalignment of timescales for planning and reporting on equality and well-being duties (Parken 2019; CoJ 2019a).

#### *Evidence from stakeholders: Legislation*

4.12. In our online survey with professional stakeholders, 64 per cent, i.e. 75 of 117 respondents, thought legislation, policy and guidance to be 'somewhat effective' at establishing clear responsibilities for action on equality and human rights, 10 per cent (12 respondents) thought it 'very effective', and 6 per cent (7 respondents) thought it 'not at all effective'. In response to a question about what could be done to clarify who is responsible for taking action, 78 per cent, i.e. 90 of 115 respondents, agreed that this could be achieved through legislation, and 81 per cent, i.e. 92 of 113 respondents, agreed that it could be achieved through guidance. Our online survey asked to what extent does current legislation, policy and guidance establish clear priorities for action by public authorities, including Welsh Ministers, on equality and human rights. On equality, 52 per cent, i.e. 58 of 111 respondents, thought that priorities were either 'quite clear' or 'very clear', with 41 per cent (45 respondents) considering priorities either 'not very' or 'not at all' clear, the other respondents did not know or were not sure. In relation to human rights, 44 per cent, i.e. 49 of 112 respondents, thought that priorities were either 'quite clear' or 'very clear', and 49 per cent (55 respondents) thought that priorities were either 'not very' or 'not at all' clear, the other respondents did not know or were not sure. On links between equality, human rights and well-being, 40 per cent, i.e. 46 of 116 survey respondents, agreed that it is clear what well-being means in public policy in Wales. However, respondents were less certain on the relationship between equality, human rights,

and well-being. Of 117 respondents, 27 per cent (32 respondents) agreed that the link between equality and well-being is clear in public policy, 35 per cent (41 respondents) disagreed and 38 per cent (44 respondents) neither agreed nor disagreed. 73 per cent, 85 of the 117 respondents thought that ensuring equality objectives are met is key to meeting well-being objectives. Of 116 respondents, 28 per cent (32 respondents) agreed that the link between human rights and well-being is clear in public policy, 37 per cent (43 respondents) disagreed and 35 per cent (41 respondents) neither agreed nor disagreed. Of 116 respondents, 78 per cent, i.e. 90 respondents, thought that ensuring human rights objectives are met is key to meeting well-being objectives. A number of survey respondents commented on the relationship between equality and well-being in the Welsh policy context. Comments included:

‘The linkage between well-being and equality is not being made strongly enough. It still feels that the two areas are viewed separately and not jointly.’

4.13. The evidence received from interviewees raises concerns about the lack of alignment of processes on equality and human rights, and well-being. For example:

‘So the Well-being Act is dealt with separately and by separate officials from the Equality and Human Rights legislation...Obviously different sets of guidance which don’t cross-refer. And different...processes which don’t link up, different reporting systems and timescales.’ (IV3)

4.14. This evidence suggests that current legislation, policy and guidance lack clarity about who is responsible for taking action on equality and human rights, making it difficult for duty bearers to understand their obligations. Comments included:

‘I think there’s quite a lot of overlap in terms of legislation...Equalities Act, Human Rights Act and then the other kinds of things...certain kinds of human rights and due regard in social services legislation. There’s such a plethora of rights and legal requirements at different levels, I don’t always think it’s clear

how that framework comes together to protect individuals' human rights.' (IV15).

'I think in terms of the priorities at the moment I think the key challenge is a very complex area of work at the moment, there's lots of pieces of legislation ...So I think in terms of the makeup of everything I think it's quite difficult to kind of navigate...you know it's a very complex field and that would make it very difficult then for those where there's a specific duty to implement, to do more than simply tick box and just carry out their day-to-day functions and make a real difference.' (IV4)

4.15. While interviewees generally acknowledged the importance of existing legislative frameworks, some commented on the need to better understand the relationship between different legislation. For example:

'I suppose it is also fair to say that there is still a lack of synergy in some respects. So we have a lot of elements, and all of these elements clearly have value, it is just a question of how they combine together. So we have the general duty, we have specific Welsh duties, we of course have human rights frameworks. We now have the socio-economic duty coming in, we have the well-being framework underpinning all of this. So the elements are there and the bodies are there, it's just a question of how...the synergy is worked out.' (IV20).

4.16. A number of interviewees raised concerns about how the concepts of equality, human rights, and well-being inter-relate and the lack of alignment in legislation. For example:

'I struggle to see the connection between the three strands of work\* and I think that's the complexity of the framework we've currently got or the lack of a framework in relation to human rights in particular...(the WFGA 2015 is) clearly not aligned to equality legislation and particularly human rights legislation.' (IV4)

\*referring to equality, human rights, and well-being

4.17. One interviewee commented that 'rights' relate to basic necessities, whilst 'well-being is something that 'you just think about when you have the luxury to think about it' (IV12). Other comments in similar vein included:

'The way the national well-being agenda is tied in the minds of a lot of people with human rights and equality, I don't know where that came from but for me it's clearly two different agendas. Of course, in practice they overlap, if we live a life where people's rights are violated, the next generation is likely to suffer as well. Of course there is a connection there but in the end they aim for completely different goals. One is very long term, the other is, there are people out there with rights being violated today that needs to be dealt with today.' (IV22)

4.18. The issue of a 'fragmented', 'disparate' and 'multi-layered' legislation and guidance was raised by interviewees but also in workshops. Workshop participants and interviewees commented on problems caused by inconsistent understandings, and about who is responsible for action on equality and human rights. The evidence received from professional stakeholders across different survey methods suggests that there is a problem of a fragmented approach where some organisations are placed under a duty by legislation and/or guidance and others are not. A particular issue raised by some interviewees is the lack of comprehensive 'all-encompassing duties'. For example:

'other key challenges really relate to inconsistency of embedding of equalities legislation across different pieces of Welsh law...we clearly have a piecemeal approach to that where we have duties of due regard in aspects of Welsh law, which covers some parts of services that children receive but not others. So we don't have a kind of all-encompassing duties beyond the Equality Act, in terms of human rights and equality.' (IV16)

4.19. There were also concerns about the different approaches to well-being in the SSWA 2014 and the WFGA 2015, as well as the 'missed opportunity' to bring the equality, human rights, and well-being agendas together. For example:

‘All legislation should have a connection to each other and the Future Generations Act missed that opportunity for continuity and support of the equality and human rights legislation. For example, it is well known that if an individual has been discriminated against, there will be an impact on their mental health and well-being. This is not recognised in legislation/guidance and is often missed in terms of the practice of the legislation... . It is disappointing that there was no joining up of the well-being agenda with equality and human rights.’ (IV13)

4.20. Another issue raised by interviewees, workshop participants and forum members, is that Welsh legislation is ‘too weak’, and that it fails to protect ‘rights’ through lack of enforcement, in particular in relation to well-being. A consistent view amongst these research participants is that well-being legislation ‘lacks teeth’ and that there is not enough understanding, including within the Welsh Government, that well-being may be ill-suited to individual enforcement through courts, tribunals or complaint mechanisms. On the other hand, enforcement is seen as essential to the proper protection of equality and human rights (see ‘Accountability and Enforcement’ below).

4.21. The evidence from professional stakeholders shows a clear concern that if the WFGA 2015 and well-being is prioritised this could be to the detriment of enforcement of equality and human rights. This comment was made in response to the online survey of professional stakeholders:

‘Despite the WFGA 2015 Commissioner emphasising its complementary nature, there is also a worry that the WFGA 2015 just adds to a “duty burden” and may diminish rather than strengthen equality and human rights in practice – greater cohesion is needed.’

4.22. Comments from the workshops included that well-being and the WFGA 2015 has ‘stolen a march on public awareness to the detriment of equality and human rights legislation and duties’ and that ‘it feels like a hierarchy where the WFGA 2015 is winning’. These concerns are echoed by interviewees, For example:

‘it’s been unhelpful, since the Future Generations Act was brought into being, you know, it’s been upheld by Welsh Government as its flagship legislation and it appeared to be the answer to everything.’ (IV3)

4.23. In terms of what could be done to improve legislative frameworks, we received a number of comments from online survey respondents (professional stakeholders), these included:

‘Develop a framework that encapsulates them all\* and identifies commonalities, differences and links. Share resources and responsibilities between key bodies responsible for the three areas.’

\*referring to equality, human rights, and well-being

‘A more joined up approach that visibly links these elements\* would go a long way to giving a clear message about the priority of equality and human rights. The issue of linkage cannot be underestimated.’

\*referring to equality, human rights, and well-being

4.24. Evidence from the interviews suggests support for improving guidance, as well as streamlining and/or consolidating existing legislation to improve clarity. Guidance is discussed in the section, (‘The implementation gap’). There were however some concerns about introducing new legislation. For example:

‘there’s part of me that questions whether it’s legislation that’s needed...it’s whether actually there needs to be more powers and resource given to support people to exercise their rights, rather than more rights, because on one level I worry there’d be a danger that we’d rush to legislate in a space where rights already exist and people aren’t exercising them, and we just get a whole new layer of rights that aren’t exercised.’ (IV5)

4.25. However, reticence about introducing new legislation seemed to be connected to scepticism about the effectiveness of existing legislation, and there was clear support for an overarching framework to build on and clarify existing duties, For example:

'I think the way forward now is really to look at what is our legislation in Wales and how do we pull it all into one umbrella so that people understand it much more clearly?' (IV14)

'There's still a bit of confusion between devolved and non-devolved duties and responsibilities...But a more global duty or a more global act would help that, surely.' (IV16)

'I can see it's important to bring all the protected rights for instance under the same umbrella and ensure the same protection as we currently have, what, under the Human Rights Act, the Equality Act, and to a certain extent the Well-being of Future Generations Wales Act, you know, that it could all be brought together in some sort of fundamental Rights Wales Act should the devolved powers permit that. But it's ensuring effective enforcement that is surely the most important thing.' (IV21)

4.26. Evidence from the workshops supports a view that existing duties should be clarified and streamlined, and that there should be an overarching framework which could extend to primary 'composite legislation'. Overall, the evidence received from professional stakeholders suggests that whatever approach is taken to streamlining and strengthening legislation and/or guidance, this should recognise that the concepts of equality and human rights cannot be reduced to the concept of well-being. As one interviewee commented:

'I think there's certainly a case for alignment of existing legislation...However having said that I would see human rights sitting on the very top of the tree and I think that that's one of the challenges we've got at the moment...Because I think well-being can fall out of human rights but it's more challenging the other way around.' (IV4)

4.27. Evidence from the Welsh Government forums was also that the term well-being should not be used 'as if it embraces human rights', and that the WFGA 2015 does not protect human rights in Wales. While some interviewees commented that human rights should underpin well-being (for example IV4 above), this was not a

universal view from the interviews, with some considering that human rights and well-being introduce different objectives and that attempting to bring them together could be detrimental, especially to human rights, and could exacerbate complexity. Evidence from the workshops suggests that there is potential for confusion over 'what comes first', human rights or well-being goals, emphasising the need to address any confusion to avoid lasting impacts on local service planning and delivery.

4.28. A different perspective is introduced by the evidence from young people. Participants in the Young Wales focus groups commented that the challenge is not so much that of establishing policy direction or statutory frameworks, but rather to ensure that those frameworks support implementation by putting in place effective accountability, inspection and monitoring structures, which engage children and young people. These issues are address in later sections of this report.

4.29. The evidence from those with lived experience suggests a 'low awareness' of relevant equality and human rights legislation and guidance, and especially who is protected, what rights people have, and how those rights work. This evidence demonstrates a wide-range of experiences of how equality and human rights legislation has, or has not made a difference. Some participants felt legislation had made a lot of difference, by providing a safety net or a way for them to ensure that they receive the services and treatment they are entitled to. Others felt that legislation had made a bit of a difference, or little or no difference, drawing attention to a culture of not respecting diverse people in society and commenting on weak legislation which fails to include all communities, and a lack of recognition of intersectional experiences.

4.30. People with lived experience suggested groups in need of more protection and recognition in legal frameworks as: carers, parents, survivors of domestic abuse, Gypsies, Roma and Travellers, refugees and asylum seekers, non-binary people (in definitions of gender identity), and, intersex people, and people from lower socio-economic groups. They also argued for stronger recognition of the social model of disability in legislation in Wales.

4.31. People with lived experience also felt there should be clearer and stronger links between the WFGA 2015 and equality and human rights, and that this should lead to implementation that strengthens equality and human rights and brings them 'back into focus'.

#### *Synthesis: Legislation*

4.32. The legislation reviewed, and the evidence received, strongly suggest the need to make clear the links between equality, human rights, and well-being in public policy, as well as to strengthen the prioritisation of equality and human rights. What emerges from the evidence is a desire that legislation and guidance should bring together the priorities for equality, human rights, and well-being, and to do so in a way which provides a 'joined-up' framework for public policy. Whilst it needs to be acknowledged that there was some reticence about new legislation, it is also the case that adding to, or amending existing legislation and guidance is seen as an opportunity to introduce coherence and consistency to the public policy framework in Wales.

4.33. In addition to the need for clarity about the relationship between equality, human rights, and well-being in Wales, the evidence received confirms a desire for human rights to be strengthened and prioritised within the national legal framework. We make a number of recommendations to address these issues, in particular under: 'Legislation and leadership', 'Guidance' and 'Process alignment' (see Table 1 below).

## **5. Findings: Human rights incorporation**

### *Context*

5.1. There have been calls for more incorporation of international human rights treaties in Welsh law. Housing organisations have called for incorporation of the right to adequate housing (Article 11, ICESCR), so that it is enforceable against authorities exercising functions under the Housing (Wales) Act 2014 (Tai Pawb *et al* 2019). Disability Wales is calling for the CRDP to be incorporated (Disability Wales

2020) and WEN Wales has called for CEDAW to be incorporated into Welsh Law, noting that:

‘Without incorporation, human rights can be treated by governments as an aspirational standard, rather than a part of the national legal framework.’  
(WEN Wales 2020a: 2)

5.2. The GER/WG concluded that incorporation of human rights conventions on disability, ethnicity, and gender could contribute to ‘visioning for public policy through setting minimum standards’ and to policy-making goals and stronger enforcement of human rights (Parken 2019: 13). Human rights have been suggested as having the potential to encourage public bodies to set more ambitious targets for action on equality than at present, and to provide firm goals for action on well-being (WEN Wales 2020a; Disability Wales 2020; Parken 2019; Hoffman 2019a, 2019b, 2019c, 2019d).

5.3. A classification has emerged from research focussed on human rights incorporation in different countries which refers to incorporation as direct, indirect or sectoral (Lundy *et al*, 2012; Kilkelly 2019; Hoffman and Stern 2020).

- **Direct incorporation:** a human rights treaty is made part of domestic law so that individuals can rely on human rights before a domestic court (Boyle 2018; Daly *et al* 2018). An example of direct incorporation in the UK is the HRA 1998 which makes rights under the ECHR enforceable by UK courts (sections 7-9, HRA 1998).
- **Indirect incorporation:** legislation will require a public authority to take account of specified human rights when exercising public functions (Lundy 2012; Kilkelly 2019; Hoffman and Stern 2020). There are three examples of indirect incorporation in Welsh law: the RCYPM 2011; the SSWA 2014; and, the ALNA 2018. These enactments require Welsh Ministers and other public bodies to have ‘due regard’ to specified human rights in prescribed circumstances. This approach to incorporation does not provide for direct enforcement of human rights (Kilkelly 2019; Hoffman and Stern 2020). Any legal challenge is via judicial review on the grounds that a decision-maker has failed to have ‘due regard’. This is a weak form of legal accountability (*ibid*; Daly *et al* 2018; Hoffman and Williams 2013).

- **Sectoral incorporation:** rights set out in a human rights treaty may be referred to in domestic legislation in specific policy areas, such as education or housing (Lundy et al 2012; Kilkelly 2019; Hoffman 2020). There are two examples of sectoral incorporation in Welsh law: the SSWA 2014; and, the ALNA 2018.

5.4. Welsh Law has established a distinctive legal human rights framework (CoJ 2019a, 2019b), making use of the ‘due regard’ formula to indirectly incorporate the CRC, the CRDP and the UN Principles on Older People in Welsh law in different sectors. To the extent that human rights promote equality and non-discrimination, as well as equality outcomes in discrete areas, indirect incorporation of the CRC, CRDP and the UN Principles in Welsh law promotes equality in policy decision-making in Wales.

5.5. A number of studies have established that where international human rights are incorporated as part of national law this contributes to advancing human rights in different ways. These studies reflect on incorporation in different countries, and on different modes of incorporation. The benefits of incorporation generally have been identified as: raising awareness of human rights at a government level and amongst the public more widely; focusing attention on, and influencing processes to give effect to human rights in policy development; and, in some jurisdictions, providing the intended beneficiaries of human rights with a route to a remedy for violations of their rights via domestic enforcement mechanisms (Lundy *et al* 2012; Boyle 2018; Daly *et al* 2018; Hoffman and Stern 2020).

5.6. Research carried out for the EHRC Wales in 2018 confirms the positive impact of indirect incorporation of the CRC in Wales under the RCYPM 2011 (Hoffman and O’Neill 2018). The research found that indirect incorporation of the CRC has resulted in: stronger awareness and recognition of children’s rights in policy development; the introduction of processes which support children’s rights (including a Child Rights Impact Assessment (CRIA)); more opportunities for policy advocacy; stronger accountability for children’s rights in the civil and political spheres; and, (some) improved policy output (*ibid*). These findings are consistent with other research which confirms the benefits of incorporation generally to help

develop a 'culture' of attention to human rights at government level (Kilkelly 2019; Daly *et al* 2018).

5.7. While the EHRC Wales research concluded that incorporation of the CRC had been a positive step forward for children's rights in Wales, it also concluded that the 'due regard' approach had done little to enhance legal accountability for children's rights (Hoffman and O'Neill 2018). Although the duty to have 'due regard' to the CRC has increased the potential for judicial review of Ministerial decisions which impact on children, it has not strengthened the position of individual children whose rights are violated (Hoffman and Williams 2013; Hoffman 2019e).

*Evidence from stakeholders: Human rights incorporation*

5.8. Overall, online survey respondents (professional stakeholders) were in favour of more incorporation of human rights in Wales: 63 per cent, i.e. 73 of 115 respondents agreed that Wales should incorporate more international human rights treaties, while 13 per cent (15 respondents) disagreed and 23 per cent (27 respondents) did not know. Survey respondents provided reasons for more incorporation, these included: ensuring rights are taken seriously; stronger recognition in policy; the signal incorporation sends about the importance of human rights in Wales; and, to protect rights lost as the UK leaves the EU. Comments included:

'Without incorporation of treaties into law it is hard to enforce human rights.'

'To enable redress, to provide a stronger human rights framework and protections.'

'To ensure human rights are always prioritised in the business of government.'

5.9. The evidence received from interviewees similarly suggests support for more incorporation, although some interviewees expressed doubts:

'I don't know that it's worth going through the legislative process for Wales, whether it would have any more impact is my cynical view.' (IV10)

And another who was reluctant to support more legislation:

'I think the frameworks are there. They need guidance and clarification in some respects.' (IV20)

5.10. Interviewees who were supportive of more incorporation referred to specific UN conventions, including the CRDP and CEDAW. For example:

'our primary goal is to see incorporation of the (CRDP) in Welsh law. And ideally as part of the Welsh Human Rights Act. I mean, I'm not a legal expert, ...I feel that there is scope for Welsh Government to, you know, explore its powers about having its own legislation. But also, I mean, I think what it could do is it could look at the mechanisms within Wales for implementation and enforcement.' (IV3)

5.11. Similarly, there was support for incorporation from participants in the Welsh Government forums. This is from the Disability and Equality Forum:

'The CRDP should be incorporated into domestic law. (name redacted) noted that all domestic UK governments signed up to the convention in principle, but needs to be enshrined into domestic law to ensure it's enacted.'

5.12. Some interviewees supportive of incorporation provided their reasons, for example, on incorporation of CEDAW:

'First of all it would raise awareness of CEDAW and women's rights in Wales, also it would give better protection to women because they could then use CEDAW in domestic law to defend their rights which at the moment they can't do, and the other thing that we think, why it's so important is it embeds women's rights for the longer term, so if it's part of our national framework then even with a change of government we still have those rights enshrined for the longer term, so we see incorporation as really important because if we don't incorporate CEDAW it doesn't actually have any legal recourse kind of legal strength, it's just there as a kind of, 'oh isn't this nice?'' (IV7)

5.13. Another interviewee drew attention to the potential of human rights to contribute to policy objectives in Wales:

‘incorporation of human rights in Wales would underpin progress towards the Well-being of Future Generations Act well-being goals by establishing clear priorities for local planning to inform well-being objectives.’ (IV2)

5.14. Interviewees also commented on the need to address gaps in current protection of human rights, and the need to make human rights enforceable. For example:

‘it could all be brought together in some sort of fundamental Rights Wales Act should the devolved powers permit that. But it’s ensuring effective enforcement that is surely the most important thing...(The HRA 1998) it’s probably the paradigm legislation, it really is a very good piece of legislation, it’s provided rights which can be effectively enforced before the Courts, and they have done now for what, the past 20 years or so.’ (IV21)

And:

‘Yeah, I think you know, for me it would be only as good as the redress mechanisms that went alongside those things, you know, in terms of kind of going back to the kind of implementation again and oversight and scrutiny and evidence that those things are being actually made real for people.’ (IV15)

5.15. There was also support for incorporation in the workshops. This extract is from one of the workshop notes:

‘The aspiration at least must be for a devolved Welsh HRA. Incrementally getting there through incorporation of UN conventions into discrete aspects of Welsh law and also discrete conventions on older people, children etc. Advocate for a more systemic and holistic approach to embedding UN conventions into domestic law and making those rights enforceable in Wales.’

5.16. The evidence from the workshops raised a concern that incorporation should not be selective, as this runs the risk of creating the ‘impression that rights concerning other areas are not required to be incorporated’. This concern was also raised by interviewees.

5.17. Some interviewees expressed support for incorporation to ensure that human rights in Wales are protected against regression, for example:

‘one of the key reasons as well for incorporation now, is it will ensure that we keep some of those (referring to rights lost as a result of leaving the European Union), some of the legislation that has been created by Europe...’ (IV7)

‘as we’re exiting the European Union, we need to ensure obviously that the things that we had, in terms of legislation coming from the European Union of different institutions that people had access to in the European Union, these need to be preserved. We need to not lose anything. So perhaps,...I would think that there is a need to actually, you know, bring human rights to Welsh legislation.’ (IV19)

5.18. The evidence from the forums also confirms concerns about the possible loss of protections as a result of the UK’s exit from the EU.

5.19. While the different approaches to incorporation were not discussed in detail, there was some suggestion that Wales needs to advance from the current indirect approach to incorporation (see above references to ‘enforcement’), focussing on children’s rights. For example:

‘I would definitely see the clear way forward to, just to have direct incorporation of the CRC into Welsh legislation so that we don’t have to argue for the applicability of children’s rights in every single piece of legislation that comes through that’s got any relevance to children. You know, so I think that clarity would be really brought about and that should be a priority for that.’ (IV16)

5.20. There was some scepticism amongst interviewees about the effectiveness of indirect incorporation, for example (IV16) above, and from another interviewee:

‘due regard, had its place, I think we do need to move forward because we’ve seen even just over the last few months under Covid has been lots of bigger issues in England but less so in Wales, but still there’s been weaknesses in our framework and it’s very difficult for people to you know, individuals, children or organisations on behalf of children and famil(ies) to go through court proceedings then to challenge the government. So our compliance framework is limited so yes I’d agree that we need to look at how we build in legal accountability to the process.’ (IV4)

5.21. The weakness of due regard was also recognised in the forum on Ageing, the forum minutes note:

‘The concept of Due Regard is interesting. There may be partial incorporation, for example, officials have to consider human rights but don’t have to say how they are implementing or complying with them. There are issues sometimes around transparency of decision making.’

5.22. The research with people with lived experience of equality and human rights shows support for human rights to be incorporated into Welsh law, and for this to include incorporation of the CRDP, CEDAW, CERD, and the UN Principles on Older People. There was also support for human rights protection to be extended to LGBTQ+ protections, as well as to reflect EU human rights obligations. The evidence from people with lived experience confirms a desire for the Welsh Government to explore introducing primary legislation around equality in Wales in order to extend legal protections to carers, survivors of domestic abuse, Gypsies, Roma and Travellers, refugees and asylum seekers.

#### *Synthesis: Human rights incorporation*

5.23. There is clear support for further human rights incorporation in Wales. The current ‘due regard’ model of indirect incorporation is perceived as weak when it comes to legal accountability for human rights. The evidence demonstrates support

for more incorporation of international human rights treaties in Welsh law and for this to be direct incorporation, so that rights may be enforced. This would require departure from the 'due regard' approach to an approach similar to the HRA 1998. However, 'due regard' has a number of strengths (discussed above), not least that it is emerging as the Welsh approach to incorporation, and is familiar to public authorities and non-governmental stakeholders as the approach taken in the RCYPM 2011, SSWBA 2014, the ALNA 2018, as well as in the EA 2010 (PSED and SED), and the WSEDs. The 'due regard' duty has potential to support mainstreaming human rights in policy development.

5.24. Consideration should be given to departing from existing models of incorporation to a position where the benefits of different forms of incorporation are brought together in a Welsh Human Rights Act. This is what is suggested by a number of housing organisations who argue for incorporation of the international right to adequate housing in Welsh law (Tai Pawb *et al* 2019).

5.25. The evidence received from research participants also raises the question of how to select human rights to be incorporated. A number of contributors commented on the existing selective incorporation of human rights as denying protection to some groups. Human rights treaties which might be incorporated, for example, CRDP, CEDAW, include rights in areas that currently fall outside the scope of devolved competence (for example, asylum, welfare benefits, policing, armed forces, labour relations). If Wales were to move toward direct incorporation of these treaties (and possibly others such as the ICESCR), consideration would need to be given as to which rights should be redacted to ensure that the rights incorporated are within legislative competence in Wales. A similar issue has arisen in Scotland where the Scottish Government is seeking to incorporate international human rights into Scots law. An advisory group recommended an Act of the Scottish Parliament to draw down rights from UN human rights treaties ratified by the UK into Scots law, subject to the limitation that the rights concerned should be exercised only within those areas that fall within the responsibility of the Scottish Parliament (First Minister's Advisory Group 2018: Recommendation 1). The Advisory Group further recommended a process of 'public engagement and awareness raising to enable the public to take ownership of the rights to be included within the Act' (ibid: 36/37). To

meet these recommendations the Scottish Government established a National Taskforce. We see this approach as a way forward in Wales (see 'Conclusions' and recommendations 1 and 25 below.)

## **6. Findings: The implementation gap**

### *Context*

6.1. It is well-established in the literature that there is a persistent 'implementation gap' between the aspirations of equality and human rights legislation and policy in Wales, and the lived reality for individuals, social groups and communities (EHRC 2018a, 2018b; Barrance 2018; Alston 2018; Audit Wales 2020; Oxfam Cymru 2021). Austerity and welfare reform, as well as poverty and socio-economic inequality in Wales, are significant issues in themselves, but also as factors which exacerbate and reinforce long-standing patterns of discrimination and disadvantage affecting in particular women, Black, Asian and Minority Ethnic communities, disabled people, older people and children (EHRC 2018a). The literature highlights a lack of resources as having a negative impact on the capacity of public authorities in Wales to deliver on equality and human rights objectives set out in legislation (EHRC 2018a; Nason *et al* 2020a; Audit Wales 2020).

6.2. As the problem of the implementation gap is comprehensively covered in the existing literature the present research does not examine this issue but instead focuses on how to improve implementation and outcomes. The evidence received provides a number of insights into how the problem of the implementation gap might be addressed. After discussion of the evidence from research participants, this section reflects on different mechanisms to implement equality and human rights (identified from the literature and by participants): mainstreaming equality and human rights; involving people; and guidance (impact assessment is discussed separately, see 'Impact Assessment').

### *Evidence from stakeholders: The implementation gap*

6.3. Our online survey with professional stakeholders asked respondents about key challenges for equality and human rights in Wales. 70 per cent, i.e. 81 of 116

respondents, agreed that these include a lack of resources to support implementation; 76 per cent, i.e. 89 of 117 respondents, agreed on the need to strengthen leadership on equality and human rights; and, 81 per cent, i.e. 94 of 116 respondents, agreed that a key challenge is how to involve the public in decisions.

6.4. Research participants with lived experience reported that they had experienced inequality and gave examples, including barriers to accessing appropriate healthcare; mental health services; social care; housing; justice; education or training; employment; welfare benefits; and public spaces. They had also experienced hate crime incidents; digital exclusion; and feeling excluded and discriminated against in all areas of life. Few participants felt they had the information and support to be able to challenge public bodies when they had experienced inequality.

6.5. Evidence received from interviewees confirms weak implementation of equality and human rights. While individual interviewees tended to reflect concerns arising in their own sphere of work, the evidence overall suggests a disconnect between policy and practice, for example:

‘There’s something going on, you know, there’s a disconnect between policy and practice.’ (IV12)

‘Implementation I think, mainly. And the gap between good intention and implementation which hasn’t been addressed yet.’ (IV18)

‘At the kind of broadest level, the big, the biggest gap is translating all of the rhetoric into reality and, you know, Wales has got a fantastic policy commitment and framework to support equality and human rights, you know, there’s so much, there’s the Children’s Measure, there’s the Future Generations Act, there’s, you know, the new commitment to the socio-economic duty, but there’s a huge implementation gap. So, yeah, there’s just not enough focus on implementation and scrutiny of what public bodies are actually doing.’ (IV1)

6.6. Weak implementation was raised as a concern during the workshops and in the forums. Forum members suggested that this may be due in part to a lack of embedding of outcomes for equality and human rights in policies and strategies. Interviewees commented on the importance of prioritising outcomes to address the implementation gap:

‘it’s who’s delivering what at different levels. And I think that’s where we have a gap, going back to that earlier point on implementation. We have a real gap in understanding of how to fit all this together to really make a difference to outcomes and until we prioritise what we’re delivering to and for Wales, I think that implementation gap’s going to continue. And inequalities and human rights issues will continue to be deepened.’ (IV18)

6.7. Touching on issues discussed in the previous section (‘Legislation’), interviewees commented on a lack of accountability and the lack of clarity about responsibility for implementation, for example:

‘we find there is a gap in the practice of implementation (...) when it comes to implementing those policies, it’s very unclear what happens there and who to hold accountable.’ (IV 12)

6.8. The evidence from people with lived experience identifies the need for senior staff in public organisations, boards, and elected members to take responsibility for ensuring they are maximising contributions to advancing equality and good relations for all communities in Wales, and communicate this strong and active commitment internally and externally.’

6.9. People with lived experience called for all public sector organisations with over 250 employees, to be required to have at least one full-time equality and human rights officer at a senior level in addition to a coproduction officer, and for smaller public sector organisations to be required to show how a staff member leads on and takes responsibility for equality and human rights.

6.10. The issue of leadership on equality and human rights was an issue raised by workshop participants and interviewees as a key challenge for equality and human rights, specifically that leadership in these areas is not as strong as it could be, for example:

‘I do passionately believe that what comes from the top matters and I think there’s probably not enough leadership across public bodies as a whole who are willing and prepared to say, “Actually, equality and human rights actually are at the heart of everything that we do,” and too often it’s a kind of, “Well, yes, we do that over there and we do that as checking that we haven’t been too dreadful.’ (IV9)

6.11. At one of the workshops it was suggested that having ‘human rights champions in organisations’ could assist in making equality and human rights delivery a reality, for example:

‘Laws set frameworks, but behaviour does not change unless adopted and integrated into organisations. It is something to invest and buy in to through champion roles in organisations to ensure proper integration rather than a set of instructions from above.’

6.12. Evidence from the workshops suggests the need for individuals and organisations to ‘take charge and ownership of the agenda’ and that this might require ‘quite a cultural shift’. And this from our online survey with professional stakeholders, making a similar point:

‘There needs to be more clarity around who is responsible for compliance related issues in an organisation. It should not be left to Equality Managers et al but with leaders in an organisation.’

6.13. While the evidence received confirms that strengthening leadership should be a priority for equality and human rights in Wales, it also emphasises that leadership needs to be informed by people with lived experience or ‘experts by experience’ and that ‘co-production is the way to go’ (workshops). This evidence shows that people

felt they are not listened to by public sector organisations, and that this exacerbates inequality. Those with lived experience felt that consultation is often too late and does not enable new ideas and solutions to be designed by communities themselves. They emphasised the need to involve communities directly, ‘ensuring the full diversity of Wales are actively involved’ with flexible approaches to engagement ‘focusing on people’s lived experiences’, and recommended that coproduction should be outlined in guidance and should be a requirement when public authorities are ‘developing and implementing all legislation, policies, strategies, budgets, programmes, action plans, services, and impact assessment in all public sector organisations, departments and policy areas in Wales.’ It was also recommended that those involved in coproduction should be offered training and information so they can take a full part in designing and delivering policy and services.

6.14. Overall, the evidence received suggests that clearer guidance, focusing on more specific examples as opposed to general principles, could make a more effective contribution implementation. Comments from interviewees included:

‘I do think that the recent exercise by the (EHRC) in Wales, where they looked at the implementation of the (PSED) and how, what divergence existed in the public sector has highlighted that a lot more specific guidance is needed to make this happen in a coordinated way. Because that has shown that, if I remember correctly, the vast majority of bodies were deemed not to be quite complying with the duty in its spirit and its letter. And not necessarily through lack of will, just through divergence of interpretation.’ (IV20)

‘the codes of practice are not clear enough coming out of Welsh Government, and they don’t actually highlight the Human Rights Act, the Equality Act and various other things so when public authorities are using that code of practice and the various other toolkits, I don’t think that there is enough information in there.’ (IV10)

‘I think perhaps there’s, there is a need for more very specific guidance rather than high level principles in some respects.’ (IV20)

‘consolidating some of the guidance and bringing it all together I think would be useful.’ (IV5)

6.15. In addition to the challenge of engaging people with lived experience, and the need for more specific guidance, resources, or the lack of resources, was identified by workshop participants and survey respondents (professional stakeholders) as a key challenge for implementation. Comments from online survey respondents included:

‘Public authorities should be supported in their efforts to bring about change through financial support and human resource provision from the Welsh Government.’

‘The key challenge for equality and human rights in Wales is Welsh Government’s continued espousing of commitments to equality and human rights while concurrently failing to underpin expressed pledges with the requisite infrastructure and resources to support them.’

6.16. The research carried out with people with lived experience identifies the need for all public sector organisations to be encouraged to invest more in equality and human rights. Research participants argued that public sector organisations should be required to invest in advancing equality and human rights in all departments, services, and areas and to evidence the outcomes of this investment.

6.17. The evidence from young people shows they are concerned about ‘tokenism’ and ‘superficiality’ and not being listened to, and only consulted after key decisions have already been made. The focus groups felt very strongly that this needed to change. We discuss participation in decision-making in the next section of this report. The evidence from the focus groups with young people is that the Welsh Government should develop Wales as a child friendly country embedding children’s and young people’s rights in order to inform policies and legislation through ‘effective regulation’ to ensure compliance and delivery.

## *Mainstreaming*

6.18. The evidence identifies the need for strong leadership to drive forward implementation of equality and human rights. The GER/WG reasoned that a ‘combined vision’ for equality, well-being and human rights could be a driver of change and better outcomes and identified equality mainstreaming as a mechanism to embed positive action on equality (Parken 2019: 10; Chwarae Teg 2019 and 2018). The EHRC (Scotland) argues that equality mainstreaming leads to equality becoming part of the structures, behaviours and culture of public authorities, and contributes to continuous improvement and better performance (EHRC 2016).

6.19. Equality mainstreaming would help ensure that policy development is evidence-based and informed by disaggregated data relevant to protected groups, including qualitative data from people with protected characteristics, and that policy is supported by resources to support action (Rees 1998; Parken and Rees 2003; EHRC 2016; Parken 2018, 2019; Chwarae Teg 2018, 2019;). The WSEDs are an opportunity to promote equality mainstreaming. A report by the EHRC Wales in 2014 concluded that the current WSEDs bring clarity to the PSED including by linking process to outcomes (EHRC 2014a). However, the GER/WG described the PSED as a ‘weak version of the concept of gender mainstreaming’ and concluded that the current WSEDs had ‘not led to ambitious objectives or plans, and subsequently (had) not produced the anticipated improvement in outcomes’, in part attributable to the use of the ‘due regard’ formulation to impose duties on relevant authorities (Parken 2019: 24 and 4).

6.20. In Scotland, the Scottish Government promotes a vision for equality action by encouraging public authorities to use the socio-economic duty (Part 1, section 1, EA 2010) to mainstream equality in all decision-making (Scottish Government 2018). The GER/WG has identified the WSEDs and the introduction of the socio-economic duty in Wales as opportunities to strengthen equality mainstreaming (Parken 2019).

6.21. Mainstreaming can also support the implementation of human rights (UNCRC 2003: para. 64; UNCRDP 2018: para.14). Processes associated with human rights mainstreaming include: promoting and coordinating human rights training, capacity-building, and using available resources for activities which promote human rights

(OHCHR 2002; UN Sustainable Development Group 2003; DIHR 2007). A human rights action plan is a contribution toward mainstreaming (ibid). Also linked to mainstreaming is a 'human rights approach' as a way of working to ensure human rights are taken into account in policy decision-making (OHCHR 2002; DIHR 2007; SHRC n.d.).

6.22. The foundation of a 'human rights approach' is that human rights standards should guide all programming in all sectors and in all phases of the programming process, and that all government programmes should further the realisation of human rights (ibid). While there is universally agreed 'human rights approach' different models have been advanced (SHRC n.d.; OHCHR 2002; UN Sustainable Development Group 2003; UNICEF 2004: annex B; DIHR 2007; OPC 2015; CCfW 2016; Care Quality Commission 2019). Key elements of a 'human rights approach' include:

- Leadership at the highest level.
- Equality and non-discrimination.
- Participation by people with an interest.
- Monitoring and evaluation of outcomes, including disaggregated data to measure progress for different groups.
- Human Rights Impact Assessment (HRIA).
- Ensuring adequate resources to develop capacity amongst officials to undertake policy on human rights.
- Ensuring that budgets are adequate to support action and deliver human rights outcomes.

(ibid)

6.23. Equality and human rights mainstreaming have common features, these are: prioritising leadership: supporting capacity; ensuring adequate resources: monitoring using disaggregated data; involving people with an interest, and a focus on outcomes. Mainstreaming is therefore an opportunity to align equality and human rights in policy development to support implementation and improve outcomes.

### *Involving people*

6.24. A key feature of mainstreaming (equality and human rights) is involving people. The WSEDs require a listed public authority to involve those who represent the interests of people with one or more of the protected characteristics when setting equality objectives (Regulation 4). Guidance on the WFGA 2015 states that public authorities and PSBs should 'involve people and communities' in decisions which change the services that affect them (Welsh Government 2016a:19). The most detailed guidance is in the Code of Practice on the SSWA 2014 which identifies the need to involve people at all stages of the design and operation of services and for 'robust arrangements' to ensure a focus on outcomes rather than processes (Welsh Government 2015: 12). The Code states that a 'co-production' approach supports and empowers people to get involved, including to take responsibility for, and contribute to, their own well-being (well-being in this context is individual well-being); and, to ensure that practitioners work in partnership with people to achieve personal outcomes at an individual and service level (ibid: 52).

6.25. While there is guidance to support public authorities to involve people, the evidence received identifies the need for more detailed information to be available on 'coproduction' and involving people. Current guidance is most detailed in relation to legislation (SSWA 2014) which prioritises individual well-being. We see the need for guidance to go further to require and support public authorities to involve people in policy development.

6.26. Guidance, statutory or non-statutory, is part of the framework which directs and influences equality and human rights. The evidence received identifies guidance as an opportunity to strengthen equality and human rights implementation. There is significant guidance on equality, human rights, and well-being available to public authorities. We have summarised what we have identified as the most significant guidance below.

### *Guidance on equality*

6.27. The EHRC has issued a number of guides on the PSED and the WSEDs. These include: technical guidance on the PSED, which explains the purpose and application of the PSED to include guidance on what it means to have 'due regard'

(EHRC 2014b); on EIA (EHRC 2014c); and, on engagement with people representative of those with different protected characteristics (EHRC 2014d). The technical guidance recognises the link between equality and human rights, but stops short of providing guidance on how these concepts may be used together in policy planning, stating:

‘Because of the close relationship between human rights and equality, it is good practice for those exercising public functions to consider equality and human rights together when drawing up equality or human rights policies.

**This guidance only addresses equality obligations.’**

(EHRC 2014b: 10; emphasis added)

6.28. The Welsh Government published advance guidance on the socio-economic duty. Guidance published in September 2020 refers to the EHRC ‘Measurement Framework for Equality and Human Rights’ (EHRC 2017) as the basis for identifying areas of socio-economic disadvantage, but does not provide any further information on how human rights are relevant or how they may be used to tackle socio-economic disadvantage (Welsh Government 2020b). Non-statutory guidance issued in February 2021 explains (briefly) the HRA 1998 (Welsh Government 2021b). This does not include specific guidance on how the socio-economic duty should be implemented to support or progress human rights. The Welsh Government has also published a scrutiny framework for the socio-economic duty (Welsh Government 2020c). This refers to the PSED but is limited to explaining that the ‘due regard’ duty which applies to the socio-economic duty should be familiar to public authorities as the standard used in the PSED.

6.29. ‘Mapping guidance’ on the socio-economic duty, the PSED and the WFGA 2015 published in January 2021 notes that many of the 46 well-being indicators used to measure progress against the WFGA 2015 well-being goals ‘measure aspects relating to a more equal Wales’ (Welsh Government 2021a: 4). This guidance discusses opportunities for alignment of common organisational processes in respect of well-being planning, the PSED, and the socio-economic duty, these are: setting objectives; considering equality in decision-making; engagement, involvement and consultation; accountability and scrutiny; and tracking and reporting

on impact (ibid). The guidance suggests that public bodies establish joint outcome-focused objectives and action plans to meet the PSED and well-being duties that focus on reducing inequalities and reflect these in corporate and annual plans (Welsh Government 2021a). It also recommends that public bodies establish the same timeline for setting PSED equality objectives and well-being objectives (ibid). The guidance suggests steps to integrate equality into implementation of the socio-economic duty, these include taking account of the EHRC 'Measurement Framework for Equality and Human Rights' to establish priorities focussed on improved outcomes (ibid). The guidance emphasises the importance of engaging and consulting with, and involving members of the community in decision-making, including through application of the EHRC guidance on the PSED and application of the National Participation Standards for Children and Young People (ibid).

6.30. While the mapping guidance directs attention to international treaties 'regarding' socio-economic rights, it does not elaborate on how these should be applied to inform implementation of the socio-economic duty (ibid: 11). In addition, the interim guidance refers public authorities to the Future Generations Framework on how to take account of well-being in establishing objectives to meet the socio-economic duty (FGC (a), n.d.). The Future Generations Framework sets the 'five ways of working' recommended by the FGC to help public bodies achieve the WFGA 2015 well-being goals (in terms: balancing short and long term needs in a sustainable way; working in an integrated way; involving people; collaborating to meet well-being objectives; and, acting to prevent problems arising or getting worse (ibid). The Future Generations Framework recommends that public bodies think about how projects support the PSED and offers some insight into the potential impact of inequality on identified well-being goals, but does not discuss how human rights might be affected (FGC (b), n.d.).

6.31. The most recent guidance on the socio-economic duty in Wales was published in March 2021 (Welsh Government 2021d). This statutory guidance speaks directly to the link between human rights and equality:

‘Equality and discrimination are inextricably linked to human rights. Socio-economic disadvantage has the potential to blight a person’s ability to access and enjoy the human rights available to them in the UK...’ (ibid 14)

6.32. This guidance makes clear that equality legislation and human rights principles will ‘support public bodies to better understand how socio-economic disadvantage interacts with people’s protected characteristics’ (ibid), the guidance focuses primarily on identifying sources of human rights (treaties) and explaining how denial of rights leads to socio-economic disadvantage. Once again, the guidance lacks direction or instruction on mechanisms (mainstreaming, HRIA, a human rights approach), which might positively contribute toward human rights as an underpinning for action to tackle socio-economic inequality.

#### *Guidance on human rights*

6.33. The Welsh Government has issued a number of explanatory ‘factsheets’ and ‘how to’ guides on the ALNA 2018 (for example Welsh Government 2018a, 2018b). However, these do not include information on procedures that might be introduced, or steps that might be taken to give effect to the human rights required to be taken into account when relevant authorities take action to implement their statutory duties under the legislation.

6.34. The SSWA 2014 Code of Practice (Welsh Government 2015), makes reference to the CRC and the UN principles, and provides readers with links to these documents. It states that where the term ‘must’ is used the guidance is a requirement (ibid: para.5). The guidance requires relevant authorities to ‘promote people’s human rights’ by having due regard to the CRC and the UN Principles (ibid: para. 347) and adds that authorities must also have due regard to the CRDP (ibid: paras 65-67). This has the effect of adding the rights set out in the CRDP to the human rights which are relevant under the SSWA 2014. The Code explains that the meaning of due regard used in section 7 of the SSWA 2014 is the same as ‘have regard’ in section 6 of the legislation and a link is provided to explanatory information on the requirements of due regard (ibid: para. 64). This is incorrect. The addition of the word ‘due’ makes a difference to the nature of the obligation, emphasising the quality of consideration which must be given to any matter which needs to be taken

into account (*R (MS) v Oldham Metropolitan Council* (2010) EWHC(Admin) 802). While the Code includes a reference to the CRC and the UN Principles when discussing EIA, it does not require relevant authorities to address the rights guaranteed by those treaties when an EIA is carried out.

6.35. Other codes of practice issued in relation to the SSWA 2014 make inconsistent reference to how human rights are relevant to different areas of social care practice and to EIA. For example, statutory guidance on safeguarding reminds relevant authorities of the due regard duties under the SSWA 2014 (Welsh Government 2016b). This guidance also directs attention to specific human rights under the ECHR as examples of rights that are engaged by the SSWA 2014 (i.e. ECHR articles 2, 3, 5, 6 and 8), but without explaining why these are selected and omitting reference to rights set out in the other human rights treaties relevant to the exercise of functions under the SSWA 2014 (ibid).

#### *Guidance on well-being*

6.36. Statutory guidance on the WFGA 2015 suggests that the focus on long-term objectives (as the basis of well-being) supports commitments made in the PSED and to children's rights (Welsh Government 2016a). The guidance does not detail how the PSEDs or human rights generally might be integrated into planning or reporting processes required by the WFGA 2015. However, guidance on the WFGA 2015 aimed at public bodies focuses on children's rights and states that public bodies are:

‘strongly encouraged to consider how you can support children and young people to realise their rights, and how they can be involved and participate, when setting your well-being objectives and how these aspects link to the well-being goals.’ (Welsh Government 2016c: 12)

6.37. This guidance also explores links between equality and well-being objective setting. Here the guidance is more specific about the mechanism (EIA) that might facilitate this alignment, as well as when reporting under the WFGA 2015, recommending that public bodies take an ‘integrated’ approach to consider how their equality objectives support achievement of their wellbeing objectives (ibid: 11) The guidance on the WFGA 2015 issued for PSBs notes the equality objectives set out in

the Welsh Government's SEP may help boards to identify actions and objectives to 'help them safeguard the rights of those with protected characteristics' (Welsh Government 2016d: 22.) However, the 'rights' focus is children's rights, referring to a distillation of children's human rights as set out in the CRC into 'Seven Core Aims' (ibid: 23) referring to: early years; education, health and freedom from abuse; play sport and leisure; participation in decision-making; a safe home and community; and, ensuring children are not disadvantaged by poverty.

*Implementation documents, plans etc.*

6.38. The Welsh Government has introduced other frameworks which might be seen as supporting equality and human rights implementation. We reviewed a large number of these during the literature review. These include the Welsh Government's Strategic Equality Plan which makes a number of strong commitments to strengthen and progress human rights, and identifies a number of priority areas of inequality which need to be addressed (Welsh Government 2020L: 4 and 40). A number of these are issues raised as deficits in equality and human rights by the EHRC in 'Is Wales Fairer' (EHRC 2018a). While the Strategic Equality Plan represents a firm commitment to connect equality and human rights through action on issues of inequality in Wales, it leaves the detail to be worked out through ongoing planning and delivery frameworks.

6.39. It would be impractical to discuss all relevant policies, strategies or action plans being worked on by the Welsh Government at this point. Instead, this part focuses on a selection of existing and 'in development' framework documents which we have identified as opportunities to prioritise equality and human rights. These include a Children's Scheme 2014 (Welsh Government 2014) setting out a CRIA as a form of HRIA, which is consistent with mainstreaming. The scheme also supports capacity building through training for officials, and accountability via a complaints mechanism (Welsh Government 2014). However, a report for EHRC Wales in 2018 noted weaknesses in the implementation of CRIA and the lack of engagement with the complaints mechanism by children or their representatives (Hoffman and O'Neill 2018). The Scheme is currently under review and could be updated to focus more firmly on human rights mainstreaming (Welsh Government 2021b).

6.40. The Welsh Government is committed to delivering a 'Race Equality Action Plan' (Welsh Government 2021c). A preparatory paper refers to the Welsh Government's Strategic Equality Plan as centralising equality and human rights in the 'vision and work' of the Welsh Government (ibid: para. 8), but it does not reference the CERD as a framework for recognition of human rights in the context of action on race equality, nor does it commit to using CERD to address the implementation gap or to achieve a shared understanding of how racism impacts Black, Asian and Minority Ethnic communities. Information provided by the Welsh Government confirms however that CERD is referenced in the draft action plan: comments on draft report, received 5<sup>th</sup> March 2021. The paper does however commit Welsh Ministers to an approach to action planning which reflects equality and human rights mainstreaming, including by: drawing on the expertise of those with lived experience to inform the plan, taking account any costs associated with the plan in its budgeting, developing indicators to measure performance, and, using relevant evidence to guide its actions.

6.41. The Welsh Government is committed to delivering an LGBTQ+ Action Plan (Welsh Government 2020d; Stonewall Cymru 2020). Priorities identified in a paper on the plan include: a focus throughout on meeting the needs of groups within the LGBTQ+ community who experience marginalisation on multiple fronts; the interests of identities such as LGBTQ+ Black, Asian and Minority Ethnic people, LGBTQ+ women and LGBTQ+ disabled people; and, addressing how entrenched and existing inequalities experienced by marginalised groups (including LGBTQ+ people) might impact on the experiences of these groups when planning recovery from COVID-19 (ibid). While the plan is yet to be published, information provided by the Welsh Government confirms that it will tackle issues of homophobic, biphobic and transphobic hate crimes in Wales, and will seek to ensure that LGBTQ+ people are fully engaged in education, and in the workplace, and that health and social care is fully inclusive (email 29<sup>th</sup> April 2021).

6.42. The Welsh Government's 'Action on Disability: the right to independent living framework and action plan' makes direct reference to the CRDP, and to the CRC and the PSED (Welsh Government 2019b). However, these references are often descriptive with limited explanation of how actions under the plan should take

account of human rights, or how human rights might be used as outcome targets. The framework commits the Welsh Government to ‘continuous improvement in how Wales fulfils its obligations with regard to the (CRDP)’, including ‘working actively’ to consider how the CRDP and other UN conventions might ‘most effectively be embedded in Welsh law’ (ibid: 29). It also notes the importance of guidance, including guidance linked to legislation, to improve understanding and raise awareness of issues and disabled people’s rights (ibid: 33).

*Synthesis: The implementation gap*

6.43. The evidence we received clearly shows that weak implementation of equality and human rights is seen as problematic, and there is a desire for stronger leadership, better resourcing, more involvement of people, and more guidance to support implementation. This section has discussed recognised mechanisms to support implementation, including by identifying priorities for action and outcomes, and involving people. In this respect, guidance and strategic planning are an opportunity to coordinate, integrate and embed, i.e. mainstream equality and human rights. They are also an opportunity to demonstrate leadership in these areas.

6.44. However, current guidance and strategies we have reviewed do not assist with understanding the relationship between these concepts, or with well-being. More problematic is that while the guidance acknowledges links between equality, human rights, and well-being it provides only very limited guidance on how public authorities might align or integrate planning and delivery across all three areas. We note a tendency to allude to, rather than require a holistic approach to embedding equality and human rights, including alongside well-being. There is also a tendency in Welsh Government guidance to refer to human rights at a general level, or to refer only to children’s rights (probably as a consequence of the RCYPM 2011) without requiring specific rights to be prioritised or explaining how these might be relevant to planning and delivery.

6.45. The Children’s Commissioner for Wales (CCfW) has produced a guide for public authorities in Wales on a ‘child rights approach’ (a subset of a ‘human rights approach’ (CCfW 2016). This sets out five principles to guide public authorities in the exercise of their planning and service delivery functions, these are: embedding

children's rights, equality and non-discrimination, empowering children, participation and accountability. The same principled approach has been adopted in a guide, again for public authorities, produced by the Older People's Commissioner for Wales (OPC) (OPC 2015). Both the OPC and CCfW have published guidance giving practical examples of how the principles may be put into practice (OPC 2015; CCfW 2016, 2017). The FGC and the CCfW used the principles to develop joint guidance on the relationship between well-being and children's rights (FGC and CCfW, n.d.). The approach to integrating human rights developed by the CCfW and OPC, and adopted by the FGC in guidance on well-being, accommodates and prioritises equality and non-discrimination and is therefore an opportunity to bring together human rights, equality, and well-being in the development and delivery of public policy.

6.46. Relevant recommendations are under: 'Involving people with an interest' and 'Guidance' (see Table 1 below). The next section discusses another mechanism identified in the literature as key to successful implementation of equality and human rights, i.e. impact assessment.

## **7. Findings: Impact assessment**

### *Context*

7.1. Impact assessment is an established feature of policy development in Wales, and emerged as a key issue for discussion amongst research participants. As an aspect of mainstreaming, EIA and HRIA are key mechanisms to support the implementation of equality and human rights (Harrison and Goler 2008; SHRC 2010; Harrison 2011; EHRC 2014c; Chwarae Teg 2018, 2019; DIHR 2016; Parken 2018, 2019; Hoffman 2020). The literature describes impact assessment as an iterative process to inform policy development by taking account of relevant evidence, including from those likely to be affected by policy, and by requiring reflective analysis of the likely impact of a policy proposal on groups, including those with protected characteristics (Harrison 2011; DIHR 2016; Payne 2019; UN HRC 2019; Hoffman 2020) Both HRIA and EIA help predict the impact of a proposal for legislation, policy or action on different groups, including protected groups, and

provide an evidential base for decision-making to support mainstreaming equality and human rights (ibid). If used properly, HRIA and EIA can be transformative by proactively promoting human rights and equality in policy development (OECD 2018; Payne 2019; Hoffman 2020).

7.2. While methods vary the literature confirms a number of core steps for EIA and HRIA (Ruggie 2007; SHRC 2010; De Schutter 2011; DIHR 2016; UN HRC 2019; Hoffman 2020). These include: commencement early in the policy cycle to allow time for any necessary changes to policy be made; adequate resourcing (including capacity building); assessment informed by relevant evidence, including qualitative and quantitative data; involving people with an interest and lived experience; informed and expert analysis; and, publication of outcomes (ibid).

7.3. Impact assessment has been described by the Welsh Government as a 'structured way to consider the factors that mean our policies affect different people's lives in different ways' (Welsh Government n.d.) The WSEDs make EIA mandatory for both Welsh Ministers and listed public authorities in Wales. A listed public authority must:

- Assess the likely impact of proposed policies and practices on its ability to comply with the PSEDs.
  - Assess the impact of any policy which is being reviewed and of any proposed revision.
  - Publish reports of these assessments where they show a substantial impact (or likely impact) on an authority's ability to meet the general duty.
  - Monitor the impact of policies and practices on its ability to meet that duty.
- (Regulation 8, WSED)

7.4. When assessing the impact of any proposal on protected groups, listed public authorities must have 'due regard' to any relevant information held by them and comply with 'engagement provisions' by involving such persons as the authority considers represent the interests of persons who share one or more of the protected characteristics with an interest in the way that the authority carries out its functions;

and, the authority may also involve or consult with other persons as it considers appropriate (Regulation 5, WSEDs).

7.5. The WSEDs set out requirements for EIA which reflect good practice in impact assessment and therefore provide a solid setting-off point for EIA, as well as a model framework for HRIA. Despite this, the GER raised concerns that EIAs are: 'not being approached in a meaningful way, were happening at the end of the policy development process rather than the start and generally lacked critical analysis through an equalities lens.' (Chwarae Teg 2019: 34)

7.6. While, in theory, EIA should be applied at all stages of the policy-cycle, and should act as a prompt to officials to collate evidence, including through consultation with stakeholders, the GER found that EIA's:

'have had a tendency, within Welsh Government and other public bodies, to become tick box exercises; a compliance based exercise that lack detailed analysis, (and) do not comply with the requirements of the specific duties on equality information or engagement and are not done at the appropriate time to meaningfully influence and inform policy and legislation.' (ibid: 38)

7.7. Non-statutory interim guidance on the socio-economic duty suggests that impact assessment should be used (amongst other procedures) to confirm how the requirement to have due regard to the socio-economic duty has been met (Welsh Government 2020e), and that relevant authorities will need to:

'integrate consideration for inequality of outcome caused by socio-economic disadvantage into existing processes for understanding and evidencing the likely impact of strategic decisions.'(ibid: 13)

7.8. Unlike EIA, there is no mandatory requirement for a HRIA in Wales, nor is there a detailed framework for HRIA. The closest equivalent is the requirement for a CRIA under the Children's Rights Scheme 2014 (Welsh Government 2014). The Scheme includes a procedure and template for CRIA which sets out a number of steps in the procedure, these include evidence gathering, consultation with

stakeholders including children, and analysis. A summary of any CRIA completed is made available when Welsh Ministers publish an Integrated Impact Assessment (IIA) (discussed further below). As is the case for EIA, the CRIA template reflects good practice in impact assessment. Despite this, research for the Welsh Government in 2015 found that CRIA was not being implemented consistently across all departments and was often commenced too late in the policy-cycle to make any difference to policy output, and was sometimes completed by officials with insufficient knowledge of children's rights (Hoffman and Morse 2015). Something similar was confirmed by research on the RCYPM 2011 carried out for the EHRC in 2018 (Hoffman and O'Neill 2018).

7.9. A range of impact assessments are carried out on primary legislation and secondary legislation in Wales, including but not limited to EIA and HRIA. Research carried out in 2019 examined ways to make impact assessment carried out by Welsh Government officials more efficient (Grace 2019); as a result, the Welsh Government streamlined a number of impact assessments into an IIA. The IIA template and its accompanying guidance focus on social, economic, and cultural well-being and how a proposal contributes to meeting the Welsh Government's well-being objectives (Welsh Government n.d.). EIA forms part of the assessment, as well as CRIA. There is no requirement under IIA to carry out a HRIA, and human rights (other than children's rights) are only contemplated as part of the 'information' to be taken into account as an aspect of EIA. While an integrated impact assessment can help reduce the impact assessment burden (Hoffman 2021), research on the RCYPM 2011 carried out for the EHRC in 2018 identified the risk that IIA reduces the prioritisation given to CRIA in the impact assessment process (Hoffman and O'Neill 2018; see also, *ibid*). The GER found that:

'increasingly, impact assessment is being viewed through the lens of the (WFGA 2015)' and that this is 'most marked within Welsh Government, through the development of a new Integrated Impact Assessment Tool' (Chwarae Teg 2019: 8).

7.10. The GER also found that IIA is often reduced to a tick box and moved to the end of the policy process (Chwarae Teg 2018, 2019; see also, Parken 2019). The GER and the GER/WG recommend that the WSEDs should strengthen the use of EI 'at the beginning and throughout policy development' (Parken 2019: 13; Chwarae Teg 2019). The GER/WG also recommends guidance on how public bodies can draw on wider research to understand the drivers of inequalities and poor well-being to inform impact assessments, and on the need to secure evidence based on people's experience (Parken 2019). The GER recommends that an equalities analysis should inform IIA at all stages, and that IIA should take an intersectional approach to reflect on the impact of different forms of discrimination and disadvantage on equality across a range of policy fields (Chwarae Teg 2019).

7.11. It is apparent that impact assessment is intended to inform policy decision-making and implementation at all levels of government in Wales. Some guidance is comprehensive and includes information on how to obtain additional advice and support. For example, when undertaking HIA as part of an IIA, Welsh Government officials are given instructions on the steps to be followed which correspond with the core steps identified for effective impact assessment (above) as well as links to external resources to support the analysis, for example the Wales Health Impact Assessment Support Unit (Welsh Government n.d.). However, in general there is limited guidance on how to conduct an effective and meaningful EIA or HRIA for public authorities in Wales.

#### *Evidence from stakeholders: Impact assessment*

7.12. In our survey with professional stakeholders 86 per cent, i.e. 83 of 97 respondents, agreed that impact assessment needs to be strengthened, 13 per cent (13 respondents) did not know and just 1 per cent (1 respondent) disagreed.

7.13. Evidence received from interviewees confirms the potential of impact assessment to enhance policy development, although concerns were raised about whether they are being used effectively by public authorities, for example:

'on paper if (IA is) done well, done at the right time, done by the right people with the right expertise, and if it's begun at the...start of the process and if it's

regularly reviewed and ... seen as an active working tool then I think it's something that does have a place and I think that it's something that does need to be retained definitely.' (IV4)

'it's one of the tools we have and I think it's just something we can learn from and develop ..., if we can get the right people trained up to be able to deliver (IA) then I think it can only be seen to make a big difference.' (IV4)

'I think in principle they (IA) are very good but the way they are implemented may not be so good.' (IV17)

7.14. Several interviewees raised similar concerns with particular reference to Covid-19 and the lack of proper (or any) impact assessment on emergency measures. A more general concern, reflecting the findings from the GER, was that impact assessment is being reduced to a 'tick-box' exercise. For example:

'it seems to me is if they've just got to report and fill in their kind of tick box, their forms, and that, 'okay well we can just tick that, they've done it, therefore this development can go ahead', or, 'they can do this because they've done an assessment', and it's not actually properly analysed and there are no sanctions...' (IV7)

'you need to have a template form, do you know what I mean? And then what tends to happen, and that's fine because it's good to have prompts for people to be aware as to what things they need to cover and what they need to remember. But the temptation then is that it just really becomes a tick box exercise and it's not a meaningful tool in that way.' (IV20)

'I think at the moment the focus seems to be, the emphasis seems to be on the requirement of public bodies to conduct quite a lot of equality impact assessments, which seems to be a very process-focussed requirement rather than outcome-focussed.' (IV1)

7.15. This was also a concern raised in the Welsh Government forums, and in the workshops. This is from the minutes of the forum on Aging:

‘Equality Impact Assessments are not used effectively – they are just a tick box exercise.’

And this from one of the workshops:

‘Impact assessments are a tool, not a tickbox at the end but this often does not happen in reality.’

7.16. Another issue raised by the interviewees was the timing of impact assessment, and that the procedure is introduced too late in the policy-cycle. For example:

‘the impact assessment process should be useful but the Government is not using it properly and there are also plenty of examples where of course the impact assessment is published at the end of the process, which naturally is far too late. So the impact assessment on children's rights on the new curriculum for example has just been published at the end of four years of curriculum consultation...in the end the Civil Servants who have done the job of preparing the impact assessment have wasted their time, and I feel for them. So, no this is one of the most fundamental weaknesses in our process.’  
(IV22)

7.17. The issue of lack of consultation with stakeholders was raised by interviewees, but also in the Welsh Government forums and the workshops. The Disability Equality forum minutes note:

‘(T)he involvement duty of EIA barely ever happens. Local Authorities will often say that they don't have the time to talk to people and as a result produce assessment themselves without consultation. Those who are being impacted by the decision should be involved before they make that decision.’

This is reflected in evidence from the workshops, for example:

‘For impact assessments there is a lack of engagement with people on the ground and experience of how decisions will actually impact communities and people they work with. Need for guidance for local authorities on how to do this. Need to engage people pushing the policies through. Management support. Otherwise a tick box exercise.’

7.18. Another issue raised in the interviews was the need for impact assessments to have consequences:

‘they’ll do these equality impact assessments and realise that it does detrimentally impact on one group and but then the overall picture will be positive and so you know that policy will go ahead, and there needs to be accountability for you know the people that are detrimentally affected.’ (IV11)

7.19. There were various reasons given in the evidence for poor implementation of impact assessment, including impact assessment is often conducted too late, when decisions are already made. Interviewees noted that budget cuts and ‘austerity’ have had an impact on the quality of impact assessments, as these are often rushed and lack detail. It was suggested that too much is expected of staff in public bodies who will often be working in ‘silos’ so information is not always shared, leading to duplication and poor quality of impact assessments. There were suggestions on how impacts assessment might be improved, for example:

‘(Impact assessment) has to be, you know, meaningful and something that is again embedded within organisations. ... some better guidance perhaps on what is a good quality impact assessment.’ (IV15)

And this from the workshops:

‘Everyone is doing something different - there is limited guidance around socio-economic duty but otherwise it is down to individual organisations and bodies to decide and interpret the tool. More guidance, training is needed to

help bodies develop these tools and to support individual staff to carry out this area of work.'

7.20. Note: the workshops took place before the Welsh Government published its statutory guidance on the socio-economic duty, see above 'The implementation gap' and 'Guidance on equality'. In addition to the need for more guidance on impact assessment, interviewees also raised the need to ensure that impact assessment is properly prioritised, including at the start of policy development. For example:

'I hate to use the term tick box exercise, but that is for lots of organisations what they are, and so that's why we talk about needing to absolutely flip that whole model on its head and say, "Actually, you ought to be thinking about that impact assessment at the very start,"...' (IV 9)

7.21. Interviewees also drew attention to the need to support officials undertaking IIA, in particular because it can be perceived as burdensome. In this respect interviewees identified the benefits of IIA:

'(W)e think that the integration impact assessment is a good idea because it saves, you know, kind of, cuts down the bureaucracy really and saves public bodies from having to do...however many separate assessments, many of which would be, you know, the same questions and sometimes done by different people, sometimes done by the same person several times. But there is obviously a risk of some of the duties being watered down...' (IV19)

'In terms of the wider strategic impact assessment you know we could see the value in the argument that there were lots of impact assessments all being done in isolation, not talking to one another, I can see the value in bringing all that together. I think obviously the weakness is you have a weakened, a full impact assessment on each of them then so it's a reduced one on equalities, reduced on Welsh language, reduced one on children's rights.' (IV4)

7.22. A number of interviewees commented on the Welsh Government's IIA including the need to focus on impact assessment in relation to particular groups (for

example, children) to minimise the risk of focus being lost. One interview commented on EIA as part of IIA:

‘The change they have made about two years ago from impact assessments going through each characteristic to an integrated impact assessment, has weakened the process remarkably. Because it gives them a license to submit something they call an impact assessment which is not an impact assessment at all. It's just a list of things we thought about...that relate to these particular protected characteristics.’ (IV22)

7.23. Other interviewees suggested that there is a lack of clarity and openness about when IIA is being used. However, while there were concerns about impact assessment and IIA, it was suggested that if properly embedded and carried out they can lead to better decisions.

7.24. Several research participants with lived experience felt that equality impact assessments are seen as a tick box exercise (exacerbated by Covid-19). Participants commented that impact assessment needs to involve diverse people and communities directly (co-production), and that the assessment should ensure that human rights are integrated. Contributors also felt that impact assessment needs to address all communities and not just ‘broad protected characteristic group(s)’, as well as needing to draw on qualitative evidence and experiences to acknowledge cumulative impacts.

#### *Synthesis: Impact assessment*

7.25. The evidence we have received suggests support for impact assessment as a policy tool, but also raises a number of general concerns about how these are completed in practice, including that the procedure has been reduced to a ‘tick-box’ exercise, that it is introduced too late in the policy process, and that it fails to involve people with an interest.

7.26. We see the need for guidance to support impact assessment, and to ensure its prioritisation in the policy development cycle. This is discussed further in the ‘Conclusions’ section below and dealt with by our recommendations 17-22.

## 8. Findings: Monitoring

### *Context*

8.1. Monitoring enables public authorities to ‘assess compliance with, and the implementation of, the equality and human rights standards that are recognised within the international human rights framework and that are codified in domestic...law’ (EHRC 2017: 42; DIHR 2007). The EHRC sees the purpose of monitoring as:

- To ensure ‘objective, independent and reliable evidence on equality and human rights violations and on the protection, promotion and fulfilment of equality and human rights standards’.
  - To increase public awareness and understanding of equality and human rights issues.
  - To promote legal accountability by drawing attention to institutional and public policy failures.
- (EHRC 2017)

8.2. In order to better understand how policy and action have an impact on equality and human rights it is essential that relevant data is available, and that this is disaggregated to the extent that it supports assessment in relation to different groups (EHRC 2017; OHCHR 2012). To support effective monitoring, indicators need to be developed and applied to assess progress on equality and human rights (ibid). However, a cautious approach is needed as there is a risk that they will lead to a ‘managerial approach’ where the focus is on quantitative data, resulting in an ‘overemphasis on what is measurable’ (EHRC 2017: 43; Rosga and Satterthwaite 2012; McGrogan 2016). The concern is that applying quantitative indicators directs attention away from how people individually experience equality and human rights (ibid; Parken 2019). Despite this, there is a recognised value to both quantitative and qualitative indicators to measure and evaluate progress on equality and human rights, and to inform policy and help establish the objectives for action on equality and human rights (OHCHR 2012; EHRC 2017).

8.3. Progress on equality and human rights in Wales may be assessed by reference to data from a diversity of sources (EHRC 2018a; Parken 2019). However, our research has revealed that while there is an array of monitoring mechanisms and indicators with potential to contribute to an assessment of progress on equality and human rights, we have been unable to find any indicators specifically developed to measure equality and human rights, in particular areas where the need for urgent action has been identified. Welsh Ministers are required to publish well-being 'national indicators' (section 10, WFGA 2015; Welsh Government 2016e). The current suite of national indicators comprises 46 indicators which were developed following public consultation. These provide 'useful evidence to assist public bodies in understanding the main areas where progress should be made in relation to the wellbeing goals' (Welsh Government 2020f: no page number). Many of the indicators will also support an assessment of progress on equality and human rights, but none are expressly linked to the PSED or human rights, although 27 indicators are directly aligned with the well-being goal of a 'more equal Wales'. The development of the 46 national well-being indicators does not appear to have been influenced by human rights: there is no suggestion that the indicators reflect any recommendations made by UN Treaty Bodies on areas for improvement to human rights in Wales (see 'Human Rights' above), and there is limited recognition of some equality issues, for example: discrimination, harassment, hate crime, which have been raised as key challenges elsewhere in this report (Welsh Government 2016e). However, the annual well-being of Wales report provides further data and analysis on matters relating to human rights and equality, including issues not expressly covered in the 46 indicators, for example, incidents of hate crime (Welsh Government 2020f).

8.4. An issue noted by the EHRC as well as the GER/WG is that data in Wales is not routinely disaggregated by reference to EA 2010 protected characteristics (EHRC 2018a; Parken 2019). While there is a large amount of data which may be drawn upon to assess and evaluate progress on equality and human rights in Wales there are no Wales-specific indicators which are the equivalent of the EHRC 'Measurement Framework for Equality and Human Rights' (EHRC 2017).

8.5. The Equality Act 2006 (EA 2006) requires the EHRC to carry out monitoring of equality and human rights (section 12). In Wales the EHRC publishes an 'Is Wales

Fairer' report which is an assessment of progress on equality and human rights using its 'Measurement Framework' applied to public policy across 6 domains: education, work, living standards, health, justice and personal security, and participation (EHRC 2018a). These domains each have a set of indicators (EHRC 2017). The EHRC Wales 'Is Wales Fairer' report assesses progress against these indicators based on evidence collated from available datasets to focus on 'key equality and human rights challenges in Wales' (EHRC 2018a: 3). The report makes connections between equality and human rights objectives, including international human rights standards, as well as outcomes for protected groups in Wales (EHRC 2018a: 30). 'Is Wales Fairer' also uses 18 'core indicators' in each of the 6 domains, and links these to available data sources as well as the national well-being indicators and WFGA 2015 well-being goals: the core indicators are accompanied by 50 statistical measures relating to process or outcomes (EHRC 2017: 66). The EHRC 'Measurement Framework' recognises the limitations of purely quantitative indicators as 'too narrow', and 'Is Wales Fairer' therefore draws on qualitative data sources and people's lived experience (EHRC 2017: 43, 63). The EHRC 'Measurement Framework' draws attention to the lack of disaggregated data, and significant data gaps in Wales, for example in relation to disability and gender, and raises concerns about the quality of data available for monitoring and assessment analysis (EHRC 2017: 67). This deficit is also noted in 'Is Wales Fairer', which concludes that the lack of equalities data for services provided by public authorities means that authorities are unable to demonstrate that their services are equally accessible and available to all (EHRC 2018a). While the EHRC framework is a relatively sophisticated monitoring framework, it is generic and non-specific to equality and human rights priorities for Wales.

8.6. In order to monitor the performance of public authorities, the WSEDs require listed authorities to monitor the impact of their policies on their ability to comply with the WSEDs (regulation 8), and to report on progress made to comply with the WSEDs (regulations 16 and 17). Although the WSEDs provide an opportunity to gather data and to analyse and report on progress toward meeting the PSED, the current arrangements have been criticised by the GER/WG as measuring 'compliance with process rather than outcomes' (Parken 2019: 33).

8.7. The GER/WG makes a number of recommendations to improve data collection, these include recommendations on aligning data collection timeframes as well as ensuring ‘read-across’ between the various indicator sets, including the EHRC’s measurement framework and the national well-being indicators (Parken 2019). The GER/WG notes the need for quantitative data to direct action, as well as the need for qualitative data to help ‘understand why there are poor outcomes, and how factors interact’ and goes on to emphasise the importance of ‘qualitative inquiry’ to help identify policy and programme solutions (ibid: 45). The GER/WG concludes that both quantitative and qualitative data are ‘essential for planning ambitious change actions’ and for data from ‘experts by experience’ and the civil society groups that represent them to inform legislative design, objective setting and policy solutions. (ibid).

#### *Evidence from stakeholders: Monitoring*

8.8. The responses to our survey with professional stakeholders suggests a degree of ambiguity about how effective current monitoring mechanisms are in reflecting progress (or lack of) on equality. 39 per cent, i.e. 45 of 116 respondents, thought equality monitoring mechanisms are not effective, while only 9 per cent (1 respondents) thought they are effective. However, there was a clear majority in favour of improving equality indicators. 73 per cent, i.e. 84 of 115 respondents, agreed that there is a need to improve indicators to measure compliance with equality duties, while a similar proportion, 75 per cent, i.e. 86 of 115 respondents, agreed that Wales needs to improve equality outcome indicators. There was also a high degree of support for more disaggregated data on equality outcomes (72 per cent, i.e. 83 of 115 respondents), and for evidence to be collated on people’s lived experience of equality (77 per cent, i.e. 88 of 114 respondents). 71 per cent of 111 respondents agreed that there is a need for public authorities to report ‘in more detail’ on equality outcomes, and 78 per cent, i.e. 87 of 112 respondents thought there was a need to report ‘in more detail’ on people’s lived experience of equality.

8.9. On mechanisms to monitor progress (or lack of) on human rights, again there was a degree of ambiguity: 37 per cent, i.e. 43 of 115 respondents, thought that monitoring mechanisms are not effective, while about 13 per cent, i.e. 15 of 115 respondents, thought they are and about 50 per cent (57 respondents) did not know.

As for equality, a high proportion of respondents, 71 per cent, i.e. 81 of 114 respondents, agreed that there is a need to improve indicators to measure compliance with human rights duties, while 71 per cent, i.e. 81 of 114 respondents, agreed that Wales needs to improve human rights outcome indicators. 73 per cent, i.e. 82 of 113 respondents, agreed that there is a need for more disaggregated data on human rights outcomes, and 73 per cent, i.e. 82 of 113 respondents, that there is a need for more data on people's lived experience of human rights. 70 per cent, i.e. 81 of 115 respondents agreed that there is a need for public authorities to report 'in more detail' on human rights outcomes and 75 per cent, i.e. 85 of 113 respondents, agreed that there is a need to report on people's lived experience of human rights.

8.10. Young people identified the need to ensure that policy and statutory frameworks are effectively implemented by putting in place effective accountability and monitoring structures, with young people as part of this scrutiny and monitoring process going forward. They recommend that statutory regulation should be revised and strengthened including monitoring, but also reporting and inspection, on equality and human rights. Focus group participants were in favour of requiring public authorities to complete regular monitoring reports and suggested that the children and young people's National Participation Standards could be used as a potential monitoring and audit tool. Overall, young people felt that more efficient regulation and monitoring is required to improve and embed human rights and equalities practice across Wales.

8.11. The evidence from interviews confirms support for improvements to monitoring of equality and human rights in Wales, for example:

'we've got lots of strategies and action plans and lots of words on paper but when it comes to being able to monitor the progress of those good intentions and the implementations successfully or not of that on outcomes for people, there's a gap.' (IV18)

'I think we've seen that there are kind of regional differences in the upholding of human rights and equalities and, you know, in the work that we do it's kind

of, it's up to the Local Authority and I think potentially more oversight and monitoring mechanisms could be strengthened.' (IV8)

8.12. Comments from some interviewees suggest that existing arrangements for monitoring are not sufficiently robust to confirm if, and if so, how public bodies are acting in compliance with relevant equality and human rights duties, for example:

'I think legislation is great, but if it's not monitored, you can't understand the level of its implementation... just to echo what we've said before I mean, it's the lack of data is sometimes shocking if I'm honest. I don't understand why data that's been required to be collected isn't collected on an equalities basis. So, you know, in terms of compliance, there's just not that kind of evidence there to, well it's very difficult, the lack of evidence makes it very difficult to hold bodies to account ... I think better data is always welcome, but it would have to be data that showed compliance or non-compliance.' (IV15)

8.13. When asked directly whether existing monitoring arrangements are adequate, this interviewee replied:

'No is the short answer. I mean, you know, we do need to get the balance right, don't we, in it being a cultural thing that people want to do. Because, rather than a tick box thing that people do because they've been told they must do it. But there's certainly, as far as I can see, very little monitoring.' (IV16)

8.14. The above interviewee raises an issue which others also commented on, which is the risk that monitoring is treated as a mechanistic 'tick box' exercise or a 'bureaucratic process' (IV3), rather than a process from which lessons may be learned and action taken:

'I think some of that is back to points I made earlier about accountability mechanisms being in place and reporting mechanisms, because if there's no requirement to report or if there is a requirement to report but there's no action based on that report or accountability or ongoing dialogue then it just

becomes a bit of a tick box exercise and you know we could have the best guidance and legislation in place but if it's not that sufficient and we found that with the wellbeing acts, under the Future Generations Act, the wellbeing plans, lots of good, high-level intentions there but it's very difficult to then engage, to unpick that and say what exactly real differences it's making on the ground.' (IV4)

8.15. The need for monitoring to lead to action was a concern for several interviewees, for example, this interviewee, commenting on the gender pay gap:

'So for an example, so the gender pay gap, so people have to report, organisations over a certain size have to report on their gender pay gap but, which is great but then who then takes that forward and monitors and sees that, so you know they publish it and perhaps they publish an action plan too but who's going to follow-up and check that it's done, and will there be sanctions if they don't improve the situation?' (IV7)

8.16. Some interviewees, recognising weakness in the existing arrangements for monitoring, including the focus on well-being indicators, and made suggestions for improvement. These included the need for specialised monitoring mechanisms:

'Seeing human rights through a well-being lens may lead to a dilution of the focus on achieving human rights outcomes. Human rights require specialised mechanisms for monitoring and enforcement.' (IV2)

8.17. However, there was also recognition that existing mechanisms, including arrangements for monitoring well-being, might be used more effectively to monitor equality and human rights through process alignment. This interviewee commented specifically on outcome indicators for equality and the possibility of aligning these with well-being indicators:

'So I think the success of the Well-being Future Generations Act is you have national indicators, everybody works to them, you have a really good accountability mechanism on wellbeing objectives and you don't have that

replicated for the Equality Act or the, and the socio-economic duty is part of the Equality Act. ... you'd have inequalities of outcome linked socio-economic disadvantage nationally driven so that local authorities and all other public bodies would then deliver to those outcomes and report and evidence on those outcomes. It may be that there's an alignment between what those socio-economic outcomes are to what the wellbeing outcome's objectives are as well...' (IV18)

8.18. Evidence from the workshops identifies the need for monitoring to be seen as an important aspect of impact assessment, while participants in the Welsh Government forums commented generally on the need for more robust monitoring and evaluation. In the Wales Race Forum, participants highlighted the importance of clarifying who is responsible for monitoring and evaluation, while the Forum on Aging noted that local authorities do not have the resources to do all that is needed. In the Disability Equality Forum meeting, it was highlighted that there is a lack of monitoring processes specifically for impacts on the human rights and equality of disabled people. This led to the suggestion that a Disabled Person's Commissioner is needed, with more powers, resources and a clear remit for protecting the rights of disabled persons.

8.19. People with lived experience identified the need for 'indicators and measures' relating to the depth and diversity of involvement of people to be part of public sector measures in all services and policy areas, and for these to be improved and for there to be more accessible reporting. They also called for measures and indicators in all services, aspects of employment, departments and policy areas focused on values, outcomes and the difference made to people's lived experiences, including all diverse and under-represented communities. They go on to call for qualitative indicators to be considered as important, if not more important, than quantitative indicators.

8.20. Related to monitoring, people with lived experience also recommend 'external, comprehensive, independent accreditation systems in relation to all diverse communities' are funded and promoted to all public sector organisations and that all Welsh regulators should build in equality and human rights measures and standards

which should form a core aspect of inspection, audit, and regulation processes; improvement notices and enforcement should follow specifically in relation to equality and human rights. They also recommend that service user feedback on services received should be a core part of all measures, audits and inspections. People with lived experience called for alignment of reporting between the WFGA 2015, equality, and human rights as well as Welsh language.

### *Synthesis: Monitoring*

8.21. On the issue of monitoring, the GER/WG has made a number of recommendations to improve the data available for monitoring, including the need for disaggregated data, on aligning data collection timeframes, ensuring ‘read-across’ between indicators, as well as the need for qualitative data. The authors fully endorse these recommendations, which are supported by the evidence received, which also suggests a lack of confidence in current monitoring mechanisms and support for improving indicators to measure compliance with equality and human rights. This is discussed further in the ‘Conclusions’ section below. We deal with monitoring in our recommendation 25, but it is also relevant to the recommendations on ‘Guidance’, ‘Impact assessment’ and Accountability and enforcement’ (see Table 1 below).

## **9. Findings: Accountability and enforcement**

### *Context*

9.1. Accountability is an aspect of mainstreaming equality and human rights and is a key element of a ‘human rights approach’. Studies have examined incorporation in different jurisdictions, and our literature review confirms the strongest form of accountability for human rights, including economic and social rights, is via domestic courts (Boyle 2020; Daly *et al* 2018; King 2012). As has already been noted, all public authorities in Wales, including Welsh Ministers are prohibited from acting other than in compliance with the human rights set out in the ECHR and incorporated into UK law by the HRA 1998. These limitations impose a degree of accountability for human rights. The obligation (in effect) to act in compliance with the ECHR is enforceable by UK courts under the HRA 1998 (sections 6-9).

9.2. The principle of equal treatment is at the core of human rights, including under the ECHR which expressly requires that the rights guaranteed should be available without discrimination 'on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' (Article 14). To this extent, enforcement of rights under the ECHR by UK courts will extend to enforcement of equality. However, the rights guaranteed by the ECHR are limited to civil and political rights, and the HRA 1998 does not provide for comprehensive enforcement of socio-economic rights; although enforcement of ECHR rights may require the courts to extend their jurisdiction into the terrain of socio-economic rights (*Airey v Ireland* App No 6289/73 (A/32), (1979) ECHR 3). In any event, the UK courts are reluctant to apply the HRA 1998 in a way which interferes with socio-economic policy unless the policy is 'manifestly without reasonable foundation' (*R(SG) v Secretary of State for Work and Pensions* (2015) UKSC 16, per Lord Reed at para.(93)).

9.3. Under existing legislation, Welsh Ministers and public authorities in Wales are subject to the PSED, the WSEDs and various duties to have 'due regard' to different human rights. The main legal mechanism for enforcing these duties is judicial review. The weaknesses of the 'due regard' approach as a mechanism for imposing human rights obligations, has been discussed above (see 'Legislation' and 'Incorporation'). As noted by the GER/WG:

'Currently, public bodies can be deemed to have met their well-being and equality duties by demonstrating 'due regard' to process, whether or not inequalities have been reduced or well-being has improved.' (Parken 2019: 25)

9.4. Provided Welsh Ministers or public authorities are able to demonstrate that they have complied with the duty to have 'due regard' they will be deemed to have complied with their duties under the PSEDs, WSEDs and human rights obligations imposed by Welsh legislation. While this may be sufficient to ensure 'process' accountability, it is ill-suited to addressing failure to achieve substantive equality or human rights outcomes (Williams and Hoffman 2013; Hoffman 2019e; Kilkelly 2019). In addition, research has found that where the WSEDs are raised in judicial review

applications this is usually as an additional and often poorly formulated ground (Nason *et al* 2020a: para 6.25).

9.5. The GER/WG has suggested that the review of the WSEDs offers the potential to consider how to strengthen the definition of ‘due regard’, perhaps through statutory guidance (Parken 2019). The WSEDs could be used to introduce priorities for action which would provide markers for the courts to assess action taken by a public authority to achieve equality outcomes (*ibid*; Williams and Hoffman 2013; Hoffman 2019(b), 2019(c), 2019(d)). We have also dealt with this under ‘Incorporation’.

9.6. The courts and judicial review are a key venue for accountability for equality and human rights. However, accountability may also be achieved through other aspects of administrative justice (referring to how government and public bodies treat people, the correctness of their decisions, the fairness of their procedures and the opportunities people have to question and challenge decisions made about them), by focusing not only on legal correctness, but also on the fairness of public policy decisions, the procedures adopted, and the opportunities available to seek various forms of redress (UKAJI 2020; Nason (ed) 2017). Viewed in this way administrative justice includes: ‘getting it right’, through good initial decision-making; ‘putting it right’ by providing access to effective and proportionate redress where things go wrong; and ‘setting it right’ through mechanisms to tackle systemic problems in public administration (Buck *et al* 2010; AJTC 2009; Law Commission 2010). When it comes to ‘getting it right’, other sections of this report have discussed how legislation and guidance, as well approaches such as ‘mainstreaming’ and impact assessment might make a contribution. As concerns ‘putting’ and ‘setting things right’, a number of institutions other than the courts have a role to play in Wales. Key amongst these is the EHRC which has powers under the EA 2006 to promote equality and human rights, to monitor legal compliance, to investigate potential non-compliance, to provide assistance in legal proceedings, and to instigate or intervene in legal proceedings (primarily judicial review). The EHRC, as well as other institutions, provide mechanisms for accountability beyond courts and tribunals (AJTC 2009; CAJTW 2016; Nason (ed) 2017; Nason *et al* 2020a). Wales has an extensive set of institutions, including commissions, commissioners, ombudpersons, auditors and

inspectorates, which are variously empowered to inspect, regulate, recommend and report.

9.7. The institutions which provide for administrative accountability include the Public Services Ombudsman for Wales (PSOW) which has 'own initiative' powers of investigation in circumstances where evidence suggests there may be systemic service failure or maladministration (Public Services Ombudsman (Wales) Act 2019). The PSOW has established a statutory Complaints Standards Authority which aims to work with public authorities within the PSOW's jurisdiction to support effective complaint handling, collect and publish data, and deliver training. The PSOW publishes an annual Equality and Human Rights Casebook, including those cases where equality and human rights are the primary focus of a complaint (PSOW 2021).

9.8. The Auditor General has specific assessment arrangements under the WFGA 2015 (section 15) and may carry out examinations of public bodies to assess the extent to which they have acted in accordance with the WFGA 2015 sustainable development principle when setting well-being objectives and taking steps to meet those objectives (ibid). The Auditor General must examine each public body at least once in a five-year period and must present a report of the examinations to the Senedd.

9.9. Administrative justice can highlight and help alleviate structural inequality through a principled approach to public administration to ensure fair, proportionate and accessible routes to redress (Doyle and O'Brien 2019). It can also provide opportunities for learning to inform policy decision-making, through investigations of ombudspersons and commissioners, as well as decisions of tribunals and courts which can help identify the extent of structural inequality and the comparative success or failure of government policies (ibid; Creutzfeldt and Kirkham 2019; AJTC 2009). In 2018, the then Counsel General for Wales, Jeremy Miles MS has linked administrative justice and equality, stating:

'we can expect that administrative decisions lead us to a more equal Wales...so that decisions taken by tribunals and commissioners and by ombudsmen within the administrative justice system lead us to that

outcome...' (Senedd Plenary, Counsel General's Questions 26 September 2018)

9.10. The administrative justice system in Wales therefore provides opportunities for accountability, for learning, and to provide evidence to inform policy-making on equality and human rights (Nason *et al* 2020a; Nason (ed) 2017). Many (though not all) of the various Welsh Commissioners' powers are to 'name and shame' rather than to issue legally enforceable recommendations. These powers can be used to secure 'upstream' accountability for equality and human rights, as well as less public interventions, for example by encouraging change through pointing out mistakes and opportunities to improve, and possibly compel change through persuasion rather than coercion (Hoffman and Williams 2013; Hoffman 2019e). A number of mechanisms already discussed in other sections of this report have potential to inform and support the role of institutions such as the EHRC and Commissioners to use administrative justice in this way, for example the WSEDs, mainstreaming (of equality or human rights), monitoring, and impact assessment. However, this report has also noted weakness in these mechanisms, including a focus on process rather than outcomes (WSEDs), a lack of Wales specific equality and human rights indicators (monitoring), the failure to introduce HRIA, and less than effective impact assessment.

9.11. As concerns 'downstream' accountability, i.e., accountability at the point where people experience equality and human rights as policies and programmes are implemented, it is clear from earlier sections that this needs to be strengthened. However, until recently confusion over the extent of devolved competence as regards equality and human rights - and concerns about the Welsh Government's capacity to influence the Ministry of Justice in implementing new Wales only legal duties - may have impeded progress in this area (MoJ 2019). A possibly more significant impediment to progress may also have been reluctance on the part of the Welsh Government to impose human rights standards on frontline decision-makers. This finds expression in the adoption of the 'due regard' formula, which is a weak approach to establishing legal obligations, but also in the piecemeal sectoral approach to imposing human rights standards (see 'Legislation'). Another issue was noted by Commission on Justice in Wales' (CoJ) which concluded that:

‘Wales has far sighted policies on future generations, sustainability, and international standards on human rights. These are, however, not integrated with the justice system. The distinctive legal framework being developed to underpin these policies, including the creation of independent public officers whose role is to promote and protect rights, is not aligned to the justice system.’ (CoJ 2019a: para 12.21)

9.12. The CoJ’s conclusion may also be applied to the WSEDs which are exclusively Welsh duties: although as noted by the GER/WG, these may not be as ‘far sighted’ as some Welsh sustainability and human rights legislation. The CoJ highlights how the Welsh legislative framework gives individuals only limited access to the legal system as a form of redress, as it does not provide individuals with directly enforceable rights. Redress is limited largely to the procedural protection offered through judicial review: which applies to equality and the WSEDs as well as to Welsh human rights duties. The CoJ’s report also highlights how the system of courts and tribunals is not well-linked to other elements of administrative justice, such as commissioners and ombudpersons, and adds to a body of literature that suggests tribunals especially, could do more to ensure that public bodies are encouraged to reflect on legal judgments and to improve their decision-making for the future (Hodges 2019; Creutzfeldt and Kirkham 2019; Ryder 2019).

9.13. Another issue raised by the CoJ is that the whole ‘system of administrative justice’ in Wales is ‘difficult for individuals to understand and use’ and the ‘current system of challenging public bodies in Wales is complex’ (CoJ 2019a: paras 5.56, 6.16 and 6.60). It has also been observed that there are gaps in the coverage of administrative justice in Wales, i.e., areas with no redress mechanisms apart from judicial review, as well as overlaps where multiple routes to redress may be available (CAJTW 2016; Nason *et al* 2020a). This means individuals may need to make a choice based on the most easily understood, accessible, and cheapest form of redress, rather than which mechanism properly addresses the problems they are experiencing or provides the most suitable remedies (*ibid*). The complex redress environment can breed confusion (Shooter 2014; CAJTW 2016; Doyle and O’Brien 2019).

9.14. An effective complaints mechanism might provide an alternative to complicated formal redress mechanisms in cases involving a failure by a public authority to meet its equality and human rights obligations. The literature identifies complaints and other alternative redress mechanisms as important contributions to accountability, especially for groups and individuals who find more formal mechanisms difficult to access. Commissioners will also play an important part in 'sign posting' people to redress mechanisms, including complaints mechanisms. However, even where complaints mechanisms are available, they may be inaccessible to some groups and therefore rarely used. Although they may be difficult to access, Alternative Dispute Resolution (ADR) mechanisms in Wales, such as complaints mechanisms or mediation, have potential to provide redress where individuals feel their entitlements to equality and human rights have not been met (for example, on the use of mediation in public law generally, in relation to England and Wales, Bondy *et al* 2009). This was recognised by the CoJ, which found that there is a lack of information and much misunderstanding about ADR in Wales and that little is done to promote it, and that the lack of proper coordination between courts, tribunals and providers of ADR needs to be resolved (CoJ 2019a: paras 5.52-5.55). In this respect, the ongoing Law Commission project to review the structure of devolved tribunals in Wales to create a modern, flexible, single tribunal system for Wales, is significant (Law Commission 2020). A reformed and integrated structure could encourage ADR in disputes that have an equality or human rights dimension, and could provide for better learning from cases to advance policy in these areas. The issues noted here include reform of the broader justice system in Wales, which is beyond the scope of this research, but which has been comprehensively covered by the CoJ. The CoJ concluded that the people of Wales are being let down by the current system of justice, in no small part due to the 'jagged edges' between, on the one hand, Senedd and Welsh Government policy and legislative competences over matters such as health and social care, housing and education, and on the other, the reservation of administration of most elements of legal justice. These 'jagged edges' are bound to have an impact on the Welsh Government's capacity to strengthen and advance equality and human rights (CoJa 2019; Wales Governance Centre 2019). We note the recommendations of the CoJ in this regard and recognise that implementation of some of these recommendations may require cooperation from UK Government.

9.15. Another issue identified by the CoJ which relates to access to justice in Wales, concerns the availability and accessibility of advice services (CoJ 2019a Chapter 3; see also, Newman 2016 and 2018; Harper and Public Law Project 2018; Low Commission 2014). There has been a reduction in legal aid expenditure following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012), with disproportionately negative effects in Wales (CoJ 2019a). Legal aid is an important contributor to access to justice for many who cannot otherwise afford advice services. Many submissions to the CoJ refer to the availability of advice services to mitigate the impact of the reduction in the availability of legal aid. However, it is apparent that the coverage of these services is far from comprehensive. The Law Society has also published online ‘heat maps’ of so-called legal advice deserts or legal aid deserts, where people on low incomes struggle to get the face-to-face advice to which they are legally entitled; the maps so far produced in relation to community care and housing, show significant advice deserts in Wales in relation to these specialisms (Law Society 2019). Research also suggests that there is a general lack of specialist public law legal advice provision, especially outside the main urban areas of south Wales (Nason and PLP 2018; Jomati Consulting 2019). The overall body of evidence on the damaging impacts of LASPO 2012 across England and Wales is extensive. The CoJ concluded that a ‘far reaching and radical plan is needed’ to address the deficit and made a number of recommendations in this area (CoJ 2019a: para 3.26) including: a strategy on funding for legal aid and third sector advice provision led by independent body to ensure there is no gap in provision and that funding is sustainable; and, expansion of Support Through Court to all courts and tribunals in Wales.

9.16. The Welsh Government is funding the continued provision of advice services by Citizens Advice/Cyngor ar Bopeth and Shelter Cymru (Wales’ two biggest advice providers) that would have been discontinued due to LASPO. It has also provided additional resources, to Citizens Advice to provide a new Single Advice Service across all regions in Wales, as well as a remote advice service, for 12 months (the funding initially ran until the end of December 2020 and additional funding has since been provided until the end of March 2021). A National Advice Network Wales (NAN) was established by the Welsh Government in March 2015 consisting of key stakeholders including funders, advice providers, representative organisations, and

other partners. The NAN was established following recommendations of the Low Commission in its report 'Tackling the Advice Deficit' (Low Commission 2014) and was tasked with providing expert advice, guidance and support to Welsh Ministers on how to strategically develop the provision of social welfare information and advice services throughout Wales. Six Regional Advice Networks (RANs) have also been established across Wales, with independent chairs and steering groups and membership of local and regional stakeholders. The RANs have been tasked to map advice need and provision and identify gaps; build referral networks between all advice services; combine experiences to identify the root causes of common problems; share best practices and support each other to deliver quality assured advice. The Low Commission made numerous recommendations on advice provision, including:

'R10: The Ministry of Justice and the Welsh Government should consult the Equality and Human Rights Commission on the development and implementation of the national strategies for advice and legal support to ensure that the needs of disadvantaged and discriminated against groups are taken into account.' (Low Commission 2014)

9.17. Alongside advice, advocacy is also key to accountability. This can take different and complementary forms; from supporting individuals to understand and access information and services and to express their views, wishes and feelings; to supporting individuals to seek redress across the administrative justice system (both legal and non-legal remedies); and to action on behalf of individuals or groups to influence policy change. Some provision is made in statute in Wales for advocacy, for example under the SSWA 2014 as part of a fundamental principle of voice and control (Care Council for Wales 2017). The Part 10 statutory Code of Practice on Advocacy, issued under section 145 of the SSWA 2014, sets out requirements for local authorities to ensure that access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising SSWA 2014 statutory duties in relation to them, and to arrange an independent professional advocate to facilitate the involvement of individuals in certain circumstances (which includes when making complaints). The ALNA 2018 requires local authorities to make arrangements for the provision of independent advocacy

services in certain contexts, in this case for children and young people for whom the local authority is responsible. In addition to these statutory requirements, there is a National Standards and Outcomes Framework for Children and Young People in Wales framework on Independent Professional Advocacy (2019), which identifies the outcomes children and young people can expect in relation to advocacy in Wales.

9.18. While it is recognised that advocacy is key to accountability for equality, human rights, and well-being in Wales, there are gaps in provision, especially where this is not required by statute (Nason *et al* 2020b), specifically in relation to education), or where there is a lack of awareness of statutory rights (Crowley 2019). Other issues include, that legal rights to statutory independent advocacy are not always well understood by professionals, that the offer can be seen as ‘too passive’ in some contexts, and that the current and future need for independent advocacy is not always sufficiently understood as a basis to inform investment and planning processes (OPC 2018).

#### *Evidence from stakeholders: Accountability and enforcement*

9.19. From our survey with professional stakeholders, 46 per cent, i.e. 53 of 116 respondents, thought that public authorities in Wales are not fully accountable for how they act in relation to equality, and 44 per cent, i.e. 51 of 115 respondents, thought this in relation to human rights. Overall, 75 per cent, i.e. 87 of 116 respondents agreed that more could be done to strengthen accountability of public authorities, including Welsh Ministers, for equality and human rights. On legal accountability 86 per cent, i.e. 84 of 98 respondents, agreed that there is a need to strengthen this aspect of accountability, while 90 per cent, i.e. 88 of 98 respondents, agreed on the need to strengthen redress mechanisms for breaches of equality duties or human rights. From the evidence from people with lived experience: ‘Almost two thirds of participants felt it is not clear who is responsible for action on equality and human rights and what they have to do.’

9.20. Interviewees also commented on the need to ensure that existing legislation is enforced, and there was a strong feeling that this cannot be done effectively without giving people more support to enforce their rights. Interviewees commented that accountability is linked to clarity of responsibilities imposed by legislation, and that

there is 'lots of really good legislation' (IV4) but that it can be difficult to navigate, which can make it challenging for those with a specific duty to implement to conduct more than a 'tick box' exercise.

9.21. Children and young people commented that the challenge was not so much that of establishing policy direction, but rather to ensure effective accountability and monitoring structures by Welsh Government, with young people as part of this scrutiny and monitoring process going forward (the involvement of young people has been discussed above in 'Monitoring'). Young people also felt that public authorities should be more accountable for equality and human rights in Wales, raising specific concerns with respect to the accountability of schools, and lack of clarity on accountability as between schools and the Welsh Government. In addition, they felt there needs to be 'more accountability and consistency across Wales' especially in relation to the 'rights respecting schools' agenda.

9.22. Some survey respondents (professional stakeholders) noted that legislation is not always formally enforced because breaches are seemingly resolved through informal engagement (in some cases just 'having a chat'). Whilst there is value to informal resolution with respect to some types of disputes (noted above), the evidence received raises concerns that this informal approach in relation to equality and human rights can be more about, as one survey respondent (professional stakeholder) put it, 'smoothing over the situation and giving the perception that improvements are being made when that isn't really the case'.

9.23. The evidence from people with lived experience supports stronger sanctions, such as financial penalties, especially for repeated breaches. However, it also notes the need for restorative justice approaches to be used more frequently in relation to incidents of inequality and breaches of human rights. This highlights the need for a range of approaches to accountability, and the importance of learning through redress, 'setting it right', as discussed in the literature referred to above.

9.24. Survey respondents (professional stakeholders) considered limited accountability to also stem from lack of access to existing enforcement and redress

routes (especially for individuals) linked to difficulties accessing advice and advocacy to support the pursuit of legal remedies. Comments included:

‘A rights based society is about people knowing their rights, being able to know if they are being respected and challenge where they are not...’

‘support, advice and advocacy needs to be consistent.’

9.25. These concerns were clearly shared by interviewees and workshop participants. There was a strong sense among interviewees and workshop participants that legal enforcement is important to accountability for equality and human rights, and that this form of accountability is very weak in Wales. Across the Welsh Government forums, participants considered that access to justice is currently limited, with little support or advocacy for people to enforce their rights if breached. These points were echoed by interviewees:

‘I think that advice and access to justice is key to the strengthening of equality and human rights in Wales...And without accountability through the Courts, you’re not going to get the implementation or the sort of impetus to get on with it either and to make sure that people are delivering what they say they’re going to deliver. So I think in terms of advice and justice, we’ve got to figure out how we are better at protecting rights and enforcing legislation that already exists here in Wales...also advice, so it’s not just when you get to Court it’s also access to advice for people where their rights have been breached and there’s all the evidence on advice deserts in Wales...’ (IV18)

(The legislative process can be described as) ‘hugely hierarchical’ (and that enforcing rights is a matter of) ‘David and Goliath.’ (IV3)

‘when you do have this legislation, it’s access is really dependent upon money, who has money to go to a solicitor, you have to invest money before you can get a return...I need to have a disposable income of a certain amount to get that process rolling and I have to be willing and able to absorb losing that tribunal...Very few people are in a position where they can take that risk

and so we've got this hugely imbalanced system, legislative system that creates these exclusionary spaces for minorities...' (IV12)

9.26. These points were also reflected in the evidence from people with lived experience, who in particular argued that specialist legal and independent professional advocacy and advice should be funded, promoted and expanded in Wales in relation to equality and human rights. Interviewees also commented on the difficulty of accessing specialist public law legal advice, and the limited options for legal advice:

'Wales has got a particular challenge in being a law desert in terms of people who undertake this kind of work. There are literally a handful of law firms...' (IV23)

9.27. The workshop evidence also raised lack of awareness of legal rights, and the lack of accessibility of the justice system associated with legal aid funding cuts and court closures, as matters impacting on accountability of public authorities in Wales. The difficulties of accessing advice and advocacy seemed particularly acute for parents and carers of disabled children, for disabled adults and for some members of Black, Asian and Minority Ethnic communities. The difficulties experienced by immigrants and asylum seekers were also commented on.

9.28. From our survey with professional stakeholders, 84 per cent, i.e. 81 of 96 respondents, agreed that civil society organisations need to be better resourced to provide support, advice and advocacy. Many interviewees and workshop participants also agreed that third sector organisations could be better supported to play a larger role in holding public authorities to account, and that their expertise could be better harnessed by organisations such as the EHRC.

9.29. Interviewees and workshop participants also noted the closeness of the third sector to government in Wales, particularly in terms of sources of funding, and commented that whilst this proximity of civil society to political process has value, it may also be another reason for lack of use of stronger accountability and enforcement mechanisms such as strategic legal challenges.

9.30. Across the evidence social services was given as a specific example of where variable levels of awareness, availability of advice, and access to advocacy, were impacting on accountability, as is reflected in this comment:

‘the Social Services & Well-being Act talks a lot about people’s rights to assessments and rights to services but then what we hear (through things like advice lines) is that people aren’t able to exercise rights in that way. And sometimes that’s a lack of the individual’s knowledge and understanding...then following on from that lack of understanding, low levels of provision of things like advocacy that would help people to exercise their rights...’ (IV5)

9.31. Other interviewees raised concerns about implementation of the SSWA 2014 that related to lack of awareness of carers rights, lack of funding, and lack of access to advice and advocacy to enable enforcement through legal challenges. Problems implementing the SSWA 2014 were also mentioned by workshop participants.

9.32. As with our online survey respondents (professional stakeholders), interviewees noted the difficulties for individuals understanding what rights and entitlements they have, and in particular the challenges for individuals seeking to enforce their rights:

‘There isn’t enough resource for individuals to actually do anything about individual breaches, so there, you know, the reduction of Legal Aid and, you know, the desert of legal advice.’ (IV1)

‘A lot of people just feel as though enforcing your rights, especially in relation to human rights, is just out of their reach, it’s not easy to do on an individual level. The onus is often on the individual to bring about legal action, which is just unattainable for a lot of people.’ (IV15)

9.33. The complexity of accessing redress mechanisms was particularly acute in the evidence from people with lived experience, with concerns expressed that mechanisms to complain and to seek legal redress with respect to equality and

human rights, are not easy to access or to understand, and that insufficient information is available to the general public about various public authority responsibilities, and how people can complain.

9.34. Many interviewees specifically linked concerns about accessibility to cuts in legal aid:

‘one thing is you know, people’s rights you know, since they’ve cut the legal aid budget right, people haven’t got the finances to actually challenge so I think that’s a huge, huge issues and that’s a huge inequality whereby people you know, if we’re talking about carers quite a lot of them are on low wages etc, disability benefits and what have you, they don’t have the finances to actually challenge and because there’s such a lack of advocacy out there for people to speak up on other people’s behalf and then the erosion of the legal aid fund because to me if it’s all about rights then you need to be able to challenge somebody in a Court to actually get that changed for the better for everybody...’ (IV 10)

‘Legal Aid is effectively not sufficiently available at the moment and even when it is granted it’s payment for the lawyers is subject to the Court granting permission, and you know, dare I say it the Legal Aid rates are woefully inadequate to fund litigation properly. This is not the best way to ensure that the rights are either not infringed in the first place, or if they are that a proper redress is available.’ (IV21)

‘it comes back to being a kind of legal desert that we live in and to actually do something about it...’ (IV23)

9.35. More specific issues in relation to legal accountability relate to the nature of different duties. None of our evidence suggested that amendments need to be made to the HRA 1998 to improve prospects for enforcement. Many were complementary about the Act, for example:

‘Section 6 to 8 of the Human Rights Act are, you know, it’s probably the paradigm legislation, it really is a very good piece of legislation, it’s provided rights which can be effectively enforced before the Courts, and they have done now for what, the past 20 years or so.’ (IV21)

9.36. And similarly, the PSED under section 149 of the EA 2010 is also seen as ‘very important and can be relied on in court’ (IV21). The concern from the perspective of our interviewees and especially from our workshop participants was that in contrast, particular equality and human rights duties under specifically Welsh law are either weaker ‘due regard’ duties, and weaker still duties to take into account or to take steps towards meeting particular objectives. The question of whether sustainability and well-being duties should be specifically legally enforceable is perhaps beyond the scope of our research, but the broader concern of our interviewees and workshop participants (which is also evident in the literature) is whether ‘due regard’ or ‘take into account’ duties, and/or the ‘target duties’ or ‘aspirational’ form of drafting, represent a broader Welsh Government approach that if followed for future equality and human rights legislation, could lead to a situation where, as one interviewee put it:

‘effectively there will be no enforcement of rights through the courts, and we’ll be left then with public bodies simply either just doing the right thing off their own bat, or possibly subject to the, what in my experience is lesser enforcement procedures that can be brought by the commissioner.’ (IV21)

And another:

‘I think some of the legislation is clearly being shown to be aspirational. That’s I think the biggest challenge, we’ve got the social welfare, socio-economic legislation coming through and my worry again, is it’s more aspirational than practical....’ and ‘until there is another challenge it’s (the WFGA 2015) purely aspirational.’ (IV23)

9.37. Interviewees stressed that the need to improve access to legal enforcement is not to be confused with creating a litigation culture:

‘I consider the best way to ensure that these rights are upheld is through effective enforcement through the Courts, that’s not because it would lead to a myriad of Court actions, it’s just that those bodies that have the duties, if they realise that they may well be sued as a result of failing to comply, will in practice be much better at complying with their duties.’ (IV21)

9.38. Litigation can also lead to transparent interpretation of legal duties that advances equality and human rights. An example given by interviewees and workshop participants was in relation to discrimination law, where the more detailed content of legal duties has been fleshed out in case-law over the years. It was said in a workshop that this cannot currently be achieved with respect to Welsh law due to lack of cases, and that in general the potentially ‘huge number of cases not heard’ is a ‘black hole that needs to be filled in some way.’

9.39. Legal redress through courts and tribunals is just one, albeit important, element of administrative justice, and our literature review demonstrated the complexity, but also the richness of the administrative justice system in Wales, especially as compared to other countries.

9.40. Accountability begins within public authorities themselves. Some of our evidence suggested that there is a need for improved leadership within public authorities and to foster developments in organisational culture particularly so that later challenges are engaged with constructively and seen as part of a learning approach. This would be part of engaging ‘responsively’ and ‘reflexively’ with legislation and policy frameworks (as discussed in our section on ‘Legislation’).

9.41. Some interviewees thought that accountability can be weakened if equality and human rights issues are not addressed at a sufficient level of seniority within public authorities. Interviewees also expressed concerns that responsibility for equality and human rights is sometimes an ‘add on’ to a person’s other roles and/or that responsibility is siloed and not integrated across the public authority. The

evidence from people with lived experience recommends greater investment by public sector organisations in equality and human rights work and more staff dedicated to these issues. Concerns were expressed across the evidence as to whether equalities officers are given enough training and support to properly perform their accountability roles. For example, an interviewee commented that there is a:

‘need to support the people on the ground who are actually doing the work, and in public bodies, well in local authorities, (I) quite often find that the equality officer is kind of marginal. They don’t speak directly to the chief executive, again they’re sort of placed somewhere out of the mainline of policy development and sometimes they’re consulted on policies as an afterthought.’ (IV6)

9.42. Workshop participants also considered that individual public authority staff do not have enough understanding of their own accountability, and that complaints to local authorities are ‘few and far between’ because people don’t know what their rights are, or what support is available to them, and that people can generally lack confidence or be intimidated by complaints processes. This is clearly borne out in the evidence from people with lived experience.

9.43. In addition to internal accountability, bodies like commissioners, ombudspersons, auditors and regulators provide a mixture of administrative and some degree of legal enforcement. The evidence suggests that these institutions collectively make an important contribution to accountability for equality and human rights in Wales. For example, an interviewee noted:

‘I think Welsh Government should take enormous credit for setting up these roles, and they do really matter and I think you know, we’ve talked about the complexity of the landscape, but older people get that there’s a Commissioner for them, children get that there’s a Commissioner for them, Welsh language speakers get that there’s a Commissioner for them, and I think those things are really important...from my, my experience that helps people to exercise their rights, because if they come to our casework team, we are able to

enable them to exercise their rights in a way that other bodies can't, because we can bring our power and profile behind that.' (IV15)

9.44. Young people noted the important role of the Children's Commissioner as a 'critical friend'. Other evidence was more circumspect as to the success of the Commissioners as is reflected in this comment:

'In terms of the individual Commissioners, not the Future Generations Commissioner I think I said I don't think this is her job, but the Young people's Commissioner and the Older People's Commissioner etc. It seems to me that they are not really succeeding and I'm not quite sure why. But they don't manage to challenge enough...They've made an impact in that they publicise these topics, that's a good thing, but they don't seem to be able to change the attitude of the Government.' (IV22)

9.45. A workshop view was that the 'subordination of the Commissioners to the executive' is a problem and that all Commissioners should be accountable to the Senedd. The importance of the more promotive and pro-active role of Commissioners in seeking to change behaviour was commented on. For example:

'holding to account is also about being constructive and improving practice and you know, it's not, it's not just about wagging a finger at people, this is about improving practice and sharing good practice.' (IV15)

'(the job of) Commissioners is to prick conscience and tell the Government when, you know, we as Commissioners are the person with the 'Emperor's New Clothes' who stands up and says 'hang on' the Emperor's not wearing clothes. That's our responsibility, you know? At times this is difficult but we need to be honest and straightforward about that.' (IV17)

'(For Commissioners), what they hope is that the attention given to a public body that fails in terms of human rights or equality is what will create difficulty for them.' (IV17)

9.46. A view that emerges from the evidence is that while public authorities are not always accountable, it is also the case that ‘their wings do get clipped by the EHRC, the Auditor General and the Commissioners over and over again’ (IV16) and that civil servants are conscious of scrutiny by the Wales Audit Office, the Commissioners (to a lesser degree) and of political scrutiny and public opinion (IV9). That said, it was noted that the general public might not be aware of the extent of accountability activities undertaken by Commissioners and other administrative justice institutions:

‘I think with all of us, all of us bodies, a lot of the monitoring and scrutiny that goes on, goes on behind the scenes. So that public awareness of the monitoring we do may, well, it may be impossible for people to be aware of all of the monitoring.’ (IV16)

9.47. The evidence also suggests that more use could be made of audit, inspection and regulation processes as a means to hold public authorities accountable for equality and human rights. A specific example given in workshops was whether ESTYN could have a role in relation to children’s rights. Strengthening the role of ESTYN in relation to equality and human rights was also raised in the evidence from young people themselves.

9.48. With all these types of administrative justice bodies, a general concern expressed was that there is a lot of issuing reports with recommendations, but that it isn’t always clear what kind of ‘teeth’ there might be to those recommendations, or how they are followed up. In relation to Commissioners, interviewees considered that there is some potential for reform. However, it was recognised that Commissioners already walk a tight rope in trying to ‘maintain a constructive relationship with the Government in order to influence as much as you can, but there are times when you can’t influence more and you have to criticise...’ (IV17). For example, the Welsh Language Commissioner (WLC) has regulatory functions, with the power to issue fines if public bodies fail to take any action after being found in breach of language standards, but even these enforcement powers, and their practical effects, can be comparatively weak at times. People with lived experience recommended

investigating whether the enforcement powers of the Commissioners could be expanded.

9.49. In relation to some Commissioners, relevant legislation surrounding their roles, remit and powers, is considered 'quite messy' (IV16). This is in part because some underpinning legislation:

'pre-dates the separation of legislature and executive, so that complicates who we're answerable to and who we are scrutinised by... so it's inconsistent and messy between commissioners. Some of what, some of what we can and can't do is unclear in our legislation...I've had to seek legal advice more than once during my term, just to check whether I can or can't intervene in particular areas because the legislation is pretty obscurely written.' (IV16)

9.50. Interviewees recognised that any proposals to give more enforcement powers to Commissioners would have to be nuanced and take into account the democratic and constitutional context:

'I also think that we probably shouldn't have the power to actually make governments and local authorities, elected bodies do things unless they're in clear breach of legislation. So it's getting the balance from being able to hold them to account properly when they breach legislation without actually saying you must bring in this new law or you must, you know, you mustn't put your funding in this place.' (IV16)

9.51. The evidence suggests that areas for reform could include clarifying underpinning legislation and developing swifter and more effective ways for Commissioners to highlight when legislation, including legislation imposing human rights obligations, has been breached. The complexity of various processes within some accountability bodies, including within some Commissioners, might also be an issue. For example, legislation underpinning the various roles of the WLC leads to at least three different complaint procedures, and to tackle this the teams dealing with complaints have been restructured so that matters are dealt with not 'according to what kind of complaint it is, but who is involved in it' (IV17). This approach also

assists with other initiatives to follow through ‘enforcement’ and collect evidence on whether public authorities subject to a complaint have indeed changed their behaviour in the medium to longer-term.

9.52. Interviewees were concerned about whether Welsh Commissioners have sufficient resources to perform their various roles, with some Commissioners having experienced real-terms budget cuts despite an expansion in the populations within their remits. Workshop participants also considered resourcing of Commissioners to be a cause for concern given the extent of their remits. This inevitably means that choices have to be made about when to commit resources to conduct investigations, and the balance between budgeting respectively for promotive work, case-work and various enforcement activities. Interviewees also noted that under-resourcing can mean that Commissioners feel unable to intervene in litigation where their intervention could be important to assisting legal clarification for the future, as well as enforcing the rights of particular individuals. The intervention of the WLC in the case of *Driver v Rhondda Cynon Taf County Borough Council (2020) EWCA Civ 1759* was seen as a particularly valuable step towards accountability in relation to Welsh language.

9.53. The overall landscape of administrative justice accountability was summed up by an interviewee who noted that Wales has ‘excellent bodies’ in its administrative justice sector, but it is ‘also fair to say that there is still a lack of synergy in some respects. So we have a lot of elements, and all of these elements clearly have value, it is just a question of how they combine together’ (IV20) and which institutions are to take leadership roles in relation to particular issues. Workshop participants also generally considered that there is no particular need for new accountability mechanisms, but rather that: ‘Ensuring compliance is key, and making more effective use of existing mechanisms is paramount.’ However, the evidence from people with lived experience suggests that new complaint mechanisms relating to equality and human rights could be valuable if they are clearer and more easily accessible than existing options.

9.54. A key body for equality and human rights accountability in Wales is the EHRC. In our survey with professional stakeholders, 38 per cent, i.e. 41 of 107

respondents, considered the EHRC to be not very, or not at all effective at holding public authorities, including Welsh Ministers, to account in Wales for equality issues, 32 per cent (34 respondents) considered the EHRC to be either quite or very effective (with 30 per cent not sure). In relation to human rights issues, 36 per cent, i.e. 41 of 113 respondents, considered the EHRC to be either not very or not at all effective as an accountability institution, 34 per cent (38 respondents) considered it to be either quite or very effective, and 30 per cent were not sure. In general, we can say that around one-third of respondents consider the EHRC to be either very or quite effective as an equality and human rights accountability institution, one-third say it is either not very or not at all effective, and one-third are not sure. Some survey respondents considered that the EHRC is comparatively effective given its resource constraints, and some suggested that it requires more funding to increase capacity.

9.55. A general theme was that the activity of monitoring by bodies like the EHRC leads to production of well-researched information, but there is little clarity about how this is actually used by the Welsh Government. Some survey respondents (professional stakeholders) considered that strategies and action plans are common, but there is an accountability gap because the medium to longer term impacts of these strategies and plans are not effectively monitored. As one respondent said, projects 'lose momentum and any positive steps are undone', and another noted that whilst responsibility for equality and human rights exists in principle in legislation, there is an emphasis on reporting (which is often not followed up) as opposed to 'holding organisations accountable for outcomes.'

9.56. Many interviewees were complementary of the reports produced by the EHRC in relation to Wales, for example:

'The reports they publish are extremely important to us all I think in terms of understanding what is happening and what is not happening in Wales.' (IV22)

9.57. That the EHRC had recently stepped up its work in Wales was recognised by some interviewees, but in general there were concerns about the EHRC's powers, funding and effectiveness:

‘And of course the EHRC is kind of a pale imitation of its former self. I mean, you know, and of course, back in the day we had three commissions and then it became one and then over the years, you know it’s been whittled away and its powers have been stripped away. So, yeah, there’s no enforcement either in the regulatory body or in other, via other agencies.’ (IV3)

9.58. The fact that the EHRC constitutes the merger of more specific accountability bodies was raised across the evidence as a reason for some of its perceived lack of effectiveness. As one interviewee highlighted:

‘you see far less coming out of the EHRC than what used to come out of the specific organisations because they were, actually they had one job whereas now they’ve got a range of jobs...’ (IV10)

9.59. Interviewees linked the lack of impact of the EHRC in Wales to what was seen as its limited power to ‘enforce’ recommendations made in reports, one example given was its report on ‘Racism in Higher Education’ where an interviewee said:

‘what’s been the impact of that, pretty much nothing because there’s been no legislative force behind it to say, hold on, you’ve got to make some action about this, you need a system of redress, you need timelines...’ (IV12).

9.60. Some survey respondents (professional stakeholders) considered that the EHRC should have increased enforcement powers. The evidence from people with lived experience also recommends strengthening the enforcement roles of the EHRC and discloses concerns about sufficiency of funding for the EHRC in Wales that were shared across the evidence. For example, from interviewees:

‘the funding cuts they’ve actually endured over the last, God, I don’t know, 10, 15 years or more, they’ve taken a massive hit which then erodes their ability then to actually take these cases and hold people to account, so they need to be very selective in which fights they actually pick.’ (IV10)

9.61. However, there seems to be a perception of lack of use and/or lack of visibility of this function, and a number of interviewees and workshop participants considered it to be difficult to access support from the EHRC for 'test cases'.

'I think, if you were to do a straw poll and ask other people (who has responsibility for accountability), everybody, most people would just straight away say, "Oh it's the Equality and Human Rights Commission, I guess", because that's what's in their title so it's natural to think perhaps it's them. But, again, you know, we know that they don't do active case work, certainly in Wales, so where is somebody supposed to go to, to perhaps get somebody to look at their complaint purely in terms of whether there's been a breach of human rights?' (IV20)

9.62. Many interviewees, then, considered that the EHRC is the obvious body for equality and human rights accountability in Wales, but that awareness of this could be improved especially among the general public. A number of interviewees discussed the relationship between the EHRC and the third sector, suggesting that third sector organisations have a key role in bringing potential cases to the attention of the EHRC, but there were then questions around whether the EHRC is sufficiently resourced to progress these claims to ensure more formal enforcement.

9.63. Some survey respondents (professional stakeholders) and interviewees considered whether aspects of the EHRC role could be devolved. This survey response is indicative:

'The EHRC needs to be devolved or at least the Wales Committee need to be given more autonomy over Wales-only matters so it can take action in Wales.'

9.64. But other evidence expressed concerns about how this could be achieved given the devolution context, and a word of caution was noted as regards the complexity of having different accountability processes for devolved and non-devolved bodies or issues, based on the experience of accountability for Welsh Language Standards (duties on most devolved bodies) and Welsh Language Schemes (duties on non-devolved bodies). It was also suggested that the UK-wide

nature of the EHRC is a strength, providing it with a more authoritative status, including on the international stage, whilst also allowing differences, sharing best-practice and learning, across Wales, Scotland and England.

### *Synthesis: Accountability and enforcement*

9.65. In this, and other sections of this report, the evidence is clear that steps need to be taken to strengthen accountability for equality and human rights in Wales, including through enforcement. This section has drawn attention to the potential of administrative justice to support accountability. While there is a need to strengthen accountability for equality and human rights, this is reliant on people being able to access advice services, up to and including legal aid funded advice services. From our evidence it seems that there is generally little appetite for new accountability bodies, but rather for improving people's access to existing redress, in particular their access to individual complaint mechanisms. These issues are discussed further in the 'Conclusions' section. Recommendations here are mainly under 'Accountability and enforcement' (see Table 1 below), but recommendation 1 is also relevant.

## **10. Findings: Raising awareness**

### *Context*

10.1. Raising awareness, and developing understanding is a key aspect of building support for equality and human rights (Equally Ours (a) and (b) n.d; OHCHR 2002). Education and training influences attitudes toward equality and human rights, and can bring about improvements through better observance and cultural change (OHCHR 2002: 8). It is therefore unsurprising that UN mechanisms have identified education and training as key mechanisms to support the realisation of equality and human rights, and there have been calls on States to develop National Plans of Action for Human Rights Education (OHCHR 2002). For example, the UN Committee CEDAW:

'Urges all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that

hinder the full operation of the principle of the social equality of women.’ (UN CEDAW 1987: general recommendation 3)

10.2. Education on human rights may be seen as amongst the key human rights obligations of States, and has been identified as such by the Committee on the Rights of the Child which has stated that there is an obligation to ‘develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary’ (UN CRC 2003: para. 53). The Committee goes on to recommend training for all those working with and for children, to include, for example, community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police (ibid: 12-13). While the Committee’s comments relate directly to children’s rights, the importance of education on equality and human rights is widely recognised as a key to implementation through capacity building and empowerment of individuals to take advantage of their rights (DIHR 2007; CCfW 2016; OPC 2015). Education (and training) also empowers individuals to engage with processes which affect them and their rights (such as participation, impact assessment or coproduction) (ibid). The reverse is that lack of awareness of these concepts is a significant reason why people do not challenge or find it difficult to challenge public body decisions that affect their human rights and entitlements and introduces an additional barrier to accessing redress (Nason *et al* 2020a).

10.3. The literature provides insights into how equality and human rights education may be delivered, including through the development of handbooks, manuals or training materials, education, awareness raising activities (DIHR 2007; OHCHR 2002). Education on equality and human rights should not be confined to schools. Public Legal Education (PLE) should be an integral aspect of raising awareness and understanding. This might include for example, public meetings, media campaigns, support to self-mobilising groups, awareness raising, workforce education, and targeted educational activities which also facilitate inclusion (DIHR 2007). PLE is an aspect of empowering (ibid). It helps the public to understand legal issues and to be aware of their rights. PLE covers a wide range of activities aimed at ‘empowering participants, and increasing their confidence and capability to deal with their law-related problems’ (Solicitor General’s Committee on PLE n.d., no page number).

Better knowledge of rights and legal issues empowers individuals and communities, enabling them to take more control over their lives, deal with their problems, participate in the democratic process, and get involved in shaping the decisions that affect them (ibid). The Low Commission argued that: 'PLE is as important in achieving equal justice as public health education is in tackling the nation's health' and that PLE should be given higher priority (Low Commission 2014: Annex 6).

10.4. The GER highlighted education as a crucial tool in driving the culture change needed to deliver a more equal Wales by challenging stereotypes, and found that education reforms offer an opportunity to embed equality and support the development of well-rounded and informed citizens (Chwarae Teg 2019). Similarly, the Welsh Government has recognised the role of education in promoting equality and human rights. It has stated that:

'...reliable, well-integrated information and advice services have an important role to play in educating people on their rights and helping them to make informed choices. This can also contribute to well-being by helping people to help themselves, and can prevent problems from escalating.' (Welsh Government 2019b: 24)

10.5. The CoJ, recognising the value of PLE, recommended that the Welsh Government should lead the development and implementation of an action plan to promote and support PLE, particularly for children and young people (CoJa 2019). While raising awareness of equality and human rights and PLE should not be confined to children and young people and the school setting, it is recognised that the education system is an important contributor to developing a society which respects these concepts. The EHRC has argued that teaching about equality and human rights, including how protection from discrimination is guaranteed in the EA 2010 can help schools and the Welsh Government fulfil their PSED and obligations with regard to the SED (EHRC n.d., evidence on curriculum bill in Wales). Education may be seen as an aspect of empowering children, consistent with a children's human rights approach, as education will provide children with accessible information and training to develop their understanding of their human rights (CCfW 2016, 2017).

10.6. The CoJ made a number of recommendations on education around Wales specific legal frameworks, and concluded that a Law Council should be established to promote the interests of legal education and the awareness of Welsh law (CoJ 2019a). The Senedd Children, Young People and Education Committee recently recommended that the Welsh Government ensure human rights education, including children's rights with reference to the CRC, is taught under the new Curriculum for Wales (CYPEC 2020: recommendation 9). This would build on the UNICEF 'Rights Respecting Schools' award which recognises education on human rights, and a culture of human rights in the school setting. The Rights Respecting Schools Award helps schools to use the CRC as their values framework in order to become 'rights-respecting' (UNICEF 2010).

10.7. At the time of writing this report, the Welsh Government is in the process of piloting its Curriculum and Assessment (Wales) Bill through the Senedd legislative process. A roundtable of stakeholders convened in advance of the Bill agreed on the importance of children and young people knowing about their human rights (CYPEC, 2020). Despite this, the Bill does not include a mandatory requirement for training on equality and human rights, but rather requires that the curriculum 'areas of learning and experience' should include 'religion, values and ethics' (section 3). The Bill requires that teaching under these headings should reflect the fact that non-religious philosophical convictions are held in Great Britain and that these convictions might include equality and human rights. While the Curriculum Bill, if enacted, will not prevent teaching on equality and human rights, there is no requirement that this takes place. The Explanatory Memorandum on the Bill explains that an understanding of human rights helps a child to develop respect for others and themselves, and notes that learning through human rights contributes to the development of values, attitudes and behaviours that reflect human rights which underpin active citizenship to advance respect for the rights of all (Welsh Government 2020g: para. 9.12). The curriculum for Wales guidance issued in January 2020 (Welsh Government 2020h), points to the benefits of a curriculum which recognises the diverse culture of society and how this promotes equality, and inclusion, and 'enables learners to develop an understanding of people with different beliefs and perspectives and to challenge stereotypes' (ibid: 42). The guidance also notes the relevance of equality and rights to different parts of the curriculum and

comments that 'experiences' in the area of human rights can help learners develop an understanding of their responsibilities and of their own rights (ibid: 125), but there is no explicit guidance for learners to be taught about equality or human rights as core topics.

#### *Evidence from stakeholders: Raising awareness*

10.8. Our survey with professional stakeholders shows that 93 per cent, i.e. 108 of 116 respondents, agree improving education on equality as a key challenge for Wales, while 92 per cent, i.e. 106 of 115 respondents, thought the same about human rights education. 83 per cent, i.e. 95 of 114 respondents, felt that the Welsh Government could do more to promote public awareness of equality and human rights, and 86 per cent, i.e. 89 of 103 respondents, felt that public authorities could do more in this area at a local level. On how to achieve better awareness of equality and human rights, 83 per cent, i.e. 89 of 107 respondents, felt there needed to a greater focus on these topics in the curriculum, while 86 per cent, i.e. 91 of 106 respondents, felt there needed to be more PLE; 87 per cent, i.e. 92 of 106 respondents, also felt there needed to be more information campaigns, while 78 per cent, i.e. 83 of 106 respondents, agreed that Welsh Ministers should make more use of social media to promote equality and human rights with 84 per cent, 88 of 105 respondents, agreeing that the Welsh Ministers should use the general media more effectively for this purpose.

10.9. Interviewees referred to the lack of public understanding of equality and human rights as a key challenge and the need for more to be done to raise public awareness of equality and human rights, including through PLE and by the Welsh Government in this area. For example:

'No they're not doing enough. ... it's very siloed so (there's) talk about it in certain meetings but not in other meetings and it's very much absent from, you know, any kind of children and education and the new curriculum where I think it needs to be first and foremost.' (IV1)

'you know, someone off the street, if I stopped them and asked them about equality and human rights, I'm 99 per cent sure they wouldn't really be sure

what I'm asking about. So there is always room for more and for more clarity. And I think that, you know, the Welsh Government can do more to promote and, you know, to make it a bit easier to understand for everyone. And to make it a bit a clear whether it's a, you know, an easy read or a video explaining everything in a kind of clear, simple way.' (IV19)

10.10. This was also an issue raised in workshops. Participants suggested that a key challenge for equality and human rights in Wales is the lack of awareness and understanding amongst the public, and identified the need to raise awareness of how human rights and equality relate to everyday life and how people can exercise their rights.

10.11. A number of interviewees highlighted the potential positive, awareness-building impact of clear public information campaigns using real life examples that resonate with ordinary people. A number of mechanisms for raising awareness were discussed:

'what we need is a greater campaign around that awareness training for practitioners and probably some public awareness campaigning.' (IV5)

'public information campaigns about what, what human rights are, what they mean in Wales, where can you go to if your human, you feel your human rights have been breached, especially in regards to marginalised identities, you know, I feel like that information is probably lacking.' (IV8)

'this could be addressed through, point number one, obligatory, appropriate and consistent education on equality and human rights in schools ... educate children and young people about the correct definition of terms frequently used in the context of equality and human rights such as race, religion, human rights, asylum seeker, ethnicity, political correctness. ... training for teachers and support staff to recognise and address issues such as racism and harassment for example. ... (on the) dangers posed by inflammatory and overwhelmingly negative press coverage of minority communities, and to consider whether there is any scope to strengthen the voice of these

communities against such coverage....(and) a positive public awareness campaign to address inappropriate language and to promote mutual understanding amongst the general public of human rights.' (IV2)

10.12. There was also recognition that while there may be challenges to raise awareness of equality and human rights, nevertheless this should be an important role for government:

'I think it's very difficult for governments to kind of run, well difficult and is it effective for governments to run public information campaigns, so the jury's out on that but I feel it, a good way to raise awareness would be around, by using certain examples and by making it clear what people's rights are and using certain examples.' (IV7)

'The raising of public awareness is an important one. I think one of the hurdles to get over is that some of the equality language is not for everyday conversation. For example, adverse impact, protected characteristics. The moment you have to explain what it means, is the moment you have lost the audience. I accept that this is true also of other pieces of legislation, but something that could potentially impact on everyone - regardless of who someone is - should be more of an 'easy read'. This would not just have a benefit for specific groups such as those with a learning disability, but it would be beneficial for everyone. Even if this was just about getting the key headline messages out there.' (IV13)

10.13. Interviewees also recognised the challenge for education on equality and human rights against the backdrop of media hostility, for example:

'but you know public awareness comes with tackling the culture that allows human rights to be denigrated as well and so the media has a big part to play here. ... it's created a culture in which people feel that human rights is something to pour scorn over, that it's something that could be, that isn't universal, that should be put aside if you've done something that's seen as controversial in the kind of court of public opinion and that culture is really,

really damaging, and it stops people from accessing basic human rights and it adds a stigma to human rights and to equality issues.’ (IV11)

10.14. This theme was echoed in the comment from another interviewee who emphasised that there should be efforts made to counter misunderstandings about human rights in particular:

‘But also I think, there could be stronger awareness about the positives of equality and human rights. You know, it’s been hijacked by being seen as, you know, being PC or human rights is about the rights of terrorists or whatever. So, you know, there isn’t, there’s not like a culture of equality and human rights in Wales. And I think Welsh Government and other public bodies could set the agenda.’ (IV3)

10.15. A number of interviewees commented on the need to educate people in Wales on specific legal frameworks, for example:

‘I think people are not clear about what legislation exists, what their actual legal rights are in relation to equality or human rights, there’s a real confusion about which legal systems can uphold those rights, whether they’re, whether it’s Welsh specific education or UK or European legislation.’ (IV1)

10.16. A number of interviewees identified different areas for human rights education, including the workplace and schools, for example:

‘I think that the government is vocal but awareness in the workplace is still low. I think that schools necessarily don’t teach this enough and the curriculum could certainly be strengthened.’ (IV11)

10.17. Interviewees also commented that equality and human rights need to be addressed through the curriculum, and that this should incorporate education about the administrative justice system to understand routes to challenge, redress and accountability:

‘we know that the best schools will continue to be very good at teaching at human rights and the weaker schools will not. We have managed to get it written throughout the curriculum content at the moment, which is great, but unless it’s underpinned by the legislation, it could just fall out of that content quite easily.’ (IV16)

10.18. Likewise, workshop findings indicated strong recognition of the importance of building awareness of equality and human rights. For example, this extract from one workshop note:

‘A lot of people don’t have an understanding of equality and human rights and negative media coverage does not help’, and that ‘there is a need for extensive resources to change culture and behaviour over time’

10.19. Other workshop participants suggested that ‘(p)erhaps user guides assuming a basic level of education and making awareness raising that centres rights holders not rights deliverers’ could be valuable. Evidence from the workshops identifies the need for representation of people with protected characteristics in any public information campaigns.

10.20. Across all of the forums, participants identified a need to improve public understanding and awareness of equality and human rights and make information accessible to all. In the Wales Race Forum, participants identified a strong need to address the widespread lack of awareness and negative view of equalities and human rights in Wales (as in the rest of the UK) as public perception of these concepts can be very narrow and nationalistic. Participants felt that more resources should be allocated towards awareness-raising and empower people to understand that equality and human rights are for everyone. In the Faith Forum, participants identified a pressing need for people to be more aware of their rights, including through information on equality and human rights accessible to the ‘average citizen’.

10.21. The evidence from children and young people highlights concerns that young people do not have much awareness of their rights or where to find this information.

The focus groups were very clear that awareness needed to be raised in relation to the CRC, but also human rights and equalities more widely, including how to take action if rights are breached and how young people can be supported to challenge breaches of their rights. This evidence draws attention to the lack of public awareness of the CRC and human rights but also notes that this applies to some professionals in specific sectors, and recommends that the Welsh Government should ensure the general public are made aware of their rights. The evidence from the Young Wales focus groups also suggests that better awareness around specific issues would mean that children and young people would feel more empowered to 'stand up, speak out and seek support', but goes on to note that not all schools in Wales are teaching children and young people about human rights and equality, which puts young people in some areas at a disadvantage. Children and young people participating in the research recommend compulsory lessons on the CRC, human rights and the EA 2010 as part of teacher training courses across Wales, and the provision of regular training opportunities for all teachers. Other recommendations include: immediate intervention and implementation of rights awareness sessions for older children; embedding regular sessions for younger children within the curriculum; and, raising rights awareness amongst all children and young people in Wales.

10.22. A key theme raised by people with lived experience was the need for education, training and awareness raising on equality and human rights, in all organisations. This group of research participants identified the need for clear, accessible, and plain language information, and for media campaigns to challenge negative coverage. They recommend that education in schools should fully embed awareness of different groups in society and should tackle misconceptions, prejudice, unconscious bias, and offensive labelling, and further recommend including people from diverse groups in sessions in schools. Other recommendations include: ensuring equality and human rights are core aspects of the curriculum across all subjects, and providing teachers and school support staff with comprehensive equality and human rights training.

10.23. The evidence from people with lived experience also draws attention to the need for equality and human rights training to be improved for public sector

organisations in Wales, and identifies the need for private and third sector organisations to implement continual training and development in equality and human rights to be provided by community groups and third sector organisations.

### *Synthesis: Raising awareness*

10.24. The evidence suggests that public sector organisations should provide information to the public on services and support for different communities and groups in an accessible format, and that the Welsh Government should deliver a large-scale, ongoing, public education campaign on people's rights and to tackle prejudice and misconceptions against various groups in Welsh society. People with lived experience put forward a number of ideas to promote equality and human rights, these include: awareness campaigns on TV and radio, in newspapers, via social media and posters to ensure they reach as many people as possible; positive stories highlighted in Welsh media to combat negative coverage; an equality and human rights factsheet to be sent to every household in Wales in a range of community languages and accessible formats; and, elected members at all levels to promote local actions to advance equality and human rights. These suggestions are reflected in our recommendations 34-39.

## **11. Findings: Covid-19**

### *Context*

11.1. A growing body of literature demonstrates the pandemic has exposed and exacerbated existing inequalities in society, and raised many issues around balancing individual rights, and the rights and interests of others and society at large. The literature also reveals the disproportionate and damaging impact of the pandemic on women (Chwarae Teg 2020; WEN Wales 2020b); on children and young people (Children in Wales 2020; Senedd CYPEC 2021); on Black, Asian and Minority Ethnic people (Ogbonna 2020); disabled people (Disability Wales and others, 2020); older people (OPC 2020); and carers (Carers Wales 2020). The Welsh Government's 'policy and strategy' for post-pandemic reconstruction identifies a number of priority areas for action, including health and social care, housing,

education, employment and the environment (Welsh Government 2020m). It identifies tackling inequality and supporting well-being as issues to be addressed as Wales recovers from the pandemic. The policy does not reflect on how human rights have been affected by the pandemic.

11.2. As will be noted in the evidence discussed below, the pandemic also resulted in a number of progressive initiatives with potential to promote equality and human rights. Amongst these is the establishment of 'Covid Moral and Ethical Advisory Group' (Welsh Government 2020i). While the group includes experts from the equality and human rights sectors, its terms of reference refer to its role to:

'gather and coordinate issues relating to moral, ethical, cultural and faith considerations, and provide a source of advice to public services on issues arising from the health and social care emergency response to the Covid-19 pandemic' (ibid.)

11.3. The terms of reference also state that the advice will lead to the 'equitable and just' management of 'health related incidents across Wales, including the pandemic.' However, they do not refer expressly to the need to provide advice and guidance on equality or human rights issues.

11.4. In addition to the advisory group there are a number of sub-groups set up to investigate and make recommendations on the impact of Covid-19 on Black, Asian and Minority Ethnic people. For example, on the socio-economic impact of the pandemic on Black, Asian and Minority Ethnic people (Welsh Government 2020j). This report has clearly taken equality and human rights issues into account, and expressly identifies human rights affected by the pandemic (including health rights, and employment rights) (ibid: paras.53 and 63). There is also work in progress on the impact of Covid-19 on disabled people and to scope data requirements in relation to race and equality (information provided by the Welsh Government, 6<sup>th</sup> March 2021, email).

*Evidence from stakeholders: Covid-19*

11.5. Interviewees highlighted how Covid-19 has exacerbated existing inequalities and exposed some gaps in protection for human rights. For example:

‘we know that it’s revealed huge structural, systemic inequalities that were already there but have been exacerbated by the coronavirus pandemic, both the, both in terms of the coronavirus itself but also the response to the pandemic and what has happened.’ (IV18)

‘it’s really highlighted issues around gender equality massively...’ (IV7)

‘So I think that’s, I think, what the pandemic has highlighted is the absolute extent of this structural racism that intersects at every stage of a person’s life...’ (IV12)

‘I guess what it’s done is its just exposed what was already there. I mean, obviously this has come off the back of ten years of austerity and it’s exposed the weakness in public life in general, I think. But also, you know, the lack of attention that has been paid to equalities issues and the specific issues of people with protected characteristics.’ (IV3)

11.6. Across all the evidence received specific issues included the impact of the pandemic on disabled people, carers, Black, Asian and Minority Ethnic people, children and young people, women, and older people.

11.7. Our evidence suggests support for the Welsh Government’s handling of the pandemic in general, including the engagement with organisations representing disproportionately affected groups. For example:

‘in some ways, I would say the Welsh Government has shown, you know, as might be expected from its history, a bit more awareness in some ways of equalities and human rights issues than some of our other governments, globally not just in the UK.’ (IV16)

'so the Welsh Government has focused quite a lot on the disproportionate impact on BAME (sic) people, which has been positive, I think it has, that focus has led to a renewed, a renewed appetite to really take more specific and urgent action on equality.' (IV1)

11.8. Nevertheless, there were a number of areas of concern, many of which, while accepting the situation as unprecedented, related to a lack of preparedness. There was also a clear sense that the pandemic has exposed underlying weaknesses, inefficacy and inefficiency in relation to equality and human rights protection. For example:

'they took ages to come out with any guidance with regards to the Coronavirus Act in Wales, that was very late coming, we felt it didn't reflect a lot of what we would have liked to have seen in there around protecting carer's rights in particular and then they've been very slow to respond to things like PPE for carers and testing for carers you know.' (IV10)

'the first thing to say is there's obviously, no one was prepared for this and neither were government and I think that yes, you know I think that government have put their hands up to say yes very early on you know that the process wasn't followed as well as it should have been done...I think it demonstrates the weakness in the system already is the lack of capacity within the system and there's a lack of expertise, so when something like this happens it's, whose responsibility and whose job is it?' (IV4)

11.9. This extended to the lack of impact assessments, for example:

'So for example, impact assessments, was that the first people were thinking of? Probably not, and yet if you look at the legislation it should have been, because it should be, but it clearly demonstrated what we've been saying for a number of years, it's not seen as embedded within government and I guess Covid has just demonstrated the weakness within the system.' (IV4)

‘So obviously the Equality Act has the legal requirement to publish equality impact assessments...we’ve been writing regularly to the Welsh Government departments about where the published equality impact assessments are and where the evidence is...it may well be that they’ve considered equality impact assessment, equality and human rights and really explored the justification of human rights in their policy development but it’s not clear, the lack of evidence on that is unclear.’ (IV18)

11.10. Issues raised in the workshops included a concern that there was a ‘(d)earth of understanding of how equality and human rights legislation is impacted by Covid legislation’. Specific issues raised across the evidence included variable access to technology, the impacts of digital exclusion and lack of digital capability, and the weaknesses of a culture of ‘digital by default’ as the primary means of engaging with people across society. Also prominent in the evidence were concerns about the rights of older people, the situation in care homes, and especially PPE for care home residents and staff, and for disabled people and carers. Across the interviews, workshops and forums, there was evidence that: ‘carers felt invisible during the pandemic’ and ‘disabled people felt that their rights have been abandoned’. For example:

‘we’ve real concerns about what’s happened in care homes. The issue was broadly not spoken about for probably the first month of the pandemic and you know, the struggle of care homes to access things like PPE and testing for quite long periods...The other area for us was about deprivation of liberty.’ (IV5)

And from the Welsh Government Forum on Aging:

‘The general narrative around older people has been negative. The pandemic has crystallised benign ageism across society and there is an urgent need to tackle this because of the way it impacts attitudes around society.’

11.11. A specific issue raised was modifications to the SSWA 2014 under the Coronavirus Act 2020. As was noted in one workshop: ‘Duties of Local Authorities

have been suspended – limiting an individual’s right to independent living’; and from another, the ‘easement of the care duty should be the first to be rolled back’.

Interviewees were also concerned about, for example:

‘And, you know, the Welsh Government, like the UK Government, introduced the Coronavirus Act and ditched duties under the Social Services and Well-being Wales Act, which, you know, stripped disabled people and other people who would have the highest level of support needs, and be at the greatest risk of the virus, you know, stripped their rights off them... it’s been kind of disappointing that, you know, like the first thing they did was to take rights away from people who needed them the most and give a local authority carte blanche.’ (IV3)

11.12. It was recognised by different participants that Covid-19 has given us a glimpse of future issues, as one interviewee put it:

‘The current pandemic is just, sort of, visualising a festering issue that’s been in our society for, you know, for years and years...it’s not just Covid-19, but we obviously, we’ve seen that there’s a disproportionate effect of Covid-19 on black and Asian and minority communities. But it’s going to be the same with climate change, we’re going to have climate change refugees that, you know, there’s still no idea how that’s going to be handled. But it’s going to be the poorest communities being hit again...It’s going to be the same with aging population. And Covid-19 has just given us, kind of, a glimpse, a really fast-track glimpse of all the, you know, the slow-burn stuff that has been happening in the background for years and years and they’re going to continue to happen.’ (IV19)

11.13. For the future, research participants stressed that human rights in particular could be seen as helping to guide the response to emergency situations rather than as being something to be limited or suspended, with the same point being made about both rights and equality impact assessments as tools to achieve this. For example:

'not just Wales, across the UK. And seeing, you know, seeing things like equality and human rights as, "Oh, we're in an emergency, we haven't got time for that," rather than seeing it as something that would help, help, you know, help a public body deal with an emergency and deal with people who are going to be at the sharp end of that.' (IV3)

11.14. Across the evidence there was recognition of good practice during the pandemic and future lessons to be learnt. For example:

'I think it's fair to say this has placed enormous pressure on the public sector and some of the sectors that are perhaps subject to a huge volume of our complaints, health and social care. We would be expecting to see some kind of fallout from this further down the line. But then, equally, you know, maybe some really innovative good practices will come to hand and we would be quite keen to emphasise those as well, to give publicity to that as well I think in due course.' (IV20)

11.15. However, there was also recognition that this impetus, and related developing good practices, must be combined with accountability.

'something that's emerged as an outcome of this very strange sort of trinity of lockdown, Covid and George Floyd and the subsequent BLM movement that's come to light and to people's attention, take all of those statements that people make about that and somebody needs to hold them to action and accountability...' (IV12)

11.16. A poignant example from the research about what can be done when 'hearts and minds' are won, related to homelessness:

'In truth of course the irony is what took us a pandemic to provide homes, which we did three months ago. This was not caused by a change in the law, but a change in the circumstances, and that has made me think that there is a lesson there to tell the truth, homeless people have no more legal rights today they had them in early February, but everyone who was homeless at the

beginning of March has a home. It may be a temporary home, but they are indoors at the moment. Therefore, it is not about changing the legal structure but actually changing the human will that is needed in truth. And it can happen because it has happened this year.’ (IV22)

11.17. The evidence from young people confirms that Covid-19 has had a significant impact on their lives, as this extract from the summary of evidence in the Young Wales report demonstrates:

‘participants expressed concerns that the pandemic had further exacerbated existing issues and hindered developments on children’s rights and participation. They felt that support networks were not enough to protect them and recommended that solutions needed to be found to address this. It was also noted that many school pastoral support groups had been lost during the pandemic albeit these pastoral sessions were believed to be of great benefit to many individuals.’

11.18. Most of those taking part in the focus groups expressed concerns around children’s rights during the Covid-19 pandemic, in particular there were concerns regarding the protected characteristics and vulnerable young people and specifically around young people from the LGBTQ+ community. The evidence also highlights how marginalised young people require much more support and guidance in terms of raising awareness of their rights and empowering them to exercise rights during the pandemic.

11.19. The evidence from people with lived experience confirms that Covid-19 has highlighted and exacerbated existing inequalities, by for example: diminishing powers; diminishing voices; and relaxation of rights protections. Other key issues raised by participants in this research included: lack of planning; lack of offline and accessible information; isolation; impacts on mental health; exacerbating socio-economic inequalities; barriers to accessing health and social care; impacts on employment and education; access to basic necessities; domestic abuse; and equality and human rights being ignored.

### *Synthesis: Covid-19*

11.20. The evidence clearly shows that the pandemic has exposed and exacerbated existing inequalities, and gaps in human rights protection. Whilst the situation was largely unprecedented it has shone a spotlight on underlying weaknesses, many related to the broader issues raised in this research, in terms of education and awareness, training on equality and human rights for public officials at all levels, management, and resources and capacity generally. It has shown how processes to embed equality and human rights, such as impact assessment, can break down precisely when they might be needed the most. It has, however, also led to examples of good practice, and specifically to timely and extensive engagement between the Welsh Government, representative organisations, Commissioners, regulators and other interested stakeholders. Some of these initiatives have resulted in learning which will inform progress on dealing with the pandemic, but also other health issues in Wales: for example, the work of socio-economic impact of the pandemic on Black, Asian and Minority Ethnic people mentioned above (Welsh Government 2020j). And it has offered insights into how the Welsh Government might work with, for example, Commissioners to gather data to inform work with particular groups to protect or advance human rights: for example, the Welsh Government, the Children's Commissioner for Wales, Children in Wales and the Welsh Youth Parliament cooperated to gather data on the impact of Covid-19 on children and young people (CCfW 2020). This data is being used to inform the Welsh Government's response to the pandemic through measures that affect children and young people.

11.21. It is too soon to comment on the impact of the above initiatives as there is no independent data (we are aware of) to confirm this, and our data was collated too early in the pandemic for participants to be in a position to comment. However, we feel that the response to the pandemic in some areas provides a basis from which to continue to work to progress equality and human rights. See recommendation 40.

## 12. Conclusions

12.1. Through our research we have sought to develop a clear understanding of existing legislation and statutory guidance frameworks, and how they contribute to the protection and promotion of equality and human rights in Wales. We have also examined the literature, and reflected on evidence received from stakeholders, to interrogate whether, and if so, what changes might be recommended to existing frameworks to strengthen and advance equality and human rights in Wales. The discussion below sets out our key findings and main conclusions which have informed our recommendations.

12.2. To aid presentation, and to help make sense of the volume of evidence we reviewed and received, we have set our findings out under discrete headings. These were suggested as overarching themes by the literature review and by the evidence we received. Similarly, we have set our recommendations out under headings that relate to key issues raised by the evidence. Table 1 shows how our recommendations relate to the most relevant sections in the report. However, it is important to note, that when developing our recommendations, we took account of all findings, from all sections of our report. As for our recommendations, our conclusions should be viewed holistically to inform thinking on how to strengthen and advance equality and human rights in Wales.

12.3. We began by examining existing legislation on equality and human rights in Wales. We note that the GoWA 2006 both enables Welsh Ministers to take action on equality and human rights, and well-being, and prohibits conduct which is contrary to the ECHR or the UK's international human rights obligations. Using devolved powers, Welsh Ministers are able to direct and influence equality and human rights through legislation, guidance, and policy. However, the powers available in these areas are asymmetrical. Legislation on equalities is largely a matter reserved to the UK government and Parliament, while implementing human rights is a matter expressly within devolved competence. The EA 2010 imposes a PSED on Welsh Ministers and public authorities in Wales (i.e. 'listed authorities'), to promote 'equality of opportunity' by requiring 'due regard' to prescribe equality objectives. Welsh Ministers have introduced WSEDs to promote the better performance of the PSED

by Welsh Ministers and public authorities. From March 2021, Welsh Ministers and public authorities in Wales will also be required to have 'due regard' to the desirability of exercising their functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

12.4. Welsh legislation makes select human rights relevant in certain areas of public policy and service delivery in Wales. The RCYPM 2011, the SSWA 2010, and the ALNA 2018, embed human rights in different areas of public policy in Wales by requiring duty-bearers to have 'due regard' to specific human rights treaties and principles.

12.5. There are strong connections between equality and human rights. Non-discrimination is a principle of international human rights, and it is well-established that inequality is both a cause and result of failures in human rights protection. Human rights treaties specifically recognise discrimination and disadvantage experienced by different social groups, for example women, disabled people, and groups subject to racial discrimination, and introduce targets for achievement by Welsh Ministers and listed public authorities. Socio-economic human rights provide guarantees in areas where people might experience discrimination and disadvantage (for example, housing, health and social care, education, employment), and are therefore directly relevant to the socio-economic duty and how this might be given effect through public policy and action. Socio-economic rights are closely aligned with devolved competences. Despite the strong connections between equality and human rights, and the potential of human rights to establish objectives for equality action, our research has shown that the connections are not recognised in the legislative framework in Wales, with the result that they are dealt with as discrete aspects of public policy.

12.6. The WFGA 2015 is a significant introduction to the legal architecture in Wales. It establishes seven well-being goals to promote sustainable development through the work of public bodies, including Welsh Ministers. The prioritisation of sustainable development as the guiding principle for public policy and action in Wales, is an opportunity to make connections with equality and human rights. The UN '2030 Agenda for Sustainable Development' describes a relationship between equality,

human rights and well-being based around the UN sustainable development goals. However, our research shows that the WFGA 2015 and its associated guidance misses the point of the 2030 Agenda to promote human rights and prioritise the needs of the most disadvantaged and those left behind by poverty, social exclusion and marginalisation. Our research confirms the findings of the GER that there is very little alignment between legislation or guidance on equality and well-being, and adds that the same may be said of well-being and human rights. The evidence also suggests perceptions of a lack of clarity about equality and human rights priorities and responsibilities under the current legislative framework amongst professional stakeholders and diverse people. A particular issue raised by the evidence from research participants is that well-being legislation ‘lacks teeth’ which risks undermining protection of equality and human rights if the three concepts are elided.

12.7. Human rights are an opportunity to establish clear objectives for equality and well-being, and to ensure these may be enforced if necessary. The evidence demonstrates that there is a desire to establish clear and firm objectives for public policy and action on equality and human rights. Socio-economic rights in particular may be seen as an opportunity to establish and embed substantial outcomes as national priorities for equality action, and for human rights. The links between human rights and sustainable development provide a bridge to connect to the well-being agenda and the priorities established for public policy by the WFGA 2015. Human rights therefore also provide the opportunity to address concerns about the lack of clarity concerning the relationship between equality, human rights and well-being, but also to firm-up well-being duties by enabling Welsh Ministers and public authorities (public bodies under the WFGA 2015), and PSBs to establish clear and substantial well-being objectives. Our conclusions here are reflected primarily in our recommendations on ‘Legislation and leadership’, ‘Guidance’ and ‘Process alignment’ (see Table 1 below).

12.8. A clear message from our research is that Wales should incorporate more human rights into its domestic law. The way in which this has taken place to date is by requiring Ministers and certain other public authorities to have ‘due regard’ to specified human rights in the exercise of certain functions. This is described as ‘indirect incorporation’. The literature establishes that this form of incorporation

provides very limited legal accountability for compliance with human rights. The evidence received indicates support for incorporation to extend human rights protections to more groups, but also for incorporation to provide for greater legal accountability and enforceable human rights. This would require legislation to incorporate human rights that goes further than the 'due regard' approach, adopting an approach similar to the HRA 1998. If Wales were to move to direct incorporation of human rights, consideration would need to be given to whether the rights incorporated are consistent with legislative competence in Wales. This raises the issue of how to select which human rights are incorporated. The evidence was inconclusive on this issue. There were concerns that incorporation so far in Wales has been partial and piecemeal, but there were also calls for this to continue in relation to certain rights (for example, CEDAW, the CRDP, and the right to adequate housing). In Scotland, where the Scottish Government is committed to human rights leadership, consideration is being given to a Bill to incorporate international human rights in Scots law. The issues discussed in this paragraph have also arisen for consideration in Scotland where they are being considered by a National Task Force established to examine options for incorporation. We see this approach as the way forward in Wales, which is reflected in recommendation 1. Recommendation 25 is also relevant.

12.9. It is well-established that there is a persistent 'implementation gap' between the aspirations of policy in Wales on equality and human rights, and people's lived experience. This is apparent from the literature and the evidence we have received. The evidence suggests stronger leadership is needed from the Welsh Government, including clear direction and guidance to public authorities to take action to implement equality and human rights objectives, but also from public authorities themselves. Incorporation of human rights and making rights enforceable would be a clear demonstration of human rights leadership as it would send a strong signal about the importance of human rights in public policy in Wales. In addition to incorporation, the literature suggests that mainstreaming is key to implementing equality and human rights, and that a 'human rights approach' can make a significant contribution toward mainstreaming of both equality and human rights. The GER/WG recommends amending the WSEDs to strengthen equality mainstreaming, including by establishing clear priorities to firm-up the 'due regard' duty. We agree that the

WSEDs should be amended, including by establishing national priorities for equality action by reference to human rights standards. We also see guidance issued by the EHRC on the PSED and WSEDs, as statutory and non-statutory guidance on well-being and on the socio-economic duty, as well as strategic documents, as mechanisms to support and promote equality, but also human rights mainstreaming. In order to advance equality and human rights, human rights standards should be clearly identified and embedded in strategic planning as national priorities and desired outcomes for public policy. This could be achieved through inclusion of national priorities based on human rights standards in strategic documents such as the Welsh Government's Strategic Equality Plan, and confirmed as objectives for public authorities in other key policy documents, statutory and non-statutory guidance. In this respect, the planning framework introduced by the WFGA 2015 should be seen as an opportunity to establish objectives focussed on outcomes aimed at realising human rights and promoting action on equality. We see an opportunity to build on 'mapping guidance' on the socio-economic duty, as well as action plans in other areas, to make stronger connections across policy domains and to use human rights to establish an ambitious 'visioning' for action and outcomes to be achieved by Welsh Ministers, and through the work of public authorities. We have made a number of recommendations to strengthen leadership, promote mainstreaming, and encourage ambition on equality and human rights in public policy in Wales. These concerns are addressed by our recommendations generally, but in particular 'Involving people with an interest' and 'Guidance' (see Table 1 below).

12.10. The literature establishes that EIA and HRIA are key mechanisms to support progressive policy development on equality and human rights. The WSEDs introduce a requirement for EIA, but there is no similar mandatory requirement for HRIA at any level of policy decision-making in Wales. However, our research confirms HRIA as a key mechanism to support the implementation of human rights, and a key component of human rights mainstreaming. For these reasons we see the need to introduce HRIA to public policy in Wales. The evidence suggests stakeholders support impact assessment as a policy tool, but also have a number of concerns about how these are completed in practice. The GER/WG recommended that the WSEDs should be amended to strengthen EIA. Based on our research, we fully

endorse the GER/WG recommendations on improving EIA. We also see the need for comprehensive guidance on impact assessment procedure and good practice, drawing on learning from research. We make a number of recommendations to improve impact assessment. These are recommendations 17-22.

12.11. Our research on indicators and measurement frameworks suggests that there are indicators already available in Wales that contribute to an assessment of progress on equality and human rights. These include the national indicators on well-being and the EHRC measurement framework on equality and human rights. However, Wales lacks a bespoke set of indicators developed primarily or exclusively to reflect and assess progress against equality and human rights objectives. The evidence shows a general lack of confidence in current monitoring arrangements to properly reflect progress, either on equality or human rights in Wales. There is clear support for improving indicators to measure compliance with equality and human rights, and for these to include indicators that capture people's lived experience, with a focus on outcomes and the difference made to people's lives, including the experience of diverse and under-represented communities. The evidence also highlights that monitoring needs to lead to action, and therefore for indicators to be developed that ensure compliance and support accountability. These findings are reflected in recommendation 24, but also in recommendations under 'Accountability and enforcement' (see Table 1 below).

12.12. Our literature review highlighted the potential of administrative justice to support 'upstream' accountability in policy development, including through audit and inspection, and through 'name and shame' powers. However, our research confirms the need for stronger legal and guidance frameworks in Wales to support institutions such as the EHRC, the PSOW, and the Welsh Commissioners to hold Welsh Ministers and public authorities to account for action that they take on equality and human rights. On 'downstream' accountability, or accountability at the point where equality and human rights are experienced in people's lives, our research confirms the weakness of 'due regard' as a mechanism to ensure legal accountability, and a strong desire to strengthen legal accountability.

12.13. While the evidence points at the need to strengthen accountability for equality and human rights, it also confirms that accountability is reliant on people being able to access advice services, up to and including legal aid funded advice services. The evidence received points at significant gaps in advice services, especially in the provision of legal aid funded advice. The evidence suggests that the Welsh Government should continue to fund research into legal needs in Wales, demonstrate leadership and coordination including through national and regional networks, and that this should extend to support for advocacy beyond the current statutory contexts of social services and responsibilities to some children and young people. The complexity of administrative justice is recognised in the literature, and the difficulties for individuals of navigating that system, especially as concerns accountability for equality and human rights, are confirmed by the evidence received. In this area we note the recommendations made by the Commission on Justice in Wales and by recent research funded by the Nuffield Foundation. We urge that these recommendations are fully implemented so far as possible within legislative competence. The evidence received suggests the need to improve the efficiency and effectiveness of at least some of the Commissioners' operations, including through earlier intervention, better communications, sharing intelligence on issues relating to equality and human rights, and coordinating actions to hold the Welsh Government and public authorities to account. The evidence also shows that audit, inspection, and regulatory bodies could have a wider and more explicit role in relation to accountability for equality and human rights. Our conclusions on accountability, administrative justice and access to justice are reflected in our recommendations under 'Accountability and enforcement' (see Table 1 below), but also in recommendation 1.

12.14. Raising awareness and developing understanding is identified in the literature as a key aspect of building support for equality and human rights. The importance of education on equality and human rights is key to implementation as it supports capacity building and empowerment of individuals to take advantage of their rights. The literature and the evidence received provides numerous insights into how equality and human rights education may be delivered in Wales, including through research, development of handbooks, manuals or training materials, education, awareness raising activities, as well as Public Legal Education (PLE). The evidence

shows clear support for improving education on equality and human rights, and for Welsh Ministers and public authorities to do more to promote public awareness of equality and human rights. There was also strong support to focus on these topics in the curriculum, and through PLE. Suggestions for improvement included public information campaigns and wider equality and human rights education, including in the workplace. It was also felt important to counter misunderstandings about human rights in particular. A number of these suggestions are reflected in our recommendations under 'Raising awareness' (see Table 1 below), but primarily by recommendations 34-39.

12.15. The evidence received clearly shows that the Covid-19 pandemic has exposed and exacerbated existing inequalities, and some gaps in human rights protection in Wales. Whilst the situation was unprecedented it has shone a spotlight on underlying weaknesses, many related to the broader issues raised in this research, including gaps in legal protections, how equality and human rights are implemented, capacity issues, leadership and management of human rights, and resource issues. The pandemic has shown how impact assessment, data collection, reporting and regulation can fall down precisely when they might be needed the most. It has, however, also led to examples of good practice, and specifically to timely and extensive engagement between the Welsh Government, representative organisations, Commissioners, regulators and other interested stakeholders. There are lessons to be learned from the pandemic, including that more needs to be done to ensure that the legal architecture is strengthened, to ensure close attention to equality and human rights not only in times of crisis, but at all times. In this respect, Covid-19, has also resulted in a number of initiatives that provide insights into how the Welsh Government might work with external organisations to support its work to protect or advance human rights. These issues are dealt with in our recommendations, and in particular recommendation 40.

## 13. Recommendations

13.1. In these recommendations, unless otherwise stated, 'public authorities' includes 'public bodies' as defined by s.6 and s.52 of the WFGA 2015 and listed authorities as defined by s.150 and Sch.19 of the EA 2010, including any authorities added to Sch.19 by regulations made by the Welsh Ministers. People with an interest means:

- People with protected characteristics as defined by sections 4-12, EA 2010.
- Organisations that represent people with protected characteristics.
- Organisations with recognised expertise in equality or human rights.

13.2. To aid presentation, and to help make sense of the volume of evidence we reviewed and received, we have set our findings out under discrete headings. Similarly, we have set our recommendations out under headings that relate to key issues raised by the evidence. Table 1 shows how our recommendations relate to the most relevant sections in the report. However, it is important to note, that when developing our recommendations we took account of all findings, from all sections of our report. Our research findings and conclusions should be viewed holistically to inform thinking on how to strengthen and advance equality and human rights in Wales. We present them as interdependent and inter-related.

13.3. Our recommendations are aimed at the Welsh Government, public authorities in Wales, the EHRC, the FGC, the Welsh Commissioners, the Public Services Ombudsman for Wales, regulators and inspectorates (defined below), the Law Society and any future Law Council for Wales. Table 2 shows which recommendations are aimed at which body.

*Table 1: Recommendations, and how they relate to sections in this report*

<b>Recommendations</b>	<b>Grouping</b>	<b>Most relevant section(s) in the report</b>
1-5	Legislation and leadership	Legislation Human rights incorporation The implementation gap Accountability and enforcement
6-8	Involving people with an interest	The implementation gap Impact assessment
9-16	Guidance	Legislation The implementation gap Impact assessment
17-22	Impact assessment	The implementation gap Impact assessment
23	Process alignment	Legislation The implementation gap Monitoring
24	Monitoring	The implementation gap Monitoring
25-33	Accountability and enforcement	Legislation Human rights incorporation The implementation gap Impact assessment Monitoring Accountability and enforcement Raising awareness
34-39	Raising awareness	Human rights incorporation The implementation gap Accountability and enforcement Raising awareness
40	Covid-19	Covid-19

*Table 2: Recommendations and who they are aimed at*

<b>Aimed at</b>	<b>Recommendations</b>
Welsh Government only	1, 6-13, 16-19, 22-30, 34-38, 40
Welsh Government and public authorities	2-5
The Welsh Government and Public Services Ombudsman for Wales	31
Public authorities only	20
The EHRC only	14, 15, 21
The FGC, the EHRC and the Welsh Commissioners	32
Regulators and inspectorates	33
The Law Society and any future Law Council for Wales	39

**Recommendations start on the next page.**

## **The legal framework and leadership**

1. The Welsh Government should introduce primary legislation to give effect to international human rights in Welsh law through a Human Rights (Wales) Act to make select international human rights part of Welsh law so that they are binding on Welsh Ministers and public authorities in the exercise of devolved functions and may be enforced by a court or tribunal.

To progress the above the Welsh Government should establish a human rights taskforce to examine options and bring forward detailed proposals for incorporation of human rights in Wales. The taskforce should be independent of the Welsh Government and adopt a participatory approach to involving people with an interest.

The taskforce should consider stronger forms of incorporation than that introduced to Welsh law by the 'due regard' approach. In particular, the Taskforce should consider options that would lead to stronger legal accountability for non-compliance with incorporated human rights than is available when adopting a 'due regard' approach.

The taskforce should complete its work so that legislation can be introduced and enacted before the dissolution of the Senedd.

The Welsh Government should continue to examine options for incorporation of international human rights through sectoral legislation, with a particular focus on the human right to adequate housing, the UNCRPD, CEDAW, CERD, and on older persons, as well as to strengthen the legal duty under the Rights of Children and Young Persons (Wales) Measure 2011. The pursuit of general human rights legislation should not serve to undermine or postpone these efforts.

2. The Welsh Government and public authorities in Wales should develop a common, single, clear and consistent statement setting out a commitment to respect, protect and fulfil human rights and equality, and to take steps to prevent discrimination and advance equality and human rights:

- a. The Welsh Government should include the statement prominently in its national strategy, programme for government, strategic equality plan, and

well-being statement and all policy documents across all areas and prominently on its website.

b. A public authority should include the statement in its corporate plan, strategic equality plan, well-being plan and all policy documents across all areas of planning and service delivery and prominently on its website.

The policy documents referred to in this recommendation are all policies subject to an Integrated Impact Assessment (Welsh Government) or Equality Impact Assessment (public authorities).

**3.** The Welsh Government and public authorities in Wales should integrate human rights as standards for policy-making to provide a stronger vision to advance equality and well-being. Human rights should be embedded in all policy and strategic planning processes.

Strategic planning processes include: setting strategic equality objectives, well-being objectives, and strategic decisions to which the socio-economic duty will apply.

**4.** The Welsh Government and public authorities in Wales should embed human rights through human rights action planning.

Human rights action planning should include:

- Taking steps to identify specific human rights as priorities for action.
- Involving people with an interest to prioritise the most relevant human rights and in particular to establish outcome targets and indicators to assess progress.
- Applying Human Rights Impact Assessment.
- Monitoring implementation using indicators.
- Reporting on progress against outcome targets and indicators.
- In relation to the Welsh Government only, a cross government mechanism for monitoring and reporting on the implementation of recommendations relevant to Wales arising from periodic review of the UK undertaken by UN Treaty Bodies and the Universal Periodic Review.

5. The Welsh Government and public authorities in Wales should require business or organisations funded in full or in part by public funds to clearly demonstrate how they will promote equality and human rights through their work (not limited to work for the Welsh Government or public authorities); and, take full account of how the allocation of public funds advances equality and human rights during the procurement and commissioning processes, giving priority to advancing equality and human rights as a factor relevant to the allocation of public funds.

Regulation 18 of the 2011 Regulations should be amended to embed this recommendation insofar as it applies to equality objectives.

The Welsh Government and public authorities should provide information for those applying for public funds to support their business activities in full or in part, on the key priorities for equality and human rights when inviting invitations to tender. Businesses or organisations applying for funding should be signposted to information on equality and human rights aimed at the business and non-governmental sectors. See below, 'Knowledge, Awareness and Understanding'.

Businesses or organisations applying for public funds should be required to provide the following advance information:

- A statement on how they will promote equality and human rights through their work and in the workplace (employers).
- An equality and human rights impact assessment.

The above advance information should be in the public domain once funding is allocated and should be incorporated into the contract with the business or organisation concerned, and should be used to assess compliance with the contract.

### **Involving people with an interest**

6. Section 30(e) of the WFGA 2015 should be amended, or revised statutory guidance should be issued, to require PSBs to invite people with an interest to participate in the activities of the board, and to demonstrate what action it has taken

to encourage the involvement of people with an interest when reporting under s.45 of the WFGA 2015.

Participate has the meaning given by s.30(3) and (4) of the WFGA 2015.

7. Section 38 of the WFGA 2015 should be amended, or revised statutory guidance should be issued, to require PSBs to involve people with an interest in determining how equality and human rights may be relevant to setting and meeting well-being objectives.

8. The Welsh Government should review and as necessary revise regulatory requirements and statutory and non-statutory guidance to align requirements and processes for public consultation and involvement contributing to planning to set strategic equality objectives and well-being objectives.

In particular, by implementing the recommendations of the GER Well-being and Equality Working Group.

### **Guidance**

A number of the recommendations in this section on guidance feature as aspects of current statutory or non-statutory guidance (included here for completeness), to this extent current guidance should be continued, or strengthened as appropriate.

9. The Welsh Government should revise statutory guidance under s.14 of the WFGA 2015 to ensure that equality and human rights are taken into account by defined public bodies (s.6 and s.52 of the WFGA 2015) and PSBs when discharging their obligations under the WFGA 2015.

Revised guidance should:

- Include a strong statement to confirm that equality and human rights are integral to well-being objectives.
- Emphasise that human rights, and in particular socio-economic human rights, provide a strong foundation for sustainable development.

- Recommend that public bodies undertake and publish an Equality Impact Assessment and a Human Rights Impact Assessment on their well-being plan and any policy likely to have an impact on equality or human rights in the area, and to publish their assessments.

**10.** The Welsh Government should require PSBs to establish an ‘Equality and Human Rights’ sub-group to involve people with an interest in determining how actions identified in the well-being plan contribute toward meeting the commitment to respect, protect and fulfil equality and human rights and steps to meet this objective.

Reports published under s.45 of the WFGA 2015 should include a summary of how involvement has been facilitated, and outcomes from this process, including any recommendations to strengthen actions in the local well-being plan, and actions taken to implement those recommendations.

**11.** The Welsh Government should revise the WSEDs to strengthen the specific duties on (listed) public authorities in order to ensure better performance of the PSEDs under s.149 of the Equality Act 2010.

The Welsh Government should use the WSEDs to identify clear national priorities for action on equality, including by:

- Using human rights standards to establish clear outcome targets.
- Identifying indicators to confirm outcomes.
- Clearly state national priorities for action on equality in its Strategic Equality Plan.

Revised regulations should require a relevant authority to:

- Identify strategic equality objectives which contribute to advancing the national priorities for action.
- Explain how its strategic equality objectives contribute to advancing the national priorities for action.
- Identify indicators to confirm outcomes to accompany its equality objectives accompanied by an explanation of why those indicators were selected.

- Demonstrate how it has taken account of statutory and non-statutory guidance when setting equality objectives.
- Demonstrate how it has taken account of multiple forms of discrimination and disadvantage experienced by people with multiple protected characteristics when setting equality objectives.
- Demonstrate how it has involved people with an interest and taken account of their views, wishes and feelings.
- Carry out an Equality Impact Assessment on all policy documents and use impact assessment to address issues of intersectionality.
- Demonstrate how it has taken account of human rights when setting equality objectives, including the evidence relied on.
- Report on action it has taken to perform the PSED with a focus on outcome indicators.
- Place all strategic documents online and in a location which is fully accessible and searchable, accompanied by all relevant Equality Impact Assessments.

**12.** The Welsh Government should publish non-statutory guidance on the procedural steps and substantive requirements of due regard. This should emphasise the importance of impact assessment as a procedure to help ensure that due regard is had in the exercise of functions.

**13.** The Welsh Government should revise statutory guidance to ensure human rights are taken into account when a public authority is having due regard to how strategic decision-making and the exercise of functions help to reduce socio-economic inequality.

(Statutory guidance under s.1(2A) of the Equality Act 2010. Relevant authority under s.1 of the Equality Act 2010.)

Statutory guidance should:

- Describe socio-economic disadvantage to include the impact of relative low income on individuals and groups leading to inequality of outcome and inequality of access to 'goods and services fundamental to well-being'.

- Emphasize that ‘goods and services fundamental to well-being’ refers to rights guaranteed by human rights.
- Include a statement promoting positive action to support equality of outcomes to reflect the adoption of progressive human rights.
- Require a relevant authority to take account of multiple forms of discrimination and disadvantage experienced by people with multiple different characteristics, when making decisions of strategic nature.
- Require a relevant authority to take account of human rights when making decisions of a strategic nature and when exercising its functions.
- Require a relevant authority to identify indicators to confirm outcomes accompanied by an explanation of why those indicators were selected.
- Require a relevant authority to place all strategic documents online and in a location which is fully accessible and searchable, accompanied by all relevant Equality Impact
- Require a relevant authority to report on action it has taken to reduce socio-economic disadvantage with a focus on outcomes measured against identified indicators.

**14.** The EHRC should revise, and re-issue guidance published under s.13 of the Equality Act 2006, including its ‘Technical Guidance on the PSED: Wales’ (last revised 2014) to provide stronger guidance on the relationship between equality and human rights.

Revised guidance should:

- Promote an expansive and inclusive approach to interpretation and application of the protected characteristics under s.4 of the Equality Act 2010 to ensure that all groups that meet the definitions in ss.5-12 of the Act are taken into account when a relevant authority is setting objectives to enable it to better perform the PSED in Wales.
- Include stronger and more detailed guidance on intersectionality.
- Include stronger and more detailed guidance on the need to take account of human rights, in particular as minimum and increasingly progressive standards to advance equality.

- Explain how public authorities can embed the social model of disability and ensure that the guidance explains that the definition of disability explicitly includes all health conditions, learning disability, neurodiversity, and dementia.

**15.** The EHRC should introduce guidance for public authorities in Wales on a bespoke 'Human Rights Approach' to support implementation of human rights.

Drawing on the exemplars of the Children's Commissioner 'Child Rights Approach' and the Older People's Commissioner 'Older People's Rights Approach'.

The model should be kept under review and updated as necessary.

**16.** Prior to issuing further or updated statutory or non-statutory guidance on the relationship between equality and human rights, and well-being (see recommendations 9, 11, 12 and 13), including on how public authorities can use equality and human rights to inform and help to set well-being objectives and steps to be taken to meet those objectives, the Welsh Government should consult with the EHRC and the Future Generations Commissioner and take full account of any advice, guidance or recommendations.

Guidance should:

- Build on 'A More Equal Wales: A Mapping Guide'.
- Confirm that human rights provide the foundation for 'improving the social economic, environmental and cultural well-being of Wales' and make a strong contribution toward well-being in Wales.
- Confirm that equality and human rights are integral to setting well-being objectives to meet all of the well-being goals for Wales.
- Confirm that human rights, and in particular socio-economic human rights, provide a strong foundation for sustainable development and an underpinning for the sustainable development principle.
- Include examples of how human rights, in particular socio-economic rights, may be used to establish strong and aspirational well-being objectives.

- Provide detailed guidance on how human rights might be embedded in processes to develop well-being objectives with a focus on human rights as outcome targets to be met through delivery and action.

### **Impact assessment**

NB: a number of these recommendations in this section on Impact Assessment feature as aspects of current guidance and are included here for completeness, to this extent current guidance should be continued, or strengthened as appropriate.

**17.** The Welsh Government should introduce Human Rights Impact Assessment as part of its Integrated Impact Assessment.

**18.** The Welsh Government should take steps to ensure effective and meaningful Integrated Impact Assessment, and in particular to strengthen assessment of proposals which are likely to impact on equality and human rights.

To increase capacity for effective and meaningful impact assessment the Welsh Government should:

- Provide mandatory training on equality and human rights for all officials responsible for completing EIA or HRIA.
  - Make training available for officials leading on Integrated Impact Assessment on impact assessment procedural good practice.
  - Provide opportunities for enhanced training, especially for officials undertaking human rights impact assessment, equality impact assessment and child rights impact assessment (to include thematic issues, as well as research and analysis skills).
  - Encourage those undertaking Integrated Impact Analysis to draw on external expertise.
  - Encourage those undertaking Integrated Impact Analysis to draw on KAS at an early stage in the procedure to ensure relevant evidence is available for analysis.
- To ensure the proper prioritisation of assessment of policy which is likely to have an impact on equality and human rights:

- Clarify the responsibility of individual Ministers to ensure effective and meaningful Integrated Impact Assessment (i.e. in compliance with good practice/guidance published by the EHRC), including as required by the Ministerial Code, in particular Part 1, section 1 and 1.3.
- Make senior civil servants responsible for ensuring effective and meaningful Integrated Impact Assessment.
- Introduce a process for systematic audit of Integrated Impact Assessments from across all departments to assess quality and compliance with good practice/guidance published by the EHRC.
- The above audit process should engage with stakeholders, the EHRC and the Welsh commissioners.

**19.** The Welsh Government should strengthen internal guidance on the processes and substantive requirements for effective and meaningful equality, human rights and children’s rights Integrated Impact Assessment.

Guidance should require:

- Early commencement, at the outset of the policy-development cycle.
- Equality and human rights to be taken into account from inception of the assessment.
- Equality and human rights to be at the core of assessment, including any assessment of well-being.
- Ministerial Advice to expressly address how equality and human rights will be affected by the proposal, and in particular the outcomes anticipated from the proposal.
- Consideration of intersectional impacts.
- Senior officials to ensure the assessment is undertaken in compliance with impact assessment good practice/guidance published by the EHRC.

**20.** Public authorities should introduce human rights as a consideration during Equality Impact Assessment and ensure that a senior officer(s) is responsible for ensuring that the assessment is undertaken in compliance with impact assessment good practice/guidance published by the EHRC.

To include a requirement that a senior officer should:

- Prepare a summary of the Equality Impact Assessment for consideration by the public services board and the Equality and Human Rights sub-group.
- Confirm to the public services board that the assessment complies with impact assessment good practice/guidance published by the EHRC.
- Summarising the actions taken in response to the impact assessment.

**21.** The EHRC should revise guidance on impact assessment and ensure this is applicable to EIA and HRIA. To ensure consistency this should include a 'model' impact assessment template to be used for all impact assessments which engage equality or human rights issues, together with detailed guidance on action to be taken at each stage in the procedure to reflect established good practice on impact assessment.

**22.** The Welsh Government should undertake Integrated Impact Assessment on budgetary and funding decisions which are likely to have an impact on individual organisations that rely on public funds to support activities which support or represent the interests of disadvantaged communities.

### **Process alignment**

**23.** The Welsh Government should take all necessary steps to give effect to the recommendations made by the Well-being and Equality Working Group on process alignment, in particular, to require stakeholders to determine timescales and points of alignment for objective-setting and planning.

### **Monitoring**

**24.** The Welsh Government should ensure that all indicators used to measure progress on equality, human rights and well-being in Wales, or any of these:

- Embed human rights as outcome targets.
- Include qualitative indicators to take account of people's lived experiences.
- Include indicators directly relevant to diverse and under-represented communities.

When developing indicators to measure progress on equality, human rights and well-being in Wales the Welsh Government should make use of (as appropriate) indicators set out in the EHRC Measurement Framework for Equality and Human Rights, and in particular the qualitative and quantitative indicators used by the EHRC in the preparation of 'Is Wales Fairer'.

### **Accountability and enforcement**

**25.** The Welsh Government should introduce primary legislation to enable individuals to bring an action before a court or tribunal to enforce their (incorporated) human rights.

See recommendation [1].

**26.** The Welsh Government should progress the recommendations of the Commission on Justice in Wales (CoJ) as regards the co-ordination and promotion of administrative justice which supports accountability for equality and human rights within the Welsh legal framework, taking into account the 36 recommendations of Nuffield Foundation funded research undertaken by Bangor University (and partners) (Public Administration and a Just Wales 2020). The Welsh Government should also progress, and where necessary liaise with UK Government to progress, the CoJ recommendations relating to access to justice and advice services.

In particular:

- CoJ recommendation 2: 'Support Through Court' should be expanded so that there is availability at courts and tribunals across Wales.
- CoJ recommendation 20: digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them.
- CoJ recommendation 21: dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and co-ordinated in Wales through a body chaired by a senior judge.

- CoJ recommendation 27: the Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation.
- CoJ recommendation 39: a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales.

**27.** The Welsh Government should prioritise support, including the continuation of funding, for advocacy and advice services in Wales and examine ways to increase advice and advocacy services to disadvantaged and discriminated against communities.

More independent advocacy in equality and human rights should be provided in Wales across all areas, not just health and social care. This should include advocates from diverse communities in Wales. There should be a mix of professional expert independent advocacy and more support for peer advocacy and self-advocacy is needed.

Advocacy means:

- Supporting individuals to understand and access information and services, and to express their views, wishes and feelings.
- Support for individuals to bring a complaint, including a complaint before a court or tribunal, but also to take advantage of available informal or formal complaint or redress mechanisms.
- Action on behalf of individuals or groups to influence or change policy or action taken by public bodies or organisations which affects those individuals or groups.

**28.** The Welsh Government should work with the National Advice Network and Regional Advice Networks on strategies to raise awareness of equality and human rights, including legally enforceable rights and duties, and to raise awareness of, and

access to, advice services, ensuring that the needs of disadvantaged and discriminated against groups are taken into account.

**29.** The Welsh Government should review funding and support for ‘grassroots’ community organisations in Wales representing disadvantaged communities and ensure that the application process to apply for funding is accessible and straightforward to use.

**30.** The Welsh Government should consult with the Senedd Business Committee with a view to establishing a Justice Committee in the Senedd.

**31.** The Welsh Government and Public Services Ombudsman for Wales should develop an agreed set of principles to be applied by the Welsh Ministers and public authorities when dealing with complaints which engage equality or human rights issues.

The Welsh Government and Public Services Ombudsman for Wales should consult with the EHRC.

Principles should include:

- A complaints mechanism should be fully and easily accessible.
- Complaints systems should place the complainant, as well as equality and human rights at the heart of the process.
- Complaints should be dealt with by a person with appropriate expertise.
- Effective remedies should be available where a complaint is upheld (options include: sanctions within the powers of relevant regulators; publication of findings; enhanced monitoring and reporting requirements).
- A focus on ‘restorative justice’ approaches.
- How to ensure that those with lived experience are directly involved in the assessment and management of complaints.

**32.** The FGC, the EHRC and the Welsh Commissioners should examine opportunities to enhance communication and share intelligence on issues relating to

equality and human rights, including protocols for data sharing, and to coordinate actions using existing powers to hold the Welsh Government and public authorities to account.

**33.** Regulators and inspectorates should integrate equality and human rights into inspection and regulatory frameworks, including by focusing on outcomes in these areas.

Regulators and inspectorates includes (but is not necessarily limited to):

- ESTYN
- Healthcare Inspectorate Wales
- Care Inspectorate Wales
- Natural Resources Wales
- Audit Wales

### **Raising awareness**

**34.** The Welsh Government should introduce key principles of equality and human rights as mandatory requirements at all stages of the curriculum and for all age groups. The ‘What Matters Code’ should require equality and human rights education at all stages of the curriculum and for all age groups across all subjects.

In particular:

- Statutory consultation on the ‘What Matters Code’ should include representatives from protected groups.
- The curriculum should integrate ‘key concepts’ of equality and human rights into the areas of ‘learning and experience’.
- Education in Wales should promote the benefit of equality and human rights for society, and should develop an understanding of diversity within society, and address misconceptions, prejudice, unconscious bias, and offensive labelling.

**35.** The Welsh Government should promote Public Legal Education (PLE) on equality and human rights, including the Welsh legal framework, through community

based training developed in partnership with organisations representing protected groups.

In particular:

- Provide funding for organisations to undertake PLE.
- Encourage Welsh law schools, especially those delivering clinical and outreach programmes, to undertake PLE as an aspect of public engagement and community mission activities (see also CoJ recommendation 51).
- Commission experts representing a range of protected groups to develop and support delivery of community based services.
- PLE providers should engage with different communities in Wales to reflect their experiences and to involve them in planning and delivery of education and training.

**36.** The Welsh Government should take the lead to deliver a national public awareness campaign to raise the profile of equality and human rights, in particular to tackle public misconceptions about these concepts.

A public awareness campaign might include:

- A factsheet on key principles of equality and human rights, as well as the benefits of these concepts to society (including highlighting positive stories), to be sent to every household in Wales.
- Campaigns in a range of media.
- A poster campaign targeted at relevant public spaces (for example, sports centres, GP practices).
- Public declarations by Ministers, including the First Minister.
- Working with stakeholders to support and publicise events celebrating equality and human rights.
- Best practice examples should be shared publicly and across sectors in Wales to showcase ways organisations could improve equality and human rights (identified by people with lived experiences).

**37.** The Welsh Government should encourage the Higher Education Funding Council for Wales (as an aspect of assessing the quality of education) and Higher Education institutions in Wales to ensure that legal education in Wales includes education on the Welsh legal framework, and in particular the legal framework on equality and human rights.

**38.** The Welsh Government should publish, on the Welsh Government website, a dedicated webpage to disseminate information for individuals, businesses and non-governmental sectors on equality and human rights.

To include:

- Information for businesses etc applying for WG or other public funds
- Link to other resources (EHRC, the Welsh Commissioners, legislation, policy, published Integrated Impact Assessment, external resources).

**39.** The Law Society for Wales and any Law Council for Wales that is established should take an active role in promoting awareness of equality and human rights legislation amongst the legal professions in Wales, and in particular to raise awareness of the legal frameworks that are unique to Wales.

### **Covid-19**

**40.** The Welsh Government should support advisory groups to input expertise and experience to influence its policy responses in areas of national priority for equality and human rights, including by learning from the experience of the pandemic.

This should include:

- Establishing advisory groups drawing together expertise expressly authorised to provide advice and guidance in specific areas.
- Ensuring that the terms of reference for these groups make clear reference to equality and human rights, including the commitment mentioned in recommendation [2] above.

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## **Appendices**

*Appendix 1 - The survey questionnaire*

Available from:

<https://www.surveymonkey.co.uk/r/RLTYKS7>

*Appendix 2 - The interview / workshop questions*

**We are interested in knowing your views on the challenges we face in Wales to advance equality and human rights for all. We are particularly interested in what you think are the key issues that need to be addressed by the Welsh Government and public authorities.**

1. What are the key challenges for equality and human rights in Wales?

**We would like to know your views on current legislation, policy and guidance in Wales on equality and human rights.**

2. Is it clear who is responsible for action on equality and human rights, and what action they are required to take?

**We are interested in the relationship between equality, human rights and well-being in Wales.**

3. Is it clear how well-being, human rights and rights and equality are connected through the work of public authorities in Wales?

**We are interested in your views on whether and, if so, how, the current legislative framework on equality and human rights in Wales might be strengthened.**

4. How might we strengthen the current legislative framework on equality and human rights in Wales adequate?

**We would like to know what you think about how public bodies are held accountable for equality and human rights in Wales.**

5. Are public authorities fully accountable for equality and human rights in Wales? How could accountability be strengthened?

**We would like your view on how we might improve public awareness of equality and human rights in Wales.**

6. Is enough being done by the Welsh Government to promote public awareness of equality and human rights? If not, what more could be done?

**We would like to know your views the Welsh Government's response to the Covid-19 pandemic.**

7. To what extent has the pandemic highlighted issues that need to be addressed as part of strengthening equality and human rights in Wales?

### *Appendix 3 - List of interviewees (by organisation)*

Interviewees are listed in alphabetical order. This does not correspond to the numbering used to identify interviewees in our report (which is randomised).

Age Cymru  
Cardiff and Vale UHB  
Carers Wales  
Children in Wales  
Children's Commissioner for Wales  
Chwarae Teg  
Cytun  
Disability Wales  
Equality and Human Rights Commission  
EYST  
Future Generations Commissioner for Wales  
Law Society Wales  
NWREN  
Older People's Commissioner for Wales  
Public Services Ombudsman for Wales  
Race Council Cymru  
Stonewall Cymru  
Swansea Bay UHB  
TUC  
Wales Council for Voluntary Action  
Wales and Chester Circuit  
Welsh Language Commissioner  
WEN Wales

*Appendix 4 - Workshop Participants (by organisation)*

Abertawe Bro Morgannwg University Health Board

Aberystwyth University

Arfon Access Group

Asylum Justice

Bangor Law School

Betsi Cadwaladr University Health Board

Cardiff Local Authority

Cardiff University x3

Carers Trust Wales

Citizens' Advice Cymru

Denbighshire Local Authority

Food Sense Wales

Gwynedd Local Authority

Hafal

HEIW – Health Education and Improvement Wales

Joining the Dots Together

Judiciary x1

Learning Disability Wales

MEIC

Mind Cymru

Natural Resources Wales

Pride Cymru

ProMo-Cymru

Public Law Wales

Rhondda Cynon Taff Local Authority

Save the Children

Swansea University x2

Tai Pawb

Travelling Ahead

Wales Institute of Social and Economic Research, Data and Methods (WISERD)

Welsh Refugee Council