

# **ECRI REPORT ON THE UNITED KINGDOM**

**(fifth monitoring cycle)**

Adopted on 29 June 2016

Published on 4 October 2016

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 17 March 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on the United Kingdom on 17 December 2009, progress has been made in a number of fields.**

The United Kingdom has generally strong legislation against racism and racial discrimination. The Equality Act 2010 came into force for Great Britain in October 2010, consolidating and replacing previous discrimination laws and providing a single legal framework to tackle disadvantage and discrimination. The Equality and Human Rights Commission (Great Britain) and the Equality Commission for Northern Ireland are in line with ECRI's recommendations in its General Policy Recommendations Nos. 2 and 7.

The Home Office is continuing to implement an improved data collection system, the Data Hub, to streamline the submission of data by police in order to aggregate figures on the levels and trends of crime in England and Wales. In May 2015 the Government updated its Policy Paper on Crime Prevention with a hate crime action plan, Challenge it, Report it, Stop it, aiming at preventing hate crime, increasing the reporting of hate crime, and improving the criminal justice response to it. The police have developed their own National Policing Hate Crime Strategy in 2014. Steps have been taken to address the serious problem of under-reporting, such as third-party reporting and data sharing schemes.

A new policy 2020 Vision has been developed to improve opportunity for people from "Black and minority ethnic" communities. Substantial efforts have been made to promote LGBT rights resulting in a significant attitude change towards LGBT persons in the United Kingdom in recent years.

**ECRI welcomes these positive developments in the United Kingdom. However, despite the progress achieved, some issues give rise to concern.**

In Northern Ireland, there is still no equality act covering all equality grounds. Discrimination is not prohibited on grounds of gender identity and same sex couples cannot marry, unlike in Great Britain. The Equality and Human Rights Commission does not collect data on or monitor the application of the Equality Act 2010. Fees have been introduced for claims made to employment tribunals or the Employment Appeals Tribunal, with higher fees in discrimination cases than other types of claim.

The specific incitement to hatred provisions are almost never applied. The significant difference between hate crime recorded by the police and offences referred for prosecution indicate that a large amount of hate crime goes unpunished. There is no data available on the application of enhanced sentencing and the racially-motivated aspects of cases are often filtered out by the police, Crown Prosecution Service or judiciary or dropped through the process of accepting guilty pleas.

There continues to be considerable intolerant political discourse focusing on immigration and contributing to an increase in xenophobic sentiments. Muslims are portrayed in a negative light by certain politicians and as a result of some policies. Their alleged lack of integration and opposition to "fundamental British values" is a common theme adding to a climate of mistrust and fear of Muslims. The counter-terrorism strategy, Prevent, may fuel discrimination against Muslims.

Hate speech in some traditional media, particularly tabloid newspapers, continues to be a problem, with biased or ill-founded information disseminated about vulnerable groups, which may contribute to perpetuating stereotypes. An independent press regulator has not been set up. A particularly high number of violent racist incidents occurred in 2013 with a sharp rise in anti-Muslim violence. Antisemitic incidents

reached the highest level ever recorded in 2014. Intimidation, harassment and violence may be an everyday reality for some LGBT people. LGBT pupils experience severe bullying in school and are not always supported by teachers.

Black and minority ethnic teachers remain under-represented in the workforce and there is still a long way to go in addressing under-representation of these groups in the police. The United Kingdom does not have a national Roma integration strategy. Lack of site provision continues to be a pressing issue for Gypsies and Travellers. In August 2015 a new Planning Policy for Traveller Sites in England was issued, substantially limiting the planning definition of Gypsy and Traveller. There is currently no integration strategy for refugees in England or Northern Ireland and refugees often live in poverty and social exclusion.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The authorities of Northern Ireland should consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland, as well as ECRI's recommendations in § 19 of this report.\* The provisions on incitement to hatred should be reviewed with a view to making them more effective and usable. The authorities should follow the advice of the Law Commission and review the operation of aggravated offences with a view to including the grounds of sexual orientation and gender identity. They should also include gender identity as a ground in the "stirring up hatred" offences.

Data should be gathered on the application of enhanced sentencing, as well as on where aggravated offences and enhanced sentencing have been invoked and then dropped through the process of accepting guilty pleas. The legal aid and fees regime should be reviewed with a view to improving access to justice in discrimination in employment cases. Data should be collected on the application of the Equality Act 2010, from the filing of a complaint to the final outcome.\* An independent press regulator should be established according to the recommendations set out in the Leveson Report.

The authorities should find concrete ways to achieve their 2020 Vision goals in education and employment and set similar goals in health care. They should establish a real dialogue with Muslims in order to combat Islamophobia and consult them on all policies which could affect Muslims. The new planning definition in England of Gypsy and Traveller should be replaced with the previous one of 2012, sufficient pitches should be provided according to the needs of these communities and alternatives to eviction, such as the negotiated stopping policy in the city of Leeds, should be promoted and replicated elsewhere. The authorities should draw up, in consultation with Gypsy, Traveller and Roma groups, a detailed programme of integration measures to address the disadvantage suffered by all three of these communities in England, Wales, Scotland and Northern Ireland.

A refugee integration strategy should be developed in England and Northern Ireland. Further efforts are encouraged to address bullying of LGBT pupils in schools, with special attention given to teacher training.

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\* A process of interim follow-up for the recommendations in this paragraph will be conducted by ECRI no later than two years following the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. The United Kingdom has still not signed and ratified Protocol No. 12 and the authorities have indicated that there are no plans to do so.

2. ECRI reiterates its previous recommendations to sign and ratify Protocol No. 12 to the European Convention on Human Rights.

##### - Existence of criminal, civil and administrative law provisions as per General Policy Recommendation (GPR) No. 7

3. ECRI is pleased to note that the United Kingdom has generally strong legislation against racism and racial discrimination. The following analysis focuses on the lacunae.

##### - Criminal law

##### - *England and Wales*

4. Section 18 of the Public Order Act 1986 states that “a person who uses threatening, abusive, or insulting words or behaviour, or displays any written material which is threatening, abusive, or insulting, is guilty of an offence if: a) he intends to thereby stir up racial hatred, or b) having regard to all the circumstances racial hatred is likely to be stirred up thereby”.<sup>2</sup> Racial hatred is defined as hatred against a group of persons by reference to “colour, race, nationality (including citizenship), or ethnic or national origins”. This offence was extended under section 29B of the Public Order Act 1986 to cover stirring up religious hatred, but only in respect of the use of threatening (but not abusive or insulting) words or behaviour or displaying threatening (but not abusive or insulting) written material. Religious hatred is defined as hatred against a group of persons by reference to religious belief or lack of religious belief. The penalty is a prison term of six months to seven years or a fine or both.

5. ECRI points out that its GPR 7 § 18 a, b and c calls for separate offences (public incitement to violence, hatred or discrimination; public insults and defamation; and threats). The above-mentioned provision combines threats and insults in the offence of incitement. Moreover, the elements of public incitement to violence and discrimination are missing<sup>3</sup> as well as defamation. As for the grounds, only language is lacking. ECRI also regrets that the grounds of race and religion are not treated in an identical manner.

6. ECRI further notes that there are no criminal law provisions against the following acts: the public expression, with a racist aim, of an ideology which claims the

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<sup>1</sup> According to ECRI's General Policy Recommendation No. 7, “racism” shall mean the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>2</sup> In addition to this offence, the so-called “stirring up” or incitement offences also include: Public Order Act 1986 section 19 (Publishing or distributing written material); section 20 (Public performance of play); section 21 (Distributing, showing or playing a recording); section 22 (Broadcasting or including programme in cable programme service); section 23 (Possession of racially inflammatory material).

<sup>3</sup> According to the Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, while United Kingdom legislation expressly mentions only public incitement to hatred, the United Kingdom considers the concept of violence to be effectively covered by the term hatred.

superiority or which depreciates or denigrates a group of persons on the grounds of their race, colour, language, religion, nationality or national or ethnic origin, as per GPR 7 § 18 d; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, as per GPR 7 § 18 e;<sup>4</sup> the production or storage aimed at public dissemination or distribution, of written, pictorial or other material containing manifestations covered by § 18 a, b, c, d and e, as called for in GPR 7 § 18 f; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities, as called for in GPR 7 § 18 g. There is also no criminal offence of racial discrimination in the exercise of one's public office or occupation, as per GPR 7 § 18 h.

7. As concerns aggravating circumstances, ECRI notes a dual system. Firstly, the Crime and Disorder Act 1998 (sections 29-32) sets out specific racially aggravated offences defined by reference to "race, colour, nationality (including citizenship) or ethnic or national origins", as well as offences motivated by religious hostility. The label "racially or religiously aggravated" forms part of the offence. These offences fall into four categories: assault, criminal damage, public order offences and harassment. Secondly, under section 145 of the Criminal Justice Act 2003, if an offence other than the above-mentioned specific racially or religiously aggravated offences was motivated by racial or religious hostility, the court must treat that fact as an aggravating factor. Enhanced sentencing requires the judge to declare in open court that the sentence has been increased because such hostility has made the offence more serious. ECRI is pleased to note, therefore, that racist motivation constitutes an aggravating circumstance for all criminal offences, in line with GPR 7 § 21.

8. ECRI recommends amending the criminal law to add the ground of language to the existing provisions and to include the following offences committed on grounds of race, colour, language, religion, nationality, or national or ethnic origin: public incitement to violence and discrimination; public insults and defamation; threats; the public expression with a racist aim of an ideology which claims the superiority or which depreciates or denigrates a group of persons; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; the production or storage aimed at public dissemination or distribution, of written, pictorial or other material containing manifestations covered by GPR 7 § 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and racial discrimination in the exercise of one's public office or occupation.

- *Scotland*

9. ECRI notes that the above-mentioned Public Order Act 1986 and the Crime and Disorder Act 1998 also apply in Scotland. In addition, section 33 of the latter introduced, in Scotland, the offence of racially-aggravated harassment, defined as causing or intending to cause a person alarm or distress and involving malice or ill-will based on a person's membership, or presumed membership, of a "racial group".<sup>5</sup> The same gaps exist in Scotland as identified in England and Wales, and ECRI's recommendation in § 8 is addressed also to the authorities of Scotland.

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<sup>4</sup> According to the above-mentioned European Commission report, the United Kingdom has submitted sentencing rulings for trivialisation, condoning and denial of the Holocaust, based on criminal law provisions punishing respectively incitement, ethnic agitation or stirring up of hatred.

<sup>5</sup> Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races".

10. Racist motivation as an aggravating circumstance is covered by the Criminal Justice (Scotland) Act 2003 (section 74 on offences aggravated by religious prejudice) and the Criminal Justice and Licensing (Scotland) Act 2010 (section 25 on offences aggravated by racial or religious prejudice).
  - *Northern Ireland*
11. The Public Order (Northern Ireland) Order 1987 is identical in substance to the above-mentioned Public Order Act 1986. Therefore, ECRI's recommendation in § 8 is addressed also to the authorities of Northern Ireland. The Criminal Justice (No. 2) (Northern Ireland) Order 2004 provides for an increase in sentences for offences aggravated by hostility, including the victim's membership of a "racial, religious or sexual orientation group".
  - **Civil and administrative law**
  - *Great Britain*
12. In its fourth report, ECRI encouraged the authorities in their efforts to prepare consolidated legislation providing equal protection to individuals against discrimination on grounds such as race, colour, religion, nationality and national or ethnic origin. It strongly recommended that they extend the protection against harassment set forth in the Equality Bill to harassment on the basis of religion, and that they consider including language as a protected characteristic.
13. ECRI notes with satisfaction that the Equality Act 2010 came into force for Great Britain in October 2010, consolidating and replacing previous discrimination laws, including the Race Relations Act 1976, and providing a single legal framework to tackle disadvantage and discrimination, as recommended by ECRI. The Act is largely in line with ECRI's GPR 7, but it could be improved by addressing the lacunae indicated below.
14. The Act covers nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Race is defined as including colour, nationality (including citizenship), ethnic or national origins. ECRI regrets that the element of language is still missing compared with its GPR 7. The authorities have stated that language is inherent under ethnic origin, but there is no case law to advance this interpretation. As for other forms of discrimination, ECRI notes that the only missing element in relation to GPR 7 § 6 is announced intention to discriminate.
15. As concerns the elements set out in GPR 7 § 9, the Equality Act provides in sections 142 to 146 that a contract is unenforceable if it constitutes, promotes or provides for treatment prohibited by the Act and can be declared void. There is no express duty to ensure that those parties to whom public authorities award contracts, loans, grants, or other benefits respect and promote a policy of non-discrimination. However, under section 149, public authorities in the exercise of their functions (including procurement) must have due regard to eliminating discrimination, harassment, victimisation, advancing equality of opportunity and fostering good relations.
16. It appears also that there are no provisions in the Act providing for the review, on an on-going basis, of the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at national and local levels, and providing for those found not to be in conformity to be amended or abrogated, as called for by GPR 7 § 13. The authorities informed ECRI that they consider that there are sufficient inherent safeguards built into the legislative process to ensure that laws are not passed that result in discrimination.

17. ECRI is pleased to note that harassment is defined and prohibited in section 26, including on grounds of religion or belief, as recommended by ECRI and in line with GPR 7 § 15.

18. Finally, ECRI has found no provisions on the obligation to suppress public financing of organisations or political parties which promote racism, or on the possibility of dissolution of such organisations (GPR 7 §§ 16 and 17).

19. ECRI recommends that the authorities improve the Equality Act by including the following: the protected characteristic of language; announced intention to discriminate; the express duty to ensure that those parties to whom public authorities award contracts, loans, grants, or other benefits respect and promote a policy of non-discrimination; the necessary legal tools to review, on an on-going basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at national and local levels, and to amend or abrogate those found not to be in conformity with the prohibition of discrimination; the obligation to suppress public financing of organisations or political parties which promote racism and the possibility of dissolution of such organisations.

- *Northern Ireland*

20. The Northern Ireland Assembly has devolved powers in relation to anti-discrimination legislation. Despite a commitment by the United Kingdom Government in the St Andrews Agreement of 2006 to work rapidly towards the development of single equality legislation, no progress has been made in Northern Ireland and there is still no equality act covering all equality grounds. There continue to be individual acts which address particular equality aspects, including the Race Relations (Northern Ireland) Order 1997, which prohibits discrimination and harassment on the grounds of race, colour, nationality or ethnic or national origins, and the Fair Employment and Treatment (Northern Ireland) Order 1998, which prohibits discrimination and harassment on the grounds of religious belief as well as political opinion.

21. As a result, there are significant gaps between equality law in Great Britain and in Northern Ireland. For example, the current race equality legislation in Northern Ireland provides for a “two tier” level of protection, with less protection against discrimination on grounds of colour and nationality than on grounds of race, ethnic or national origins.<sup>6</sup> There is also only a limited range of special measures aimed at alleviating disadvantage (“positive action”) which employers, service providers and public bodies are allowed to take. ECRI refers to the 2014 report of the Equality Commission for Northern Ireland highlighting the inadequacies in race equality legislation and its recommendations for strengthening such legislation.<sup>7</sup> ECRI is concerned, therefore, that, in a number of key areas, individuals in Northern Ireland have a lower level of protection against racial discrimination than people in other parts of the United Kingdom.

22. ECRI strongly recommends that the authorities of Northern Ireland consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland, as well as ECRI’s recommendations in § 19 of this report.

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<sup>6</sup> Harassment, for instance, only applies on the grounds of race, ethnic and national origins, but not on grounds of colour or nationality.

<sup>7</sup> Equality Commission for Northern Ireland 2014.

- **National specialised bodies<sup>8</sup>**
  - *Great Britain*
23. The Equality and Human Rights Commission (EHRC) is an independent statutory body established in 2007 under the Equality Act 2006, and the result of the merger of the former Equal Opportunities Commission, Commission for Racial Equality and Disability Rights Commission. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. It protects, enforces and promotes equality across the nine protected grounds: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.
  24. According to an Equinet study,<sup>9</sup> the EHRC is a predominantly promotion-type and legal support body spending the bulk of its time and resources on a broad mix of activities that include supporting good practice in organisations, awareness raising, developing a knowledge base on equality and non-discrimination, and providing legal assistance to individual victims of discrimination. The latter is provided through the Equality Advisory Support Service, set up in 2012 as a helpline informing individuals of their rights and how to access further support.
  25. Under its enforcement powers, the EHRC can conduct an inquiry into any matter which relates to sections 8 or 9 of the Equality Act, namely equality and diversity or human rights. It has investigation powers and may issue recommendations and an “unlawful act notice” requiring the preparation of an action plan to avoid the unlawful act being repeated or continued. While it does have the right to initiate, and participate in, court proceedings, it does not generally bring cases to court on behalf of individuals, except in strategic cases.<sup>10</sup> In addition, the EHRC monitors legislation and gives advice to legislative and executive authorities. It has the power to threaten judicial review before proposed legislation is passed or challenge a law which has come into force. The EHRC can provide in-house legal assistance or funding for external legal assistance in equality cases that might be of strategic importance. In short, the EHRC is fully in line with ECRI’s recommendations in GPRs 2 and 7.
- *Northern Ireland*
26. The Equality Commission for Northern Ireland (ECNI) was established by the Northern Ireland Act 1998 as an independent public body on 1 October 1999. In fact, Northern Ireland was the first country in the United Kingdom to establish a commission which covered all equality grounds. The ECNI promotes equality of opportunity and affirmative action, works towards the elimination of unlawful discrimination, keeps relevant legislation under review, promotes good relations between persons of different ethnic groups and oversees the effectiveness of statutory duties on public authorities. It is also a predominantly promotion-type and legal support body and has similar functions and powers to the EHRC.

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<sup>8</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

<sup>9</sup> Ammer, Crowley, Liegl et al. 2010.

<sup>10</sup> The factors taken into account by the EHRC on whether to get involved include: whether and to what extent the issue has potential to help to prevent breach of the 2010 Equality Act or human rights law by setting precedent or by raising public interest in the issues raised; whether the case addresses continuing breaches of the 2010 Act or human rights law; the prospects of success of the case in terms of its factual and legal merits. For further details, see the Equality and Human Rights Commission’s Strategic Litigation Policy, on [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

## 2. Hate speech

27. For ECRI, hate speech is the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all these types of expression, on grounds, among others, of “race”, colour, national or ethnic origin, language, religion or belief, gender identity and sexual orientation.<sup>11</sup>
28. Racist hate speech in the United Kingdom is punished under various acts, as noted in §§ 4 and 9-11 of this report. As concerns hate speech motivated by sexual orientation or gender identity, ECRI refers to the section below on Policies to combat discrimination and intolerance vis-à-vis LGBT.

### - Extent of the problem

29. Hate crime data, in England and Wales, are collected by the National Police Chiefs Council,<sup>12</sup> the Crown Prosecution Service and the Home Office and are regularly published. Hate crime is defined as “any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic”. The five centrally-monitored “strands” of hate crime are race or ethnicity; religion or beliefs; sexual orientation; disability; and transgender identity.
30. According to the Home Office<sup>13</sup>, there were 52 528 hate motivated criminal offences recorded by the police in the year 2014-2015. These include offences of hate speech and violence. Of note, 42 930 (82%) belonged to the category of race hate crime; 5 597 (11%) were sexual orientation hate crimes; 3 254 (6%) were religious hate crimes; and 605 (1%) were transgender hate crimes. There was an overall increase of 18% compared with 2013-14; the largest increase was in relation to religious hate crime (43%).
31. When broken down further according to type of offence, the data show that 59% of all hate-motivated offences in 2014-15 were public order offences (the vast majority involving public fear, alarm or distress<sup>14</sup>), 30% related to violence against the person and 7% to criminal damage and arson. ECRI was not able to access any data on offences of incitement to hatred recorded by the police.
32. In addition to reported hate crime, a survey to measure unreported hate crime is conducted annually. The Crime Survey for England and Wales is a face-to-face victimisation survey in which persons aged 16 and over are asked about their experiences of crime in the past 12 months. The latest survey data revealed that there are an estimated 222 000 hate-motivated criminal offences on average per year, of which 106 000 relate to the race strand. On comparison with the police figures above, it appears that approximately only one in four hate-motivated offences is recorded by the police. This may indicate deficiencies in police recording of hate-motivated offences and unwillingness of hate crime victims to report such crime.

### - Hate speech in political discourse

33. In its fourth report, ECRI recommended that the authorities take particular care, when developing and explaining policies, to ensure that the message sent to society as a whole is not one likely to foment or foster intolerance and it urged the authorities to take measures to tackle the exploitation of racism in politics. In this

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<sup>11</sup> For a definition of hate speech, see also Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30 October 1997.

<sup>12</sup> Formerly known as the Association of Chief Police Officers.

<sup>13</sup> Home Office 2015a.

<sup>14</sup> Public Order Act 1986 section 4 (Fear or provocation of violence); section 4A (Intentional harassment, alarm or distress) and section 5 (Harassment, alarm or distress).



context, ECRI welcomes the Report of the All Party Parliamentary Inquiry into Electoral Conduct, published in October 2013, and its 2015 General Election Update, as good examples of politicians actively encouraging responsibility to combat racism in political discourse.<sup>15</sup>

34. Nevertheless, there continues to be considerable intolerant political discourse, coming from the populist anti-migrant UK Independence Party (UKIP) as well as other political actors. Such discourse has focused, in recent years, on the issue of immigration. For example, in the run-up to the lifting of EU restrictions on access to the labour market for nationals of Romania and Bulgaria, there was large-scale scaremongering by UKIP and some Conservative MPs that hundreds of thousands of people from the two nations could soon be on their way to Britain.<sup>16</sup> Terms such as “invasions” and “floods” were frequently used as well as the expression “benefits tourism”, despite a 2013 European Commission study finding no evidence that the main motivation of EU citizens to migrate was benefit-related.<sup>17</sup> ECRI considers that using such terms contributes needlessly to an increase in xenophobic sentiments. The Council of Europe’s Human Rights Commissioner stated that it was unacceptable to treat Bulgarian and Romanian citizens like a scourge and that the debate had taken a worrying turn.<sup>18</sup> Even the Prime Minister, when asked about the Calais crisis in July 2015, spoke of a “swarm” of people crossing the Mediterranean seeking a better life in Britain.<sup>19</sup> The UN Special Representative of the Secretary General for International Migration accused politicians of adopting a “xenophobic response” to the migrant crisis and said their language had been “grossly excessive”.<sup>20</sup>
35. Muslims are similarly portrayed in a negative light by certain politicians and as a result of some government policies. Their alleged lack of integration and opposition to “fundamental British values”, leading to radicalisation and extremism, is a common theme and contributes to a climate of mistrust and fear of Muslims. For instance, UKIP’s leader, Nigel Farage, warned that “there is rising public concern about immigration partly because people believe there are some Muslims who want to form a fifth column and kill us”.<sup>21</sup> In January 2016, the Prime Minister launched a £20 million language fund to enable an estimated 190 000 Muslim women to learn English in a drive to build community integration; while ECRI applauds this programme, it regrets that the Prime Minister associated it with countering “backward attitudes” and extremism. Some Muslim groups accused him of “disgraceful stereotyping of British Muslims”.<sup>22</sup> ECRI also refers to the counter-terrorism strategy Prevent described in §§ 85-88 below.
36. Roma, Gypsies and Travellers have also come under attack by politicians. For example, in 2013 a Conservative member of Thurrock Council referred to a Travellers’ planning application as “my big fat Gypsy cesspit” and these words were included in the Thurrock Conservatives press release.<sup>23</sup> A former Secretary of State for Communities and Local Government, in a press release announcing a crackdown on unauthorised camps, referred to some Travellers as a “blight that would not be tolerated”. He also said, in a television interview, that Travellers

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<sup>15</sup> All-Party Parliamentary Group against Antisemitism 2013 and 2015.

<sup>16</sup> The Independent 2013.

<sup>17</sup> European Commission, DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract 2013.

<sup>18</sup> The Guardian 2013a.

<sup>19</sup> BBC 2015.

<sup>20</sup> Idem.

<sup>21</sup> The Independent 2015a.

<sup>22</sup> The Guardian 2016b.

<sup>23</sup> Politics.co.uk 2015.

could not be allowed to “trash” the green belt.<sup>24</sup> Representatives of Traveller organisations found the comments highly offensive.

37. There have also been examples of homophobic comments in political discourse. The new Liberal Democrat leader sent a tweet in July 2015 comparing the gay community to “fish” and “frogs” and suggested that homosexuality is curable.<sup>25</sup> In April 2015, Northern Ireland’s Health Minister claimed that children raised by same-sex parents are “more likely” to be abused.<sup>26</sup>
38. ECRI stresses that prejudicial comments from well-known political figures have an impact on the public and legitimise intolerance. Remarks such as those indicated above can only contribute further to the already high levels of hostility in towards certain vulnerable groups, such as Gypsies and Travellers.
39. ECRI calls upon all political parties to take a firm stand against intolerant discourse and instruct their representatives to refrain from making derogatory comments targeting a group of persons on grounds of their “race”, religion, citizenship, language, ethnic origin, sexual orientation or gender identity.

- **Hate speech in traditional media and on the Internet**

40. ECRI considers that hate speech in some traditional media continues to be a serious problem, notably as concerns tabloid newspapers. According to NGOs,<sup>27</sup> the media play a prominent role in encouraging prejudice against Roma, Gypsies and Travellers, as well as other vulnerable groups. The European Roma and Travellers Forum has expressed concern that some media regularly disseminate biased or ill-founded information about these communities and that they distort and exaggerate facts and reinforce stereotypes.<sup>28</sup> A 2011 survey provides evidence of high levels of negative attitudes in the media in Northern Ireland towards Travellers and Eastern European Roma.<sup>29</sup> ECRI notes that certain tabloid newspapers, which are the most widely-read national dailies, are responsible for most of the offensive, discriminatory and provocative terminology. The Sun, for instance, published an article in April 2015 entitled “Rescue boats? I’d use gunships to stop migrants”, in which the columnist likened migrants to “cockroaches”. ECRI notes that following this, the UN High Commissioner for Human Rights, emphasising decades of “sustained and unrestrained anti-foreigner abuse” in the press, stated that “vicious verbal assault on migrants and asylum seekers in the UK tabloid press has continued unchallenged under the law for far too long”. He urged the authorities and media to take steps to curb such incitement to hatred in line with the country’s obligations under national and international law.<sup>30</sup>
41. The Sun newspaper has also published inflammatory anti-Muslim headlines, such as its front page of 23 November 2015 which read “1 in 5 Brit Muslims’ sympathy for jihadis”, along with a picture of a masked terrorist wielding a knife. Unscrupulous press reporting targeting LGBT is also of concern. In March 2013, a trans schoolteacher committed suicide after being outed by the Daily Mail tabloid newspaper.<sup>31</sup>
42. As concerns Internet hate speech, ECRI notes an upward trend. On-line hate speech targeting Muslims in particular has soared since 2013. This trend has

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<sup>24</sup> The Telegraph 2013.

<sup>25</sup> Pink News 2015a.

<sup>26</sup> Belfast Live 2015.

<sup>27</sup> Ryder and Cemlin 2014.

<sup>28</sup> European Roma and Travellers Forum 2015.

<sup>29</sup> Equality Commission for Northern Ireland 2012.

<sup>30</sup> Office of the High Commissioner for Human Rights 2015a.

<sup>31</sup> ILGA-Europe 2014.

been documented in a paper on Islamophobia and Twitter<sup>32</sup> as well as a recent report of the organisation Tell MAMA (Measuring Anti-Muslim Attacks).<sup>33</sup> Analysis of Tell MAMA's 2014-2015 data found that of the 548 Islamophobic incidents reported, 402 took place on-line.<sup>34</sup> There is also evidence that anti-Muslim hate targeting Muslim women has increased on-line, via social networking sites such as Facebook, Twitter and Instagram.<sup>35</sup> According to the above-mentioned report, this has resulted in a permanent sense of vulnerability, fear and insecurity among Muslims.

43. Further, far-right groups are increasingly using on-line platforms as primary sites for organising, recruitment, and communication. Facebook in particular is a key site for movements such as Britain First, which is a political party formed in 2011 by former members of the British National Party, with an anti-immigration and anti-Muslim agenda. According to a study by Faith Matters,<sup>36</sup> based on comments taken from Britain First's Facebook posts on 26 August 2014, the day the Rotherham scandal<sup>37</sup> was first published in the press, derogatory discourse denigrated the Muslim community as a whole, painting all Muslims as rapists and paedophiles by nature. The term "scum" came up 207 times, while words calling for direct action against Muslims, such as "hang" came up 61 times and "death" 34 times. The study states that Britain First's Facebook page opens a site in which extreme anti-Muslim attitudes circulate largely unchallenged.
44. Similarly, there was a large increase in on-line antisemitic hate speech in 2014. The organisation Community Security Trust (CST), which runs an incident hotline, recorded 1 168 antisemitic incidents in that year, against 535 in 2013,<sup>38</sup> the highest level ever recorded.<sup>39</sup> Of these, 233 involved the use of Internet-based social media, as compared with 88 in 2013. However, in 2015 there was a 22 % fall in the total number of antisemitic incidents recorded by the CST (924), of which only 159 involved the Internet.

- **Response of the authorities**

45. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards actual violence but also because of the pernicious effects it has on those who are targeted emotionally and psychologically. Appropriate responses to hate speech include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech.
46. As concerns the criminal law response, ECRI, in its fourth report, made a number of recommendations relating to the monitoring, reporting and recording of hate crime. It is pleased to note further progress in these areas. For example, since April 2011 all police forces have been reporting hate crime as part of the formal annual data requirement. Moreover, the Home Office is continuing to implement an improved data collection system called the Data Hub to streamline the process by which forces submit data and aggregate figures on the levels and trends of crime in England and Wales.

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<sup>32</sup> Awan and Zempi 2015.

<sup>33</sup> Awan and Zempi 2015.

<sup>34</sup> Littler and Feldman 2015.

<sup>35</sup> Awan 2014.

<sup>36</sup> Faith Matters 2014.

<sup>37</sup> Widespread organised child sexual abuse, involving some 1 400 underage girls, took place in Rotherham, South Yorkshire, between 1997 and 2013, perpetrated by Pakistani men, five of whom have been convicted.

<sup>38</sup> Community Security Trust 2014.

<sup>39</sup> Mashable UK 2015.

47. In May 2015, the Government updated its Policy Paper 2010-2015: Crime Prevention. This includes a hate crime action plan, Challenge it, Report it, Stop it, aiming at preventing hate crime, increasing the reporting of hate crime, and improving the criminal justice response to it. In addition, the police have developed their own National Policing Hate Crime Strategy 2014, which gives a clear statement of commitment to these goals. The College of Policing published Hate Crime Operational Guidance in 2014, underlining that much hate crime goes unreported and many others are reported but not recorded as hate crime. The guidance gives advice on understanding, recognising and investigating hate crime as well as the appropriate response to victims. As concerns recognition of hate crime, according to the Office for National Statistics, the increase in hate crime from 2013-14 to 2014-15 (see § 30 above) can be attributed partially to improvements in police recording rather than a real increase in offences.
48. Regarding under-reporting, a number of steps have been taken. One of these is the introduction of third-party reporting sites which provide the public with alternative methods of reporting a criminal offence. Partnerships have been established, for example, with Traveller liaison officers, and data-sharing schemes between the police and organisations such as Tell MAMA and the Community Security Trust have been established for incidents involving anti-Muslim and antisemitic hate. These are effective since many people feel more comfortable talking about traumatic incidents with members of their own community. Some forces have provided for a 24-hour telephone advice service, such as via Stop Hate UK which operates the Stop Hate Line for reporting hate crime. Further, the True Vision website,<sup>40</sup> a joint initiative between the police and the Government, was launched in December 2010 to publish hate crime data and to enable victims and third party organisations to report hate crime on-line directly to the relevant police agency.
49. ECRI welcomes the above initiatives and particularly applauds the third-party reporting and data sharing systems which it highlights as best practice. Further, it welcomes the fact that from spring 2016 the police will provide a breakdown of religion-based data, including anti-Muslim hate crime, which should increase consistency and provide a broader evidence base for tackling hate crime.
50. Regarding the application of the specific incitement to hatred provisions,<sup>41</sup> ECRI notes that in 2013-14 there was one successful prosecution resulting in a 12 month custodial sentence.<sup>42</sup> In the year 2012-2013, there were no prosecutions. In 2011-12, a total of 17 charges were brought resulting in 13 convictions. That year saw the first successful prosecution of stirring up hatred on grounds of sexual orientation.<sup>43</sup> ECRI is concerned that these provisions are almost never applied. Potential cases are referred to the Special Crime and Counter Terrorism Division, and, as noted in both ECRI's third and fourth reports, the consent of the Attorney General - and not the Director of Public Prosecutions - is still required for any prosecution. The authorities state that in light of the potential conflict with an individual's right to freedom of expression, there is a higher standard of proof required in incitement cases. Consequently, the Crown

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<sup>40</sup> True Vision website: [www.report-it.org.uk/home](http://www.report-it.org.uk/home).

<sup>41</sup> Public Order Act 1986, Part III Racial Hatred, Acts intended or likely to stir up racial hatred. These are section 18: Use of words or behaviour or display of written material; section 19: Publishing or distributing written material; section 20: Public performance of play; section 21: Distributing, showing or playing a recording; section 22: Broadcasting or including programme in cable programme service; section 23: Possession of racially inflammatory material.

<sup>42</sup> The defendant posted three videos of himself on Facebook dressed in a Ku Klux Klan outfit hanging a life size 'golliwog' doll. According to a specialist lawyer from the CPS Special Crime and Counter Terrorism Division, "this was an act with very clear racist connotations, and his dissemination of the videos on open social media channels showed a clear intent to stir up racial hatred."

<sup>43</sup> Crown Prosecution Service 2011-2012.

Prosecution Service (CPS) frequently pursues other options under the Public Order Act 1986 for which convictions are easier to obtain but which result in lower sentences. The Law Commission, in a 2014 report, also noted the very few prosecutions for the “stirring up” offences and recommended a full-scale review of the hate crime legislation (see also §138 of this report).<sup>44</sup>

51. ECRI recommends that the authorities review the provisions on incitement to hatred with a view to making them more effective and usable.
52. As regards Internet hate speech, ECRI notes that the Government contributes, through its officials and the Community Security Trust, to the International Cyber-Hate Working Group collaborating with Internet industry leaders to identify opportunities to reduce the harm caused by hate material on the Internet, while protecting the right to freedom of speech. The Working Group published Best Practices for Responding to Cyberhate, in cooperation with the social networks in 2014. The Government also provided funding to the Society of Editors to develop a best practice guide for on-line moderators of user-generated content. The True Vision website provides advice on what constitutes illegal hate content on the Internet and a means to report it. While ECRI welcomes these steps, it regrets that the United Kingdom has no plans to sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<sup>45</sup> Further to its recommendation in § 51, it encourages the authorities to review and amend the current incitement laws in such a way that it would make it possible for the United Kingdom to ratify the Additional Protocol.
53. In its fourth report, ECRI strongly encouraged the authorities to intensify their efforts to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards various minority ethnic groups. ECRI places great emphasis on self-regulation as an important means of combating the use of hate speech. It therefore regrets that, as concerns the media, the systems in place in the United Kingdom have not been effective. This was unequivocally demonstrated by the Leveson Inquiry, a judicial public inquiry set up by the Prime Minister into the culture, practices and ethics of the press.<sup>46</sup> The Leveson Report, published in November 2012,<sup>47</sup> pointed out that “certain parts of the press ride roughshod over others, both individuals and the public at large, without any justifiable public interest”, and that a significant number of news stories fail to meet standards of integrity and propriety and reflect a culture of “recklessness in prioritising sensational stories, almost irrespective of the harm these may cause and the rights of those who would be affected”. It also noted a “significant and reckless disregard for accuracy”. The report stated that the Press Complaints Commission was not independent and had failed its purpose, and recommended replacing it with a new, independent, self-regulatory body established by statute, with the dual roles of promoting high standards of journalism and protecting the rights of individuals, and with a range of sanctions available to it.
54. In 2013, the Government proposed a Royal Charter, which was approved by Parliament, incorporating all 47 of Lord Justice Leveson’s recommendations

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<sup>44</sup> The Law Commission 2014.

<sup>45</sup> In the negotiations, the United Kingdom argued for language which would allow it to retain its criminal threshold for offences of incitement to racial hatred, but was not able to secure this in the final text and so has not been able to sign or ratify the instrument.

<sup>46</sup> “It was sparked by public revulsion about a single action – the hacking [by journalists] of the mobile phone of a murdered teenager.” See Leveson Inquiry, Executive summary Right Honourable Lord Justice Leveson 2012, An inquiry into the culture, practices and ethics of the press.

<sup>47</sup> Leveson 2012.

relating to press self-regulation. However, at the same time the press had developed their own scheme for self-regulation, the Independent Press Standards Organisation (IPSO), which in 2014 replaced the Press Complaints Commission as the new independent regulator for the newspaper and magazine industry. IPSO is supported by large sections of the press and has been signed up to by the majority of national newspapers. However, it has been criticised for not meeting the standards of independence and effectiveness recommended in the Leveson Report.<sup>48</sup> For example, its Editors' Code of Practice Committee is made up predominantly of serving editors. IPSO makes provision for investigations but the procedure is cumbersome with many opportunities for the target newspaper to obstruct and delay. As a result, while fines are possible (up to £1 million), none has so far been imposed.<sup>49</sup>

55. ECRI regrets that a way has not been found to establish an independent press regulator and that, as a result, certain tabloids continue to publish offensive material, as indicated above. ECRI urges the media to take stock of the importance of responsible reporting, not only to avoid perpetuating prejudice and biased information, but also to avoid harm to targeted persons or vulnerable groups. ECRI considers that, in light of the fact that Muslims are increasingly under the spotlight as a result of recent ISIS-related terrorist acts around the world, fuelling prejudice against Muslims shows a reckless disregard, not only for the dignity of the great majority of Muslims in the United Kingdom, but also for their safety. In this context, it draws attention to a recent study by Teeside University<sup>50</sup> suggesting that where the media stress the Muslim background of perpetrators of terrorist acts, and devote significant coverage to it, the violent backlash against Muslims is likely to be greater than in cases where the perpetrators' motivation is downplayed or rejected in favour of alternative explanations.<sup>51</sup>

56. ECRI strongly recommends that the authorities find a way to establish an independent press regulator according to the recommendations set out in the Leveson Report. It recommends more rigorous training for journalists to ensure better compliance with ethical standards. It further recommends the authorities to sign and ratify the Additional Protocol to the Convention on Cybercrime.

57. As regards ethical standards, the Editors' Code of Practice provides that the press "must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability" (clause 12 on discrimination). The Code was amended in 2015 to include also gender identity. However, breaches of clause 12 can only be related to an identified individual who can bring a complaint as a victim, but it cannot concern groups. For example, while ECRI is satisfied that the large number of complaints against the anti-Muslim headline in the Sun newspaper (see § 41) were upheld by IPSO in respect of clause 1 (accuracy) of the Editors' Code of Practice, it notes that clause 12 was not considered as there was no pejorative or prejudicial reference to any individual. The European Roma and Travellers Forum has drawn attention to this deficiency and, in light of high levels of offensive coverage against Roma, Gypsies and Travellers in the press, has called for the introduction of a robust system where victims can complain as members of a vulnerable group.

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<sup>48</sup> Cathcart 2013.

<sup>49</sup> In January 2016, another press regulator, Impress, applied for recognition via the Press Recognition Panel, set up following the Leveson Inquiry.

<sup>50</sup> The Guardian 2015b.

<sup>51</sup> The study suggests that more restrained media reporting of the Sydney hostage situation in 2014, in which the hostage taker, who claimed to be acting on behalf of Islamic State, was swiftly and repeatedly identified as mentally ill, may have played a role in minimising the backlash against the Muslim community.

58. ECRI recommends amending the Editor's Code of Practice to ensure that members of groups can submit complaints as victims against biased or prejudicial reporting concerning their community.

59. An important means of tackling hate speech is through confronting and condemning it directly by counter-speech that clearly shows its destructive and unacceptable character. In its fourth report, ECRI underlined that political leaders on all sides should take a public stance against the expression of racist and xenophobic attitudes. ECRI notes that in this respect verbal racist or homophobic attacks frequently receive a broad and immediate response. For example, in June 2015, a vicar, during a radio interview, drew comparisons between gay people and paedophiles.<sup>52</sup> In a Parliamentary debate shortly afterwards, the Leader of the Commons stated: "There is absolutely no connection whatsoever between homosexuality and paedophilia. Paedophilia is a crime, homosexuality is a reality of our society; it is something we have moved to support through same-sex marriage and through other changes in recent years. It is never acceptable to equate the two".<sup>53</sup> Following the Prime Minister's comment about "swarms" of migrants, he came under immediate fire, for instance from the acting Labour leader who said that "he should remember he's talking about people and not insects" and the Refugee Council which criticised his comments as "irresponsible", "dehumanising" and "extremely inflammatory". ECRI welcomes such counter narratives which send a clear public message that intolerant views are expressed by a minority and are not held by all. Moreover, ECRI takes note with satisfaction that senior politicians have made important statements or speeches on the contribution of Black and minority ethnic communities and Muslims to British society.<sup>54</sup>

### 3. Racist and homo/transphobic violence

#### - Data

60. Recent data on hate crime, covering both hate speech and violence, are given in the previous section.

61. ECRI notes that a particularly high number of violent racist incidents occurred in 2013 with a sharp rise in anti-Muslim violence. Incidents included two murders, one victim being an 82-year-old man returning from Friday prayers,<sup>55</sup> several physical assaults and threats against Muslim women (many involving attempts to remove their headscarves), pigs' heads or bacon placed outside family homes, damage to mosques and Muslim graves, two attempted bombings and several arson attacks on mosques and one against a Muslim school which resulted in two boys requiring treatment for smoke inhalation. Many of these incidents occurred in the wake of the brutal killing of a British soldier by two converted Islamists in Woolwich on 22 May 2013, provoking an anti-Muslim backlash across the country. On 27 May - five days after the killing – the organisation Hope not Hate reported 193 Islamophobic incidents, including attacks on 10 mosques. Tell MAMA reported a 373% increase in reports of anti-Muslim incidents in the week

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<sup>52</sup> The Guardian 2015c.

<sup>53</sup> Pink News 2015b.

<sup>54</sup> For example, Marcus Jones MP and Minister, stated in a Parliamentary debate to celebrate Black History Month in October 2015: "Black History Month is an opportunity for us to celebrate the UK's African, Caribbean and Asian communities and the enormous contribution they have made to our country." The Prime Minister said, in July 2015: "Over generations, we have built something extraordinary in Britain – a successful multi-racial, multi-faith democracy ... I know what a profound contribution Muslims from all backgrounds and denominations are making in every sphere of our society, proud to be both British and Muslim, without conflict or contradiction."

<sup>55</sup> The killer, a White supremacist Ukrainian student, was sentenced to life imprisonment. See the 2015 report of Hate Speech International, Investigating extremism, Hating Muslims, Anti-Muslim hate crimes and terrorism, 2010-2014 at [www.hate-speech.org/wp-content/uploads/2015/02/HATING-MUSLIMS-single-page-pdf-version.pdf](http://www.hate-speech.org/wp-content/uploads/2015/02/HATING-MUSLIMS-single-page-pdf-version.pdf).

after the soldier's murder as compared to the week before it. The total number of anti-Muslim incidents recorded by Tell MAMA in the year 2012-13 was 734,<sup>56</sup> while data for 2014-2015 revealed a drop in such incidents, down to 548 in total.<sup>57</sup> Of these, seven were categorised as extreme violence; 21 involved assault, 29 threats and 15 damage to Islamic institutions and personal properties.

62. As for antisemitic violence, a large increase was noted in 2014. The Community Security Trust (CST) reported 81 violent assaults, one of which was categorised as extreme violence (grievous bodily harm or threat to life) as compared to 69 in 2013, an increase of 17%.<sup>58</sup> Incidents of damage to and desecration of Jewish property increased by 65%, from 49 incidents in 2013 to 81 incidents in 2014. There were 92 incidents in the category of threats in 2014, which represents an increase of 142% compared to the 38 incidents of this type recorded in 2013.
63. As noted before, hate crime targeting LGBT is also increasing. Moreover, compared with other types of hate crime, incidents motivated by hostility towards the victim's sexual orientation are more likely to be violent in nature.<sup>59</sup> For example, a cross-dressing man was viciously assaulted in June 2015 in east London while a gang chanted "kill him".<sup>60</sup> Also in June 2015, a man threatened to burn a lesbian couple's house down with their children inside.<sup>61</sup> The Leicester Hate Crime Project,<sup>62</sup> the United Kingdom's largest study of hate crime victimisation, suggests that intimidation, harassment and violence are an everyday reality for some LGBT people.<sup>63</sup> The author of the study said that some gay people especially in rural areas are relentlessly bullied because of their sexuality, leaving some too scared to leave the house. The Project has also shown that under-reporting is particularly evident within the Lesbian, Gay and Bisexual (LGB) sample of the above-mentioned study, of whom only 14% had reported their most recent experience of hate crime to the police. High numbers of LGBT victims explained that the reason for not reporting was fear of not being taken seriously.
64. ECRI is concerned that, according to a 2014 report,<sup>64</sup> there have been at least 93 killings with a known or suspected racial element in the United Kingdom since the publication of the Macpherson Report in 1999<sup>65</sup>; 97% of the victims were Black or from "ethnic minority" groups, including Gypsy or Traveller communities and European migrant workers. Only four of the killings were perpetrated by people known to be supporters of far-right groups. In 84% of cases, there was a conviction of some kind but not necessarily for murder or manslaughter. In only a quarter of the cases was the allegation of racism accepted and prosecuted with racist motivation factored into the sentencing of perpetrators. The report also

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<sup>56</sup> Feldman and Litter 2014.

<sup>57</sup> Feldman and Litter 2015.

<sup>58</sup> Community Security Trust 2014.

<sup>59</sup> Creese and Lader 2014.

<sup>60</sup> Pink News 2015c.

<sup>61</sup> Pink News 2015d.

<sup>62</sup> Chakraborti and Hardy 2015.

<sup>63</sup> See the Leicester Hate Crime Project, [www2.le.ac.uk/departments/criminology/hate/research/copy\\_of\\_project](http://www2.le.ac.uk/departments/criminology/hate/research/copy_of_project). Also reported in The Telegraph, 23 June 2015.

<sup>64</sup> Athwal and Burnett 2014.

<sup>65</sup> The Macpherson Report investigated the racially-motivated murder of Black teenager Stephen Lawrence by a group of White youths at a bus stop in Greenwich, London, in 1993. It concluded that the Metropolitan Police was institutionally racist and 70 recommendations for reform were made (67 of which have now been implemented). The Report has been described as a "defining moment in British race relations", a "watershed" and a document that "rocked the foundations of the police service". It led to profound changes in the criminal justice system. In 2012, almost 20 years after the event, two of the original suspects were convicted of the murder.



cites lack of early intervention by the police, when persistent harassment and low-level racial abuse are reported by victims. 19% of the total deaths were preceded by a campaign of racial harassment and intimidation, which was ignored or not taken seriously by police.

- **The authorities' response**

65. In addition to information provided in the previous section on hate speech, which applies also to hate-motivated violence, ECRI would like to highlight a number of other issues.
66. ECRI notes that the Crown Prosecution Service (CPS) has produced specific guidance for prosecutors on prosecuting racist and religious crime, homophobic and transphobic crime and cases involving communications sent via social media. However, it is concerned that there is a large difference between hate crime recorded by the police (see § 30) and that referred for prosecution. According to CPS data,<sup>66</sup> as concerns racially or religiously aggravated offences during the year 2013-2014, the police referred 12 184 cases to the CPS (an increase of 14.7% on the previous year). 79.7% of these went on to prosecution and the conviction rate was 85.2%. In the same year, the police referred 1 307 homophobic and transphobic cases to the CPS for decision (an increase of 18.3% on the previous year); the conviction rate was 80.7%. The CPS states that the main reason for the difference between recorded and prosecuted hate crime is that for around half (49%) of all offences recorded, no suspect is identified and the case is closed.<sup>67</sup> This means that a very large amount of hate crime goes unpunished.
67. As for enhanced sentencing, where this is applied it shows that the police, prosecutors and courts have all recognised the hate motivation and is therefore one of the clearest indicators of a successful criminal justice response. ECRI regrets, therefore, that there is no data available on the application of enhanced sentencing under sections 145 and 146 of the Criminal Justice Act 2003, since this is not recorded by courts or elsewhere and does not appear on the criminal records of offenders.<sup>68</sup> There is much speculation about the under-use of these provisions.
68. ECRI is also concerned about reports stating that the racially-motivated aspects of cases are often filtered out by the police, CPS or judiciary through a combination of unwillingness to recognise racist motivation, the reclassifying of racist attacks as disputes or other forms of hostility, and the over-strict interpretation of the provisions on racist motivation.<sup>69</sup> Further, ECRI notes that the aggravated elements of offences are sometimes dropped through the process of accepting guilty pleas. Although it is CPS policy not to accept pleas to lesser offences, or omit or minimise admissible evidence of racial or religious aggravation for the sake of expediency, the CPS also states that guilty pleas benefit victims and witnesses, who do not have to attend court to give evidence, and substantially reduce costs. However, in light of the considerable evidence that hate crime is more traumatising to victims than other types of crime,<sup>70</sup> the failure to acknowledge the hate motivation is emotionally damaging to victims as it does not recognise the specific harm suffered by them. When racist motivation is dropped, the state appears to be condoning it. In addition, the removal of

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<sup>66</sup> Crown Prosecution Service 2013-2014.

<sup>67</sup> Home Office 2015a.

<sup>68</sup> This is not the case in Northern Ireland: since 2015, statistics include whether or not the judge accepted the "aggravated by hostility" element and imposed an enhanced sentence under the Criminal Justice (No. 2) (NI) Order 2004. Northern Ireland Human Rights Commission 2015, The 2015 Annual Statement: Human Rights in Northern Ireland.

<sup>69</sup> See for example, Athwal and Burnett 2014.

<sup>70</sup> Duggan 2014; Iganski 2015; College of Policing 2014.

aggravated elements through the process of accepting guilty pleas results in a failure of hate crime data to reflect the true picture. In this respect, ECRI notes that the CPS has examined the issue of dropped aggravation in light of community concerns and has taken steps to reinforce policy and enhance capacity in this area.

69. ECRI recommends that data are gathered on the application of enhanced sentencing under sections 145 and 146 of the Criminal Justice Act 2003 and, where imposed, that this should be duly recorded, including on the criminal records of offenders. Data should also be collected on where aggravated offences and enhanced sentencing have been invoked and then dropped through the process of accepting guilty pleas. ECRI also recommends that steps are taken to narrow the gap between hate crime recorded by the police and that referred for prosecution.
70. ECRI welcomes the reaction of the authorities to some of the violent incidents mentioned above. Following the incident in which a soldier was beheaded in the street in Woolwich, an additional 1 200 police officers were deployed across London to prevent revenge attacks on Muslim communities. The attack itself was condemned by all major political and religious leaders, including the Prime Minister, the Archbishop of Canterbury, the Christian Muslim Forum and the Muslim Council of Britain.
71. Regarding criticism over lack of early intervention by the police (see § 64), ECRI welcomes the fact that this has been acknowledged and steps are being taken to address the issue. Both the Government hate crime action plan and the police strategy stress the fact that it is essential that all police staff are aware of the potential for low-level hate-motivated anti-social behaviour to escalate into more serious offences.

#### **4. Integration policies**

72. A number of different policies have been developed across the United Kingdom in recent years addressing integration. These include the 2010 Equality Strategy – Building a Fairer Britain, based on the principles of equal treatment and equal opportunity, and the 2012 Creating the Conditions for Integration. Neither of these addressed racial inequalities as a factor hindering integration of certain communities but focused on socio-economic status and poverty affecting people’s chances in life regardless of racial or ethnic background.
73. The Scottish Government published a Race Equality Statement for 2008-2011. A new Race Equality Framework setting out the Scottish Government’s approach to promoting race equality and tackling racism between 2016 and 2030 was published in March 2016. The Welsh Government has an on-going community cohesion strategy, Getting on Together, launched in 2009. It has also established a Wales Race Forum, to engage and understand the key issues and barriers facing Black and minority ethnic communities, and a Faith Communities Forum, bringing together representatives of different faith groups to discuss key inter-faith issues. Northern Ireland published a Racial Equality Strategy 2015-2025 in December 2015.
74. ECRI examines below the situation of certain vulnerable groups in light of any specific integration policies or lack of such policies.
- *“Black and minority ethnic” communities<sup>71</sup>*
75. Until very recently there was no national policy specifically targeting the integration of so-called Black and minority ethnic communities. The Prime Minister announced his new policy entitled 2020 Vision during an election

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<sup>71</sup> The term is used to refer to members of non-White communities in the United Kingdom. In ECRI’s other country reports, these would be described as people with a migration background.

campaign speech in April 2015. The aim is to improve opportunity for people from Black and minority ethnic communities. 2020 Vision includes a number of specific targets to be achieved by the end of the current Parliament in 2020: 20% more Black and minority ethnic people in employment; 20% more students from diverse backgrounds in university; 20% of new apprenticeship start-ups from Black and minority ethnic young people and a 20% increase in new Black and minority ethnic recruits in the police. ECRI welcomes this initiative and the commitments of the United Kingdom Government, but as 2020 Vision has been adopted very recently it is not possible for ECRI to assess its effectiveness at this stage.

76. ECRI notes that the five largest non-majority ethnic groups (from largest to smallest) are Indian, Pakistani, Black African, Black Caribbean and Bangladeshi. According to a 2014 report<sup>72</sup>, while the United Kingdom's White population has remained roughly the same size over the past 10 years, the ethnic minority population has almost doubled and now is at least 8 million people, or 14% of the total population. The report also notes that at least 99% of second-generation ethnic minority groups who were born in the United Kingdom to immigrant parents have United Kingdom citizenship.
77. In its fourth report, ECRI made a number of recommendations in the field of education including: reduce achievement gaps between minority ethnic pupils and the majority population; and intensify the drive to recruit minority ethnic teachers and retain them in the teaching profession. As concerns the achievement gap, according to data gathered by the authorities, some minority ethnic pupils in England do well at school.<sup>73</sup> However, Black Caribbean and Pakistani pupils continue to perform below the national average.<sup>74</sup>
78. ECRI is interested to learn about the Special Educational Needs Programme which channels resources through the "pupil premium" introduced in England 2011. The aim is to raise the attainment of disadvantaged pupils from low income families irrespective of their background or their current level of achievement. Additional funding is granted to state maintained schools for every disadvantaged pupil enrolled.<sup>75</sup> The authorities have stated that the programme disproportionately benefits pupils from Black and minority ethnic communities. In 2012-13, at the end of key stage 4, 45% of Black Caribbean pupils and 44.4% of Pakistani pupils were eligible for the pupil premium. The National Audit Office published a study in June 2015 stating that early signs are that the pupil premium has the potential to bring about a significant improvement in outcomes, but that it is too early to evaluate its full impact. ECRI encourages the authorities to make an assessment of the effectiveness of the scheme and how it reduces the achievement gap in particular as concerns Black Caribbean and Pakistani pupils.
79. As for the recruitment of Black and minority ethnic teachers in England, Department for Education figures show that the current teaching force is 93.3% White and only 6.7% are from ethnic minority groups compared to around 14% of the population as a whole. In addition, only 2.4% of head teachers are from ethnic minority groups. The National Union of Teachers has warned that the current state of recruitment is "disturbing" as it means that, in the majority of

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<sup>72</sup> Sunak and Rajeswaran 2014.

<sup>73</sup> In 2014, at the end of primary school, Chinese (88%), Indian (86%), Irish (84%) and Bangladeshi (81%) pupil groups performed above the national average (79%) in reading, writing and mathematics. At key stage 4 (the two years leading up to the General Certificate of Secondary Education, when pupils are aged between 14 and 16), Chinese (74.4%), Indian (72.9%), Irish (65.9%), Bangladeshi (61.3%) and Black African (56.8%) pupil groups attained above the national average for all pupils of 56.6%.

<sup>74</sup> In 2014, 73% of Black Caribbean pupils and 75% of Pakistani pupils attained or exceeded the expected level for reading, writing and mathematics compared to the national average of 79%.

<sup>75</sup> In 2015-16, the per annum amount is £1 320 per child in primary school and £935 per child in secondary school.

schools, the only Black role models are administrative staff, cleaners, kitchen or security staff.<sup>76</sup> Further, evidence collected by the National Union of Teachers shows that once in the profession, Black and minority ethnic teachers still face discrimination, bullying and harassment which hold them back from career progression and may be a factor in the low take-up into the profession.<sup>77</sup> ECRI remains concerned about the continued under-representation of Black and minority ethnic teachers in the workforce and the difficult situation they face in the profession.

80. ECRI reiterates its recommendation to intensify the recruitment of Black and minority ethnic teachers, in order for teaching staff to reflect better the communities they serve, and retain them in the teaching profession.
81. In its fourth report, ECRI encouraged the authorities in their efforts to improve the employment situation of ethnic minorities. According to the authorities, the latest ethnic minority employment figures for 2015 are encouraging: the employment rate of 62.8% is at its highest since 2001. Nevertheless, the 2014 study “A Portrait of Modern Britain” confirms that ethnic groups generally have higher unemployment rates than the White population with the highest proportion of jobless Black Africans – at least 14.8% (as compared to 4.8% unemployed White people, according to data provided by the Government), although their post-16 educational participation rate is much higher.<sup>78</sup> The exception is Indians who are often in the highest skilled professions.
82. A number of employment schemes and programmes have been developed to support people in addressing barriers to accessing employment, such as Jobcentre Plus, Work Programme and the Apprenticeship Grant for Employers to encourage employers to take on young apprentices aged 16-24. However, it appears that these programmes have not been effective in getting ethnic minorities into work. Data for 2014-2015 show that only 8.7% of new starters on apprenticeship programmes were ethnic minorities, despite accounting for 17.8% of the population of those aged 16-24. This has been partially explained by poor promotion of apprenticeship schemes in schools.<sup>79</sup>
83. As regards health, ECRI is concerned about numerous reports indicating that people from Black African or Caribbean ethnic groups have the highest rate of contact with specialist mental health services.<sup>80</sup> According to information from the organisation Black Mental Health UK, although the prevalence of mental illness amongst this group is not higher, Black people are 50% more likely to be referred to the psychiatric services via the police than White people.<sup>81</sup> Allegations of discrimination by police and by the mental health services in relation to Black people have been made and that high levels of coercion rather than care typify the Black African/Caribbean patient experience.<sup>82</sup> ECRI considers that the authorities should look into these allegations and review the treatment of Black African and Caribbean people in the mental health care system.
84. In view of the continued disadvantage of certain Black and minority ethnic groups in education and employment, ECRI encourages the authorities to find concrete ways to achieve their 2020 Vision goals. It also strongly recommends setting similar goals in health care, with a particular focus on eliminating any racial discrimination in mental health care.

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<sup>76</sup> The Independent 2015b.

<sup>77</sup> Ward 2014.

<sup>78</sup> Ali and Gidley 2014.

<sup>79</sup> Mai Sims 2012-2013.

<sup>80</sup> See, for example, Equality and Human Rights Commission 2015.

<sup>81</sup> Care Quality Commission 2014.

<sup>82</sup> MacAttram 2015.

85. Finally, ECRI notes that the integration of Muslims<sup>83</sup> has been called into question in recent times. They have come under increasing focus in public debate as a result of terrorist acts around the world as well as national scandals such as the Trojan Horse affair.<sup>84</sup> The popular reaction is to associate all Muslims with extremism and terrorism. As observed previously, this has led to a large increase in hate speech and violence against Muslims. Added to this are a number of policies which may have the effect of further stereotyping Muslims, albeit indirectly. One of these is the Prevent Strategy, which is part of the United Kingdom Government's counter-terrorism strategy.<sup>85</sup> It aims to stop people becoming terrorists or supporting terrorism and defines extremism as "vocal or active opposition to fundamental British values including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs".
86. In July 2015, a statutory duty in England and Wales was placed on schools, prisons, local authorities and hospitals to have due regard to preventing people being drawn into terrorism. According to Government guidance, the day-to-day responsibilities of teachers, even at nursery-school level, now include identifying children at risk of radicalisation and referring them to the Government's anti-radicalisation programme, Channel, set up to protect vulnerable individuals from being drawn into terrorism. From 2007-2013, 2 653 people were referred (547 from the education sector), almost half of them under 18, with the youngest being three years old.<sup>86</sup> Since 2012, over 4 000 people have been referred for de-radicalisation, 57.4% of whom were Muslims (prior to this it was 67%). Fears have been raised that the strategy fuels discrimination against Muslims.
87. ECRI is concerned that all this has created a feeling of anxiety and insecurity within Muslim communities. ECRI considers that it may also lead to increasing marginalisation and alienation of Muslims by the majority population. It recalls the recommendation it made in its fourth report to pursue and strengthen dialogue with representatives of Muslims on the causes of Islamophobia, emphasising the need for an overall strategy against it. ECRI welcome's the United Kingdom Government's funding, since 2012, of Tell MAMA which is considered to be a successful project. However, ECRI notes that other initiatives, such as the All-Party Parliamentary Group on Islamophobia, which was re-established in Parliament in 2011, and the cross-Government Working Group on Anti-Muslim Hatred set up in 2012, have had little impact.<sup>87</sup> ECRI considers that the authorities and Muslim community organisations should take inspiration from the successful partnership between Jewish community organisations and the Government on shared priorities and work to improve dialogue in a similar way. Indeed, ECRI is pleased to note that Jewish organisations have expressed positive views about the relationship of trust with the Government and the police

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<sup>83</sup> Results from the 2011 census show that Islam is the second largest religion in the United Kingdom with a Muslim population of 2 706 066 persons, approximately 4.5% of the total population. The largest groups of Muslims are Pakistanis and Bangladeshis.

<sup>84</sup> Operation Trojan Horse purported to be a guide for hardline Islamists wanting to overthrow head teachers at state schools in Birmingham and beyond, and replace them with compliant leaders who would run the schools on strict Islamic principles. Five separate investigations were conducted into the alleged plot. The Government report of 2014 concluded that there had been "coordinated, deliberate and sustained action, carried out by a number of associated individuals, to introduce an intolerant and aggressive Islamic ethos into a few schools in Birmingham." However, according to the report of the Education Select Committee of the House of Commons of 17 March 2015, "no evidence of extremism or radicalisation, apart from a single isolated incident, was found by any of the inquiries."

<sup>85</sup> See also Council of Europe Commissioner for Human Rights 2016.

<sup>86</sup> Association of Chief Police Officers 2014.

<sup>87</sup> Huffington Post 2015 and New Statesman 2015.

in tackling antisemitism.<sup>88</sup> Moreover, Muslims should be involved in the development of policies which could adversely affect them, such as Prevent.

88. ECRI strongly recommends that the authorities establish a real dialogue with Muslims in order to combat Islamophobia. They should consult them on all policies which could affect Muslims.

- *Roma, Gypsies and Travellers*

89. ECRI notes that the term “Gypsy and Traveller” refers to traditional groups who have lived and travelled in the United Kingdom for centuries, including Romany Gypsies and Irish Travellers, who all speak English as their mother-tongue. Some Gypsies and Travellers travel, or travel some of the time, while many are sedentary and live in houses but nevertheless consider that travelling is part of their identity. The 2011 census for England and Wales for the first time included a Gypsy and Traveller tick-box in the ethnic origin question and 58 000 people (0.1% of the population) identified themselves as belonging to these groups. In Scotland the figure was just over 4 000 (0.1%) and in Northern Ireland 1 300 (0.07%). However, their numbers are estimated to be much higher, from 80 000 to 300 000.<sup>89</sup> The term “Roma” usually refers to people of Roma origin who have migrated from other parts of Europe to the United Kingdom in recent years and who are not travellers. There are also no confirmed figures for the size of this population. According to the European Union’s 2014 Roma Health Report, Europe’s largest migrant Roma population is to be found in the United Kingdom.<sup>90</sup>

90. ECRI notes that the United Kingdom has clearly stated that it does not have a national Roma integration strategy. Its approach is set out in the document Council Conclusions on an EU Framework Strategy for Roma Integration up to 2020: United Kingdom of Great Britain and Northern Ireland.<sup>91</sup> The document describes briefly the situation of Roma, Gypsies and Travellers and the policies in place to address disadvantages they suffer in England, Wales, Scotland and Northern Ireland, within wider social inclusion policies. In addition, ECRI notes that in April 2012, the Ministerial Working Group set up in 2010 to look into inequalities experienced by Gypsies and Travellers in England, published a progress report setting out 28 commitments in various fields including education, health care, providing appropriate accommodation, tackling hate crime and improving access to employment.

91. These two documents were submitted to the European Commission in 2012. ECRI is pleased to note that the Commission’s 2014 assessment highlighted various mainstream and targeted measures taken in education, employment, health, housing and anti-discrimination and recommended monitoring their impact. It also pointed out that halting sites for Gypsies and Travellers and housing for Roma remain a challenge all over the United Kingdom, and that effective measures should be taken to combat anti-Roma rhetoric and hate speech. The lack of allocation of funding for many of the measures is also noted.<sup>92</sup>

92. NGOs have criticised the Government for failing to adopt an NRIS and of developing policies limited to cosmetic commitments falling below identified needs.<sup>93</sup> Gypsy and Traveller organisations have described the 28 commitments for England as “very disappointing and unacceptable”, or “at best disappointing

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<sup>88</sup> Muslim Engagement and Development 2015.

<sup>89</sup> European Commission, Directorate-General for Justice.

<sup>90</sup> European Union 2014.

<sup>91</sup> This was drafted in response to the Council of the European Union Conclusions of May 2011 on an EU Framework for National Roma Integration Strategies (NRIS) up to 2020.

<sup>92</sup> European Commission, Directorate-General for Justice 2013.

<sup>93</sup> European Roma and Travellers Forum 2015.

and at worst insulting”. The 28 commitments have also been criticised by some civil society organisations for addressing Roma only in the field of education and for not including this group explicitly in other policy areas.<sup>94</sup> ECRI notes that many of the 28 commitments are vague where not accompanied by targets, indicators, timeframes, or dedicated funding.

93. As concerns accommodation, in its fourth report, ECRI recommended that the authorities step up their efforts to ensure that a sufficient number of pitches are in place to accommodate the needs of Gypsies and Travellers. One of the most pressing issues for Gypsies and Travellers continues to be the lack of site provision.<sup>95</sup> According to the 2011 census, 24% of respondents who identified as Gypsy or Traveller live in caravans or other mobile structures. According to the latest bi-annual count of traveller caravans in July 2015, there were 21 084 caravans of which 85% were on authorised sites and 15% on unauthorised sites. Unauthorised sites include public land or privately-owned land, including land owned by Gypsies and Travellers but without planning permission (this is required even for a single caravan). To complicate the situation further, the majority of planning applications by Gypsies and Travellers are turned down.
94. The Localism Act 2011 gave local planning authorities more control over planning and development in their areas. The European Roma and Travellers Forum signaled that this “bad practice” could lead to a decline in the number and quality of sites provided, because local councils are often unwilling to provide new sites due to high levels of tension between Gypsies and Travellers and the rest of the population. Local residents protest fiercely against the creation of sites and have organised successful campaigns against them.<sup>96</sup>
95. The authorities have informed ECRI that under the Traveller Pitch Fund, which ran from 2011 to 2015, 499 new pitches were developed and 386 were refurbished in England. These figures are disputed by Gypsy and Traveller organisations as misleading, since most sites listed as new are in fact renovations of existing pitches.<sup>97</sup> In a research report of 2009 published by the Equality and Human Rights Commission, the national shortfall in England was estimated to be almost 6 000 pitches;<sup>98</sup> Gypsy and Traveller organisations informed ECRI that they are of the view that little or no progress has been made since then.<sup>99</sup> The lack access to an authorised pitch means that they have to resort to wasteland or roadside accommodation, known as unauthorised encampments. There are estimated to be around 1000 caravans on the roadside at any given time. Moreover, such unauthorised encampments frequently lead to repeated forced evictions.

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<sup>94</sup> While the focus of the Ministerial Working Group was on Gypsies and Travellers, its progress report acknowledged that some issues affecting Roma overlap with those of Gypsies and Travellers, particularly in education.

<sup>95</sup> A site is made up of several pitches. Each pitch is equivalent to a family home and might accommodate one or more caravans.

<sup>96</sup> For example, in Cheshire the local council announced that it planned to build two plots for Gypsy and Traveller households to live on a site, but residents set up the Crewe Campaign Against Traveller Sites in October 2011 which raised enough money to hire a lawyer and a 5 400-strong petition. The group received widespread public support and in the face of this pressure, the local council withdrew the application for a site in April 2012.

<sup>97</sup> The Homes and Communities Agency defines new pitches as including those on an existing site that are not fit for purpose, with no facilities or only derelict facilities, and where the works require the complete redevelopment of the site.

<sup>98</sup> Brown and Niner 2009.

<sup>99</sup> Reports indicate the shortage of sites also in Scotland. See for example: Equality and Human Rights Commission 2013 and Shelter Scotland 2016.

96. Furthermore, in August 2015 the Government issued a new Planning Policy for Traveller Sites in England, which replaces the previous policy of 2012 and which came into force immediately. A controversial aspect of this is that if Gypsies or Travellers stop travelling permanently due to ill-health or old age, they will no longer be within the planning definition of Gypsy and Traveller.<sup>100</sup> According to a report by the Institute of Race Relations,<sup>101</sup> the policy is traumatic for Gypsies and Travellers, who feel that it is an attempt by the Government to erase their identity and curb their traditional way of life. ECRI notes that there was a consultation before the policy was adopted but the strong opposition of Gypsy and Traveller groups as well as concerns raised by the EHRC were not taken into account. ECRI regrets that the situation as concerns accommodation for Gypsies and Travellers has deteriorated since its fourth report. This may be due to the lack of an adequate policy in this respect.
97. Nevertheless, ECRI draws attention to two positive developments. Firstly, it notes an example of best practice in the city of Leeds, which developed a “negotiated stopping” policy in 2011.<sup>102</sup> Under the policy, Gypsy and Traveller families select the location where they want to set up camp and sign an agreement not to stay for longer than three months. In return, the council agrees not to evict them and to supply facilities such as toilets and waste disposal services. The council can decline a request for a justifiable reason but must provide an alternative piece of land. As a result of the policy, relations between the council, the police, the public and Gypsies and Travellers have improved markedly and the council is saving £2 000 a week on eviction and clean-up costs.<sup>103</sup> ECRI calls upon other areas to follow this successful initiative which benefits all parties. Secondly, ECRI is pleased to note that the Welsh Government has recognised the cultural needs of Gypsies and Travellers to remain nomadic and has taken steps to break the negative cycle of conflict and exclusion caused by a shortage of sites.
98. ECRI recommends that the new planning definition in England of Gypsy and Traveller is replaced with the previous one of 2012, that sufficient pitches are provided according to the needs of these communities, and that alternatives to eviction, such as the negotiated stopping policy in the city of Leeds, are promoted and replicated elsewhere.
99. As concerns Roma, local studies show that the majority live in privately rented, overcrowded accommodation in poor conditions and expensive to rent.<sup>104</sup> Roma are often in low paid and insecure work and rely on extended family networks to live together and contribute to the rent. Poverty, and sometimes destitution, is a persistent problem for Central and Eastern European Roma.<sup>105</sup> ECRI considers that the lack of a housing policy geared to the needs of Roma contributes to the marginalisation of this community.
100. As for education, ECRI notes that six of the 28 commitments refer to steps to be taken in this field, including tackling poor attendance at school and low attainment. However, these do not involve any concrete goals. The 2011 census revealed that Gypsies and Travellers had the highest proportion with no academic or professional qualifications for any ethnic group (60%) – almost three times higher than for England and Wales as a whole (23%). Gypsy, Roma and

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<sup>100</sup> This does not apply in Wales where the Housing (Wales) Act 2004 retains a wide definition of Gypsies and Travellers.

<sup>101</sup> Johnson and Ryder 2016.

<sup>102</sup> This was initiated by the organisation Leeds Gypsy and Traveller Exchange (Leeds GATE). The organisation was the regional winner of the Lloyds Bank Foundation 2015 Charity Achievement Awards under the category “Championing Change”.

<sup>103</sup> Third Sector 2015.

<sup>104</sup> European Union 2014; European Roma and Travellers Forum 2015.

<sup>105</sup> European Commission 2014.



Traveller pupils are the lowest performing ethnic group in education. In 2014, 29% of Gypsy/Roma pupils and 38% of Traveller pupils reached or exceeded the expected level in reading, writing and mathematics, compared to the national average of 79%. Some steps have been taken to address this gap. In 2012-13, at the end of key stage 4, 78.8% of Traveller pupils and 65.2% of Gypsy/Roma pupils were eligible for the above-mentioned pupil premium (as compared to 23.4% of White British pupils).

101. In Scotland, the Scottish Government's education-specific Equality Outcome includes a focus on Gypsies and Travellers. The Government also funds the Scottish Traveller Education Programme and is currently developing guidance on inclusive educational approaches for Traveller children and young people. As for Wales, Travelling Together, a new on-line curriculum resource which celebrates Gypsy and Traveller history and culture has been launched aiming to provide pupils with a more culturally relevant curriculum. The lowest performing group in Wales are Gypsy/Roma children; in 2011-13, only 12.3% of these pupils reached the required level at age 16. As for Northern Ireland, the Equality Commission for Northern Ireland has identified wide-ranging educational inequalities experienced by Traveller children, with 92% leaving school without qualifications compared with 4% for school-leavers overall. Therefore, the data clearly show that a great deal more needs to be done across the United Kingdom to improve education outcomes for Gypsy, Roma and Traveller pupils.
102. Regarding employment, ECRI recalls its recommendation that the authorities take steps to reduce the unemployment of Gypsies and Travellers. Among the 28 commitments of the Government, only one is directly related to the above recommendation, providing for personalised support to Gypsies and Travellers via the Work Programme and "access to appropriate skills support". ECRI has no information about the effect on Gypsies and Travellers of the Work Programme, launched in 2011, but notes that to the end of December 2015, 503 160 participants had found sustained work through it. The 2011 census showed that Gypsy or Travellers were the ethnic groups with the lowest proportion of respondents who were economically active. Of these only 51% were employed compared to 75% for the total of England and Wales and 20% were unemployed (compared to 7% for England and Wales). Elementary occupations (such as sales, service or construction) were the most common type of employment. According to the Civil Society Monitoring report,<sup>106</sup> evidence exists that Gypsies and Travellers in Scotland and Northern Ireland face high levels of economic exclusion, with troubling evidence of Roma being exploited in low paid employment or within the informal economy.
103. Typically Gypsies and Travellers earn a living by delivering business services and trading with local communities (such as scrap metal trading, tree cutting and fencing). Increasingly rigid legislation has been enacted, such as the new Scrap Metal Dealers Act 2013 which aims to tackle the illegal trade in stolen metal. It means that individuals must apply to each local authority in which scrap metal is collected and pay the fees. Since Gypsies and Travellers frequently work across different local authorities they have to apply and pay for licences several times. The new legislation disproportionately affects these communities and creates an obstacle for them to work.
104. ECRI recommends that the licencing regime under the Scrap Metal Dealers Act 2013 is revised to allow Gypsies and Travellers to apply for licences on a regional rather than local basis to allow them to pursue this trade across a range of local authorities without incurring excessive fees.
105. Again, ECRI is concerned that the situation as regards employment has not improved and may even have deteriorated.

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<sup>106</sup> Ryder and Cemlyn, 2014. See also European Roma and Travellers Forum 2015.

106. As concerns health, ECRI, in its fourth report, strongly encouraged the authorities to pursue their efforts to research and address the situation of disadvantage of the Gypsy and Traveller population as concerns health issues. Five of the Government's 28 commitments concern health. These include identifying gaps in data and research, identifying specific interventions that produce positive health outcomes, and identifying what more needs to be done to improve maternal health and reduce infant mortality. According to a recent report of the EU's Fundamental Rights Agency,<sup>107</sup> Traveller women are expected to live 12 fewer years and Traveller men 10 fewer years than the general population. Data on infant mortality show higher rates amongst Gypsies and Travellers compared with the general population. Local studies indicate high prevalence of diabetes, cardiovascular disease, premature myocardial infarction, obesity and asthma amongst Central and Eastern European Roma. More than one study points to higher incidences of mental health issues such as stress, anxiety and depression amongst Gypsies, Travellers and Roma.<sup>108</sup>
107. In recognition of the fact that Gypsies and Travellers have poorer health status than other groups and that they also face barriers in accessing some health care services, the authorities informed ECRI that they provided funding for the NGO Friends, Families and Travellers over three years for a project to address health inequalities experienced by Gypsies and Travellers.
108. In view of the above, ECRI considers that the United Kingdom needs to draw up urgently, in consultation with Gypsy, Traveller and Roma groups, a detailed programme of integration strategies and measures to address the extreme disadvantage suffered by these communities.
109. ECRI strongly recommends that the authorities draw up, in consultation with Gypsy, Traveller and Roma groups, a detailed programme of integration strategies and measures to address the disadvantage suffered by all three of these communities in England, Wales, Scotland and Northern Ireland, including concrete targets, timeframes, and resources, in all areas of daily life, such as education, employment, health care and accommodation, in particular addressing the shortage of caravan sites.
- *Refugees*
110. There is no national policy in general on the integration of non-nationals. As concerns refugees, there is currently no integration strategy in England<sup>109</sup> or Northern Ireland.<sup>110</sup> However, in Scotland, *New Scots: Integrating Refugees in Scotland's Communities 2014-2017* aims to ensure that people who seek asylum in Scotland are welcomed, supported and integrated into communities from day one. The Welsh Government adopted a *Refugee Inclusion Strategy* in 2008 with the aim of supporting refugees and enabling them to rebuild their lives and make a full contribution to society. An *Implementation Action Plan* was launched in 2011 and is updated annually; it includes priorities in different fields including health care, housing, provision of free English-language courses, and employment.
111. In 2014, there were almost 31 400 asylum applications (an increase from 29 900 in 2013). Some 20 000 decisions were taken; 36% resulted in asylum being granted. The main applicants were from Eritrea, Pakistan, Syria and Iran. At the

<sup>107</sup> FRANET National Focal Point: Social Thematic Study: The Situation of Roma, University of Nottingham, as reported in the European Commission's 2014 Roma Health Report, Health status of the Roma population, Data collection in the Member States of the European Union.

<sup>108</sup> European Commission 2014.

<sup>109</sup> The last strategy published in 2009, *Integration Matters*, is no longer in place.

<sup>110</sup> A proposal for such a strategy was put forward in November 2013.

end of 2014, UNHCR estimated that there were 117 161 refugees in the United Kingdom.<sup>111</sup>

112. According to reports, while refugees are entitled to the same welfare benefits as United Kingdom citizens, they nevertheless often live in situations of poverty and social exclusion.<sup>112</sup> The Refugee Integration and Employment Service, which was oriented towards assisting integration, in particular with housing, welfare and employment, was closed down in 2011. Since then there has been limited strategic and resourced support for refugee integration.<sup>113</sup> Cuts to classes in English for speakers of other languages have also hindered integration progress.
113. The main problem faced by new refugees is the extremely short “grace period” in the transition between asylum seeker and refugee status. Those in receipt of asylum support (accommodation and cash) cease to be entitled to it 28 days after notification of being granted refugee status. During this short period, refugees have to obtain housing and a means to support themselves through employment or welfare benefits. Finding accommodation is particularly difficult since refugees may lack the money to pay the deposit or advance rent. They frequently resort to staying with friends, living in hostels or sleeping rough in the streets.<sup>114</sup> Only those deemed vulnerable, generally the disabled or those with children, will get priority access to emergency accommodation.<sup>115</sup> Further, refugees must receive a national insurance number before they can access welfare benefits. A British Red Cross report states that moving to mainstream benefits takes much longer than 28 days and many new refugees are at risk of destitution during this time. The organisation calls, among other things, for an extension to 40 days to avoid a break in support.<sup>116</sup>
114. ECRI recommends taking steps to ensure that refugees do not fall into destitution by prolonging the provision of asylum support until access to welfare benefits is obtained.
115. ECRI considers that greater efforts need to be made to assist newly-arrived refugees and that the lack of a formal strategy is detrimental to their integration.
116. ECRI recommends that a refugee integration strategy is developed in England and Northern Ireland to assist newly-arrived refugees, in particular as concerns housing, employment, access to welfare and learning English, and that refugee integration is systematically evaluated.

- *Other non-citizens*

117. The foreign-born population in the United Kingdom is 13% according to the 2011 census. The main countries of origin are India, Poland, Pakistan and Ireland. However, a large proportion of migrants are naturalised and only 7.4% of foreign-born persons in England and Wales do not have United Kingdom nationality. Immigrants should be covered by any policy for Black and minority ethnic groups, such as 2020 Vision. Many of the issues for members of this group are dealt with under the section above on “Black and minority ethnic” communities.
118. ECRI considers that, while access to citizenship is not strictly speaking an absolute prerequisite for integration, it is often regarded as the last step in a successful integration process and should be possible under reasonable conditions. In its fourth report, ECRI recommended that the effect of the new

<sup>111</sup> [www.unhcr.org/about-us/the-uk-and-asylum.html](http://www.unhcr.org/about-us/the-uk-and-asylum.html).

<sup>112</sup> Kartalozzi 2014.

<sup>113</sup> Phillimore 2012.

<sup>114</sup> Doyle 2014.

<sup>115</sup> Allsopp, Sigona and Phillimore 2014.

<sup>116</sup> The move-on period; an ordeal for new refugees, [www.redcross.org.uk/en/About-us/Advocacy/Refugees/Ending-destitution/The-move-on-period](http://www.redcross.org.uk/en/About-us/Advocacy/Refugees/Ending-destitution/The-move-on-period).

rules with respect to the acquisition of citizenship is to assist and not to hinder non-citizens in their part of the process of integration. ECRI is pleased to note that the authorities did not pursue the Earned Citizenship policy, which was due to come into effect in July 2011, and which was highlighted in ECRI's fourth report.<sup>117</sup> The rules set out in the British Nationality Act 1981 remain in place.

119. ECRI notes that it is relatively easy for children born in the United Kingdom to non-citizen parents to be naturalised. The law also does not require renunciation of prior citizenships. Adults may qualify for citizenship through at least five years residence or through marriage to a citizen (with three years' residence as a spouse or civil partner). In addition, requirements of "good character" must be met, ability to communicate in English (the level was raised to B1 intermediate as of October 2013), Welsh or Scottish Gaelic, and "knowledge of life in the UK", as assessed by a Life in the UK Test.<sup>118</sup> ECRI notes that the United Kingdom has the most expensive citizenship fees in the world: in 2015, these amounted to £1 005 for an adult application. In 2014, 125 800 foreigners naturalised as United Kingdom citizens. 5% of applications were refused, mainly due to failure to meet either the good character requirement or the residence requirement. Only 1% of refusals were for not meeting the language proficiency requirements or knowledge of life in the UK. ECRI notes that the United Kingdom ranked 15<sup>th</sup> out of 38 countries in the Migration Integration Policy Index 2015.<sup>119</sup>
120. As already observed, there has been for some time now a negative climate of opinion towards EU migrants. The Prime Minister regularly refers to generous welfare systems being abused by workers from poorer countries, bringing along their families and draining public finances. There is little mention in public debate that EU migration, or migration in general, is overall economically positive for host countries. ECRI encourages those who engage in this debate to ensure that they do not provoke hostility towards migrants themselves.

## **II. Topics specific to the United Kingdom**

### **1. Interim follow-up recommendations of the fourth cycle**

121. In its first interim follow-up recommendation, ECRI reiterated that the authorities should consider how best to ensure that legal aid is available in discrimination cases before Employment Tribunals. In its conclusions adopted on 4 December 2012, ECRI noted that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 only provides for free legal aid for representation in respect of "discrimination-in-employment claims" before the Employment Appeals Tribunal but not the Employment Tribunal. In Northern Ireland legal aid is available for initial advice and assistance but not for representation. ECRI concluded that its recommendation had only been partially implemented in England, Wales and Northern Ireland. As for Scotland, ECRI noted that assistance by way of representation had always been available for discrimination cases before the Employment Tribunal, subject to the Scottish Legal Aid Board's prior approval following an examination on the merits.
122. Since then there have been developments in a negative direction. In July 2013, fees were introduced for claims made to employment tribunals or the Employment Appeals Tribunal, with higher fees for discrimination claims than other types of claim.<sup>120</sup> This has led to a dramatic drop in the number of cases before such tribunals. The Equality and Human Rights Commission (EHRC) stated that there was an 81% drop in claims in 2014 compared to the same

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<sup>117</sup> Immigration Matters 2010.

<sup>118</sup> Blinder 2015.

<sup>119</sup> MIPEX 2015, [www.mipex.eu/united-kingdom](http://www.mipex.eu/united-kingdom).

<sup>120</sup> Equality and Human Rights Commission 2015.

period in the previous year; for racial discrimination claims, the drop was 61%. Moreover, recent statistics from Northern Ireland indicate that those who are unrepresented in discrimination cases at tribunals are more likely to lose than those who do have representation.<sup>121</sup> ECRI is concerned that people who cannot afford the fees may be denied justice. These new costs, as well as limited free legal aid, may be creating impunity for employers, which leads to further abusive labour practices.

123. ECRI strongly recommends that the authorities review the legal aid and fees regime with a view to improving access to justice in discrimination in employment cases.

124. In its second interim recommendation, ECRI strongly encouraged the authorities in their efforts to address the disadvantages faced by Gypsies and Travellers in access to adequate accommodation and recommended that they take all necessary measures to ensure that the assessment of accommodation needs at local level is completed thoroughly and as quickly as possible. In its conclusions of 4 December 2012, ECRI considered that its recommendation had only been partially implemented in England, Wales, Scotland and Northern Ireland.

125. The first part of the recommendation concerning access to accommodation has been addressed in §§ 93-98. As for the assessment of accommodation needs at local level, ECRI recalls that, in England, the Housing Act 2004 provides specifically that every local housing authority must carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to their district and prepare a strategy to meet such needs. It notes that the Housing and Planning Bill currently going through Parliament removes all reference to Gypsies and Travellers and only includes a duty to “consider the needs of people” residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed. ECRI is concerned that if the bill is enacted the accommodation needs of these vulnerable communities will be further undermined. In view of the above-mentioned shortage of sites and repeated eviction, such needs assessments are a key part of solving the problem. In this context, ECRI welcomes as best practice the new Housing (Wales) Act 2014, which requires local authorities in Wales to undertake Gypsy and Traveller accommodation assessments and includes a duty to provide sites where a need has been identified. Further, the Welsh Government has the power to compel local authorities to provide sites where the need has been identified but not met.

126. ECRI strongly recommends that the authorities of England revise the Housing and Planning Bill to ensure that it makes explicit reference to the duty of local housing authorities to assess and meet the accommodation needs of Gypsies and Travellers, taking inspiration from the Housing (Wales) Act 2014.

127. In its third interim recommendation, ECRI encouraged the authorities to continue their efforts to address the under-representation of ethnic minorities in the police and to monitor progress in recruitment, retention and career advancement. ECRI noted, in its conclusions of 4 December 2012, a small rise in England and Wales in the proportion of ethnic minority police officers and better retention rates than for others. However, they were under-represented at senior ranks. It reached the same conclusion in respect of Scotland and Northern Ireland, where various initiatives had been taken to increase diversity in police forces, and concluded that its recommendation had been partially implemented.

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<sup>121</sup> Northern Ireland Council for Ethnic Minorities 2013-2014.

128. ECRI notes that further steps have been taken to address this issue. Every police force now has an action plan in place to increase diversity. The College of Policing runs a work programme called BME<sup>122</sup> Progression 2018 to improve the recruitment, retention and progression of officers from under-represented groups in policing. It also published advice in 2014 for forces on the lawful use of positive action to address under-representation. Police Scotland also runs initiatives to recruit more Black and minority ethnic police officers.
129. According to the authorities, at 31 March 2014, there were 6 715 Black and minority ethnic police officers in England and Wales, up 178 from the previous year. The proportion of Black and minority ethnic officers has remained constant at 5%, while their proportion in the population is around 14%. In London, 11% of officers are from Black and minority ethnic communities, while the latter represent 42% of the general population there. In October 2015, the Home Secretary criticised the diversity of the police in England and Wales, saying that they are “too White”, with not one of the 43 forces looking like the communities they serve. She specified that four forces have no Black officers, 11 have no ethnic minorities above the rank of chief inspector, and there are only two Black and minority ethnic chief officers.<sup>123</sup> She encouraged forces to identify areas for improvement.<sup>124</sup>
130. ECRI notes, therefore, that there is still a long way to go in addressing under-representation. It recalls that the new policy 2020 Vision provides for a 20% increase in Black and minority ethnic people in the police. It strongly encourages the authorities to intensify their efforts to achieve this goal.

## **2. Effectiveness of the Equality and Human Rights Commission**

131. In its fourth report, ECRI recommended that the authorities ensure that sufficient financial and human resources are available to the Equality and Human Rights Commission (EHRC) to allow it to fulfil its terms of reference without prejudice to its work on race equality and racial discrimination.
132. As noted above, the EHRC is the body in which three former Commissions, including the Commission for Racial Equality, were merged. In March 2011, the Government carried out a consultation (entitled Building a fairer Britain: Reform of the Equality and Human Rights Commission) in which it set out detailed proposals to reform the EHRC. Almost a thousand responses were received. Most expressed unhappiness with the EHRC’s performance up to that date and over half of the responses called for the EHRC’s abolition. The Government then redefined its remit and limited its activities in order to improve its operational performance. Since 2011-2012, the EHRC has had its budget and workforce halved. However, despite the shakeup and cuts, the EHRC employs around 200 people and has stated that its staff and budget are sufficient to carry out its functions. It does regret, however, that funding was stopped for its helpline and grants programmes.
133. One aspect of concern regarding the EHRC’s role in enforcing the Equality Act 2010 is that it does not collect data on or monitor the application of the act. ECRI has not been able to access any information on the number of discrimination cases filed in court on the grounds under its mandate nor the outcomes of such cases, other than in the field of employment. It considers this a major shortcoming which should be resolved.
134. ECRI strongly recommends that data is collected on the application of the Equality Act 2010, from the filing of a complaint to the final outcome.

<sup>122</sup> An abbreviation for Black and minority ethnic.

<sup>123</sup> The Guardian 2015d.

<sup>124</sup> Home Office 2015b [www.gov.uk/government/speeches/home-secretary-speech-at-nbpa-conference](http://www.gov.uk/government/speeches/home-secretary-speech-at-nbpa-conference).

### 3. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>125</sup>

#### - Data

135. According to the 2015 Integrated Household Survey, 1.6% of adults identified themselves as gay, lesbian or bisexual, corresponding to some 641 160 persons.<sup>126</sup> There is no official data on the number of transsexuals. A 2009 study by a transgender organisation estimated their number to be between 300 000 and 500 000.<sup>127</sup>
136. ECRI notes that there has been a significant attitude change towards LGBT persons in the United Kingdom in recent years. The European Union's LGBT survey found that six out of 10 persons interviewed stated that they were very or fairly open about their sexual orientation or gender identity.<sup>128</sup> Only 18% said that discrimination on grounds of sexual orientation was "very widespread" in their country (the EU average is 31%). According to Rainbow Europe Map 2015 of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), the United Kingdom comes in first place (out of 49 countries ranked) with a score of 86%. The United Kingdom Parliament has been confirmed as the worldwide leader for the proportion of openly gay, lesbian or bisexual MPs, with roughly 5% of its 650 members.<sup>129</sup>

#### - Legislative issues

137. As concerns criminal law, in England and Wales, section 146 of the Criminal Justice Act 2003 empowers courts to impose tougher sentences for offences motivated or aggravated by the victim's sexual orientation or transgender identity. Stirring up hatred on grounds of sexual orientation, but not gender identity, is also an offence under the Public Order Act 1986.<sup>130</sup>
138. In 2014, the Law Commission looked into whether the aggravated offences in the Crime and Disorder Act 1998 (see § 7) should be extended to include hostility on grounds of sexual orientation or gender identity and whether the stirring up of hatred offences under Public Order Act 1986 should be extended to include grounds of gender identity, in order to remove perceived inequality in the current system.<sup>131</sup> It noted the under-use of enhanced sentencing under section 146 and recommended a full-scale review of the operation of the aggravated offences to address failings in the present system before adding further protected characteristics. If such a review was not supported by the Government, it recommended, in the alternative, extending the aggravated offences to include grounds of sexual orientation and gender identity. The Law Commission was against extending the stirring up offences to include gender identity, mainly on account of the very few prosecutions on the existing grounds of racial or religious hatred (see also ECRI's comments in §§ 4-5). There has been no reaction yet from the Government.

139. ECRI recommends that the authorities follow the advice of the Law Commission and review the operation of aggravated offences with a view to including the grounds of sexual orientation and gender identity. It also recommends including

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<sup>125</sup> For terminology, see the definitions set out in Council of Europe Commissioner for Human Rights 2011.

<sup>126</sup> Office for National Statistics 2015.

<sup>127</sup> Reed, Rhodes, Schofield and Wylie 2009.

<sup>128</sup> European Union Agency for Fundamental Rights 2013.

<sup>129</sup> Welfare Society Territory 2015, [www.west-info.eu/westminster-breaks-its-own-record-for-the-number-of-gay-mps/](http://www.west-info.eu/westminster-breaks-its-own-record-for-the-number-of-gay-mps/).

<sup>130</sup> The offence is identical to stirring up religious hatred, but not racial hatred, since it only covers the use of threatening (but not abusive or insulting) words, behaviour or material.

<sup>131</sup> Law Commission 2014.

gender identity as a ground in the “stirring up hatred” offences and refers to its recommendation in § 51 of this report.

140. In Scotland, stirring up hatred on grounds of sexual orientation, but not gender identity, is an offence under the Public Order Act 1986. The second part of the above recommendation is therefore also addressed to the authorities of Scotland. The Offences (Aggravation by Prejudice) Act 2009 extended the aggravating circumstances to include offences motivated by prejudice relating to a victim’s actual or presumed sexual orientation or transgender identity.
141. In Northern Ireland, the Public Order (Northern Ireland) Order 1987, which criminalises “acts intended or likely to stir up hatred or arouse fear”, was extended in 2004 to include sexual orientation, but not gender identity. The Criminal Justice (No 2) (Northern Ireland) Order 2004 allows judges to increase the sentence for any offence proved to have been aggravated by hostility on account of the victim’s membership of a “sexual orientation group”. The above recommendation is addressed also to the authorities of Northern Ireland.
142. Regarding civil and administrative law, the Equality Act 2010 protects people in England, Wales and Scotland from discrimination on grounds of sexual orientation and gender identity. In Northern Ireland, the Equality Act (Sexual Orientation) Regulations 2006 prohibits discrimination on the grounds of sexual orientation in the provision of goods, facilities, services, education, functions of public authorities and the disposal of property. The Gender Reassignment Regulations (Northern Ireland) 1999 make it unlawful to discriminate on grounds of gender reassignment in employment and training and the Sex Discrimination (Amendment of Legislation) Regulations 2008 introduced protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises.
143. ECRI recommends that legislation is enacted in Northern Ireland providing for protection from discrimination on grounds of gender identity.
144. As for family law, the Civil Partnership Act 2004 allows same-sex couples to enter into a civil partnership. According to the Marriage (Same Sex Couples) Act 2013, same-sex couples can also get married, or change their existing civil partnership to a marriage, in England, Wales and Scotland, but not in Northern Ireland. Proposed legislation on equal marriage has been rejected four times by the Northern Ireland Assembly, despite popular support. A survey, carried out by Ipsos MORI in 2015, found that 68% of adults in Northern Ireland believe that same-sex couples should be allowed to marry.<sup>132</sup> The Gender Recognition Act 2004 applies throughout the United Kingdom enabling transgender people to obtain legal recognition of their acquired gender and to be issued a new birth certificate. There is no requirement to undergo surgery or hormone treatment.
145. As regards asylum, the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (transposing into domestic law the EU Asylum Qualification Directive) and new immigration rules provide that “a particular social group” may include a group based on a common characteristic of sexual orientation or gender identity.

- **Promoting tolerance and combating discrimination**

146. ECRI notes that employment is the area in which LGBT people experience the least intolerance. According to Eurobarometer 2012, 10% of participants in the United Kingdom expressed the view that a candidate’s sexual orientation (being LGB) would be a disadvantage in recruitment, while 13% stated that the candidate’s gender identity (being trans) would be a disadvantage.<sup>133</sup> The scores

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<sup>132</sup> Welfare Society Territory 2015.

<sup>133</sup> European Commission 2012: 88.



for both of these categories are amongst the lowest in all EU countries. However, as regards health care, the EU LGBT Survey indicated that 13% of respondents felt personally discriminated against in the last 12 months because of being LGBT by health care personnel (a receptionist, nurse or doctor). This figure is above the EU average which is 10%.<sup>134</sup> Moreover, the EHRC in a 2015 report refers to a range of barriers for transgender people in accessing National Health Service gender reassignment services, resulting from lack of knowledge on the part of doctors on referring patients to gender identity services or, at worst, doctors allegedly being obstructive and discriminatory.<sup>135</sup>

147. As for access to goods and services for the public, ECRI notes a much publicised case recently decided in Northern Ireland which sends a clear anti-discrimination message. A bakery which had refused to take the order of a gay rights activist for a cake displaying a pro-gay marriage slogan, claiming that it was on account of their deeply held religious beliefs, was taken to court in May 2015 and found guilty of unlawful discrimination by the Belfast County Court. The District Judge noted in her judgement that the defendants were not a religious organisation and conducted a business for profit, therefore it was “direct discrimination for which there is no justification”.<sup>136</sup>
148. Regarding education, the public sector equality duty under the Equality Act 2010 requires schools to advance equality for LGBT pupils and for every school to have a behaviour policy setting out measures to promote respect and to prevent all forms of bullying. However, there is ample evidence indicating that LGBT pupils experience severe bullying and are not always supported by teachers. The EU LGBT Survey found that during their schooling 78% of LGBT persons have always or often witnessed negative comments and conduct against a peer who was perceived to be LGBT.<sup>137</sup> In July 2013, research conducted by the University of Cambridge found that 55% of LGB pupils in secondary schools experience homophobic bullying and 25% report that teachers do not challenge it.<sup>138</sup> A study by the National Aids Trust published in March 2015, which questioned more than 1 000 LGB teenagers, found that one in five had been bullied or discriminated against by a teacher on the basis of their sexuality.<sup>139</sup> ECRI is pleased, therefore, that in 2014 the United Kingdom Government allocated £2 million to a programme to help build schools’ capacity to tackle homophobic, biphobic and transphobic bullying, in cooperation with relevant NGOs,<sup>140</sup> and that a further £1 million was announced in March 2016 to address this type of bullying more effectively.
149. ECRI encourages further efforts to address bullying of LGBT pupils in schools, with special attention given to teacher training.

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<sup>134</sup> <http://fra.europa.eu/DVS/DVT/lgbt.php..>

<sup>135</sup> Equality and Human Rights Commission 2015.

<sup>136</sup> Pink News 2015e.

<sup>137</sup> EU FRA 2012, <http://fra.europa.eu/DVS/DVT/lgbt.php>.

<sup>138</sup> ILGA Europe 2013.

<sup>139</sup> National AIDS Trust 2015.

<sup>140</sup> For example, in 2014 Stonewall published an exhaustive guide on tackling homophobic bullying at school. Its Education for All campaign includes training and resources for use in primary and secondary schools, and it has produced a Coming Out guide for young people who think they might be LGB.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of the United Kingdom are the following:

- ECRI strongly recommends that the authorities of Northern Ireland consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland, as well as ECRI's recommendations in § 19 of this report.
- ECRI strongly recommends that data is collected on the application of the Equality Act 2010, from the filing of a complaint to the final outcome.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI reiterates its previous recommendations to sign and ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 8) ECRI recommends amending the criminal law to add the ground of language to the existing provisions and to include the following offences committed on grounds of race, colour, language, religion, nationality, or national or ethnic origin: public incitement to violence and discrimination; public insults and defamation; threats; the public expression with a racist aim of an ideology which claims the superiority or which depreciates or denigrates a group of persons; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; the production or storage aimed at public dissemination or distribution, of written, pictorial or other material containing manifestations covered by GPR 7 § 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and racial discrimination in the exercise of one's public office or occupation.
3. (§ 19) ECRI recommends that the authorities improve the Equality Act by including the following: the protected characteristic of language; announced intention to discriminate; the express duty to ensure that those parties to whom public authorities award contracts, loans, grants, or other benefits respect and promote a policy of non-discrimination; the necessary legal tools to review, on an on-going basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at national and local levels, and to amend or abrogate those found not to be in conformity with the prohibition of discrimination; the obligation to suppress public financing of organisations or political parties which promote racism and the possibility of dissolution of such organisations.
4. (§ 22) ECRI strongly recommends that the authorities of Northern Ireland consolidate equality legislation into a single, comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the Equality Commission for Northern Ireland, as well as ECRI's recommendations in § 19 of this report.
5. (§ 39) ECRI calls upon all political parties to take a firm stand against intolerant discourse and instruct their representatives to refrain from making derogatory comments targeting a group of persons on grounds of their "race", religion, citizenship, language, ethnic origin, sexual orientation or gender identity.
6. (§ 51) ECRI recommends that the authorities review the provisions on incitement to hatred with a view to making them more effective and usable.
7. (§ 56) ECRI strongly recommends that the authorities find a way to establish an independent press regulator according to the recommendations set out in the Leveson Report. It recommends more rigorous training for journalists to ensure better compliance with ethical standards. It further recommends the authorities to sign and ratify the Additional Protocol to the Convention on Cybercrime.
8. (§ 58) ECRI recommends amending the Editor's Code of Practice to ensure that members of groups can submit complaints as victims against biased or prejudicial reporting concerning their community.
9. (§ 69) ECRI recommends that data are gathered on the application of enhanced sentencing under sections 145 and 146 of the Criminal Justice Act 2003 and, where imposed, that this should be duly recorded, including on the criminal

records of offenders. Data should also be collected on where aggravated offences and enhanced sentencing have been invoked and then dropped through the process of accepting guilty pleas. ECRI also recommends that steps are taken to narrow the gap between hate crime recorded by the police and that referred for prosecution.

10. (§ 80) ECRI reiterates its recommendation to intensify the recruitment of Black and minority ethnic teachers, in order for teaching staff to reflect better the communities they serve, and retain them in the teaching profession.
11. (§ 84) In view of the continued disadvantage of certain Black and minority ethnic groups in education and employment, ECRI encourages the authorities to find concrete ways to achieve their 2020 Vision goals. It also strongly recommends setting similar goals in health care, with a particular focus on eliminating any racial discrimination in mental health care.
12. (§ 88) ECRI strongly recommends that the authorities establish a real dialogue with Muslims in order to combat Islamophobia. They should consult them on all policies which could affect Muslims.
13. (§ 98) ECRI recommends that the new planning definition in England of Gypsy and Traveller is replaced with the previous one of 2012, that sufficient pitches are provided according to the needs of these communities, and that alternatives to eviction, such as the negotiated stopping policy in the city of Leeds, are promoted and replicated elsewhere.
14. (§ 104) ECRI recommends that the licencing regime under the Scrap Metal Dealers Act 2013 is revised to allow Gypsies and Travellers to apply for licences on a regional rather than local basis to allow them to pursue this trade across a range of local authorities without incurring excessive fees.
15. (§ 109) ECRI strongly recommends that the authorities draw up, in consultation with Gypsy, Traveller and Roma groups, a detailed programme of integration strategies and measures to address the disadvantage suffered by all three of these communities in England, Wales, Scotland and Northern Ireland, including concrete targets, timeframes, and resources, in all areas of daily life, such as education, employment, health care and accommodation, in particular addressing the shortage of caravan sites.
16. (§ 114) ECRI recommends taking steps to ensure that refugees do not fall into destitution by prolonging the provision of asylum support until access to welfare benefits is obtained.
17. (§ 116) ECRI recommends that a refugee integration strategy is developed in England and Northern Ireland to assist newly-arrived refugees, in particular as concerns housing, employment, access to welfare and learning English, and that refugee integration is systematically evaluated.
18. (§ 123) ECRI strongly recommends that the authorities review the legal aid and fees regime with a view to improving access to justice in discrimination in employment cases.
19. (§ 126) ECRI strongly recommends that the authorities of England revise the Housing and Planning Bill to ensure that it makes explicit reference to the duty of local housing authorities to assess and meet the accommodation needs of Gypsies and Travellers, taking inspiration from the Housing (Wales) Act 2014.
20. (§ 134) ECRI strongly recommends that data is collected on the application of the Equality Act 2010, from the filing of a complaint to the final outcome.
21. (§ 139) ECRI recommends that the authorities follow the advice of the Law Commission and review the operation of aggravated offences with a view to including the grounds of sexual orientation and gender identity. It also

recommends including gender identity as a ground in the “stirring up hatred” offences and refers to its recommendation in § 51 of this report.

22. (§ 143) ECRI recommends that legislation is enacted in Northern Ireland providing for protection from discrimination on grounds of gender identity.
23. (§ 149) ECRI encourages further efforts to address bullying of LGBT pupils in schools, with special attention given to teacher training.





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