Is Scotland Fairer?
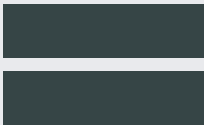
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The state of equality and human rights 2018

**Equality and
Human Rights
Commission** | **Scotland**

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Foreword
from our Scotland Commissioner

Lesley Sawers
Scotland Commissioner

'Is Scotland Fairer? 2018' is the Scottish supplement to our state-of-the-nation report on equality and human rights covering England, Scotland and Wales, 'Is Britain Fairer? 2018'.

This review sets out the direction of travel on equality and human rights issues made since our last review in 2015. It covers progress and regress in education, work, living standards, health, justice and personal security and participation. It is the most comprehensive round-up of how Scotland is performing in these areas, and the evidence it contains will help set the agenda for the Scotland of the future.

In 'Is Scotland Fairer?' the evidence suggests that despite efforts made by Scottish Government and many others, the same problems and concerns which have been highlighted in previous reviews are still apparent. Unless action is taken, the disadvantages that many people face risk becoming further entrenched for generations to come.

There is evidence of progress, but this progress is slow and not consistent or widespread. The stark reality of inequality in Scotland today is that too often people are unable to realise their full potential, are excluded from positions of influence, and experience prejudice and discrimination in daily life.

A lack of equalities data on some critical issues about people who have or share protected characteristics means that we do not have a complete picture. Without a strong evidence base we cannot identify the scale and nature of inequalities. Work must continue to address these evidence gaps.

The Scottish Government's Programme for Government is committed to tackling inequality and creating a fairer and more equal Scotland. Uniquely in Britain, the Scottish Government has activated Section 1 of the Equality Act – the Fairer Scotland Duty – which requires public authorities to tackle socio-economic inequality. They have legislated for Scotland's new social security system and agency will be based on the principles of human rights, dignity and respect, and they have set out strategies to tackle race and disability inequality.

In addition, the 50:50 by 2020 programme will ensure that women's voices are heard on the boards of our major institutions. The Scottish Government has articulated a vision of an inclusive economy where the benefits of national prosperity are shared more evenly. These are all welcome and progressive developments.

It is too easy to focus only on problems. It is our responsibility to be part of the solutions. To that end, we make a series of recommendations based on our findings to strengthen the legal and policy frameworks and to tackle gaps in evidence.

> **Fairness should be at the heart of Scottish society. This review suggests that there is still some way to go**

The UK referendum and subsequent debates about our future relationship with Europe have left many people feeling uncertain. The Scottish and UK Governments have set out different visions of how this could be achieved. As we approach Brexit, the UK Government should make a very clear statement that it will continue to safeguard our rights and quickly introduce legislation to plug the gaps left by the decision to remove the protections offered by the EU Charter of Fundamental Rights.

As we leave the EU at the end of March 2019, our review provides an important baseline from which we can measure the impact of Brexit on equality and human rights. The questions posed by 'Is Britain Fairer?' and 'Is Scotland Fairer?' are based on deep-rooted values of open-mindedness, fairness, respect for people's dignity and enduring social justice. The Brexit conversation is a major opportunity to discuss the type of country we all want Britain to be.

Fairness should be at the heart of Scottish society. This review suggests that there is still some way to go. We have a vital part to play in making Scotland fairer – and we are asking everyone who cares about the future of our nation to work with us to act on our recommendations to improve outcomes and crucially to ensure that everyone in our society has a fair chance in life.

Executive summary

'Is Scotland Fairer? 2018' is the Equality and Human Rights Commission's Scottish standalone supplement to our statutory report on equality and human rights progress in England, Scotland and Wales, 'Is Britain Fairer? 2018'.

www.equalityhumanrights.com/britain-fairer

This report provides a clear, evidence-based assessment of where Scotland has made progress, where things have not changed or have got worse, and any emerging concerns.

We have also looked at legislative and policy developments, identified recommendations for action, and highlighted areas where the evidence base needs to be strengthened. We believe that this report will be of value to policy-makers and influencers across all sectors, and to anyone with an interest in social progress and inclusion across Scotland.

We have gathered data and evidence based around six domains, or themes, which reflect areas of life that are important to people and enable them to flourish. The domains are: education, work, living standards, health, justice and personal security, and participation. Within each of these domains, we have used a set of indicators, or topics, to assess progress or regress in 'structure', 'process' and 'outcome'. Simply put, the structure relates to the law, the process to government policies and the outcome to people's experiences.

The evidence collection involved desk-based research of existing published sources and conducting our own secondary statistical analysis of datasets such as household surveys and administrative data (collected by government agencies; for example, schools and hospitals). To ensure a consistent comparison between reviews, we have not included evidence that was published after a cut-off date of 31 May 2018.

The quantitative evidence we have used draws from major surveys and administrative data compiled by public bodies. Most of our core quantitative data cover the periods of 2010/11, 2013/14 and 2016/17 where data was available. This data has been supplemented by some more recent data drawn from other published analysis that meets our strict criteria. We have mainly drawn on qualitative data sources (such as observations and conclusions from regulators, inspectorates and parliamentary committees, human rights monitoring bodies, and NGOs) to reflect outcomes not captured through surveys and administrative data.

Education

Educational attainment of children and young people

Levels of attainment at school generally improved, although gaps persisted:

– Differences in attainment were evident by Primary 1 (age five to six) – both by sex and for children living in the most deprived areas.

– Girls continued to do better than boys, and some ethnic minority pupils performed well above the national average.

– Gypsy/Traveller pupils, those with additional support needs, looked after children and pupils living in the most deprived areas had lower levels of attainment than average.

– Subject choices continued to show differences based on gender stereotypes for girls and boys, with likely implications for career paths in adult life.

Exclusions, bullying and NEET

Exclusion rates fell nationally but some groups continued to have much higher rates:

– Exclusion rates were higher for Gypsy/Travellers, disabled pupils, those with additional support needs and pupils living in the most deprived areas.

– Boys were more likely to be excluded than girls.

Bullying can have a serious impact in terms of health, wellbeing and educational outcomes:

– Reasons for bullying include physical appearance, sex, having an additional support need or learning disability, sexual orientation, race, or faith.

– There is no mandatory collection of information on bullying in schools, and no official data on the levels of bullying.

There was no change in the level of young people not in education, employment or training (NEET):

– Young people with no qualifications were at greatest risk of becoming NEET.

– Disabled young people were twice as likely to be NEET compared with non-disabled young people.

Higher education and lifelong learning

The proportion of adults with a degree-level qualification increased; however, not everyone was equally likely to achieve this level of qualification:

– Women and people from some ethnic minority groups were more likely to have a degree-level qualification, while disabled people were less likely to have a degree-level qualification.

– People from the most deprived communities and men were under-represented at university.

– Ethnic minority students received lower final grades for their degrees compared with white students.

There was a fall in the proportion of people aged 16–64 who attended an education course or received job-related training:

– Young people aged 16–24 were more likely to have attended an education course or received job-related training than other age groups.

– Disabled people were less likely than non-disabled people to have attended an education course or received job-related training.

Work

Employment

The number of people in employment increased, although experiences of work differed:

– Disabled people were less likely to be in employment and more likely to be unemployed.

– Women were less likely than men to be in employment and more likely to be in part-time work.

– Young people were most likely to be unemployed and many were in insecure jobs.

– Women continued to experience sexual harassment and discrimination related to pregnancy and maternity in the workplace.

Exclusion rates were higher for Gypsy/Travellers, disabled pupils, those with additional support needs and pupils living in the most deprived areas

There was a fall in earnings and little progress in tackling pay gaps

Earnings

There was a fall in earnings and little progress in tackling pay gaps:

– Women continued to earn less than men on average, and the gender pay gap changed very little in recent years.

– Disabled people continued to earn less than non-disabled people, and the disability pay gap widened.

– Women, young people aged 18–24, disabled people, black people and those in the Other White ethnic group were more likely to be in low-paid work.

Occupational segregation

Occupational segregation continued to be a key feature of work:

– Women continued to be under-represented in senior positions, even where women accounted for the majority of the workforce, such as education and health.

– Women, people from ethnic minority groups and disabled people remained under-represented in Modern Apprenticeships.

– Reflecting the labour market, Modern Apprenticeships continued to show strong gender segregation within sectors.

Young people were most likely to be unemployed, and many were in insecure jobs

Living standards

Housing

Homelessness and access to a secure home continued to be an issue:

– Young women, households with children, lone parents and people with at least one support need were particularly at risk of homelessness.

– There was a slight decrease in the number of homeless applications to local authorities.

– The number of people, many of whom were children, being placed in temporary accommodation increased.

– Asylum seekers were at risk of destitution throughout the asylum process.

There were variations in the type and quality of housing people could access:

– People from White Scottish and Other White British groups were more likely to own their home compared with people from ethnic minority groups, who were more likely to rent from a private or social landlord.

– Younger people were more likely to be in private rented accommodation than other tenures.

– The number of Gypsy/Travellers who were satisfied with their Registered Social Landlord management of their site decreased, whereas satisfaction with local authorities' management increased.

– Many disabled people lived in homes that did not meet their requirements to live independently.

Poverty

Nearly all measures of poverty showed an increase over time:

– The number of adults and children living in poverty after housing costs increased.

– The number of adults and children being referred to a Trussell Trust Foodbank increased.

– Wealth inequality increased, with single-adult households accounting for the majority of those living in low-wealth households.

– Fuel poverty decreased, but roughly a third of people still experienced it.

A wide range of people were affected by poverty:

– Disabled people, people with mental health conditions and people from ethnic minority groups were more likely to live in poverty.

– The majority of children living in poverty were from working households.

– Women and disabled people were more likely to experience severe material deprivation.

Social care

Provision of high-quality, flexible social care was put at risk from increasing demand, budget restrictions, the commissioning approach to social care and a lack of skilled staff.

Experiences of care varied considerably:

– Most people who received formal help and support rated this as good and said they were treated with compassion and understanding.

Between 2010/11 and 2015/16, the number of adults and children living in relative poverty increased

– Despite the implementation of Self-directed Support, many people were not aware of their options, and were not always given choice and control.

– The overall number of guardianship orders increased.

– The percentage of new guardianship orders granted on an indefinite basis continued to fall.

Health

Access to healthcare services

People's access to and experience of healthcare services varied:

– The number of people waiting more than 18 weeks from the point of referral for health services increased.

– Some lesbian, gay, bisexual and transgender (LGBT) people experienced homophobic, biphobic and transphobic language and behaviour in health and social care settings.

– Some transgender people, people who experienced homelessness and asylum-seeking women reported that they experienced discrimination in accessing healthcare services.

– The prison admissions process was found to be robust in helping to identify healthcare needs; however, there was variation in mental healthcare available to prisoners and inconsistencies in older prisoners' experiences of personal and medical care.

Health outcomes

People's health outcomes varied considerably:

– The majority of adults and children reported good or very good health, yet older people and people with mental health conditions or physical disabilities were less likely to report having good or very good health.

People living in the most deprived areas had lower life expectancy compared with those living in the least deprived areas

– Women had a higher life expectancy and healthy life expectancy compared with men.

– People living in the most deprived areas had lower life expectancy compared with those living in the least deprived areas.

– The overall suicide rate declined. The suicide rate was highest for those aged 35–44 and 45–54, and men were much more likely to die by suicide than women.

– The mortality rate from diseases of the circulatory system declined, but the rate was much higher for men compared with that for women.

Mental health

The number of adults and children starting treatment for mental health conditions increased, yet experiences of mental health services and settings varied:

– The number of adults who reported poor mental health has not changed since 2010. Women, disabled people, single people and people who had previously been in a long-term relationship were more likely to report poorer mental health and wellbeing.

– The number of referrals to Child and Adolescent Mental Health Services (CAMHS) increased, yet one in five referrals were rejected.

– The majority of individuals who died by suicide had been prescribed at least one mental health drug in the year prior to their death.

– The number of Compulsory Treatment Orders (CTOs) increased, and their use was higher for males compared with females. The number of CTOs for young people aged under 18 decreased.

– The number of place of safety notifications increased, as did the proportion of incidents where the place of safety was a police station.

Justice and personal security

Conditions of detention

The prison population fell marginally, but issues persisted:

– The number of older prisoners increased, which presented challenges regarding the suitability of the prison estate.

– There was an increase in the number of incidents of self-harm and prisoner-on-prisoner assaults despite a reduction in prison overcrowding.

– While improvements were made to ensure young people were supported when leaving custody, some still left with no home to go to.

– Non-natural deaths across all detention settings were uncommon but remained a concern.

Hate crime, homicides, sexual and domestic abuse

The number of self-reported hate crimes and hate crime charges decreased overall, but a mixed picture emerged:

– There was a decrease in the number of racially aggravated harassment and behaviour charges, and charges for other offences with a racial aggravation.

– There was an increase in the number of charges aggravated by prejudice related to sexual orientation, transgender identity and religion.

There was a large increase in the number of reported sexual crimes; however, conviction rates, particularly for rape and attempted rape, remained low. Changes have been made to improve the treatment and support for victims of sexual crime.

Legal protection against abusive behaviour has been strengthened recently; however, the longer-term trend showed that the number of domestic abuse incidents recorded by police changed little over the last five years.

Criminal and civil justice

Employment tribunal fees, which were declared unlawful, have had an impact on the number of claims made.

Most people did not know much about the criminal justice system, although they were confident the system treats people fairly. However, this pattern was not the same for all groups:

– People from the most deprived areas were less confident that those accused of a crime get a fair trial, that everyone has access to the legal system if they need it and that those accused of crimes are treated as innocent until proven guilty.

– Disabled people were less confident that cases are dealt with promptly and efficiently and that the system gives the punishment which fits the crime.

Confidence in the criminal justice system is up between 2014/15 and 2016/17

Participation

Political and civic participation and representation

The representation of different groups in political and civic life showed a mixed picture:

– Women, people from ethnic minority groups and disabled people continued to be under-represented in all areas of public life, including in the Scottish Parliament.

– While there was improvement in the proportion of women on public boards, the proportion of disabled people on public boards fell.

– Trade union membership continued to fall.

Access to services

Not everyone was able to access services that could enable them to participate in society.

– Lack of access to affordable transport options negatively affected access to other essential services and employment.

– Older and disabled people, and those living in a deprived area or living in social housing were risk factors for exclusion from access to digital services.

– People living in poverty were less likely to have a bank account and more likely to pay more for essential goods and services.

– Attendance at cultural events (includes attending a cinema, library, museum, theatre, or historical place) was much lower for people with a long-term physical or mental health condition, those with no qualifications and those living in the most deprived areas.

– Disabled people and LGBT people reported that they continued to feel discriminated against while participating in sport or attending sporting events.

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Privacy and surveillance

Most people who used the internet were able to control their privacy settings, although some were concerned about online security.

– Internet use increased for older people, although they were more likely to give out their personal information online than younger people.

– Security concerns had a greater impact on the use of the internet by people with a long-term physical or mental health condition, who were also less likely to shop and bank online.

Social and community cohesion

Most adults felt a sense of trust and belonging in their neighbourhood, but this pattern was not consistent for all groups:

– Young people, single people, people from ethnic minority groups and people from urban areas reported lower levels of trust and belonging in their neighbourhood.

– Disabled people were less likely to say most people in their neighbourhood could be trusted.

– People who had no religion or belief or were living in urban areas were less likely to feel they belonged to their neighbourhood.

Most people had positive attitudes towards young people.

Less than half of young LGBT people said that there were enough places where they could socialise safely and be open about their sexual orientation or gender identity.

Progress and regress since our last review

'Is Scotland fairer?' appears to be a simple question, but it is a question without a simple answer. Across the different areas of life captured by this review we have found evidence of progress, but progress is not consistent or widespread. The evidence suggests that, despite efforts made by the Scottish Government and others, the same problems and concerns highlighted in previous reviews are still evident. We acknowledge that effecting change requires a long-term commitment and it can take many years before any change is apparent. However, the evidence in this review suggests a general stagnation in progress. We need to recognise where, and question why, stagnation is happening.

The available evidence shows that women, disabled people, LGBT people, people from ethnic minority groups, and younger and older people experience the starkest inequalities, and that these cut across many areas of life. Poverty drives or compounds inequality, and many of the worst outcomes are for people living in the most deprived areas. A lack of new available evidence published since 2015, alongside a lack of protected characteristic data from administrative data and surveys, mean that this is not a complete picture. A lack of new evidence does not mean a lack of issues, and work and effort to tackle these evidence gaps must continue.

1. Introduction

The Equality Act 2006 gave the Equality and Human Rights Commission ('the Commission') the statutory duty to report regularly to the UK Parliament on the extent to which equality and human rights are improving in Britain.

'Is Britain Fairer? 2018' is our latest review of progress, following two previous reviews in 2010 and 2015. 'Is Scotland Fairer? 2018' is our Scottish-specific supplementary report to the 'Is Britain Fairer? 2018' review.

This report provides a clear, evidence-based assessment of where Scotland has made progress, where things have not changed or have got worse, and any emerging concerns. We have also looked at legislative and policy developments, identified recommendations for action, and highlighted areas where the evidence base needs to be strengthened. We believe that this report will be of value to policy-makers and influencers across all sectors, and to anyone with an interest in social progress and inclusion across Scotland. Our aims are to:

– report on the progress of equality and human rights, highlighting areas of improvement, as well as those where no progress has been made or where the situation has deteriorated

– provide clear, measurable and achievable recommendations for action to improve people's lives

– identify areas where there are gaps in the evidence and how to tackle those gaps

– engage with governments, regulators, parliamentary and assembly representatives, and the public, private and voluntary sectors to highlight the evidence and agree and put into action the recommendations.

This report provides a clear, evidence-based assessment of where Scotland has made progress, where things have not changed or have got worse, and any emerging concerns

Although we have posed what appears to be a simple question – is Scotland fairer? – we recognise that the answer to the question is not simple. Scotland has become fairer in some areas, but progress continues to be slow or non-existent in others. Scotland needs to continue to recognise, question and challenge where progress is not being made.

Following consultation with stakeholders, the findings of this review will also inform our next Strategic Plan (2019–2022). 'Is Britain Fairer? 2018' will also be the final review before the UK leaves the European Union, and so should act as a pre-Brexit baseline for measuring the impact of UK withdrawal on equalities and human rights.

1.1 How we reviewed the evidence

Underpinning the 'Is Britain Fairer?' review is our Measurement Framework. The Measurement Framework's purpose is to measure and monitor progress on equality and human rights across England, Scotland and Wales in a systematic and consistent way.

The Measurement Framework covers six domains, or themes, that reflect the aspects of life which are important to people and enable them to flourish. Within each of these domains, we have used a set of indicators, or topics, to assess progress or regress in 'structure', 'process' and 'outcome'. The structure relates to the law, the process to government policies and the outcome to people's experiences. The six domains are: education, work, living standards, health, justice and personal security, and participation.

The evidence collection involved desk-based research of existing published sources and conducting our own secondary statistical analysis of datasets such as household surveys and administrative data (collected by government agencies; for example, schools and hospitals). To ensure a consistent comparison between reviews, we have not included evidence that was published after a cut-off date of 31 May 2018.

We compared data from 2010/11, 2013/14 and 2016/17 where this was possible. We have only reported on statistically significant differences for every measure. We also do not try to explain why there are differences in experience and outcomes for some people with, or who share, particular protected characteristics. Sample size breakdowns for some protected characteristics or 'at-risk' groups in Scotland can be low; for example, those for ethnic group, religion and belief, and sexual orientation. This can also problematic for conducting intersectional analysis.

We focus on change at the Scottish level; however, we recognise that there can be significant variation at regional level, and between urban and rural areas. Our data analysis has not looked at these differences, but it is important to acknowledge that they can occur. The full data tables of our own analysis have been made available on our website.

We have mainly drawn on qualitative data sources (such as observations and conclusions from regulators, inspectorates and parliamentary committees, human rights monitoring bodies, and NGOs) to reflect outcomes that are not captured through surveys and administrative data. We took into account other sources (such as published research reports, research articles in journals and books, or other publicly available sources) if the evidence base was deemed sufficiently robust and relevant. Often these are used to capture and describe the situation and experiences of people 'at risk'. Throughout 'Is Scotland Fairer?', we have outlined the sample size of any evidence sources that are not from large-scale surveys and administrative data.

When referring to protected characteristics we recognise that data and research may use terms in slightly different ways. Protected characteristics are described consistently unless a source uses a different term, in which case we have replicated the term to avoid misrepresenting the findings. The Measurement Framework also includes a definition of 'vulnerable' people that refers to people who are at higher risk of harm, abuse, discrimination or disadvantage. In 'Is Scotland Fairer?' we have generally referred to these groups as 'at risk'.

A full explanation of our methodology is in the appendix of 'Is Britain Fairer? 2018'.

We have mainly drawn on qualitative data sources to reflect outcomes not captured through surveys

1.2 Economic and political context

The period since the 2015 review has seen significant changes. There has been continued pressure on public spending and increased political and economic uncertainty.

There have been two UK Governments during the period, following a snap election in 2017 and a referendum on, and subsequent decision to leave, the European Union (EU). There were Scottish Parliament elections in 2016 and Scottish local government elections in 2017. The UK and Scottish Governments have been led by the same political parties as they were before but, in the UK and Scottish Parliaments respectively, those same Governments lost their majority.

Since 2015, the Scottish economy has continued to grow (Scottish Government, 2018a); however, the rate of economic growth has been slower over the decade from 2008 to 2018 than historic rates, and economy forecasts by the Scottish Fiscal Commission have predicted that this pattern of slower growth is likely to persist for the next five years. One of the main factors underlying subdued GDP growth is slow growth in productivity or output per hour worked. The Scottish economy has also been depressed by the fall in oil prices internationally. The underlying reasons for this are not yet fully understood and are not unique to Scotland (Scottish Fiscal Commission, 2018).

One of the main factors underlying subdued GDP growth is slow growth in productivity or output per hour worked

The UK Government has committed to eliminate the budget deficit – the difference between what the Government borrows and what it spends – and this has mainly been actioned through cuts in public spending. Despite some devolution of tax powers to the Scottish Government through the Scotland Act 2016, Scotland's available funds are largely determined by the Barnett formula, which allocates funding based on UK Government expenditure (although some aspects of public spending are devolved).

Following the Scottish independence referendum in 2014, the Smith Commission recommended that the Scottish Parliament should be given autonomy to determine the structure and value of a range of powers over benefits, and that the Scottish Parliament should be given powers to create new benefits in areas of devolved responsibility and to top-up reserved ones. These recommendations, which included amendments to the Equality Act 2010 to allow the Scottish Government to introduce Section 1 of the Act (the 'Socio-Economic Duty') were made law by the Scotland Act 2016, which received royal assent in March 2016. The resulting Scottish Government Fairer Scotland Duty came into force on 1 April 2018.

The Social Security (Scotland) Bill was passed by the Scottish Parliament in April 2018 and received royal assent on 1 June 2018. This established a framework for the new system and devolved 11 existing social security benefits to Scotland, which will have an impact on the 1.4 million people who rely on benefits. The Scottish Government has stated that it will use its powers to create a Scottish social security system based on dignity, fairness and respect, which will help to support those who need it, when they need it.

1.2.1 Scotland's population

Between 2015 and 2017, Scotland's population grew. Scotland's estimated population in 2017 was at its highest ever recorded, at over 5.4 million, an increase of 0.4% over the previous year. The growth in population was largely driven by migration – both internal migration from other parts of the UK, and from oversees (National Records of Scotland, 2018).

Scotland's growing population is also ageing. Between 2007 and 2017, the total population increased by 6%. However, there was a 23% increase in the 65–74 age group, a 16% increase in the 75 and above age group, and a 10% increase in the 45–64 age group. In contrast, there were small decreases in all of the younger age groups. This reflects the ageing population and falling birth rate trends of the last 10 years (National Records of Scotland, 2018).

There is limited data and evidence collected on the experiences of the lesbian, gay, bisexual and transgender (LGBT) population. In 2016, 2.2% of adults identified their sexual orientation as LGB or Other (Scottish Government, 2018b).

In 2016, 24% of people had a long-term limiting physical or mental health condition that limits daily activity.[1] Older people aged 65 and above were more likely to suffer a long-term limiting health condition compared with those without such a condition (38.5% compared with 17.0% respectively) (Scottish Government, 2018b).

1.3 Next steps

The report contains recommendations for how to tackle many of our findings, with additional recommendations to strengthen the legal and policy framework and to tackle gaps in evidence.

We have powers which will enable us to be a catalyst for change in some areas, but we do not have the expertise or powers to tackle all issues alone and will be aiming to influence others to take action or work in partnership to achieve change.

We look forward to discussing the findings and recommendations of this report with a wide range of audiences and to working with a range of partners to tackle the challenges set out within it.

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[1] Harmonised questions on long-term limiting physical or mental health conditions that limit daily activity are designed to identify respondents who may have rights under Section 6 of the Equality Act 2010. Long-term limiting physical or mental health conditions are therefore taken as a proxy for disability.

2. Education

The right to an education should be respected, protected and fulfilled for everyone, and education should be provided free from discrimination and abuse.

🔑 Key findings

Educational attainment of children and young people

Levels of attainment at school generally improved, although gaps persisted:

– Differences in attainment were evident by Primary 1 (age five to six) – both by sex and for children living in the most deprived areas.

– Girls continued to do better than boys, and some ethnic minority pupils performed well above the national average.

– Gypsy/Traveller pupils, those with additional support needs, looked after children and pupils living in the most deprived areas had lower levels of attainment than average.

– Subject choices continued to show differences based on gender stereotypes for girls and boys, with likely implications for career paths in adult life.

Exclusions, bullying and NEET

Exclusion rates fell nationally but some groups continued to have much higher rates:

– Exclusion rates were higher for Gypsy/ Travellers, disabled pupils, those with additional support needs and pupils living in the most deprived areas.

– Boys were more likely to be excluded than girls.

Bullying can have a serious impact in terms of health, well-being and educational outcomes:

– Reasons for bullying include physical appearance, sex, having an additional support need or learning disability, sexual orientation, race, or faith.

– There is no mandatory collection of information on bullying in schools, and no official data on the levels of bullying.

There was no change in the level of young people not in education, employment or training (NEET):

– Young people with no qualifications were at greatest risk of becoming NEET.

– Disabled young people were twice as likely to be NEET compared with non-disabled young people.

Higher education and lifelong learning

The proportion of adults with a degree-level qualification increased; however, not everyone was equally likely to achieve this level of qualification:

– Women and people from some ethnic minority groups were more likely to have a degree-level qualification, while disabled people were less likely to have a degree-level qualification.

– People from the most deprived communities and men were under-represented at university.

– Ethnic minority students received lower final grades for their degrees compared with white students.

There was a fall in the proportion of people aged 16–64 who attended an education course or received job-related training:

– Young people aged 16–24 were more likely to have attended an education course or received job-related training than other age groups.

– Disabled people were less likely than non-disabled people to have attended an education course or received job-related training.

2.1 Introduction

The right to an education should be respected, protected and fulfilled for everyone, and education should be provided free from discrimination and abuse.

All children and young people should have the opportunity to reach their full potential through education without fear of unfair exclusion, stereotyping and bullying. Every person, irrespective of their protected characteristics or socio-economic group, should also have the opportunity to meaningfully participate in higher education or lifelong learning. This chapter discusses the educational attainment of children and young people; school exclusions, bullying and those who are not in education, employment or training (NEET); and higher education and lifelong learning.

2.2 Educational attainment of children and young people

While levels of educational attainment generally improved at national level, significant gaps still existed for some pupils. The Scottish Attainment Challenge was launched in 2015, aiming to reduce the poverty-related attainment gap between pupils in Scotland's most and least deprived areas. The Attainment Scotland Fund is focused on improving attainment in literacy and numeracy, and health and wellbeing in areas with the highest concentrations of deprivation. An evaluation of the first two years of the Attainment Scotland Fund concluded that the fund was a driver for change and cohesion, and had increased awareness, understanding and commitment to tackle the impact of poverty. Although initial indications were positive, it was too early to assess long-term outcomes.

A range of stakeholders highlighted that it was important to recognise how a number of factors, such as additional support needs, also influence attainment, and that the focus should be on raising attainment for all children (Scottish Government, 2018a).

Some children and young people need additional help to ensure they fully benefit from education. Just over a quarter (26.6%) of the school population in 2017 were found to have an additional support need compared with 14.7% in 2011 (Scottish Government, 2017a). Boys, pupils from deprived areas, Gypsy/Traveller pupils and looked after children were most likely to be identified as having additional support needs (Carmichael and Riddell, 2017; Scottish Government, 2017a; Scottish Government, 2017b).

Tackling a recommendation made by the United Nations Committee on the Rights of the Child, the Education (Scotland) Act 2016 extended rights to children (age 12–15) regarding additional support needs, including the right to ask for information or challenge a decision. Any rights can only be exercised by the child following an assessment of capacity and consideration of adverse impact on wellbeing. These assessments are carried out in most cases by the education authority involved (or, in some cases, the Additional Support Needs Tribunal[2]).

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[2] The tribunal's formal name is the Additional Support Needs jurisdiction of the First-tier Tribunal for Scotland (Health and Education Chamber). The tribunal hears two types of appeals – references regarding the provision of education support under the Education (Additional Support for Learning) (Scotland) Act 2004 and claims in respect of disability discrimination in school education under the Equality Act 2010.

2.2.1 Early years education

The main measure used in this report to assess attainment in early years education focuses on literacy and numeracy in early primary education (P1).[3] Overall, 72.5% of all pupils in P1 in 2016/17 achieved all the expected Curriculum for Excellence (CfE) levels in reading, writing, listening and talking, and numeracy. Even by P1, some differences between groups of children were evident:

– Children with additional support needs and those living in the most deprived areas were less likely to achieve all the expected CfE levels.

– Girls were more likely to achieve all the expected CfE levels than boys.

– There was some variation across ethnic minority groups. Compared with White Scottish children, Indian pupils and those with a Mixed or Multiple ethnicity were more likely to achieve all the expected CfE levels. Alongside White non-Scottish children, Pakistani pupils and those from Other ethnic groups were less likely to achieve the expected CfE levels.

2.2.2 Attainment at school leaving age

The main measure used in this report to assess educational attainment at secondary school is the percentage of school leavers who achieve five or more qualifications at Scottish Credit and Qualifications Framework (SCQF) Level 5 or above.[4] Overall, educational attainment improved: 56% of all school leavers achieved five or more qualifications at SCQF Level 5 or above in 2015/16, up from 54.6% in 2011/12. However, differences in attainment existed in 2015/16:

– Girls did better than boys (62.0% compared with 50.1% achieved five or more qualifications) and the gap between girls and boys had increased since 2011/12.

– Only 30.3% of school leavers with additional support needs achieved five or more qualifications, compared with 63.5% of school leavers with no additional support needs.

– White Scottish school leavers performed relatively poorly (55.6% achieving five or more qualifications) compared with Chinese (84.0%), Indian (70.8%), Pakistani (66.5%) and Mixed or Multiple ethnicities (64.9%) pupils. White Other school leavers had even lower attainment (52.7%).

– Only 10.4% of Gypsy/Traveller school leavers achieved five or more qualifications at SCQF Level 5 over 2014/15 to 2015/16 (2 year average) (Scottish Government, 2018b).

In 2017, the Scottish Government consulted on draft guidance on improving educational outcomes for children and young people from travelling cultures (covering Scottish Gypsy/ Travellers, Roma and Travelling Showpeople). The guidance is being revised in light of consultation responses and consideration by the Ministerial Working Group on Gypsy/Travellers.

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[3] Unless otherwise stated, the figures reported here on the educational attainment of P1 children are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government Achievement of Curriculum for Excellence 2016/17 (Table EDU.EAT.1).

[4] Unless otherwise stated, the figures reported here on the educational attainment of secondary school leavers are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government unpublished data on attainment of school leavers 2011/12, 2013/14 and 2015/16 (Table EDU. EAT.2).

Difference in attainment between school leavers living in the most and least deprived area in Scotland in 2015/16

35.4%   76.7%

Most deprived   Least deprived
areas   areas
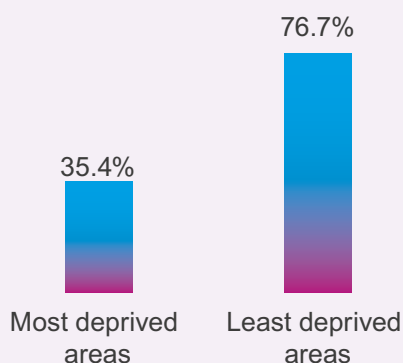
Figures relate to pupils who achieved 5 or more qualifications at SCQF Level 5 or above

Disabled young people are more than twice as likely to be not in education, employment or training as non-disabled young people (2016/17)

24.6%

10.8%

Disabled   Non-disabled
young people   young people
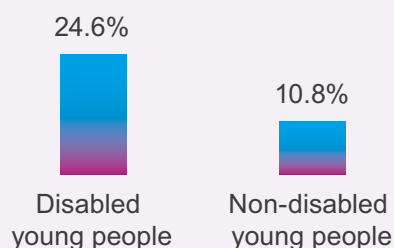
Results from the 2015 Programme for International Student Assessment (PISA; an international study assessing the skills of 15-year-olds) evidenced a decline in performance in science and reading compared with 2012. It also reported that boys' and girls' performance was statistically similar in maths and science, but girls outperformed boys in reading (Scottish Government, 2016).

Recent research (sample size 200) on young people's experiences of the education and training system found that the focus on attainment and qualifications puts pressure on them to the detriment of their wider development and support needs (for example, their mental health needs and preparation for life after school) (Scottish Government, 2017c).

2.2.3 Impact of poverty and social exclusion on educational attainment

There was an increase in educational attainment (school leavers who achieve five or more qualifications at SCQF Level 5 or above) for pupils who lived in the most deprived areas between 2011/12 and 2015/16.[5] The gap between school leavers from the least and most deprived areas decreased during this time period. There was little change in attainment during this time for school leavers living in the least deprived areas.

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[5] Unless otherwise stated, the figures reported here on the educational attainment of secondary school leavers are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government unpublished data on attainment of school leavers 2011/12, 2013/14 and 2015/16 (Table EDU.EAT.2).

The impact of poverty on educational attainment can be seen from early years. P1 pupils from the most deprived areas were much less likely to achieve all the expected CfE levels (64.1%) compared with P1 pupils from the least deprived areas (84.4%).[6] By the time pupils left school, the gap was wider – only 35.4% of pupils in the most deprived areas attained five or more qualifications at SCQF Level 5 in 2015/16 compared with 76.7% of school leavers in the least deprived areas.

Of school leavers who lived in the most deprived areas, Other White British young people had the lowest attainment rate (26.6%), followed by White Scottish (33.8%). For school leavers with additional support needs, only 19.7% who lived in the most deprived areas attained five or more qualifications at SCQF Level 5, compared with 51.6% of school leavers with additional support needs who lived in the least deprived areas.

The attainment of looked after children increased between 2009/10 and 2015/16, but their performance remained well below that of other pupils. Only 15% of looked after children who had been looked after for the entire year prior to leaving school achieved more than one pass at SCQF Level 5 or higher in 2009/10, although this had increased to 40% in 2015/16 (Scottish Government, 2017d).[7]

2.2.4 Impact of gender bias and stereotyping on educational outcomes

From a very early age, fixed ideas based on gender stereotypes influence the choices that children and young people make in relation to subject and career choice (Engender, 2016).

Many subjects are still predominantly studied by one sex at secondary school level, with more young men studying Technological Studies (93%), Graphic Communication (71%) and Physics (72%); and more young women studying Home Economics (92%), Administration (77%), Biology (64%), and Art and Design (82%) (Engender, 2016).

At school, boys made up the majority of entries and passes for science, technology, engineering and maths (STEM) subjects across all levels. However, when girls studied STEM subjects, their pass rate was higher than the male pass rate at all levels (Scottish Government, 2017e). The Science, Technology, Engineering and Mathematics Education and Training Strategy for Scotland (launched in 2017) emphasises the need for greater inclusion of certain groups (women especially) in STEM to enable inclusive economic growth.

> At school, boys made up the majority of entries and passes for science, technology, engineering and maths (STEM) subjects across all levels

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[6] Unless otherwise stated, the figures reported here on the educational attainment of P1 children and school leavers are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government Achievement of Curriculum for Excellence 2016/17 and unpublished data on attainment of school leavers 2011/12, 2013/14 and 2015/16 (Table EDU.EAT.1).

[7] A change to the way attainment evidence is recorded may have had an impact on the findings presented – since 2013/14 leavers have been classified by identifying the highest SCQF level at which they achieved one or more passes by the time they leave school, rather than the system of tariff scores which was used prior to 2013/14.

2.3 School exclusions, bullying and those not in education, employment or training (NEET)

2.3.1 Exclusions from school

Exclusion has an impact on pupils' wellbeing and level of attainment, and heightens the risk of social exclusion and anti-social behaviour. In 2017, the Scottish Government published refreshed guidance on school exclusions 'Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions', with a focus on prevention, early intervention and responding to each child's individual needs.

Between 2010/11 and 2016/17, exclusion rates fell.[8] Boys, disabled pupils, pupils with additional support needs, those from the most deprived areas and Gypsy/Traveller pupils continued to have higher exclusion rates:

– Girls had a much lower exclusion rate than boys (11.1 exclusions per 1,000 pupils compared with 42.0 per 1,000) in 2016/17. Between 2010/11 and 2016/17, the gap between boys and girls narrowed; the decrease in exclusions was greater for boys than for girls (-18.8 per 1,000 compared with -7.2 per 1,000).

– White Scottish pupils had the highest exclusion rates of any ethnic group.

– The exclusion rate for pupils with additional support needs was much higher than for those without additional support needs (66.6 per 1,000 compared with 13.4 per 1,000) in 2016/17.

Exclusion rates were higher for Gypsy/Travellers, disabled pupils, those with additional support needs and pupils living in the most deprived areas

– Pupils assessed or declared as being disabled had a higher exclusion rate than pupils who were not disabled (47.9 per 1,000 compared with 25.6 per 1,000).

– Pupils from the most deprived areas were over five times more likely to be excluded than pupils from the least deprived areas (48.5 per 1,000 compared with 9.1 per 1,000 respectively). Between 2010/11 and 2016/17, the gap narrowed; the decrease for pupils from the most deprived areas was much greater than for pupils from the least deprived areas (-30.8 per 1,000 compared with -3.3 per 1,000).

– Exclusions for Gypsy/Travellers in 2016/17 was 53 per 1,000 pupils (Scottish Government, 2018b).

For looked after children, short-term exclusion can lead to the need to move to a new placement if appropriate care and supervision cannot be provided in their current placement. In the longer term, ongoing instability in a child's life is very likely to lead to lifelong challenges and disadvantage (Scottish Government, 2017f).

In 2018, several legal cases found local authorities discriminated against disabled children by failing to support their return to school or to put in place reasonable adjustments which led to the child's exclusion. Glasgow City Council *(M v Glasgow City Council)* was found to have discriminated against a boy with Asperger Syndrome who had been excluded on the basis of his impairment by failing to put in place reasonable adjustments at his primary school.

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[8] Unless otherwise stated, the figures reported here on exclusions from school are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government Exclusions from schools – supplementary data 2010/11, 2012/13 and 2016/17 (Table EDU.EBN.1).

City of Edinburgh Council *(City of Edinburgh Council v R)* was found on appeal to the Court of Session to have discriminated in their failure to support the return to school education of a child with autism. The Council had not provided an adequate co-ordinated support plan for the child who had sensory processing disorder and complex mental health conditions and this was found to be discrimination arising from disability. South Lanarkshire Council *(South Lanarkshire Council v M)* were found to have discriminated against a child who had autism, sensory impairment and learning disability in excluding him from school as a result of his behaviour. The Additional Support Needs Tribunal held there had been discrimination arising from disability, indirect discrimination and a failure to make reasonable adjustments by failing to support the child's return to school education and by not providing an adequate co-ordinated support plan.

2.3.2 Bullying in schools

The collection of information on bullying in schools is not mandatory, and no official data on the levels of bullying exists. In 2017, the Scottish Parliament's Equalities and Human Rights Committee held an inquiry into bullying. The inquiry recommended that the Scottish Government make it a requirement for every education authority to collect and monitor school bullying incidents and to record specific incidents of prejudice-based bullying (Scottish Parliament, 2018). The Scottish Government issued guidance for schools to develop a consistent and uniform approach to recording and monitoring bullying incidents on a voluntary basis for use in the 2018/19 academic year. An evaluation will be undertaken in 2019/20, once the new system is fully embedded.

Nearly two thirds (66%) of pupils who have learning disabilities and/or autism (sample size 800) reported that they had been bullied

All schools must have their own anti-bullying policy in place which sufficiently meets the requirements of their council's anti-bullying policy. In 2017, the Scottish Public Service Ombudsman (SPSO) upheld a complaint relating to Highland Council's failure to ensure a school had an anti-bullying policy in place. Although the council's overarching policy was thorough, the SPSO found that the school did not have its own policy in place that sufficiently met the requirements of the council's policy.

Reasons why young people experience bullying included physical appearance, sex, presence of an additional support need or learning disability, sexual orientation, race, or faith (Scottish Parliament, 2017).

Nearly half (48%) of lesbian, gay, bisexual and transgender (LGBT) pupils aged 11–19 who took part in a study (sample size 402), including around two-thirds (71%) of transgender pupils, were bullied at school for being LGBT. Of those LGBT young people who experienced homophobic, biphobic and transphobic bullying, 44% did not tell anyone about it (Stonewall Scotland, 2017). Some LGBT pupils who were bullied felt that the bullying had a long-lasting negative effect on them. In some cases, bullying resulted in self-harm or attempted suicide (Time for Inclusive Education, 2016).

Nearly two thirds (66%) of pupils who have learning disabilities and/or autism (sample size 800) reported that they had been bullied; 16% said they did not have any friends; and 39% said they did not see their friends outside school (Enable Scotland, 2016).

A young transgender school girl.

Around two-thirds of transgender pupils were bullied at school for being LGBT

2.3.3 Not in education, employment or training (NEET)

Young people who experience being NEET can suffer long-term consequences. They are more likely to be unemployed or economically inactive. If they do find work, they are more likely to be in low-status occupations and at higher risk of poor physical and mental health (Scottish Government, 2015).

In 2016/17, 12.5% of all young people aged 16–19 were NEET. There has been little change in the rate of young people who are NEET since 2010/11.[9]

Disabled young people were twice as likely to be NEET as non-disabled young people. In 2016/17, 24.6% of disabled young people were NEET compared with 10.8% of non-disabled young people. Since 2010/11, the NEET rate has fallen for non-disabled young people.

In 2016/17, there was little difference in the NEET rate between boys and girls (12.8% compared with 12.2%). This differs from 2010/11, when boys had a higher rate of NEET than girls (17.7% compared with 13.0%).

A lack of educational qualifications is the greatest predictor of being NEET, with those having no qualifications at greatest risk. Other risk factors are absence from school, a high number of exclusions and, for females, being an unpaid carer for more than 20 hours a week and teenage pregnancy (Scottish Government, 2015).

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[9] Unless otherwise stated, the figures reported here, on young people not in employment, education or training, are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey 2010/11, 2013/14, 2016/17 (Table EDU.EBN.2).

2.4 Higher education and lifelong learning

The Learner Journey is a strategy which considers and responds to factors that affect a child's learning capacity.

The 15-24 Learner Journey Review, commissioned by the Scottish Government in 2016, examined the lack of parity of esteem between higher education, apprenticeships and other forms of vocational education. The review reported in May 2018 and found that young people felt that schools viewed university as the top destination for leavers, with college and vocational routes rarely promoted or discussed (Scottish Government, 2018c).

2.4.1 Higher education, including subject choice, attainment and degree-level qualifications

In 2016/17, nearly a third (30.9%) of the adult population aged 25–64 had a degree-level qualification.[10] This represented an increase from 27.2% in 2013/14. Some groups of people were more or less likely to have a degree than others:

– Older people were less likely to have a degree; 22.1% of those aged 55–64 had a degree-level qualification compared with 38.8% of those aged 25–34.

– Disabled people were less likely to have a degree-level qualification compared with non-disabled people (18.9% compared with 34.1%).

– Women were more likely to have a degree-level qualification than men (33.1% compared with 28.6%). The proportion of both men and women with a degree-level qualification increased since 2013/14, but grew faster for women.

– Higher percentages of Indian (73.3%) and White Irish (72.3%) people held a degree-level qualification compared with White British people (28.9%).

The proportion of undergraduate students from deprived backgrounds who entered university at full-time first-degree level decreased from 14.8% in 2015/16 to 14.6% in 2016/17 (Scottish Funding Council, 2018a).

The Commission on Widening Access was established to advise Scottish Ministers on the steps necessary to achieve equality of access to higher education for those from a socio-economically disadvantaged background or with a care experience. In 2016, the Commission on Widening Access published its final report and the Scottish Government accepted the recommendations in full. The recommendations included the introduction of access thresholds for all degree programmes which recognise that the school attainment of disadvantaged learners does not reflect their full potential. Universities are now required to review entry requirements by 2019. The Scottish Government has set stepped targets to ensure 20% of places at Scottish universities are taken by students from the 20% most deprived areas by 2030 (Scottish Government, 2017g).

[10] Unless otherwise stated, the figures reported here, on degree level qualifications, are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey 2010/11, 2013/14 and 2016/17 (Table EDU.HLL.1).

In 2016/17, women represented 58.1% of full-time undergraduate starts at university, an increase from 57.9% in 2014/15. Significant imbalances in subject choice were evident between male and female students. Subjects allied to nursing, social studies, teaching and psychology were predominantly studied by women; engineering, computer science, architecture, building and planning, and technology were predominantly studied by men (Scottish Funding Council, 2018a). Female graduates were slightly more likely than male graduates to be in work or further study after finishing their undergraduate degree (Scottish Funding Council, 2017). However, in most subject areas men had higher median earnings than women five years after graduation (Scottish Government, 2018d).

The proportion of university full-time undergraduate entrants who reported they were disabled increased from 10.6% in 2014/15 to 12.3% in 2016/17 (Scottish Funding Council, 2018a). Disabled students were less likely than non-disabled students to successfully complete their qualification, and also less likely to be in work or further study after graduation (Scottish Funding Council, 2017).

In 2016/17, 8.1% of full-time undergraduate entrants were ethnic minority students, a small increase from 8.0% in 2015/16 (Scottish Funding Council, 2018a). Ethnic minority students were less likely to get a First or 2:1 in their degree compared with white students (Equality Challenge Unit, 2017) and, after graduation, were less likely to be in work or further study (Scottish Funding Council, 2017).

Between 2010/11 and 2016/17, the number of students in higher education (studying at either university or college) aged 25 or older decreased (Scottish Funding Council, 2018b). The largest decreases were for people aged 40–49 (a fall of 25%), over 60 (a fall of 20%) and 50–59 (a fall of 15%).

The proportion of all students in higher education aged over 25 fell from 40% to 35% between 2010/11 and 2016/17. In 2016, the policy of the Student Awards Agency for Scotland not to award loans to people over 55 was found to be discriminatory *(Elizabeth Hunter v Student Awards Agency for Scotland)*.

2.4.2 Lifelong learning

Between 2013/14 and 2016/17, the proportion of people aged 16–64 who had attended an education course or received job-related training – described as 'learning activities' – in the previous three months fell from 31.7% to 27.4%.[11] A lower proportion of men than women attended learning activities (26.5% compared with 28.4%). Disabled people were less likely than non-disabled people to attend learning activities (17.7% compared with 29.8%). Between 2013/14 and 2016/17, the proportion fell for non-disabled people from 34.4% to 29.8%.

Young people aged 16–24 were most likely to have attended learning activities (58.1%) compared with other age groups (25.6% for those aged 25–34; 23.7% for those aged 35–44; 21.5% for those aged 45–54; and 13.3% for those aged 55–64). The proportion of young people aged 16–24 who attended learning activities changed little between 2013/14 and 2016/17, but fell for all ages between 25 and 54.

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[11] Unless otherwise stated, the figures reported here on learning activities in the previous three months are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey 2010/11, 2013/14 and 2016/17 (Table EDU.HLL.2).

2.5 Conclusion

While there have been improvements across the education domain, gaps still exist, with some groups consistently experiencing poorer educational outcomes.

Gypsy/Travellers have experienced poor attainment and high levels of school exclusions in recent years. Children with additional support needs and those from deprived backgrounds also experienced poorer levels of attainment and higher levels of exclusion. With increasing numbers of children being identified as having an additional support need (in particular boys, children from the most deprived backgrounds and looked after children) it is important that consideration is given to the impact of multiple factors on educational attainment. Although the Scottish Attainment Challenge has seen some positive outcomes, it is still too early to assess the long-term outcomes.

Lack of educational attainment also has implications beyond school and is the greatest predicator of being NEET. People from deprived areas, people from ethnic minority backgrounds and disabled people were also less likely to go to university and, although representation of these groups has increased in recent years, disabled students and ethnic minority students were less likely to be in work or further study after graduation. Gender stereotyping in subject choice also continues to be an issue and can be seen throughout the education system.

Children with additional support needs and those from deprived backgrounds also experienced poorer levels of attainment and higher levels of exclusion

3. Work

The right to decent work should be respected, protected and fulfilled for everyone, and work should be enjoyed free from discrimination, harassment and victimisation.

Key findings

Employment

The number of people in employment increased, although experiences of work differed:

– Disabled people were less likely to be in employment and more likely to be unemployed.

– Women were less likely than men to be in employment and more likely to be in part-time work.

– Young people were most likely to be unemployed and many were in insecure jobs.

– Women continued to experience sexual harassment and discrimination related to pregnancy and maternity in the workplace.

Earnings

There was a fall in earnings and little progress in tackling pay gaps:

– Women continued to earn less than men on average, and the gender pay gap changed very little in recent years.

– Disabled people continued to earn less than non-disabled people, and the disability pay gap widened.

– Women, young people aged 18–24, disabled people, black people and those in the Other White ethnic group were more likely to be in low-paid work.

Occupational segregation

Occupational segregation continued to be a key feature of work:

– Women continued to be under-represented in senior positions, even where women accounted for the majority of the workforce, such as in education and health.

– Women, people from ethnic minority groups and disabled people remained under-represented in Modern Apprenticeships.

– Reflecting the labour market, Modern Apprenticeships continued to show strong gender segregation within sectors.

Women continued to be under-represented in senior positions, even where women accounted for the majority of the workforce, such as in education and health

3.1 Introduction

The right to decent work should be respected, protected and fulfilled for everyone, and work should be enjoyed free from discrimination, harassment and victimisation.

Upholding these rights includes making sure workers have fair working practices, safe and healthy working conditions, and the same pay as others for doing the same or similar work. Everyone should also have the opportunity to a free choice of profession and should not be prevented from working in a particular occupation without good reason. This chapter discusses employment, earnings and occupational segregation.

3.2 Employment and unemployment

Employment, company and equality law are all generally reserved to the UK Government; therefore the Scottish Government's work in this area has been largely based on policy change.

Under international human rights law, the UK state is obliged to implement the rights to work and provide just and favourable conditions of work. UN treaty bodies[12] have called upon the UK and devolved governments to eliminate the persistent gender pay gap, tackle the root causes of unemployment, intensify efforts to increase the level of representation of women in decision-making positions, and ensure that the national minimum wage is periodically reviewed and set at a level sufficient to provide all workers (including those under the age of 25) and their families with a decent standard of living.

UN treaty bodies have also recommended that the UK Government progressively take measures to reduce the use of temporary employment, precarious self-employment and zero-hour contracts, and to ensure that all migrant workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal and other issues.

The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations introduced in 2015 provide greater protection for employees and workers by making exclusivity clauses in zero-hour contracts unenforceable and making dismissing an employee or subjecting a worker to a detriment because they have breached such a clause unlawful. However, there are still gaps in legal protection. Various high-profile cases, notably *Uber BV v Aslam* in 2017 and *Pimlico Plumbers Ltd v Smith* in 2018, have looked at the employment status of individuals, which dictates what, if any, employment rights they are entitled to. There is still no right to the minimum wage for those who live-in with a family they carry out household work for. The removal of the statutory questionnaire procedure also continues to make it difficult for employees to identify appropriate comparators to bring equal pay cases.

The McGregor-Smith Review (2017) examined the position and progression of people from ethnic minority groups in the workplace. McGregor-Smith's report contained recommendations about recruitment targets, the use of contracts and supply chains, work experience placements, and (for larger businesses) the publication of ethnicity data by salary band. The UK Government is reviewing progress against the recommendations.

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[12] UN Committee on Economic, Social and Cultural Rights, 2016; UN Committee on the Rights of Persons with Disabilities, 2017; UN Committee on the Elimination of Racial Discrimination, 2016.

Young people were most likely to be unemployed, and many were in insecure jobs

For evidence on employment tribunal fees see Chapter 7, 'Justice and personal security'.

A range of key policies has been introduced by the Scottish Government since 2015 in relation to employment and unemployment, including those described below.

– The Scottish Government's Economic Strategy, published in 2015, commits Scotland to the concept of inclusive growth and creating opportunity for all through a fair and inclusive jobs market. The strategy aims to make Scotland more equal and socially just by promoting equality in the workplace and tackling inequality in the labour market. The strategy also emphasises narrowing the inequalities in wealth and health, and maximising opportunities for women and families through actions such as increasing the availability of free childcare and encouraging employers to give equal pay and offer flexible working.

– The Fair Work Convention was established in 2015 following a recommendation of the Working Together Review[13] to support fair employment. The Convention aims to improve employer practice, benchmark current practice and identify areas where improvement could be made.

– The Labour Market Strategy was introduced in 2016 to underpin the aims of the Economic Strategy published in 2015. The strategy sets out the Scottish Government's plan to develop a culture of fair work within which employees feel valued and fulfilled, and jobs are secure and well-paid. The strategy also has a strong focus on improving equality and tackling inequality through the promotion of inclusive growth.

– The Race Equality Action Plan 2017–21 highlights the importance of employment in addressing racial inequality, and outlines actions which will aim to address the employment gap between people from white groups and people from ethnic minority groups.

– A Fairer Scotland for Disabled People published in 2016 outlines the Scottish Government's ambitions aimed at changing the lives of disabled people, including ensuring disabled people have equal opportunities in employment.

– The Scottish Business Pledge is a voluntary commitment by companies to adopt fair and progressive business practices to improve competitiveness and productivity while tackling inequalities. The Scottish Government announced in March 2018 that there would be a short review of the Pledge, with a focus on attracting greater business buy-in and support.

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[13] The Scottish Government commissioned this independent review in 2014 to consider progressive workplace policies and practices in the public and private sectors, with a focus on measures that would enhance the relationships that link trade unions, employers and the Scottish Government.

The Race Equality Action Plan 2017-21 highlights the importance of employment in addressing racial equality

Between 2010/11 and 2016/17, the overall employment rate[14] increased from 58.0% to 59.0%. Over the same period, the overall unemployment rate[15] decreased from 7.7% to 4.5%, with most of this decrease occurring between 2013/14 and 2016/17.[16]

There was a fall and subsequent rise in employment rates for young people aged 16–24 between 2010/11 and 2016/17. Employment rates for other age groups either remained at a similar level or increased. Only a small proportion of those aged 65–74 were in employment, an increase from 2010/11 (14.5% compared with 11.1%).

Young people aged 16–24 had the highest unemployment rate in 2010/11, 2013/14 and 2016/17. In 2016/17, this rate was 9.9% – approximately three times the rate for those aged 45–54 (2.9%). Between 2010/11 and 2016/17, the unemployment rate fell for all people aged under 55. The biggest decrease was for the 16–24 age group.

[14] The employment rate is calculated by people in employment as a percentage of the population. Unless a particular age group is specified, the figure refers to the population over 16 years old. People in employment are employees, the self-employed, those on Government employment and training programmes, and unpaid family workers. The definition includes those temporarily away from a job, such as on holiday.

[15] The unemployment rate is unemployed people as a percentage of employed and unemployed people. Unemployed people are those looking for work in the last four weeks and available to start work in the next two weeks or waiting to start a job already obtained.

[16] Unless otherwise stated, the figures reported here on employment and unemployment by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey for the financial years 2010/11, 2013/14 and 2016/17 (Tables WRK.EMP.1 and WRK.EMP.2).

% of disabled and non-disabled people employed in 2016/17

32.9% Disabled people in employment

74.1% Non-disabled people in employment
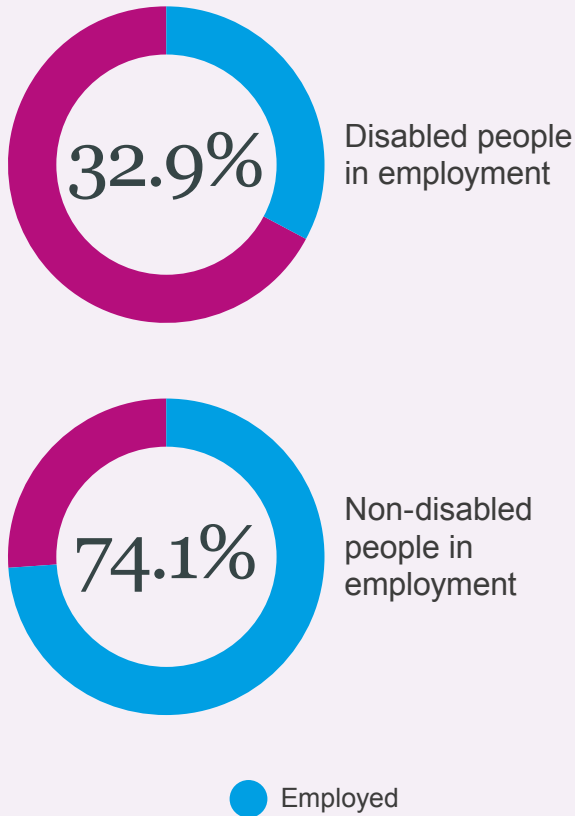
● Employed

In 2014, the Scottish Government committed to reducing youth unemployment by 40% by 2020

In 2014, the Scottish Government committed to reducing youth unemployment by 40% by 2020 through the implementation of recommendations by the Commission for Developing Scotland's Young Workforce (DYW) in its Youth Employment Strategy. The Scottish Government (2018a) reported that the DYW programme had achieved this target four years ahead of schedule.

The employment rate for disabled people was much lower than for non-disabled people. In 2016/17, the employment rate was 32.9% for disabled people compared with 74.1% for non-disabled people. The employment rate increased between 2013/14 and 2016/17 for both disabled people and non-disabled people, with little change in the employment gap. The Scottish Government is currently consulting on setting targets to help disabled people into work in the public sector.

Disabled people continued to be more likely to be unemployed. In 2016/17, the unemployment rate for disabled people was more than twice the rate for non-disabled people (9.8% compared with 3.8%). The rates for both groups fell between 2013/14 and 2016/17.

In 2016/17, the Other White ethnic group had a higher employment rate than the White British group (74.0% compared with 58.3%), while the Mixed/Multiple group had a lower employment rate (43.0%). Between 2013/14 and 2016/17, the employment rate for Pakistani people increased from 38.4% to 60.5%.

In 2016/17, women continued to be less likely to be employed than men (54.9% compared with 63.5%). Men and women had broadly similar unemployment rates in 2016/17 (4.8% compared with 4.1%). Between 2010/11 and 2016/17, the unemployment rate fell more for men than for women.

3.2.1 Part-time and flexible employment

In 2017, part-time employment accounted for just over a quarter (26.8%) of all employment. Part-time employment accounted for 42.3% of all women's employment compared with 12.2% of all men's employment. People aged 16–24 years (40.2% working part-time) and aged 65 years and over (61.9% working part-time) were more likely to work part-time compared with other age groups (Scottish Government, 2018b).

Analysis of over 230,000 job adverts between September and December 2016 found that the availability of flexible-working jobs decreased as the salary increased, with 11.9% of jobs paying over £20,000 full-time equivalent (FTE) advertised with flexible working options, compared with 24.0% of jobs paying less than £20,000 FTE. The research defined 'flexible' jobs as any permanent job (excluding temping and self-employed opportunities) that is either advertised as part-time or, if full-time, offering at least one of the following forms of flexibility: the possibility of a reduced-hours contract, a different pattern of work such as flexitime or shifts, the ability to work from home for some or all of the working week, or being open to discussion about flexibility on either hours or location. Most jobs advertised as flexible and paying over £20,000 FTE were part-time. The availability of flexible working arrangements varied depending on the sector (Timewise, 2017).

In a 2014 survey (sample size 1,005), over a third (36%) of working parents did not work flexibly. Two-thirds of those not working flexibly said this was due to perceived barriers such as a lack of choice and flexibility in their workplace and the wider employment market (Family Friendly Working Scotland, 2015).

In 2016, the Scottish Government published a public consultation on its commitment to almost double the hours of government-funded early learning and childcare to 1,140 hours per year by 2020. The long-term aim of the expansion is to support children's cognitive, social and emotional development, and the secondary aim is to support more parents and carers in work, training or study (Ipsos MORI, 2017).

3.2.2 Insecure employment

Insecure employment often does not provide regular hours and is low-paid, and as a result can negatively impact on a person's physical and mental health, and can act as a barrier to young people accessing the housing market (Oxfam Scotland, 2016; Scottish Government, 2017a).

Insecure employment, including temporary employment, agency work and low-paid self-employment (but not including zero-hour contracts and on-call working), increased from 8.1% to 9.2% between 2010/11 and 2016/17.[17]

A higher percentage of young people aged 16–24 were in insecure employment in 2016/17, with approximately one in seven (14.8%) working in insecure jobs. Single people were more likely than married people to be in insecure jobs (10.6% compared with 7.9%). There was no difference between the rates for disabled people and non-disabled people or between the rates for men and women.

The number of people on zero-hour contracts increased during 2017. Between October and December 2017, 2.7% of people in employment reported being on a zero-hour contract, compared with 2.2% in the same time period in 2016 (Office for National Statistics, 2018).

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[17] Unless otherwise stated, the figures reported here on insecure employment by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey from 2010/11, 2013/14 and 2016/17 (Table WRK.EMP.3).

3.2.3 Unfair treatment, bullying and harassment in the workplace

There have been no large-scale Scottish surveys of unfair treatment, bullying and harassment in the workplace since the Great Britain-wide Fair Treatment at Work Survey 2008.

Case-study evidence from Citizens Advice Scotland (2015) highlighted that a significant number of its clients had experienced unfair treatment in the workplace. Examples included employees being unfairly dismissed, abuse of zero-hour contracts by employers, and discrimination against pregnant women and migrant staff.

Approximately one in six (16%) LGBT employees (sample size 799) and two in five (39%) transgender employees (sample size 600) said they had been subjected to negative comments or conduct from work colleagues in 2016/17 because they were LGBT. Over a third (36%) of LGBT employees, and roughly three in five (58%) transgender employees, had hidden or disguised that they were LGBT over the last year because they were afraid of discrimination (Stonewall Scotland, 2018).

The Scottish Government's Equally Safe Delivery Plan 2017–2021 acknowledged that women continue to experience violence in the workplace, and employers have a key role in supporting victims and tackling perpetrators.

There are no large-scale Scottish-specific statistics available on the number of people who have experienced sexual harassment in the workplace. Smaller-scale surveys found that:

– 10% of respondents (sample size 600) had experienced mental or physical abuse at work, including rape or sexual assault in 2016, and over 70% of respondents described experiencing or witnessing sexual harassment, teasing or innuendo (Zero Tolerance, 2017).

– 32% of people (sample size 565) had experienced unwanted sexual behaviour at work in 2017 (ComRes, 2017).

– A fifth (20%) of respondents (sample size 1,039)[18] had experienced sexual harassment or sexist behaviour in Parliament and MSPs' local offices. Women (30%) were more likely than men (6%) to have experienced this kind of behaviour (Scottish Parliament, 2017). A joint working group was set up to consider and agree actions required as a result of the outcomes of the survey, and the group has identified strands of work it will take forward.

Most employers (94%) thought it was in the interests of their organisation to support pregnant women and those on maternity leave. However, nearly three-quarters of mothers (73%) reported having a negative or possibly discriminatory experience during pregnancy, maternity leave, and/or on return from maternity leave. More than half of employers (59%) believed that women should declare during recruitment if they were pregnant (Equality and Human Rights Commission, 2016).

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[18] Survey respondents included: MSPs; MSP staff, including interns; staff of the Parliament; staff of the Scottish Government who work at Holyrood; and agency workers, contractors and members of the media who work at the Parliament.

A working group led by the Minister for Employability and Training has been convened to take forward the recommendations of our pregnancy and maternity discrimination work (Scottish Government, 2017b). The group will continue to build on progress, consider how the members can work together to tackle the issues raised regarding Public Sector Equality Duty (PSED) reporting, and look at achieving sector-specific support.

3.3 Earnings

3.3.1 Pay gaps

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 require all private and voluntary sector employers across Britain with 250 or more employees to publish information on their gender pay gap by 4 April 2018, and by 4 April each year thereafter.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) require listed public sector employers to publish pay gap information in April every two years, setting out the percentage difference, among its employees, between men and women's average hourly pay (both excluding overtime). The threshold for reporting was lowered from 150 employees to 20 employees in 2016.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 also require listed public sector authorities to publish an equal pay statement which contains the authority's policy on equal pay in relation to gender, disability and race, as well as information on occupational segregation (both by grade and occupation) across those three protected characteristics. The reporting threshold for this duty changed from 150 employees to 20 employees in March 2016.

Our pay gaps strategy (Equality and Human Rights Commission, 2017) recommends that the UK Government monitors the effectiveness of mandatory gender pay gap reporting in closing pay gaps and consults with employers on the most effective way of extending the reporting requirements to ethnicity and disability pay gaps. Our strategy also calls on the UK Government to publish statistical information on the scale and trends in disability and ethnicity pay gaps for full-time and part-time workers (in addition to gender). The strategy further argues that the UK, Scottish and Welsh Governments should develop national action plans to close gender, ethnicity and disability pay gaps and report regularly on progress.

In 2010/11 and 2016/17, median (average) hourly earnings were the same after adjustment for inflation.[19] Women continued to be paid less than men. In 2016/17, the median hourly earnings for men were £12.39 compared with £10.49 for women. This represented a pay gap of 15.3%. In 2013/14, median hourly earnings were £12.24 for men compared with £10.21 for women. This represented a pay gap of 16.6%. The Scottish Government has convened a working group to develop an action plan to tackle the gender pay gap.

Disabled people were paid less than non-disabled people. In 2016/17, median hourly earnings for disabled people were £9.89 compared with £11.63 for non-disabled people, a difference of £1.74 an hour. This represented a disability pay gap of 15.0%. The disability pay gap increased between 2013/14 and 2016/17 due to a small increase in median hourly earnings for non-disabled people.

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[19] Unless otherwise stated, the figures reported here on pay gaps in median hourly earnings adjusted for inflation (2017 prices) of employees by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey for the financial years 2010/11, 2013/14 and 2016/17 (Table WRK.ERN.1).

Women continued to get paid less than men. The gender pay gap in 2016/17 was 15.3%

In 2016/17, the median hourly earnings of the White British group were £11.53, and earnings of the Other White group were £9.15.

In 2016/17, young people aged 16–24 had the lowest median hourly earnings (£7.61). Earnings increased with age up to the 35–44 and 45–54 age groups (£13.17 and £13.47). Earnings decreased for older age groups. The gap in median earnings between those aged 16–24 and those aged 45–54 was 43.5%. Between 2010/11 and 2016/17, earnings increased by 40 pence per hour for young people aged 16–24.

Muslims had significantly lower median earnings (£9.19) than those of no religion or Christians (both £11.39). The pay gap between Muslims and those of no religion was as high as 19.3%.

3.3.2 Low pay

In April 2017, an estimated 26,000 jobs (1.1%) paid less than the National Minimum Wage (NMW) or National Living Wage (NLW) to employees aged 16 and over (Office for National Statistics, 2017).

In 2017, 18.4% (430,000) of people aged 18 and over earned less than the Living Wage Foundation's Living Wage (LW) compared with 19.6% (460,000 people) in 2015 and 20.1% (468,000 people) in 2016. Women were more likely than men to earn less than the LW. In 2017, 22.0% of women earned less than the LW compared with 14.3% of men, rates that were similar to those in 2015 and 2016. People aged 18–24 were more likely than any other age group to earn less than the LW. In 2017, 47.8% of people aged 18–24 earned less than the LW (Scottish Government, 2017c).

The Scottish Government has encouraged other Scottish public bodies to pay their staff the Real Living Wage and funds the Scottish Living Wage Accreditation Initiative.[20] At the end of 2015, 400 Scottish businesses were accredited, and this figure had increased to 800 by the end of 2017.

3.3.3 Gender differences by occupation, sector and industry

In 2016, in all nine occupational groups, men had higher median full-time hourly earnings than women. The size of the full-time gender pay gap varied considerably. The gap was particularly wide for 'skilled trades occupations'; 'managers, directors and senior officials'; and 'process, plant and machine operatives' (Scottish Government, 2017d).

In 2017, the full-time gender pay gap in median hourly earnings excluding overtime also varied between industries. The gap was wide in 'professional, scientific and technical activities' and 'financial and insurance activities', and narrow in 'education' and 'transportation and storage' (Scottish Government, 2017d).

Large pay differences were found across the apprenticeship framework, reflecting the wider labour market. As in previous years, the basic hourly pay figure for Level 2 and Level 3 apprentices was lowest in the female-dominated hairdressing framework (median earnings of £4.08 per hour). Female Level 2 and Level 3 apprenticeships had lower mean and median earnings than equivalent male apprentices (Department for Business, Energy and Industrial Strategy, 2017).

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[20] The Real Living Wage is currently £8.75 per hour and is based on the cost of living. The Living Wage accreditation celebrates employers that choose to go further than the UK Government's minimum.

3.4 Occupational segregation

3.4.1 Vertical and horizontal segregation

Vertical segregation within an occupation occurs when members of one group (for example, men) are typically employed at a higher level than members of another (for example, women). Horizontal segregation occurs when members of one group are typically employed in different types of job than members of another.

In 2016/17, 29.6% of adults aged over 16 were employed in managerial or professional occupations, and 30.1% were employed in low-pay occupations.[21]

Young people aged 16–24 were most likely to work in low-pay occupations when compared with other age groups. However, between 2013/14 and 2016/17, there was an increase in the proportion of young people working in high-pay occupations from 7.8% to 11.2%.

Disabled people (36.9%) were more likely than non-disabled people (29.3%) to work in low-pay occupations in 2016/17.

Compared with White British people, White Irish people (65.5%) and Indian people (61.9%) were more likely to work in high-pay occupations in 2016/17. Black people and those in the Other White group were more likely to work in low-pay occupations. As Scotland's ethnic minority population is small, it is challenging to assess change over time.

Similar proportions of men and women (29.8% and 29.5% respectively) were employed in high-pay occupations, but women (38.6%) were more likely than men to work in low-pay occupations (22.1%) in 2016/17. Between 2010/11 and 2016/17, the gender gap in high-pay occupations decreased, driven by an increase in the proportion of women in high-pay occupations. The proportion of men in high-pay occupations did not change.

Female cleaner in a hospital.

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[21] Managerial and professional occupations are 1 or 2 in the standard occupational classification. Low-pay occupations include: caring, leisure and other service occupations; sales and customer service occupations; or elementary occupations, such as cleaners or kitchen and catering assistants. That is: 6, 7 or 9 in the standard occupational classification.

Unless otherwise stated, the figures reported here on percentage in high-pay occupations and low-pay occupations by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Annual Population Survey for the financial years 2010/11, 2013/14 and 2016/17 (Tables WRK.OCS.1 and WRK.OCS.2).

Low-pay occupations include cleaners or kitchen and catering assistants

Evidence showed that women have unequal access to power, decision making and participation across all domains of public life. In 2017, 72% of Scottish public bodies were headed by men, yet 64% of workers across the Scottish public sector were women (Engender, 2017).

Nearly two-thirds (63%) of secondary school teachers in 2016 were women, but approximately two-fifths (41%) of head teachers were women (Scottish Government, 2016). In 2016, only 23% of professors in Scottish universities were women (Engender, 2017).

In total, 71% of the NHS workforce in 2016 was made up of women, but only one regional health board out of 14 was chaired by a woman. Only 22% of NHS board chairs were women, and only 38% of NHS health board chief executives were women (Engender, 2017).

Across the corporate sector, 100% of CEOs of Scotland's 50 'top companies' were men. The majority of company directors in 2015 across Scottish-based firms in the FTSE 100 and FTSE 250 were men (75% and 82% respectively) (Engender, 2017).

For evidence on public appointments see Chapter 8, 'Participation'.

3.4.2 Segregation within apprenticeships

The number of new Modern Apprenticeship (MA) starts in 2016/17 was 26,262 (Skills Development Scotland, 2017). Women, people from ethnic minority groups and disabled people remained under-represented. The Scottish Government are supporting Skills Development Scotland to implement their Equalities Action Plan for Modern Apprenticeships. The plan includes specific improvement targets for participation by race, gender and disability.

Women accounted for 40% of Modern Apprenticeship new starts in 2016/17, which represents a relatively unchanged rate since 2013/14, and a lower rate than in 2012/13 (43%). Men and women were concentrated in different occupational areas (reflecting the wider labour market), with women less likely to be represented in better-paid sectors such as construction, engineering, and transport and logistics (Skills Development Scotland, 2017).

Concerns exist regarding inequality of access, especially for disabled people and people from ethnic minority groups, with a strong ethnic profile bias towards White participants (who make up 98% of new starts), and less than one in 10 apprenticeships being taken up by someone with a 'self-identified impairment, health condition or learning difficulty' (Skills Development Scotland, 2017).

Across the corporate sector, 100% of CEOs of Scotland's 50 'top companies' were men

3.5 Conclusion

Although employment law is not a devolved issue, the Scottish Government has introduced policies aimed at supporting fair work in which employees feel valued and are well paid. The evidence suggests that, while there have been some improvements across the work domain, some groups consistently experienced poorer outcomes.

Disabled people continue to face significant disadvantage in the labour market. Disabled people are less likely to be in work, and those who are in work find themselves facing a widening pay gap.

Little progress has been seen for women in the labour market. Women continue to be less likely to be in work, continue to be paid less than men and continue to be less likely to hold senior positions. Even in health and education, two sectors in which the majority of the workforce is female, women are not reaching the higher levels of management. While in work, many women face sexual harassment and experience discrimination before, during or after maternity leave.

The fall in youth unemployment is a positive development but the rise of insecure employment, where many young people find work, is a concern. Without a decent and secure income, young people will not be able to access housing, and insecure employment has negative implications for physical and mental health.

It is difficult to draw overarching conclusions for people from ethnic minority groups. A relatively small ethnic minority population means a lack of evidence from national sources. When evidence that can be disaggregated by ethnicity is available, it shows a mixed picture. Lower employment rates for people who are from ethnic minority groups and under-representation of people from ethnic minority groups in Modern Apprenticeships are a concern.
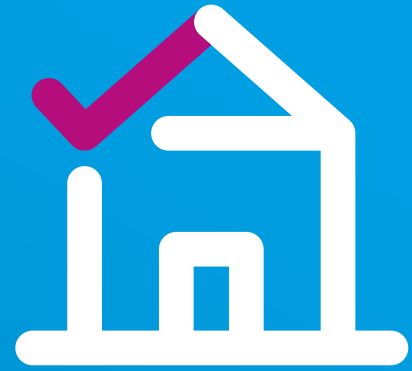
4. Living standards

The right to an adequate standard of living should be respected, protected and fulfilled for everyone.

Key findings

Housing

Homelessness and access to a secure home continued to be an issue:

– Young women, households with children, lone parents and people with at least one support need were particularly at risk of homelessness.

– There was a slight decrease in the number of homeless applications to local authorities.

– The number of people, many of whom were children, being placed in temporary accommodation increased.

– Asylum seekers were at risk of destitution throughout the asylum process.

There were variations in the type and quality of housing people could access:

– People from White Scottish and Other White British groups were more likely to own their home compared with people from ethnic minority groups, who were more likely to rent from a private or social landlord.

– Younger people were more likely to be in private rented accommodation than other tenures.

– The number of Gypsy/Travellers who were satisfied with their Registered Social Landlord management of their site decreased, whereas satisfaction with local authorities' management increased.

– Many disabled people lived in homes that did not meet their requirements to live independently.

Poverty

Nearly all measures of poverty showed an increase over time:

– The number of adults and children living in poverty after housing costs increased.

– The number of adults and children being referred to a Trussell Trust Foodbank increased.

– Wealth inequality increased, with single-adult households accounting for the majority of those living in low-wealth households.

– Fuel poverty decreased, but roughly a third of people still experienced it.

A wide range of people were affected by poverty:

– Disabled people, people with mental health conditions and people from ethnic minority groups were more likely to live in poverty.

– The majority of children living in poverty were from working households.

– Women and disabled people were more likely to experience severe material deprivation.

Social care

Provision of high-quality, flexible social care was put at risk from increasing demand, budget restrictions, the commissioning approach to social care and a lack of skilled staff.

Experiences of care varied considerably:

– Most people who received formal help and support rated this as good and said they were treated with compassion and understanding.

– Despite the implementation of Self-directed Support, many people were not aware of their options, and were not always given choice and control.

– The overall number of guardianship orders increased.

– The percentage of new guardianship orders granted on an indefinite basis continued to fall.

The overall number of guardianship orders increased

4.1 Introduction

The right to an adequate standard of living should be respected, protected and fulfilled for everyone.

This right includes having access to housing that allows people to live independently and with dignity, and be able to live free from poverty, with the support of social security where required. People should also have access to, and control over, effective and high-quality social care and support. This chapter discusses housing, poverty and social care.

4.2 Housing

4.2.1 Overcrowding and suitable accommodation

In 2016, 67,000 households (3% of households) lived in overcrowded accommodation. The rate of overcrowding had not changed since 2009 (Scottish Government, 2017a).

Most adults (92.6%) were very or fairly satisfied with their house or flat.[22] Older people were more likely to live in such a household compared with younger people, and people who were married or in a civil partnership were more likely than other people to live in such a household.

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[22] Based on the response of the highest income householder. Unless otherwise stated, the figures reported here on satisfaction with house or flat by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Household Survey from 2013 and 2015 (Table LST.HSG.2).

Disabled woman watering flowers outside her accessible home.

Most adults were very or fairly satisfied with their house or flat

Average Registered Social Landlord tenants' satisfaction with the quality of their home increased from 86% in 2015/16 to 88% in 2016/17, and declined for local authority tenants from 84% to 81% in the same time period (Scottish Housing Regulator, 2016a; Scottish Housing Regulator, 2017).

4.2.2 Homelessness

The number of homelessness applications to local authorities decreased from 34,926 to 34,100 between April 2016 and March 2017. The Scottish Government highlighted that this decrease was mainly due to the impact of Housing Options[23] and homelessness prevention strategies adopted by most local authorities since 2010, rather than changes in the underlying drivers of homelessness. Some people were particularly at risk of homelessness: women aged 34 and under, households with children, lone parents (the majority of whom are women) and people with at least one support need such as a mental health condition, physical impairment or learning disability (Scottish Government, 2017b).

In 2016/17, 8% of homelessness applicants (2,621 individuals) reported a household member sleeping rough at least once during the three months prior to application, and 4% (1,500 individuals) slept rough the night before applying for assistance (Scottish Government, 2017b). Figures on rough sleeping are likely to be underestimated: many individuals choose not to engage with services or are not adequately supported through Housing Options because of their often complex needs (Scottish Parliament, 2018; Shelter Scotland, 2017). The Scottish Government committed in its 2017/18 programme for Government to setting a national objective to eradicate rough sleeping and established the Homelessness and Rough Sleeping Action Group to lead change in this area.

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[23] Housing Options is a person-centred and preventative approach which looks at an individual's options and choices in the widest sense. The approach features early intervention and explores all possible tenure options.

People who have become homeless have a right to permanent accommodation and, if no permanent accommodation is available immediately, will be placed in temporary accommodation until permanent accommodation is found.[24] However, there is no time limit on how long homeless people should stay in unsuitable temporary accommodation, although the Scottish Government has committed to imposing a limit of seven days for families with children and pregnant women (Crisis, 2017a).

Between March 2016 and March 2017, the number of people being placed in temporary accommodation increased from 10,543 households to 10,873 households (Scottish Government, 2017b). Over the same time period, the number of children in temporary accommodation increased by 16%, from 5,223 to 6,041. Households with children or pregnant women were mainly provided with local authority or housing association accommodation (82%), with a small proportion (1%) being placed in bed and breakfast accommodation.

Evidence presented so far does not capture 'hidden' homelessness. 'Hidden' homeless refers to forms of homelessness that are not counted in official figures, such as when a person becomes homeless but finds a temporary solution by staying with family members or friends, living in squats or staying in other insecure accommodation.

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[24] The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 replaced existing provision setting out what is unsuitable temporary accommodation for people who may be homeless. It applies to pregnant women, or households that include children or a pregnant woman.

[25] Universal Credit will replace: housing benefit, income-based jobseeker's allowance, income-related employment and support allowance, income support, child tax credits and working tax credits.

It is estimated that around 40% of all people experiencing homelessness were 'sofa-surfing' at friends' or relatives' accommodation

It is estimated that around 40% of all people experiencing homelessness were 'sofa-surfing' at friends' or relatives' accommodation. Sofa-surfing refers to staying with others (not close family), on a short-term or insecure basis, wanting to move, and often being in crowded conditions (the term does not include students) (Crisis, 2017b).

4.2.3 Housing benefits

Since 2010, the UK Government has implemented a series of changes to social security. These measures affect a number of policy areas that are devolved, including housing. Housing Benefit is the responsibility of the UK Government, and is administered to recipients by local authorities. At the time of writing, Housing Benefit was being replaced by Universal Credit for working-age adults.[25] The Scottish Government has some powers over the way in which Universal Credit is paid, including giving people the choice of being paid twice a month rather than monthly and, if they would prefer, to have their Universal Credit housing element paid directly to their landlord.

The Scottish Government has taken action to mitigate changes introduced by the UK Welfare Reform Act 2012, as well as introduced wider measures to tackle poverty, including those described below.

– The Scotland Act 2016 devolved the right to the Scottish Parliament to make Discretionary Housing Payments[26] with the aim of fully mitigating the removal of the spare room subsidy (the 'bedroom tax').

– In 2017, the Scottish Government committed to restoring Housing Benefit for those aged 18–21 and, as a temporary measure, it was agreed that the Scottish Welfare Fund would be extended to help those adversely affected by the UK Government's changes to housing benefit.

4.2.4 Housing tenure

The Housing (Scotland) Act 2014 abolished the Right to Buy in July 2016. The Scottish Government estimated that, since the Right to Buy was introduced, around 455,000 properties had been bought using the scheme. This has resulted in a shortage of housing in the social rented sector, placing increased pressure on councils and housing associations (Scottish Government, 2013).

The Private Housing (Tenancies) (Scotland) Act 2016 aims to improve security, stability and predictability for private tenants, and provide safeguards for landlords, lenders and investors. The Act removed the landlord's right to evict a tenant because the tenancy had reached the stated tenancy agreement end date, introduced longer notice periods before a tenant could be evicted, limited rent increases and allowed local authorities to apply to Scottish Ministers to establish 'rent pressure zone(s)'.

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[26] Discretionary Housing Payments (DHPs) are administered in Scotland by the 32 local authorities. DHPs may be awarded when a local authority considers that a housing benefit or Universal Credit (including the housing element) claimant requires further financial assistance towards housing costs. DHPs can be used to provide support to claimants affected by some of the key welfare reforms, including the benefit cap, removal of the 'bedroom tax' in the social rented sector and reductions in Local Housing Allowance.

Between 2013 and 2016, the White Scottish and Other White British groups were more likely to own their home (66% and 70% respectively) compared with people from ethnic minority groups, who were more likely to rent from a private or social landlord than own their own home (Scottish Government, 2018a).

Younger people were more likely to be in private rented accommodation than other tenures in 2016. Of those people who owned their house outright, nearly three-quarters were over the age of 60 (Scottish Government, 2017c).

4.2.5 Housing for Gypsy/Travellers

The Scottish Government has acknowledged that more action must be taken to improve outcomes for Gypsy/Traveller groups (Scottish Government, 2017d). In reviewing progress against its 2013 report into Gypsy/Traveller accommodation, the Convener of the Equalities and Human Rights Committee voiced concerns that little or no progress had been made either in site provision or quality of facilities (Scottish Parliament, 2017a). The Scottish Government has established a Gypsy/Traveller Ministerial Working Group to drive forward cross-government actions, which should lead to improvements in the lives of Gypsy/Traveller groups, including improvements in housing.

In response to the Scottish Housing Regulator's 2015 thematic inquiry into Gypsy/Travellers, the Scottish Government published a set of standards with which all landlords running Gypsy/Traveller sites had to comply by June 2018. The standards are designed to bring the quality of accommodation on sites up to the standard of housing (Scottish Government, 2015).

Between 2013/14 and 2014/15, the proportion of Gypsy/Travellers who were satisfied with their Registered Social Landlord's (RSL) management of their site decreased from 70% to 57.1%. However, the proportion of Gypsy/Travellers who were satisfied with their local authority's management of their site increased from 71.8% in 2013/14 to 80.8% in 2014/15 (Scottish Housing Regulator, 2016b). In 2016, the UN Committee on the Rights of the Child recommended that the Scottish Government introduce a statutory duty for local authorities to provide safe and adequate sites for Travellers, while ensuring meaningful participation of Roma, Gypsy and Traveller communities in planning and decision-making processes.

4.2.6 Accessible housing for disabled people

Housing is the cornerstone of independent living, yet many disabled people live in homes that do not meet their requirements. Despite the Scottish Government's commitment to build 50,000 new homes by 2021, there remains a severe shortage of accessible and wheelchair-accessible housing (Equality and Human Rights Commission, 2018).

In 2016, 12% of all households with a person with a long term physical/mental health condition/illness required adaptations to their home, a similar proportion as in the previous year. This proportion increased to 16% for those in social rented accommodation (Scottish Government, 2016a; Scottish Government, 2017c).

Our inquiry (Equality and Human Rights Commission, 2018) into the availability of accessible and adaptable housing for disabled people found a number of issues including:

– The systems used to identify disabled people's requirements and deliver accessible houses were weak, and local authorities made decisions about current need and future demand for accessible houses based on very limited data.

– Few local authorities set targets for accessible housing and many reported that developers were reluctant to build accessible houses. There was a notable exception in Glasgow, where new developments must provide 10% of homes to wheelchair-accessible or readily adaptable standards.

– Disabled people were often left waiting for long periods of time, even for minor adaptations. Disabled people faced particular problems in the private rented sector where private landlords frequently refused to make adaptations to their properties.

– Disabled people were not getting the support that they need to live independently; the provision of advice, support and advocacy was patchy and people reported that they had nowhere to turn when their housing was unsuitable.

Evidence to the Scottish Parliament's Equalities and Human Rights Committee found that asylum seekers were at risk of destitution throughout the asylum process

4.2.7 Housing for refugees and asylum seekers

The Scottish Government has outlined a series of objectives and actions related to housing in its New Scots Refugee Integration Strategy 2018–22. The objectives aim to ensure that refugees are able to fully access support and housing options so that they can settle and integrate into their new home and area, and to ensure that new refugees are supported to move from asylum accommodation to a more permanent home.

Evidence to the Scottish Parliament's Equalities and Human Rights Committee found that asylum seekers were at risk of destitution throughout the asylum process, in particular when their asylum claim had been refused and they had no recourse to public funds. A large proportion of claims were refused at the initial decision stage, meaning that a significant number of asylum seekers were evicted from their properties before they had the chance to appeal the decision, and before alternative accommodation arrangements could be made. Additionally, new refugees who acquired refugee or protected status experienced destitution at the point of being required to vacate their asylum accommodation after 28 days, and delay in accessing their housing and welfare benefits (Scottish Parliament, 2017b).

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[27] The Act sets in statute four income-based targets to be met by 2030/31 and interim targets, based on the same measures, to be met by 2023/24. The targets are largely focused on the income of the household; however, they also consider housing costs, as well as wider costs of living captured through the material deprivation measure. The 2030 targets are that, of children living in households in Scotland: less than 10% live in relative poverty, less than 5% live in absolute poverty, less than 5% live in combined low income and material deprivation, and less than 5% live in persistent poverty.

4.3 Poverty

The Scottish Government has made a number of commitments to tackling socio-economic disadvantage since 2015. The Socio-Economic Duty (now known as the Fairer Scotland Duty) contained in Part 1 of the Equality Act 2010 was introduced in 2018. Since 1 April 2018, a number of Scottish public bodies have had to consider socio-economic disadvantage and how it affects inequality when making important strategic decisions.

The Child Poverty (Scotland) Act 2017 reintroduced income-based targets[27] that had previously been removed by the UK Government and set statutory targets to reduce child poverty by 2030. In 2018, the Scottish Government introduced its Tackling Child Poverty Delivery Plan 2018–22, which sets out new policies and proposals to tackle child poverty.

The Scottish Parliament's Social Security Committee launched an inquiry into social security and the potential impact of Universal Credit on in-work poverty in 2018. The Committee will publish a report before the end of 2018.

% of people living in relative poverty

Adults

2010/11	16.5%
2015/16	18.6%

Children

2010/11	21.0%
2015/16	26.0%

4.3.1 Relative poverty

Between 2010/11 and 2015/16, the proportion of adults living in relative poverty (60% contemporary median income after housing costs (AHC)) increased from 16.5% to 18.6%, and the proportion of children living in relative poverty increased from 21.0% to 26.0%.[28] People aged 16–24 and aged 25–34 were more likely to live in poverty compared with those aged 45–54 (27.0% and 23.5% compared with 14.9%), and people aged 56–74 were least likely to live in poverty (11.0%).

People from ethnic (excluding White) minority backgrounds were more likely than White British people to live in poverty (39.6% compared with 17.6%).

Disabled people were more likely to live in poverty AHC compared with non-disabled people in 2015/16 (24.3% compared with 16.6%). Between 2010/11 and 2015/16, the percentage of disabled people living in poverty increased from 21.0%. Approximately 1 in 4 of those with mobility (21.5%); dexterity (22.2%); memory (25.0%); or learning, understanding or concentration (28.0%) impairments were likely to be living in poverty. The proportion of people with mental health conditions living in poverty (37.6%) was double that for non-disabled people (16.6%).

Children living in single-parent households and children living with those who had never worked or were long-term unemployed were more likely to live in poverty AHC. However, between 2014 and 2017, 66% of children in poverty were living in working households AHC (Scottish Government, 2018b).[29]

4.3.2 Material deprivation

Material deprivation is a measure of poverty based on the extent to which people can afford items and activities that are believed to be necessary.[30] In 2015/16, 14.1% of adults experienced severe material deprivation; this was a decrease from 18.0% in 2010/11.[31] Women were more likely than men to experience material deprivation (15.5% compared with 12.6%).

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[28] Unless otherwise stated, the figures reported here on percentage living in households below 60% contemporary median income AHC (adults and children) by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Family Resources Survey/ Households Below Average Income from 2010/11, 2013/14 and 2015/16 (Tables LST.PVT.1A and LST. PVT.1C).

[29] The terms 'working' and 'in-work poverty' here refer to paid employment only. In-work poverty refers to people living in households where at least one member of the household is in either full- or part-time paid work, but the household income is below the relative poverty threshold.

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[30] An individual is defined as experiencing severe material deprivation if they cannot afford four of the following nine items: 1) holidays away from home at least one week per year not staying with relatives; 2) enough money to keep their home in a decent state of decoration; 3) household contents insurance; 4) savings of at least £10 per month; 5) ability to replace worn-out furniture; 6) ability to repair or replace broken electrical goods; 7) money to spend each week on themselves, not on their family; 8) ability to keep their accommodation sufficiently warm; 9) ability to keep up with bills and regular debt payments.

[31] Unless otherwise stated, the figures reported here on percentage experiencing severe material deprivation (adults) by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Family Resources Survey/ Households Below Average Income from 2010/11, 2013/14 and 2015/16 (Table LST.PVT.2).

Disabled people were three times more likely to experience material deprivation compared with non-disabled people (31.6% compared with 10.3%). Over two in five people with impairments related to: memory (41.8%); mental health (47.8%); and learning, understanding or concentration (43.0%) experienced material deprivation. Between 2010/11 and 2015/16, the percentage of disabled people who experienced material deprivation decreased by more than the percentage of non-disabled people.

Between 2014 and 2017, 12% of children were living in combined low income AHC and material deprivation (Scottish Government, 2018b).

4.3.4 Social security and the benefit system

In 2016 the UN Committees on Economic, Social and Cultural Rights, on the Rights of Persons with Disabilities and on the Rights of the Child recommended that the UK and devolved governments ensure social security benefit levels are sufficient to meet the basic cost of living and set up clear accountability mechanisms to eradicate child poverty. They also urged the UK Government to ensure that its social security reforms meet international minimum standards of human rights for retrogressive measures; that is, that they are temporary, necessary and proportionate; that they are not discriminatory and that marginalised or disadvantaged groups are not disproportionately affected; and that they uphold the core minimum level of people's rights.

Part 2 of Schedule 5 of the Scotland Act 1998 (as amended in 2016) devolves powers over some parts of the social security system, such as the power to create new benefits and to top up benefits in newly devolved areas, to the Scottish Parliament.[32] The Act provides power to top up some reserved benefits, and allows the Scottish Government to make changes to parts of the administration of Universal Credit, including splitting payments between individual members of a household.

The Social Security (Scotland) Act 2018 sets out seven principles that the Scottish social security system should be based on, including respect for the dignity of individuals. The Act includes a right to independent advocacy for individuals who require assistance due to an impairment, restrictions on private-sector involvement in medical assessments, and a duty on the Scottish Government to consider the effects of inflation with disability and employment-injury assistance.

Social Security Experience Panels[33] were established to ensure that the new social security system in Scotland is shaped by the people that use it. The Scottish Government is expected to continue its engagement with the Experience Panels, in particular regarding the set-up of the Scottish Social Security Agency and the development of the Social Security Charter.

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[32] The benefits include: attendance allowance, carer's allowance, disability living allowance, personal independence payments, industrial injuries benefit, severe disablement allowance, cold weather payments, funeral payment, sure start maternity grant and winter fuel payment.

[33] Over 2,400 people signed up to the Experience Panels. 1,144 panel members responded to the survey, which closed on 1 September 2017, and 274 panel members attended 35 focus groups held across Scotland.

4.3.5 Food and fuel poverty

Food insecurity, where people do not have reliable access to an adequate amount of affordable nutritious food, has been consistently linked to low income, including low-paid and insecure work, inadequate social security payments, and high costs of fuel and rent (Scottish Government, 2016b).

Evidence from Trussell Trust Foodbanks[34] showed that the number of people who accessed emergency food supplies continued to increase. Primary reasons for referral to a foodbank included: being on a low income, benefit delays and benefit changes. Between 2015/16 and 2017/18, the number of people who received emergency food supplies increased from 117,689 to 170,625. Over this timeframe, roughly a third of people referred were children (Trussell Trust, 2018).

In response to increasing levels of food poverty, the Scottish Government has dedicated funding to support the emergency food aid sector to help address food poverty and has made a commitment to work with key stakeholders to explore how the right to food could be incorporated into domestic legislation.

In 2017, the Scottish Government consulted on a new fuel poverty strategy, and will introduce the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill in summer 2018. The Bill will set a new target for fuel poverty, introduce a new definition of fuel poverty that is more focused on low-income households, and mandate the production of a new long-term fuel poverty strategy.

The number of people living in fuel poverty[35] decreased from 748,000 households (30.7%) in 2015 to 649,000 households (26.5%) in 2016. The number of rural households living in fuel poverty decreased from 50% in 2014 to 35% in 2015 and then remained at a similar level in 2016, at 37%. The reduction between 2014 and 2015 was partly due to the lower price of domestic liquid fuels (Scottish Government, 2017a).

4.3.6 Wealth and income distribution

Between 2010/12 and 2012/14, wealth inequality increased.[36] In 2012/14, the wealthiest 10% owned 9.4 times more household wealth than the bottom 40%, compared with 8.8 times more household wealth in 2010/12 (Scottish Government, 2017e).

In 2012/14, single-adult households – including adults who were lone parents, single working-age adults and single pensioners – accounted for 60% of low wealth households, but only made up 40% of the total Scottish population (Scottish Government, 2017e).

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[34] The Trussell Trust is the UK's largest foodbank provider. The numbers reported here are likely to underestimate the scale of the problem of food insecurity because a substantial proportion of charitable emergency food in Scotland comes from other providers and because many people who struggle to afford food will not access a food bank.

[35] In Scotland, if a household is required to spend more than 10% of its income to maintain a satisfactory heating regime, then they are living in fuel poverty. If a household is spending more than 20% of its income on heating, they are living in 'extreme' fuel poverty.

[36] Analysis is based on new data from 2012/14 – the fourth wave of the Wealth and Assets Survey, which is the main source of information on the economic wellbeing of households in Great Britain.

4.4 Social care

Scotland has an integrated approach to health and social care, with the aim of bringing together different health and social care programmes and increasing joined-up working.[37] The Public Bodies (Joint Working) (Scotland) Act 2014 came into force in April 2014, with integration to be fully implemented by April 2016. The intention of the legislation is that the integration of health and social care will shift focus towards preventative and community-based services and reduce unnecessary hospital admissions by making more efficient and effective use of limited resources (Scottish Parliament, 2016).

The Scottish Government introduced its Health and Social Care Delivery Plan in 2016. The plan sets out a programme of work to enhance health and social care services, including: an integrated health and social care system; a focus on the provision of high-quality and safe care, whatever the setting; a person-centred approach to decision making; and an aim to ensure people can return to their home or community as soon as possible, with minimal risk of re-admission.

In 2017/18, nearly 7 in 8 (86.9%) people who received formal social care reported that they were treated with compassion and understanding. This was a slight decline since 2013/14.

As of 31 March 2016, 28.7 per 1,000 adults aged 18 and over were receiving social care either in the community or in a care home.[38] This rate was much higher for those aged 75–84 (111.0 per 1,000) and higher still for those aged over 85 (392.1 per 1,000). A higher number of women (34.9 per 1,000) received social care compared with men (22.0 per 1,000), as did the number of White people (22.6 per 1,000) compared with people from ethnic minority groups (10.0 per 1,000). Between 2010 and 2016, the rate increased substantially for people aged over 85, and increased more for men than women.

[37] Integration schemes: local authority and Health Board area were introduced in the Public Bodies (Joint Working) (Scotland) Act 2014, which received Royal Assent on 1 April 2014.

[38] Unless otherwise stated, the figures reported here on rate per 1,000 in receipt of home care or Self-directed Support payments, or long-term residents in a care home by protected characteristic, are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Care Home Census and Social Care Services statistics from 2010, 2013 and 2016 (Table LST.SCR.2).

4.4.1 Impact of social care funding on the provision of services

In 2014/15, local authorities spent around £3.1 billion on social care. It is estimated that a further £510 million to £667 million (a 16% to 21% increase) will be required by 2020 if councils and Health and Social Care Partnerships (HSCPs) boards are to maintain the current level of service. Councils face significant challenges as a result of the reduction in overall council spending, demographic changes and the cost of implementing new legislation and policies. Many councils have taken a piecemeal approach to implementing change, severely restricting the potential impact of any positive policy decisions (Accounts Commission, 2016).

4.4.2 Quality of social care

The quality of social care support is monitored through the Health and Care Experience Survey, which asks a sample of people about their experiences of care, support and help with everyday living. The results show that experiences of social care, in particular coordination of health and care services, and support to live as independently as possible varied considerably.

Just under one in 10 people (9%) had received help or support for everyday living in the last 12 months. Of those who had received help or support, only 60% said this help was provided by formal services. This suggests that 40% of people receiving help or support received informal assistance or support (for example, from family and friends). Experiences of help, care and support services varied between HSCPs with between 71% and 94% of people rating the services as either excellent or good (Scottish Government, 2018c).

Analysis of free-text comments from the 2015/16 Health and Care Experience survey (Scottish Government, 2018d) highlighted the importance of person-centred support plans; clear and responsive communication between agencies and the people using services; continuity and quality of care to build trust, social connectedness, independence and support recovery; and support to enable unpaid carers to continue in their caring role.

Homecare, nursing and mental health service providers' ability to offer flexible services to their clients have been negatively affected by a shortage of skilled staff (Audit Scotland, 2016). Challenges in the recruitment and retention of social care staff due to low wages, antisocial hours and difficult working conditions have also been reported to negatively affect service provision (Audit Scotland, 2017). The Scottish Government published its National Health and Social Care Workforce Plan in 2017, which aims to address some of the concerns regarding recruitment and retention of specialised social care staff.

In 2017/18, 80% of those who received formal help and support rated the overall help, care and support as excellent or good; this represented a decrease from 83% in 2013/14. Users of care services were generally positive about some of the person-centred aspects of the care that they received; 82% reported that people took account of the things that mattered to them. Users of care and support were least positive about being aware of the help, care and support options available (73% were positive), and the coordination of services (74% positive). The number of people who said that they had a say in how their help, care or support was provided continued to decrease, from 83% in 2013/14 to 76% in 2017/18 (Scottish Government, 2018c).

4.4.3 Choice and control over support to enable independent living and independent advocacy

Self-directed Support (SDS) is Scotland's approach to social care. The Social Care (Self-directed Support) (Scotland) Act 2013 came into force on 1 April 2014 and places a duty on local authority social work departments to offer those eligible for social care a range of choices about how they receive their social care and support. SDS allows people, their carers and their families to make informed choices regarding what their support looks like and how it is delivered, making it possible to meet agreed personal outcomes. SDS aims to ensure that social care focuses on what matters to people and allows them, if they wish, to take control of what their social care looks like.

The National Implementation Plan 2016–18 aims to tackle key challenges and determine success in relation to the SDS strategy. The plan is set around four strategic outcomes: supported people have more choice and control; workers are confident and valued; commissioning is more flexible and responsive; and systems are more widely understood, flexible and less complex (Scottish Government, 2016c).

Despite an increase in policies that aim to give people more choices about social care, people were often not aware of their options. The introduction of SDS was supported by many disabled people and their organisations, but concerns had been raised regarding its implementation (Equality and Human Rights Commission, 2017). In 2017, Audit Scotland reported in its SDS progress report that there had been progress in implementing SDS, but there was no evidence that local authorities had made the transformation to fully implement the SDS strategy.

Audit Scotland reported that most people rated their social care services highly, yet not everyone was getting choice and control. The report highlighted that more reliable data are required on the number of people choosing each SDS option, and that data collection should have been implemented at an earlier stage to measure the progress and impact of the strategy and legislation (Audit Scotland, 2017).

The Mental Health (Scotland) Act 2015 amends the Mental Health (Care and Treatment) (Scotland) Act 2003 to introduce independent advocacy support by requiring that health boards and local authorities report to the MWC on how they have ensured access to services, and how they plan to do so in the future. The Mental Welfare Commission Scotland (MWC, 2018) found that the planning and provision of advocacy services across Scotland was variable and lacked clarity; there were significant gaps in service provision for children and young people with a mental health condition and/or learning disability; and services for adults were often prioritised for those who were receiving compulsory care or treatment.

There are ongoing calls for reform of the Adults with Incapacity (Scotland) Act 2000 relating to deprivation of liberty safeguards.[39] Concerns have been expressed that people deprived of their liberty are unable effectively to assert their rights (Mental Welfare Commission for Scotland, 2017a).

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[39] The act introduced a system for safeguarding the welfare and managing the finances and property of adults who lack capacity to act or make some or all decisions for themselves, due to a mental illness, learning disability, dementia or other condition (or inability to communicate due to a physical condition). The act allows other people – guardians or attorneys – to make decisions on behalf of these adults, subject to safeguards.

The Scottish Government is currently consulting on proposals for reform of the Adults with Incapacity (Scotland) Act 2000, which are intended to modernise the legislation, improve the extent to which it empowers disabled adults and simplify some of the more complex processes within the current law.

The MWC reported that the number of guardianship orders increased by 12.5%, from 10,735 in 2015/16 to 12,082 in 2016/17. The proportion of guardianship applications for people with a learning disability and dementia increased between 2014/15 and 2016/17. The MWC was particularly concerned at the seeking and granting of orders on an indefinite basis for young people with a learning disability (Mental Welfare Commission for Scotland, 2017b). The percentage of new orders granted on an indefinite basis continued to fall: from 30% in 2014/15 to 26% in 2015/16 and 20% in 2016/17. The MWC acknowledged that progress continued to be made in tackling the issue of the length of time guardianship orders were granted for, but expressed concern that, due to a lack of automatic, periodic judicial scrutiny of approved orders, individuals or another party were left with the responsibility to challenge the order – something which rarely happened (Mental Welfare Commission for Scotland, 2017b).

4.4.4 Dignity and respect in social care

The National Health and Social Care Standards set out what people should expect when using health, social care or social work services. They seek to provide better outcomes for everyone; to ensure that individuals are treated with respect and dignity, and that basic human rights are upheld. Following a review of the National Health and Social Care Standards, the Scottish Government shortened the standards, made each standard applicable to all areas of care and simplified the language to make them more accessible (Scottish Government, 2017f). The new standards came into force in April 2018.

Part 3 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 created the offence of ill-treatment and wilful neglect of those being cared for. There are separate offences for care workers, with a maximum prison sentence of five years, and care providers, who could be liable to a fine.

Between 2013/14 and 2017/18, there was a fall in the proportion of people receiving formal social care who reported being treated with compassion and understanding, from 88.5% in 2013/14 to 86.9% in 2017/18.[40] Women were less likely to report being treated with compassion and understanding compared with men in 2017/18 (86.1% compared with 88.1%).

In 2017/18, bisexual people were less likely to report that they were treated with compassion and understanding (76.2%) compared with heterosexual/straight people (87.2%).

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[40] Unless otherwise stated, the figures reported here on percentage of social care users treated with compassion and understanding by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review using data from the Health and Care Experience Survey from 2013/14 and 2017/18 (Table LST.SCR.1).

Those with a mental health condition and those with chronic pain lasting more than three months reported lower levels of compassion and understanding than people with no impairment (85.0% and 83.9% reporting being treated with compassion and understanding compared with 88.2%).

Leonard Cheshire reported that, in 2016/17, a third of Scottish councils commissioned fifteen-minute visits for the provision of personal care, a practice that can deprive people of dignified and compassionate care (Leonard Cheshire, 2018).

4.4.5 Impact of caring on carers

The Carers (Scotland) Act 2016 brought in measures designed to support carers' health and wellbeing by, for example, introducing carers' support plans, young carers' statements, local carers' strategies, and information and advice services. The Act came into force in April 2018.

Caring can have a significant impact on carers' health; in 2017, 64% of carers said their physical health had worsened, and 74% said they experienced a mental health condition as a result of their caring role (sample size 648). Roughly a quarter (23%) of carers said they received no practical support with caring; 32% received support and help from family and friends; and 29% received practical support from care workers coming in to their home to help. With tightening resources across the public sector and the impact this will have on the availability of support and care, 28% of carers were worried about the practical support they might receive in the future; a third of people had already seen changes in their care and support services. The majority of carers reported feeling that their contribution was not understood or valued by government (70%) and by health and care professionals (75%) (Carers Scotland, 2017).

Women were more likely than men to carry out regular unpaid caring responsibilities (62% compared with 38%)

In 2017/18, 16% of respondents to the Health and Social Care Survey (Scottish Government, 2018c) looked after or provided regular help or support to others. Women were more likely than men to carry out regular unpaid caring responsibilities (62% compared with 38%). Most carers (40%) looked after a parent and 27% cared for a partner or spouse. When asked about specific aspects of caring, people were less positive than in previous years: in 2017/18, 37% of carers said they felt supported to continue caring, compared with 40% in 2015/16 and 43% in 2013/14. Carers were most positive about having a good balance between caring and other activities, with almost two-thirds (65%) saying that they had this balance.

Putting a wash on in a National Autistic Society support home.

The quality of homes can be an issue, with long waits for home adaptations for disabled people

4.5 Conclusion

While there have been some small improvements across the living standards domain, many of the indicators suggest that people are still experiencing difficulties in meeting their basic needs.

The number of homeless applications to local authorities decreased, but the number of adults and children being placed in temporary accommodation increased. Asylum seekers were at risk of destitution throughout the asylum process. The quality of homes can be an issue, with people living in overcrowded accommodation, long waits for home adaptations for disabled people, a shortage of accessible and wheelchair accessible housing, and little improvement in site provision for Gypsy/Travellers.

There has been significant activity and focus from the Scottish Government on poverty, and a desire to hear directly from people who experience poverty. However, poverty has increased, with greater numbers of adults and children living in poverty, more people using foodbanks and a widening of wealth inequality. People from ethnic minority groups and disabled people were those most likely to live in poverty.

It is not clear whether the integrated approach to health and social care is delivering improvements to social care. Individual choice and control in social care is under pressure from increasing budget constraints, shortages in skilled staff and problems in the implementation of some policies (such as SDS). Many people rely on help from informal carers, most of whom are women. Recognising the contribution informal carers make, the Scottish Government has implemented new measures to support carers' health and wellbeing (which can be adversely affected by caring), but the impact remains to be seen.

5. Health

The right to the highest attainable standard of physical and mental health should be respected, protected and fulfilled for everyone. Upholding this right includes ensuring timely access to high-quality healthcare services and information about health without discrimination.

Key findings

Access to healthcare services

People's access to and experience of healthcare services varied:

– The number of people waiting more than 18 weeks from the point of referral for health services increased.

– Some lesbian, gay, bisexual and transgender (LGBT) people experienced homophobic, biphobic and transphobic language and behaviour in health and social care settings.

– Some transgender people, people who experienced homelessness and asylum-seeking women reported that they experienced discrimination in accessing healthcare services.

– The prison admissions process was found to be robust in helping to identify healthcare needs; however, there was variation in mental healthcare available to prisoners and inconsistencies in older prisoners' experiences of personal and medical care.

Health outcomes

People's health outcomes varied considerably:

– The majority of adults and children reported good or very good health, yet older people and people with mental health conditions or physical disabilities were less likely to report having good or very good health.

– Women had a higher life expectancy and healthy life expectancy compared with men.

– People living in the most deprived areas had lower life expectancy compared with those living in the least deprived areas.

– The overall suicide rate declined. The suicide rate was highest for those aged 35–44 and 45–54, and men were much more likely to die by suicide than women.

– The mortality rate from diseases of the circulatory system declined, but the rate was much higher for men compared with that for women.

Mental health

The number of adults and children starting treatment for mental health conditions increased, yet experiences of mental health services and settings varied:

– The number of adults who reported poor mental health has not changed since 2010. Women, disabled people, single people and people who had previously been in a long-term relationship were more likely to report poorer mental health and wellbeing.

– The number of referrals to Child and Adolescent Mental Health Services (CAMHS) increased, yet one in five referrals were rejected.

– The majority of individuals who died by suicide had been prescribed at least one mental health drug in the year prior to their death.

– The number of Compulsory Treatment Orders (CTOs) increased, and their use was higher for males compared with females. The number of CTOs for young people aged under 18 decreased.

– The number of place of safety notifications increased, as did the proportion of incidents where the place of safety was a police station.

5.1 Introduction

The right to the highest attainable standard of physical and mental health should be respected, protected and fulfilled for everyone.

Upholding this right includes ensuring timely access to high-quality healthcare services and information about health without discrimination. Life expectancy should not be dependent on a person's socio-economic status or where they live, and efforts should be increased to prevent premature mortality through avoidable disease, neglect or suicide. This chapter discusses access to healthcare services, health outcomes and mental health.

5.2 Access to healthcare services

Health and social care integration is a priority for the Scottish Government. A key reason for integration is the projected increase in demand for health and social care as a result of an ageing population. Integration of health and social care aims to reduce unnecessary admissions to hospital and delayed discharges from hospital, and to make more efficient and effective use of limited resources. High-profile policies have either recently been, or are currently being, designed to complement and support the process of integration. Since the policies in this area are still being developed, it is difficult to fully assess progress in access to healthcare services.

By the end of March 2016, all Health and Social Care Partnerships (HSCPs) had published their first Strategic Commissioning Plans, underpinned by a core suite of indicators to be used to report progress and identify areas for improvement (Scottish Government, 2015). However, most of the indicators can only be disaggregated by sex and age, limiting opportunities to identify issues for other protected characteristics. The Scottish Parliament Health and Sport Committee reported that a recurring issue raised during its inquiry into HSCPs' engagement with stakeholders was the lack of public awareness about the establishment of HSCPs. It also reported that stakeholders were not embedded in decision-making processes across all HSCPs and at all stages in determining the approach taken to delivering local services, and that this must be improved. This variable, but improving, approach to engagement may also undermine how effective the plans are in ensuring access to healthcare for protected groups (Scottish Parliament, 2018).

The Scottish Government has introduced a number of policies since 2015 to tackle issues regarding access to healthcare services:

– The Health and Social Care Delivery Plan and NHS Health Scotland's A Fairer Healthier Scotland 2017–2022 Strategic Framework aim to tackle issues regarding making better use of digital technology and data so that care can become more person-centred.

People waiting more than 18 weeks for health services
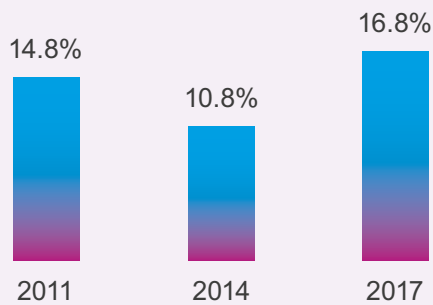
14.8%   10.8%   16.8%

2011   2014   2017

The Scottish Access Collaborative was created in October 2017 to sustainably improve waiting times for non-emergency procedures

– The Clinical Strategy for Scotland published in 2016 set out a framework for the development of health services over the ensuing 10 to 15 years. An important component of the strategy is the acknowledgement of a culture change among clinicians should put the person receiving health and care at the centre of decision making and encourages a personalised approach to their care. The approach should also guard against the likelihood of diagnostic overshadowing – where physical problems are under-treated or wrongly attributed to mental health conditions.

– The Scottish Access Collaborative was created in October 2017 to sustainably improve waiting times for non-emergency procedures.

– A Fairer Scotland for Disabled People Delivery Plan was introduced in 2018 to ensure the delivery of high-quality health and social care, and third-sector services. This is to be achieved through services working together to remove the barriers faced by disabled people of all ages; increased opportunities for disabled people to be fully involved in the design and delivery of services; and support for independent living for disabled people of all ages, with increased say over how that support will be managed and provided.

– The New Scots Refugee Integration Strategy 2018–2022 aims to ensure that refugees and asylum seekers are able to look after and improve their own health and wellbeing; have positive experiences when using health and social care services; have their dignity respected; and have services that are more responsive to their needs.

– The Race Equality Action Plan, launched in 2017, acknowledged that the health of people from ethnic minority groups is in some ways better than that of the white population, but this is not universal. For some conditions, people from ethnic minority groups are disproportionately affected, and low uptake of screening programmes exists in some communities.

– The Scottish Government are in the process of developing a 10-year Child and Adolescent Health and Wellbeing Action Plan. The plan will take a cross-policy, rights-based approach to improving the physical, mental and emotional health and wellbeing of children and young people. The plan will put the child at the centre, taking a developmental rather than age-based approach.

5.2.1 Waiting and referral times

The 18 weeks referral to treatment (RTT) standard is set by the Scottish Government. The standard focuses on the entire patient journey from initial referral to the start of treatment including, for the first time, treatment undertaken in an outpatient setting, and promotes a holistic approach to providing clinically effective, safe and efficient care in a timely manner. The Scottish Government has determined that the RTT standard should be delivered for at least 90% of patients.

The number of people waiting for health services who have waited more than 18 weeks after referral increased. In March 2017, 16.8% of people who received treatment had waited for more than 18 weeks since referral. This rate was higher than in both 2011 (14.8%) and 2014 (10.8%).

5.2.2 Access issues for 'at risk' groups

LGBT people

One in five (21%) LGBT respondents (sample size 1,052) in 2015 said they had personally experienced discrimination or less good treatment in healthcare services. The issues respondents described included: feeling looked down upon when discussing sexual health with their GP; not being able to donate blood; and health professionals not being adequately trained to understand the issues affecting LGBT people, in particular around mental health needs (Equality Network, 2015). In 2017, the Scottish National Blood Transfusion Service accepted recommended changes to the rules on blood donation, meaning that the rules on deferment due to sexual behaviours are consistent for all groups.

In 2015, 29% of health and social care staff heard colleagues make negative remarks about LGBT people, or use discriminatory language (sample size 421); while 61% of health and social care practitioners with direct responsibility for patient care said they did not consider sexual orientation to be relevant to an individual's health needs (Stonewall Scotland, 2015).

In 2017, 80% of LGB young people and 70% of transgender young people were satisfied with the NHS services they had used, with some variation across services (sample size 684). Yet only 27% of LGB young people and 15% of transgender young people felt supported by all NHS services they had used. The majority of LGBT young people (76%) felt supported and respected by their GP; the same pattern holds across sexual orientation and gender identities[42] (LGBT Youth Scotland, 2018).

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[41] Unless otherwise stated, the figures reported here on the percentage of people waiting for health services who have waited for more than 18 weeks by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review using data from Information Services Division from March 2011, March 2014 and March 2017 (Table HLT.ACH.1).

[42] LGBT Youth Scotland define 'gender identity' as: 'how we relate to and feel about ourselves: like a woman, man, neither, both.'

From 2014 to 2017, the number of referrals to the three main Scottish Gender Identity Clinics (GICs) (Sandyford, Chalmers and Highland) increased every year for both adults and young people. However, the rate of increase appeared to be slowing for both groups: for adults, the increase of 60.7% in 2014/15 fell to 24.7% in 2015/2016 and 23.2% in 2016/2017. Among children, the increase of 103.2% in 2014/15 fell to 43.0% in 2015/2016 and 21.2% in 2016/2017. Between 2014 and 2017, the mean waiting time for adult GICs fell by 69.2%, from 370.8 days to 114.3 days. The average age at referral decreased between 2014 and 2017: from 29.9 years to 25.8 years for adults, and from 15.0 years to 13.8 years for young people (Scottish Public Health Network, 2017).

In 2017, 84% of LGBT young people who had used GIC services[43] felt supported and respected, although rates were lower for non-binary[44] young people (65%). Some LGBT young people perceived GICs as only supporting those with binary identities of male and female, resulting in some young people misidentifying themselves as having a binary gender to access support (LGBT Youth Scotland, 2018).

Gypsy/Travellers and Roma people

In 2017, it was reported by NHS Health Scotland that Gypsy/Travellers had low rates of outpatient appointments, hospital admissions, A&E attendances, cancer registrations and maternity hospital admissions. It was suggested that this may be due to the under-recording of Gypsy/Travellers compared with the proportions reported in the census, and issues with accessing services (NHS National Services Scotland, 2017).

In 2015, the MWC visited hospital learning disability units (excluding forensic units) and examined the care and treatment of just over half of inpatients

People with learning disabilities

In mental health care, people with a learning disability or autism experienced delays in accessing appropriate mental health community services and were likely to have longer stays in hospital than other mental health patients (Scottish Government, 2016a).

In 2015, the MWC visited hospital learning disability units (excluding forensic units) and examined the care and treatment of just over half of inpatients. At the time of the visit, there were 180 inpatients in total and, of these, 35% (58) were delayed discharges. The MWC regard this as individuals being kept in hospital when hospital is recognised as no longer the best place for them to be living. Reasons for delayed discharge included: a lack of suitable accommodation and support for the complex needs of many of the patients, lack of coordination of funding from the local authority with the availability of appropriate accommodation, the impact of constrained local authority budgets, and delays in adaptations to properties (Mental Welfare Commission for Scotland, 2016a).

[43] Report does not provide sample size of those who had specifically used GIC services, but the overall sample size is 684 (LGBT Youth Scotland, 2018).

[44] Defined in the report as a person who does not identify exclusively as a boy or as a girl.

People who experience homelessness

Findings from a small study (sample size 34) conducted with people who had experienced homelessness found that nearly every participant felt discriminated against when accessing health services, feeling that they were unable to participate in decision making regarding their health and personal circumstances due to lack of information and attitudes of medical staff (Abdulkadir, 2016). Barriers for people who had experienced homelessness included difficulties registering with a GP, and a lack of information on where to go for treatment (Mental Welfare Commission for Scotland, 2017a; Abdulkadir, 2016).

Migrants, refugees and asylum seekers

There is little routine data that can be used to assess the health needs of migrants directly. Migrants were generally found to be low-level users of health services, possibly due to a lack of knowledge around how the healthcare system works in Scotland (Scottish Public Health Network, 2016).

Evidence to the Scottish Parliament Equalities and Human Rights Committee's inquiry into asylum and destitution described how the asylum process can exacerbate mental health difficulties, and how access to quality health care and treatment for patients who do not have regular accommodation was problematic (Scottish Parliament, 2017a).

Destitution was found to make accessing healthcare and the treatment of ongoing conditions more difficult. Women who were asylum seekers, or had insecure immigration status, were at particular risk of poor health during pregnancy, birth and the post-natal period. Pregnant women going through the asylum process faced particular difficulties, from lack of adequate financial support through to lack of interpreters during and after childbirth (British Red Cross, 2016). Pregnant women were reluctant to seek maternity care because of fears about immigration status, shame felt about the pregnancy or other reasons associated with previously having lived in conflict and war zones, including experiencing rape, trafficking for sexual exploitation or female genital mutilation (Scottish Parliament, 2017a).

Prisoners

Prisons have a unique opportunity to tackle health inequalities due to the poor health of many people in prisons. Between January and March 2017, the Scottish Parliament's Health and Sport Committee carried out an inquiry into healthcare in prisons. The prison admissions process was found to be quite robust in helping to identify healthcare needs, including those relating to mental health and substance misuse. Prisoners have access to national screening and there are opportunities to test for blood-borne viruses such as HIV (Scottish Parliament, 2017b).

Evidence to the Committee also highlighted that the number of prisoners with mental health needs was unknown, and there was considerable variation in mental healthcare available to prisoners across prisons and health boards. It was also noted that the 18 weeks referral to treatment time for accessing psychological therapies does not apply to prisoners (Scottish Parliament, 2017b).

Non-disabled people were more likely to report having good or very good health compared with disabled people in 2016

Prisoners over the age of 60 generally reported favourably on their dealings with healthcare professionals. However, there were large inconsistencies in experiences of medical and personal care. Her Majesty's Inspectorate of Prisons for Scotland (HMIPS) also reported a wide variation in the levels of basic human decency and humane treatment of older prisoners. A key challenge over the next 15 years will be caring for older prisoners with more complex health and care needs with challenges for specialist areas, including dementia and end-of-life care (HMIPS, 2017).

5.3 Health outcomes

Most Scottish Government policy relating to inequality in health outcomes is largely framed through socio-economic inequality. Through the introduction of the socio-economic duty, known as the Fairer Scotland Duty, NHS boards have to pay due regard to how they can reduce poverty and inequality when they design and implement strategies. The duty came into effect in April 2018.

The Scottish Government, with the support of the Convention of Scottish Local Authorities (COSLA), commissioned Sir Harry Burns to undertake a review of targets and indicators in health and social care in September 2016 following a Programme for Government commitment to ensure that the Scottish Government's approach to targets is outcomes-based. The concluding report, published on 15 November 2017, identified key principles of how to use targets and indicators to improve outcomes for people.

The process of health and social care integration is monitored by a suite of core indicators, which each Health and Social Care Partnership (HSCP) has to report against in its annual performance report. These allow outcomes to be tracked over time against indicators such as 'premature mortality rate' and 'percentage of adults receiving any care or support who rate it as excellent or good'. These indicators feed into the National Health and Wellbeing Outcomes, which report on the gap in outcomes between the most and least deprived areas of Scotland across a variety of indicators.

5.3.1 People's current health status

The majority (73.0%) of adults reported good or very good health in 2016; this proportion remained relatively unchanged since 2010.[45] The number of people who reported good or very good health decreased with age, from 88.4% for those aged 16–24 to 52.5% for those aged over 75.

Non-disabled people were more likely to report having good or very good health compared with disabled people in 2016 (90.0% compared with 38.0%).

The majority (95.5%) of children reported their health as good or very good in 2016. Disabled children were less likely to report good or very good health compared with non-disabled children (63.1% compared with 97.1%).

[45] Unless otherwise stated, the figures reported here on percentage who report good or very good current health status (adults and children) by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Health Survey from 2010, 2013 and 2016 (adults) and 2010, 2013 and 2015 (children) (Tables HLT.OCM.1A and HLT.OCM.1C).

[46] Unless otherwise stated, the figures reported here on suicide rate (per 100,000) by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review using data from the National Records of Scotland for 2011, 2013 and 2016 (Table HLT.OCM.2).

5.3.2 Suicide

The Scottish Government has finished consulting on the potential themes and draft actions for inclusion in the Suicide Prevention Action Plan 2018. These included: improving the use of evidence, data and guidance on suicide prevention, modernising the content and accessibility of training, maximising the impact of national and local suicide prevention activity, and developing the use of social media and online resources. A final version of the plan is to be published in summer 2018.

In 2016, the overall suicide rate was 16.0 per 100,000 for people aged 15 or over.[46] Between 2011 and 2016, the suicide rate declined overall by 4.0 per 100,000. The suicide rate per 100,000 population was highest for those aged 35–44 and 45–54, (22.2 and 22.3 per 100,000), in which groups the rate was over double the rate for those aged 15–24 in 2016 (10.9 per 100,000). Between 2011 and 2016, the largest falls in the suicide rate per 100,000 was for those aged 25–34 (a fall of 9.6) and those aged 35–44 (a fall of 10.6).

Men were over two and a half times more likely to die by suicide than women (23.6 compared with 8.9 per 100,000). Between 2011 and 2016, the suicide rate declined for women by 1.9 per 100,000, and for men by 6.3 per 100,000, with most of the decline in the rate for men occurring between 2013 and 2016.

Suicide rate per 100,000 people aged 15+ (2016)

Overall	16.0
Men	23.6
Women	8.9
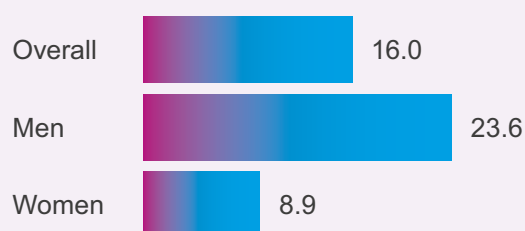
5.3.3 Attempts of suicide or self-harm by LGBT people

Results from a survey (sample size 402) conducted with LGBT young people aged 11–19 in 2016/17 (Stonewall Scotland, 2017) found that:

– 96% of transgender young people had deliberately harmed themselves at some point, and 43% had at some point attempted to take their own life.

– 58% of lesbian, gay and bisexual young people who were not transgender had self-harmed, and 24% had attempted to take their own life.

5.3.4 Infant mortality

Between 2010 and 2016, the overall infant mortality rate decreased; however, rates fluctuated over the same period. In 2010, the infant mortality rate was 3.7 per 1,000 live births, reaching a peak of 4.1 in 2011 and reducing to 3.2 in 2015 and 3.3 per 1,000 live births in 2016 (National Records of Scotland, 2017a).

An independent national review into targets and indicators for health and social care conducted in 2017 recommended that the stillbirth rate and infant mortality rate should be included in the annual reporting of children's wellbeing (Scottish Government, 2017a).

Between 2010 and 2016, the overall infant mortality rate decreased; however, rates fluctuated over the same period

5.3.5 Life expectancy

A baby boy born between 2014 and 2016 could expect to live for 77.1 years, while a baby girl could expect to live for 81.2 years. Over the three decades prior to the time of writing, male life expectancy increased by 8 years, from 69.1 years between 1980 and 1982 to 77.1 years between 2014 and 2016. For women, life expectancy increased by 5.8 years, from 75.3 years between 1980 and 1982 to 81.2 years between 2014 and 2016. In years recent to this report, however, the increase in life expectancy has slowed, remaining virtually unchanged for both men and women since 2012–2014 (National Records of Scotland, 2017b).

Females born between 2014 and 2016 in the most deprived areas could expect to live for 76.7 years, compared with 84.5 years for females born in the least deprived areas.[47] Males born in the most deprived areas could expect to live for 71.3 years, compared with 81.9 years for males born in the least deprived areas. The difference in life expectancy between the most and least deprived areas was greater for males than for females (10.5 years compared with 7.8 years) (National Records of Scotland, 2017b).

Between 2014 and 2016, women had a higher healthy life expectancy compared with men. In 2014, women had a healthy life expectancy of 62.6 years, compared with 60.3 years for men. In 2015, the level decreased slightly to 62.3 years for women and 59.0 years for men. In 2016, women had a healthy life expectancy of 62.7 years compared with 59.3 years for men (Scottish Public Health Observatory, no date).

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[47] The Scottish Index of Multiple Deprivation (SIMD) ranks data zones using multiple measures of deprivation from most deprived to least deprived across Scotland.

5.3.6 Mortality rate from diseases of the circulatory system

In 2016, the overall mortality rate from diseases of the circulatory system (such as heart disease) was 332.9 per 100,000 for people aged 15 and over.[48] Between 2010 and 2016, the rate declined by 44.9 per 100,000.

Women had a much lower mortality rate from diseases of the circulatory system compared with men: 275.2 per 100,000 women compared with 403.6 per 100,000 men. Between 2010 and 2016, the mortality rate declined for both men and women, with a steeper decline in the rate for men.

Between 2010 and 2016, the mortality rate declined for both men and women

5.4 Mental health

The Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015 came into force in November 2015. The regulations were the result of a court ruling in 2012 *(RM v Scottish Ministers)* in which the Supreme Court found that the Scottish Government was obliged to enact regulations under the Mental Health (Care and Treatment) (Scotland) Act 2003 and thereby provide a mechanism to allow a person to challenge the level of security under which they were detained.

The Mental Health (Scotland) Act 2015 introduced a number of amendments to the Mental Health (Care and Treatment) (Scotland) Act 2003 regarding issues such as compulsory treatment orders (CTOs), the registration of advance statements in which a person can set out how they wish and do not wish to be treated for mental disorder, the requirement for local authorities and hospitals to tell the MWC how they are meeting their duty to provide independent advocacy to those with a mental disorder, and how local authorities and hospitals ensure access to that service.

Section 37 of the Mental Health (Scotland) Act 2015 required Scottish Ministers, within three years of that section coming into force, to undertake and publish a review of the arrangements for investigating the death of people receiving mental health care or treatment in hospital, or subject to a CTO in the community. This review will be published by the end of December 2018.

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[48] Unless otherwise stated, the figures reported here on mortality rate from diseases of the circulatory system by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review using data from the National Records of Scotland from 2010, 2013 and 2016 (Table HLT.OCM.3).

The Scottish Government have committed to achieving parity between mental and physical health over the 10 years of the Mental Health Strategy 2017–2027, as outlined in its 2017 'Equality Outcomes and Mainstreaming Report'. The strategy should also be viewed in the context of the Scottish Government's 2020 Vision for Health and Social Care Delivery. Mental health funding is not ring-fenced; NHS Boards and local authorities in partnership with HSCPs draw on the overall funding they receive from the Scottish Government for health and social care and make local decisions on the funding of mental health services on the basis of locally assessed needs, and in line with priorities set by the Scottish Government. All HSCPs are listed authorities for the purpose of the Public Sector Equality Duty (PSED) Scotland Specific Duties.

The Scottish Government's Mental Health Strategy 2017–2027 takes a preventative, early intervention and human rights-based approach to mental health. The strategy's actions are grouped under five headings: prevention and early intervention; access to treatment and joined-up, accessible services; the physical wellbeing of people with mental health problems; rights, information use and planning; and data and measurement.

The Scottish Government's Mental Health Strategy 2017–2027 takes a preventative, early intervention and human rights-based approach to mental health

5.4.1 Percentage with poor mental health and wellbeing

In 2016, 15.4% of adults reported poor mental health and wellbeing, a rate that had not changed between 2010 and 2016.[49] Women were more likely to report poor mental health and wellbeing compared with men (17.3% compared with 13.2%). Disabled people were three times more likely to report poor mental health and wellbeing compared with non-disabled people (28.4% compared with 9.4%). Married people were less likely to report poor mental health compared with single people (10% compared with 18.9%), or compared with those who had previously been in a long-term relationship (24.1%).

In 2016, 10.4% of children aged 13–15 living in private households reported they had poor mental health and wellbeing.

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[49] Unless otherwise stated, the figures reported here on the percentage of people with poor mental health and wellbeing (adults and children) by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Health Survey from 2010, 2013 and 2016 (Tables HLT.MTL.1A and HLT.MTL.1C).

5.4.2 Percentage starting or receiving treatment for mental health conditions

In 2016/17, 10.7 out of every 1,000 adults over 18 were starting or receiving treatment for mental health conditions.[50] This rate had increased from 7.8 per 1,000 adults in 2013/14. The number of children and young people under 18 who were starting or receiving treatment for mental health conditions also increased, from 13.8 per 1,000 children in 2013/14 to 17.0 per 1,000 children in 2016/17.

The Scottish Association for Mental Health (SAMH) expressed concern about the lack of equalities data collected on people who access psychological therapies. SAMH found that eight health boards and NHS 24 could provide full or partial monitoring data in relation to age and gender, but little data was collected on other protected characteristics (Scottish Association for Mental Health, 2016).

Looked after children and care leavers were likely to experience poorer mental health compared with children who had not been in care, and were less likely to engage with health services (Scottish Government, 2017b).

Almost half of those who had been referred for a psychological therapy in 2015 found the length of time they had to wait either very or quite difficult (sample size 494). The longer people waited for treatment, the more likely it was that their mental health deteriorated while waiting – 30% of those waiting one or two weeks said their mental health got worse while they waited, compared with 62% of those waiting three to six months, 73% of those waiting six months and 100% of those waiting over a year (Scottish Association for Mental Health, 2016).

> The MWC (2016a) reported that several young people from Scotland are transferred to specialist adolescent units in England each year due to a national lack of provision for particular mental health needs of young people

In response to large numbers of rejected referrals to Child and Adolescent Mental Health Services (CAMHS), the Scottish Government announced in 2017 that they would commission an audit of CAMHS rejected referrals. Although the overall number of referrals to CAMHS increased, the rejected referral rate was broadly stable at one in five since December 2016 (Scottish Government, 2017c). Between January 2016 and September 2017, 12,171 (21.3%) of referrals to CAMHS were rejected (Information Services Division, 2017a). The Scottish Government is due to publish its audit of rejected referrals to CAMHS services in summer 2018.

The MWC (2016a) reported that several young people from Scotland are transferred to specialist adolescent units in England each year due to a national lack of provision for particular mental health needs of young people. For example, there is no inpatient provision in Scotland at present for young offenders who have significant mental health conditions, and there is no inpatient provision for young people with a learning disability.

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[50] Unless otherwise stated, the figures reported here on the proportion of people starting or receiving treatment for mental health conditions (adults and children) are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the ISD Scotland Psychological Therapies Waiting Times for 2013/14 and 2016/17 (Tables HLT.MTL.2A and HTL.MTL.2C).

A review[51] carried out between 2010 and 2014 of the need for inpatient mental health services for children and young people with learning disability and/or autism found that children and young people faced lengthy waits for placement in an appropriate ward. Children and young people with more than mild learning disability admitted to wards in Scotland faced significant difficulties, including lengthy admissions, sometimes in highly restrictive environments, with multiple transfers and transitions. Patients from Scotland who were admitted to specialist wards in England generally received comprehensive, age-appropriate treatment in an appropriate environment where they achieved significant improvements in mental health, sleep and wellbeing. However, difficulties arose from admissions related to distance from home; greater distances caused additional stress to children and young people and their families, complicated discharge planning, and involved complex cross-border mental health law issues (Scottish Government, 2017d).

In its Mental Health Strategy 2017–2027, the Scottish Government has committed to undertake further work to scope the required level of highly specialist inpatient services for young people and to act on its findings.

In 2014, there were an estimated 229 deaths by suicide of patients who had been in contact with mental health services in the 12 months prior to death

5.4.3 Suicides of mental health service users

Between 2009 and 2015, there were 5,119 registered 'probable suicide' deaths by those aged five and over. In the 30 days before their death, 5% of these 5,119 had been discharged from a mental health hospital, and 7% had a mental health outpatient appointment. In the five years prior to their death, 21% had been discharged from a mental health speciality (Information Services Division, 2017b).

Between 2009 and 2015, the majority (59%) of individuals who died by suicide had been prescribed at least one mental health drug in the year prior to their death. Women were more likely than men in all age groups to be prescribed a mental health drug apart from the under 25 age group, which had a lower likelihood for both men and women (Information Services Division, 2017b).

In 2014, there were an estimated 229 deaths by suicide of patients who had been in contact with mental health services in the 12 months prior to death. This was a decrease from 285 in 2011. On average, there were five deaths by suicide per year among detained inpatients (National Confidential Inquiry, 2016).

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[51] Survey gathered comprehensive information over a five-year period (2010–2014 inclusive): 153 questionnaires were returned by 43 clinicians from 13 out of 14 health boards, relating to 84 individual patients who were admitted to hospital on one or more occasion. Interviews with 37 of 43 clinicians took place between March and May 2015.

5.4.4 Use of restraint and medication

The MWC expressed concern in relation to chemical restraint. Its review of units providing longer-term care for people with dementia found high levels of use of antipsychotics, anxiolytics and sedative antidepressants in the management of stressed and distressed behaviours. They were often used in combination and without evidence of a regular review of the necessity for these medications (Mental Welfare Commission for Scotland, 2014).

MWC visits to patients with dementia in community hospitals in 2017 found that restraint was used in 27% (77) of cases – mostly the use of bed rails. In a third of cases of restraint (34%) there was little or no evidence of regular reviews. There is no systematic collection of data on the use of physical restraint in care settings (Mental Welfare Commission for Scotland, 2018a).

Visits to all medium and low secure forensic wards in 2016 found that 8% of people (14) had been restrained in the last month. Often these patients experienced more than one incident of restraint and incidents of repeated restraint ranged from one to seven. Of the 14 people restrained, eight had a diagnosis that included a disability. In the three months prior to the visit, five units indicated that they had had 20 or more incidents involving restraint in that period. There was little written evidence of debriefing or support for patients after incidents of restraint. The MWC that patients should be given the opportunity to discuss incidents of restraint openly and honestly with a member of staff and explore possible alternative strategies (Mental Welfare Commission for Scotland, 2017b).

5.4.5 Compulsory Treatment Orders (CTOs)

A CTO allows for a person to be treated for their mental illness, setting out a number of conditions that need to be complied with, and which will depend on whether the person has to stay in hospital or in the community. A CTO can last for up to six months, and can be extended for a further six months and then for periods of 12 months at a time.

In 2015/16, there were 1,366 new CTOs, 8% higher than the previous year.[52] The use of CTOs was higher for males compared with females (52% compared with 48%). The number of CTOs for young people aged under 18 decreased from 63 in 2014/15 to 46 in 2015/16 and remained much higher for females compared with males (36 compared with 10). The number of CTOs for people aged 65–84 increased by 7% in 2014/15 to 373 in 2015/16, and decreased by 8% to 66 for those aged over 85 in the same period (Mental Welfare Commission for Scotland, 2016c).

For evidence on compulsory treatment under criminal proceedings see Chapter 7, 'Justice and personal security'.

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[52] Data used here for CTOs are from the Mental Health Act Monitoring report for 2015–16, and not from the 2016–17 report, as the most recent report covers hospital CTOs only and does not include community CTOs, and so does not allow trend analysis over time.

Rates of Compulsory Treatment Orders (CTOs) from 2014/15 to 2015/16

8%

Increase in CTOs in 2015/16 compared with 2014/2015

2015/16

Male   52%

Female   48%

Young people aged under 18 (2015/16)

Male   21.7%

Female   78.3%
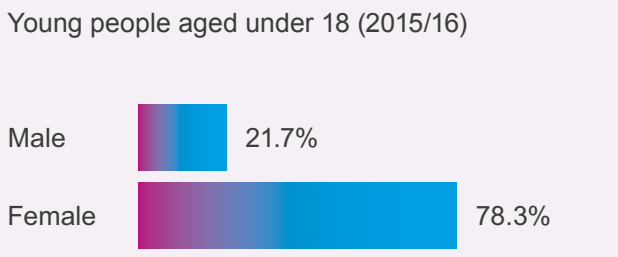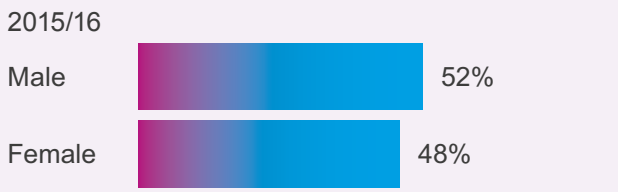
5.4.6 Immigration detention and access to mental health

An unannounced visit to Dungavel Immigration Removal Centre in 2015 resulted in the report that mental health provision was excellent, as detainees had prompt access to a variety of timely and appropriate mental health support. Detainees who were referred through the open referral system were assessed within 72 hours and those with urgent needs were assessed within 24 hours (HM Chief Inspector of Prisons, 2015).

5.4.7 The use of Mental Health (Care and Treatment) (Scotland) Act 2003 Part 19 Sections 292 to 300

Place of safety orders can be used by the police to detain for up to 24 hours someone they find in a public space, if they believe that individual may have a mental health condition and may be in need of immediate care and treatment. The police should notify the MWC every time a person is held under these powers. Between 2015/16 and 2016/17, place of safety notifications received by the MWC increased by 37% from 830 to 1,133, representing an increase of 90% since 2011/12. The MWC believes that the increase reflects better reporting by the police. The proportion of incidents where the place of safety was a police station increased from 2% (13) in 2015/16 to 5% (58) in 2016/17. There were 17 occasions when the second place of safety was a police station, usually due to the discovery of a weapon or breach of the peace (Mental Welfare Commission for Scotland, 2018b).

5.4.8 Discrimination in access to mental health care

The MWC identified that mental health services need to respond better to people who do not fit current service approaches. Their visits and investigations repeatedly showed worse services and poorer outcomes for people with complex needs or needs considered out of the ordinary, including people with autistic spectrum disorders, acquired brain injury, a personality disorder label, a dual diagnosis (for example, a learning disability plus a mental health condition), or women and young people who need secure care.

In consultation responses to the Scottish Government's Mental Health Strategy in 2015/16, Stonewall Scotland, The Equality Network and Scottish Transgender Alliance highlighted that LGBT people felt discriminated against when accessing mental health services, and that the experience of these groups in accessing other health services can have a detrimental effect on their mental health (Scottish Government, 2016b).

Demand for health services is increasing, driving a focus on preventative approaches and more effective and efficient use of services

5.5 Conclusion

While there have been improvements across the health domain, some groups consistently experienced poorer outcomes, while a lack of data made it difficult to get an accurate picture for others. Demand for health services is increasing, driving a focus on preventative approaches and more effective and efficient use of services. At the same time, there is a desire to pursue a person-centred approach and greater involvement of service users in the design and delivery of services. The evidence suggests that this desire is not being realised for everyone. Increased waiting times for mental health treatment; discrimination towards LGBT people accessing treatment; longer stays in hospital and delayed discharge for people with learning disabilities; and difficulties accessing treatment for Gypsy/Travellers, refugees, asylum seekers, prisoners and homeless people all suggest that the health service is not serving everyone equally.

Indicators that measure health outcomes generally show a positive and improving picture. However, a lack of equalities data that goes beyond age and sex means that we do not fully understand the outcomes for all people with, or who share, protected characteristics, including outcomes for 'at risk' groups and where characteristics intersect.

There are concerning trends in mental health, with an increase in the number of adults and children starting or receiving treatment for mental health conditions, and an increased use of CTOs and place of safety notifications, including to a police station. Despite the increasing number of children and young people starting or receiving treatment for mental health conditions, issues persist with a lack of specialist inpatient mental health services for children and young people, and large numbers of rejected CAMHS referrals.

6. Justice and personal security

The right to life, to freedom from torture and inhuman or degrading treatment, to liberty and security, and to a fair trial should be respected, protected and fulfilled for everyone.

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🔑 Key findings

Conditions of detention

The prison population fell marginally, but issues persisted:

– The number of older prisoners increased, which presented challenges regarding the suitability of the prison estate.

– There was an increase in the number of incidents of self-harm and prisoner-on-prisoner assaults despite a reduction in prison overcrowding.

– While improvements were made to ensure young people are supported when leaving custody, some are still left with no home to go to.

– Non-natural deaths across all detention settings were uncommon but remained a concern.

Hate crime, homicides, sexual and domestic abuse

The number of self-reported hate crimes and hate crime charges decreased overall, but a mixed picture emerged:

– There was a decrease in the number of racially aggravated harassment and behaviour charges, and charges for other offences with a racial aggravation.

– There was an increase in the number of charges aggravated by prejudice related to sexual orientation, transgender identity and religion.

There was a large increase in the number of reported sexual crimes; however, conviction rates, particularly for rape and attempted rape, remained low. Changes have been made to improve the treatment and support for victims of sexual crime.

Legal protection against abusive behaviour has been strengthened recently; however, the longer-term trend showed that the number of domestic abuse incidents recorded by police changed little over the last five years.

Criminal and civil justice

Employment tribunal fees, which were declared unlawful, have had an impact on the number of claims made.

Most people did not know much about the criminal justice system, although they were confident the system treats people fairly. However, this pattern was not the same for all groups:

– People from the most deprived areas were less confident that those accused of a crime get a fair trial, that everyone has access to the legal system if they need it and that those accused of crimes are treated as innocent until proven guilty.

– Disabled people were less confident that cases are dealt with promptly and efficiently and that the system gives the punishment which fits the crime.

6.1 Introduction

The right to life, to freedom from torture and inhuman or degrading treatment, to liberty and security, and to a fair trial should be respected, protected and fulfilled for everyone.

Upholding this right includes ensuring people are able to live without fear of humiliation, harassment or abuse based on who they are, and ensuring that everyone is able to live their life free from violence. All people should be treated fairly before the law, with readily available, accessible, affordable and impartial legal information and advocacy. This chapter discusses conditions of detention; hate crime, homicides, sexual and domestic abuse; and criminal and civil justice.

6.2 Conditions of detention

The Scottish Government published its Justice Vision and Priorities: Delivery Plan 2017–18 in 2017, bringing together seven priorities for the justice system, including improving health and wellbeing in justice settings with a focus on mental health and substance use. The plan also included a new vision for women in prison, including a new national facility and local community units with a focus on rehabilitation and reintegration.

6.2.1 Detained population, non-natural deaths, conditions of detention, safety, mental health, use of force and restraint in specific settings

Prisons

Scotland's prison population is changing. The overall population has declined marginally since 2010, although the number of older prisoners has increased and is likely to continue to increase, due to people living longer, convictions for historical sexual offences and longer sentences at court.

In 2016, there were 1.7 people aged 15 and over per 1,000 population in prison.[53] The rate was much higher for men compared with women (3.4 compared with 0.2 per 1,000). The rate of adults in prison per 1,000 was higher for those aged under 50 than over 50. Between 2010 and 2016, the rate of adults in prison per 1,000 fell for both men and women aged 16–30 and increased for men and women aged 31 or above.

The rate per 1,000 population of adults in prison in 2016 was much higher for African/Caribbean/Black people compared with White people (3.1 compared with 1.7). Between 2010 and 2016, the rate fell across all ethnic minorities. The largest fall in the rate was for Chinese, African/Caribbean/Black and Pakistani people.

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[53] Unless otherwise stated, the figures reported here on the rate per 1,000 population in prison (adults) are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government, Prison Statistics Scotland from 2010, 2013 and 2016 (Table JPS.DTN.2).

Significant progress had been made at HMP and YOI Cornton Vale[54] since its previous inspection in 2009 (HMIPS, 2016), although conditions were still poor in some areas. Prisoners in shared accommodation lived in cramped conditions, and almost half of the prison population in Cornton Vale did not have direct access to toilet facilities (Scottish Prison Service, 2017a). A follow-up report in 2017 found that women at that point had access to unrestricted toilet facilities (HMIPS, 2017a). HMP and YOI Cornton Vale is due to be replaced with a smaller national prison for women and two Community Custody Units in Glasgow and Dundee. These should allow women to serve their prison sentence closer to home and help them maintain family and community links. However, concerns have been raised that the new estate will not be big enough to accommodate the number of women currently in prison (HMIPS, 2017b).

Overcrowding continued to be a concern for a few individual prisons. In 2016, two prisons were over capacity – HMP Barlinnie and HMP Inverness. This represented a reduction from 11 prisons over capacity in 2011, and three in 2015 (Scottish Parliament, 2017).

The reported number of incidents of self-harm in prisons increased between 2015/16 and 2016/17 from 305 to 429. Women in prisons were disproportionately likely to be involved in incidents of self-harm. In 2016/17, women were involved in 26% of self-harm incidents (Scottish Prison Service, 2017b) but accounted for only 5% of the prison population (Scottish Prison Service, 2017a). It is not clear whether the increase in self-harm incidents was due to more incidents being reported or increasing numbers of self-harm incidents.

Both serious and minor assaults between prisoners increased between 2014/15 and 2016/17, from 66 to 74 serious assaults, and from 1,767 to 2,136 minor and no injury assaults (Scottish Prison Service, 2016; Scottish Prison Service, 2017c). Most prisoners reported no fear for their safety (84%) and most had not experienced bullying in the last month (84%), although this latter figure had decreased from 88% in 2015 (Scottish Prison Survey, 2017d).

All deaths in prison trigger a Fatal Accident Inquiry (FAI). These can take several years to return a determination on the cause of death, making it difficult to look at trends over time. In 2017, there were three confirmed deaths by suicide; all involving male prisoners on remand. As of 31 May 2018, there were 32 deaths in which the FAI had not yet concluded (Scottish Prison Service, 2018).

A new system of prison monitoring was introduced in 2015 (Independent Prison Monitoring (IPM)) that met the requirements of the National Preventive Mechanism in terms of independence. The IPM recording system was implemented in 2016/17. The system will support HMIPS by identifying national and local trends in the treatment of and conditions for prisoners, as well as flagging urgent prisoner issues.

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[54] Cornton Vale is the principal prison in Scotland for holding female offenders remanded or sentenced to prison by the courts. While Cornton Vale is Scotland's only all-female prison, women are also held in Edinburgh, Grampian, Greenock and Inverness.

To create stronger links between criminal justice colleagues and partners in local authorities, Community Justice Partnerships replaced Community Justice Authorities in 2017

HMIPS inspections are supported by HMIPS working in partnership with other inspection and scrutiny bodies: the Care Inspectorate, Education Scotland, Healthcare Improvement Scotland and the Scottish Human Rights Commission (SHRC). In 2016/17, full inspections were carried out in three large prisons. The SHRC has been working with HMIPS to support a human rights-based approach to the inspection of prisons, providing advice regarding inspection standards and supporting several inspections during 2015–17 to ensure that the human rights of prisoners are being respected (Scottish Human Rights Commission, 2017).

To create stronger links between criminal justice colleagues and partners in local authorities, Community Justice Partnerships replaced Community Justice Authorities in 2017. Partnerships have statutory partners including councils, NHS, Police Scotland, Scottish Fire Service, Health and Social Care Partnerships, Scottish Prison Service and Skills Development Scotland. Partnerships are required to consult with people with convictions and have a duty to report annually on their progress in achieving improved community justice outcomes.

For evidence on prisoner access to healthcare services see Chapter 6, 'Health'.

Police custody

In 2015/16, police custody centres were found to be well managed and the detainees commented positively on their treatment (HMICS, 2016). No significant issues regarding care or ill-treatment of detainees were raised by either detainees or custody visitors (Independent Custody Visiting Scotland, 2017).

Rights for people who are being detained at a police station were enhanced through the Criminal Justice (Scotland) Act 2016 (Commencement No. 5, Transitional and Saving Provisions) Order 2017. For those under 18 these rights included access by parents and guardians to their child detained in police custody. The Act placed a duty on the police not to detain someone unreasonably or unnecessarily, and removed the distinction between detention and arrest. The power to detain a suspect has been substituted with a power to arrest on suspicion of an offence being committed.

The number of deaths in police custody remained low: three deaths in 2016/17, two deaths in 2015/16, and three in 2014/15 (Police Investigations and Review Commissioner, 2016; 2017).

For evidence on place of safety orders see Chapter 6, 'Health'.

Health and social care detention

People with a mental disorder who are accused or convicted of a criminal offence can be placed on a CPSA Order (an order made under the Criminal Procedure (Scotland) Act 1995), which requires them to be treated in hospital or, occasionally, in the community. In 2016/17, 267 individuals were subject to CPSA orders, with the total number of orders amounting to 463 (people can be subject to more than one order). In 2017/18, 230 individuals were subject to a CPSA order, with the total number of orders amounting to 417. This total is very similar to 2014/15, when there were 398 CPSA orders (Mental Welfare Commission for Scotland, 2017).

The reported number of incidents of self-harm in prisons increased between 2015/16 and 2016/17

305   429

2015/16   2016/17
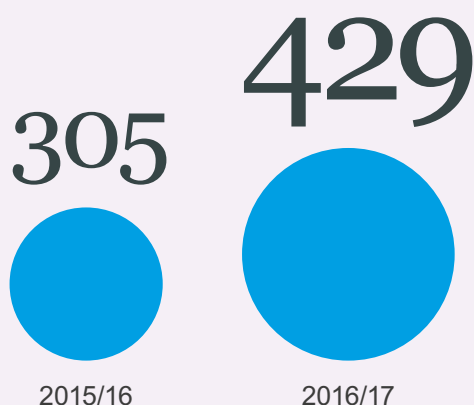
Both serious and minor assaults between prisoners increased between 2014/15 and 2016/17

Serious assaults

| 2014/15 | 66 |
| 2016/17 | 74 |

Minor and no injury assaults

| 2014/15 | 1,767 |
| 2016/17 | 2,136 |

Immigration detention

Immigration detention means holding people who are subject to immigration control in custody while they wait for permission to enter or before they are deported or removed from the country (and including people in the asylum process) and is a reserved matter for the UK Parliament. In February 2017, the Home Office abandoned plans to replace the immigration removal centre at Dungavel House with a new short-term holding facility near Glasgow Airport when Renfrewshire Council rejected the planning application for the new facility. As a result, the Home Office will retain Dungavel for people facing removal.

Young Offender Institutions and other detention settings for children and young people

In 2016, there were 1.4 young people aged 16–20 per 1,000 population held in prison (youth justice system).[55] The rate per 1,000 population was higher for boys compared with girls (2.6 compared with 0.2). White boys had a higher rate per 1,000 population compared with boys from ethnic minority groups (2.6 compared with 1.8 per 1,000). Young people with no religion had a higher rate (1.7) than both Christian young people (1.2) and those from religious minorities (0.4).

Between 2010 and 2016, the rate of young people held in the youth secure estate decreased by 1.4 per 1,000 population.

[55] Unless otherwise stated, the figures reported here on the rate per 1,000 population of young people in prison aged 16–20 are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Government, Prison Statistics Scotland from 2010, 2013 and 2016 (Table JPS.DTN.3).

A progress report on the implementation of the 2015 Youth Justice Strategy found progress had been made in the first two years, with a drop in the number of people under 18 in custody and a fall in the number of those aged 12–17 prosecuted in Scottish courts, although a significant number of 16- and 17-year-olds were still prosecuted. Children and young people who offend have nearly always experienced hurt and harm (described as adverse childhood experiences) and, while the number of young people in custody has fallen, services face new challenges dealing with a smaller number of young people in the system with more complex challenges (Scottish Government, 2017a).

HM Chief Inspector of Prisons for Scotland (HMIPS, 2017c) reported that HMP and YOI Polmont supplied basic requirements of decent life to the prisoners. A report on the state of children's rights in Scotland found the terms 'restraint' and 'seclusion' were not clearly defined in Scottish legislation, and that the use of restraint in Young Offenders Institutions (YOIs) or secure care in Scotland would benefit from further scrutiny despite no concerns having been reported (Together Scotland, 2016).

It is important that young people leaving custody are supported when they return to the community. The introduction of Throughcare Support Officers (TSOs),[56] has been seen as an improvement (Centre for Youth and Criminal Justice, 2017); however HMIPS (2017c) reported that, out of the 82 young men who were supported by TSOs, 28 were freed without an address to go to. The lack of an address was not only an issue concerning shelter and personal safety, but also had implications for the individual's ability to access appropriate healthcare services and social security payments.

In the year to 31 March 2017, there were two deaths of young adults held in a YOI and no deaths of children held in detention settings (National Preventive Mechanism, 2017).

HM Chief Inspector of Prisons for Scotland reported that HMP and YOI Polmont supplied basic requirements of decent life to the prisoners

[56] The TSO's role is to support individuals for their transition from custody into the community. The TSO works collaboratively with the prisoner, their family, statutory and third-sector organisations to discuss appropriate support provision and develop a personalised support plan including plans for accessing housing, healthcare and benefits.

6.3 Hate crime, homicides, sexual and domestic abuse

6.3.1 Hate crime

Hate crime is behaviour that is motivated by hatred, malice, ill-will or prejudice towards people because they form part of a specific group (or are assumed or perceived to form part of a group), such as people of a particular race, people holding a specific religion or belief, people of a particular sexual orientation, people with a transgender identity, or disabled people. The legislation does not at the time of writing include age or gender. The Scottish Government commissioned a review of hate crime legislation in response to recommendations made in 2016 by the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion. The Independent Review of Hate Crime Legislation by Lord Bracadale reported in May 2018 and recommended that statutory aggravations should continue to be the core method of prosecuting hate crimes. It also recommended that new statutory aggravations based on gender hostility and age hostility should be introduced, and that the Scottish Government should consider the introduction of a general aggravation covering exploitation and vulnerability outwith the hate crime scheme.

The introduction of stirring up of hatred offences (conduct that encourages others to hate a particular group) was also recommended.

Between 2012/13 and 2014/15, the number of adults who self-reported that they had experienced one or more hate incidents in the previous year decreased from 0.3% to 0.1%.[57] In 2014/15, people aged 35–45 were more likely to self-report that they experienced a hate incident (0.3%) than other age groups. In the same period, people from ethnic minority groups were more likely to self-report that they experienced a hate incident (0.6% compared with 0.1% for white people).

Between 2010/11 and 2016/17, the number of hate crime charges declined by 61 incidents from 5,386 to 5,325.[58] In 2016/17, two in three (63%) of these charges included a racial component, and one in five (20%) were related to the sexual orientation of the victim. The remaining monitored strands included religion (13% of the total), disability (4% of the total) and transgender-based hate crime charges (0.8% of all hate crime charges).

Between 2010/11 and 2016/17, the number of charges with a racial aggravation fell from 4,178 to 3,349, while the number of charges increased for offences aggravated by prejudice towards disability (from 48 to 188), sexual orientation (from 452 to 1,075) and transgender identity (from 14 to 40). Charges aggravated by religious prejudice declined between 2010/11 and 2013/14 (from 694 to 591), and by 2016/17 had almost returned to earlier levels (673).

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[57] Unless otherwise stated, the figures reported here on the percentage who experienced one or more hate incidents (self-reported) in the previous 12 months (adults) are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Crime and Justice Survey, 2012/13 and 2014/15 (Table JPS.VNT.1).

[58] Unless otherwise stated, the figures reported here on the number of hate crime charges are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Crown Office and Procurator Fiscal Service, 2010/11, 2013/14 and 2016/17 (Table JPS.VNT.2).

Change between 2015/16 and 2016/17 has produced a mixed picture (COPFS, 2017):

– A decrease of 10.0% in the number of charges related to racially aggravated harassment and behaviour and charges related to another offence with a racial aggravation to 3,349 charges, continuing a longer-term downward trend, although race remains the most commonly reported hate crime.

– An increase of 4.8% in the number of charges aggravated by prejudice relating to sexual orientation to 1,075 charges.

– An increase of 13.7% in the number of charges aggravated by religious prejudice to 673 charges, the highest number since 2012/13.

– A fall of 6.5% in the number of charges aggravated by prejudice related to disability to 188 charges, the first fall since 2010/11.

– An increase in the number of charges aggravated by prejudice related to transgender identity to 40 charges, ten more than the year before and the highest number since the legislation came into force.

In 2015/16, there were 287 reported charges of 'offensive behaviour at football' related to 169 separate incidents

In 2015/16, there were 287 reported charges of 'offensive behaviour at football' related to 169 separate incidents. Offensive behaviour was classified as a hate crime in 83 of these charges (where there was a specific reference to religion, race, sexual orientation, disability or other forms of hatred), up from 58 in 2014/15, but down from 125 in 2012/13. Of the charges, 63 related to religion; 14 to race; 5 to sexual orientation and 1 to disability (Scottish Government, 2016a). The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was repealed in April 2018 after a campaign by various groups and MSPs who argued that the law was ineffective and targeted football fans.

These figures do not capture the full extent of hate crime. Stonewall Scotland (2017) (sample size 1,261) estimated that, in 2017, one in five LGBT people, one in four disabled LGBT people, and nearly half of transgender people had experienced a hate crime or incident due to their sexual orientation and/or gender identity in the previous 12 months. Most did not report it to the police or to anyone else. Reasons included police attitudes and fears the incident would not be taken seriously.

Racist incidents (any incident which is perceived to be racist by the victim or any other person) most frequently occurred on a street (36%), in a house (20.5%) or in a shop (13.5%), with men most likely to report an incident. People aged 26–35 were most likely to be a victim/complainer.[59] Where ethnicity was known, Pakistani people were the most likely to be the victim/complainer of a racist incident recorded by the police, with 224.5 victims/complainers per 10,000 population. This was followed by people of African, Caribbean or Other Black ethnic backgrounds, with 189.9 victims/complainers per 10,000 population. This rate was much higher than the average across all ethnic backgrounds (11 per 10,000). Perpetrators of racist incidents were most likely to be men aged 16–20 (Scottish Government, 2015).

A review of the implementation of the recommendations made by the Independent Advisory Group on Tackling Sectarianism identified progress in some areas, including more evidence-based and practical approaches to sectarianism, but evidence of a culture of denial in others. In his review of hate crime legislation, Lord Bracadale did not consider it necessary to create any new offence or statutory aggravation to tackle hostility towards a sectarian identity (insofar as this is different from hostility towards a religious or racial group) (Scottish Government, 2017b).

6.3.2 Homicide

Homicide covers all crimes of murder and culpable homicide. The homicide rate in 2016/17 was 13.6 per million population, a fall from 21.4 per million population in 2010/11.[60] There was no change in the homicide rate between 2013/14 and 2016/17. There were three homicide victims aged under 16 in 2016/17.

Men were more likely to be victims of homicide than women, accounting for 75% of all homicide victims in 2016/17 (Scottish Government, 2017c). For all homicides recorded in the last 10 years where the victim was female aged between 16 and 70 years, just over half (52%) were killed by their partner or ex-partner, 28% were killed by an acquaintance and 8% were killed by a stranger. Men aged 16 to 70 years were more likely to be killed by an acquaintance (62%) or a stranger (20%).

[59] The victim/complainer may not necessarily be the person at whom the racially aggravated behaviour was targeted. Data on characteristics of victims/complainers should therefore be treated with caution.

[60] Unless otherwise stated, the figures reported here on homicide are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from Homicide in Scotland, 2010/11, 2013/14 and 2016/17 and unpublished data (Table JPS.VNT.3A).

Racist incidents (any incident which is perceived to be racist by the victim or any other person) most frequently occurred on a street (36%), in a house (20.5%) or in a shop (13.5%), with men most likely to report an incident

6.3.3 Sexual violence and rape

Most victims of sexual violence and rape do not report it to the police. In 2014/15, two out of every 1,000 people said they had experienced rape or serious sexual assault, or attempted rape or serious sexual assault in the last 12 months,[61] while three out of every 100 people said they had experienced at least one form of serious sexual assault since the age of 16 (Scottish Government, 2016b). Women aged between 16 and 20 were most at risk, and often the offender was their partner. However, only one in six (16.8%) of those who had experienced forced sexual intercourse since the age of 16 had informed the police. The most common reason for not reporting the incident to the police was fear that it would make matters worse.

The number of sexual crimes recorded continued to increase and was at the highest level in 2016/17 since 1971. Between 2015/16 and 2016/17, recorded sexual crimes increased by 5% from 10,273 to 10,822. This increase may in part be due to a combination of improved recording of sexual offences by the police; an increased willingness of victims to come forward, including for non-recent crimes; media coverage that has led to the identification of further victims who previously may not have reported crimes to the police; and an increase

in online child sexual abuse (Scottish Government, 2017d; Scottish Government, 2017e). Of all sexual crimes recorded in 2016/17, 44% related to a victim under the age of 18. This was the same as in 2015/16 (Scottish Government, 2017d).

Of all sexual crimes recorded in 2016/17 (Scottish Government, 2017f):

– 4,281 (40%) were sexual assault, an increase of 47% since 2011/12.

– 1,878 (17%) were rape or attempted rape, an increase of 47% since 2011/12.

– 303 (3%) were crimes associated with prostitution, a 23% increase from 247 in 2015/16 (although over the 10-year period from 2007/08 to 2016/17, these crimes have seen a large fall of 56%).

– 4,360 (40%) were 'Other sexual crimes',[62] an increase of 67% since 2011/12.

– The majority (59%) of victims of 'Other sexual crimes' were under 16. Most of these were girls. The proportion of 'Other sexual crimes' that were cyber-enabled increased from 38% in 2014/15 to 51% in 2016/17.

Sexual crimes have a high rate of attrition (the process whereby cases drop out of the criminal justice system at any point) and low conviction rates, particularly for offences of rape and attempted rape. In 2016/17, the conviction rate for all sexual crimes was 69%, but only 39% for rape and attempted rape (Scottish Government, 2018a). The traumatic nature of the offence and the nature of the criminal justice process were seen as the main reasons why high numbers of victims disengage. An examination of 207 cases discontinued by the prosecutor in 2014/15 found that 31% (66) were due to disengagement of the victims, 41% (85) were due to insufficient admissible evidence and 18% (37) were due to there being no realistic prospect of conviction[63] (Scottish Government, 2017e).

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[61] Unless otherwise stated, the figures reported here on self-reported rape and serious sexual assault (including attempts) are from analysis specifically for the 'Is Britain Fairer? 2018' review using data from the Scottish Crime and Justice Survey, 2013/14 and 2014/15 (Table JPS.VNT.4).

[62] The 'Other sexual crimes' category includes crimes such as Communicating indecency, Taking, possessing and distributing indecent photos of children, Sexual exposure, Public indecency and Causing to view sexual images or activity.

[63] Five of the remaining cases were referred to the Children's Reporter, in 14 the accused died during the course of the proceedings and in one the accused was deemed unfit for trial.

There have been several developments to improve treatment and support for victims of sexual crimes. The Scottish Government has provided funding for the implementation of new forensic medical examination standards for survivors of sexual violence which should support provision of a consistent service across Scotland (Healthcare Improvement Scotland, 2017). A Memorandum of Understanding, signed in December 2017, has been agreed between the Crown Office and Procurator Fiscal Service (COPFS) and Rape Crisis Scotland to allow Rape Crisis Scotland to share anonymous feedback on victims' experiences of the criminal justice system to improve the service provided to victims of sexual crime. The Scottish Women's Rights Centre was launched in April 2015 to enable women to access timely and appropriate legal advice and information on any aspect of gender-based violence. There are special measures for giving evidence in court available for 'vulnerable' victims and witnesses, including victims of alleged sexual offences. Being deemed a vulnerable witness entitles the witness to the use of special measures such as use of a live television link, a screen to avoid seeing the accused, and a supporter.

> The Scottish Women's Rights Centre was launched in April 2015 to enable women to access timely and appropriate legal advice and information on any aspect of gender-based violence

There is no legislation or regulation governing access to a victim's medical or other sensitive records by the defence or the Crown, which lessens protection for victims of sexual assault, rape and domestic abuse. In 2016, a court *(WF v Scottish Ministers)* quashed the decision of Scottish Ministers to refuse an application for legal aid to enable a complainer to oppose an application for recovery of her medical, psychiatric and psychological records by her alleged abuser. The court held that, to comply with Article 8, there must be an opportunity to be heard before an order for recovery of medical records was made. In response, the Scottish Government directed that the Scottish Legal Aid Board may, subject to certain conditions and restrictions, provide legal aid to someone who wants to oppose the recovery of their medical or other sensitive documents by an accused person in criminal proceedings.

The three-year limitation period for making civil claims of sexual abuse where the victim was under the age of 18 was removed by the Limitation (Childhood Abuse) (Scotland) Act 2017. The change only applies to abuse that took place on or after 26 September 1964.

6.3.4 Domestic violence and abuse

Domestic abuse legislation now includes a crime of psychological abuse as well as physical abuse following the introduction of the Domestic Abuse (Scotland) Act 2018. The legislation introduced offences involving coercive and controlling behaviour that can take place over a sustained period of time. The new legislation makes some changes to criminal procedure, evidence and sentencing in domestic abuse cases. It also provides an associated statutory aggravation where the behaviour involved or affected a child, or where a child saw, heard or was present during an incident, which could result in a longer sentence.

Non-consensual sharing of private and intimate images or so-called 'revenge porn', was made illegal by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. The Act's overarching objective is to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm, helping in turn to improve public safety by ensuring that perpetrators are appropriately held to account for their conduct.

In 2014/15, 3.0% of people said they had experienced domestic violence and abuse in the previous 12 months.[64] Women were more likely to say they had experienced domestic violence and abuse than men (3.5% compared with 2.4%) and disabled people were more likely to say they had experienced it than non-disabled people (4.1% compared with 2.8%).

The number of domestic abuse incidents recorded by the police changed little since 2011/12, staying between 58,000 and 60,000 incidents per year. Between 2015/16 and 2016/17 there was a small increase (1%), taking the number of domestic abuse incidents recorded to 58,810. Where sex was recorded, 79% of all incidents of domestic abuse in 2016/17 had a female victim and a male accused – the same as in 2015/16. This had fallen from 85% of incidents having a female victim and a male accused in 2007/08. Incidents of domestic abuse were more common at weekends (36% of all incidents occurred at the weekend) and tended to occur in a home or dwelling (Scottish Government, 2017g).

There were 10,830 domestic abuse convictions in 2016/17, a 12% fall compared with the previous year (12,376 convictions) but 26% higher than in 2010/11 (8,566 convictions). The vast majority (88%) of people convicted were men (Scottish Government, 2018a).

An evaluation of the Caledonian System – which works with men convicted of domestic abuse-related offences on a programme to reduce their reoffending while offering integrated services to women and children – found men who completed the programme posed a lower risk to partners, children and others, and that women felt safer. Men are referred to the Caledonian Men's Programme following receipt of a court order, either as part of a Community Payback Order or Probation Order or as a requirement of post-release supervision (Ipsos MORI, 2016).

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[64] Unless otherwise stated, the figures reported here on self-reported domestic violence and abuse are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Crime and Justice Survey, 2012/13 and 2014/15 (Table JPS.VNT.5).

Inside the Scottish Parliament building.

Domestic abuse legislation now includes a crime of psychological abuse as well as physical abuse

Child abuse and neglect

The number of children on the child protection register decreased by 3% between 2016 and 2017, from 2,715 to 2,631. The most common reasons for children being placed on the register were emotional abuse (38%), parental substance misuse (38%) and domestic abuse (37%).[65] There was a decrease in the number of cruelty and neglect offences by parents or carers against children under 16, from a rate of 11.4 per 10,000 in 2014/15 to 8.6 per 10,000 in 2016/17 (NSPCC, 2018).

The rate of sexual offences per 10,000 children (under the age of 16) increased from 34.0 to 45. This figure is likely to include a high number of historical sexual abuse offences (NSPCC, 2018).

An inquiry to investigate the abuse of children in care or foster care in Scotland (or where the care was arranged in Scotland) was set up in October 2015. The Scottish Child Abuse Inquiry is not due to report before October 2019.

Confidence in the criminal justice system is up between 2014/15 and 2016/17

6.4 Criminal and civil justice

6.4.1 Access to courts and tribunals

Ten Sheriff Courts and seven Justice of the Peace courts were closed across Scotland between 2013 and 2016, but no further closures have been announced since 2016. Data has shown that half of sheriff courts took longer to process summary criminal cases in 2016 than in 2015, potentially affecting the right of defendants to be tried without undue delay (Scottish Courts and Tribunal Service, 2016).

Employment tribunal fees, introduced in 2013, were declared unlawful by the Supreme Court in July 2017 *(R (on the application of UNISON) v Lord Chancellor)*. The introduction of substantial fees had a significant adverse effect on the ability of individuals to access justice and enforce their employment rights. The removal of fees seems to have reversed the decline in claim receipts. Between 2014 and 2017, the number of single claims received at employment tribunals increased by 11.3% from 1,702 to 1,895 (Ministry of Justice, 2017).[66] This is still substantially less than the 4,572 single claims received in 2012. Employment tribunals will be devolved to Scotland around 2019/20.

6.4.2 Diversion from prosecution

In the case of more minor offences, the Procurator Fiscal may decide to refer the individual to a diversion scheme managed by criminal justice social work, rather than prosecuting the individual through the courts or offering other direct measures (direct measures include written or verbal warnings, fines, referral for specialist support or treatment, and mediation). In such cases, prosecution is waived, subject to successful completion of the scheme. Diversion from prosecution schemes aim to provide support and advice regarding the underlying causes of offending (such as problematic substance use) and reduce reoffending.

The Scottish Government has stated that it wants to see increased use of diversion (to social work or other services) and fiscal work orders (10–50 hours of unpaid work) to tackle the individual's underlying needs and make these resources available to be reinvested into the community. The Government states that community justice partners should maximise opportunities for the use of diversion. This will require a balance of appropriate decision making by the Procurator Fiscal and provision of suitable services by criminal justice social work and charities and voluntary organisations (Scottish Government, 2016c).

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[66] Employment tribunal claims are counted as received (receipts) once the relevant issue fee has been paid or remitted, and the tribunal has accepted the claim as valid. Claims in employment tribunals can be classified into either single or multiple claims. Single claims are made by a sole employee/worker relating to alleged breaches of employment rights. Multiple claims are where two or more people bring proceedings arising out of the same facts, usually against a common employer. The trend in multiple claims is more volatile than single claims due to large numbers of claims against a single employer that can skew the national figures; therefore only single claim figures are quoted here.

In 2016/17, 1,980 cases (out of 3,428 referrals) were diverted from prosecution, an increase from 1,855 in 2015/16. Those aged 16–20 were substantially more likely to be diverted – accounting for 33% of people being diverted from prosecution, but only 8% of the population aged 16–70, suggesting a general focus on diversion for younger people. Of the 1,980 cases diverted from prosecution, 58.3% were men and 41.7% were women (Scottish Government, 2018b).

Research on the experiences of people with learning disabilities in the criminal justice system in 2017 found that participants (sample size 46) were concerned about the perceived inconsistency in how cases in the system are diverted or dropped and the availability of diversion schemes which are specifically tailored for those with learning disabilities (Equality and Human Rights Commission, 2017).

6.4.3 Legal aid

In 2016/17, 93.5% of all legal aid applications received were granted, compared with 92.9% in 2010/11.[67] A review of legal aid published in 2018 found Scotland's legal aid spend per head was among the highest in the European Union and that Scotland has the widest scope of both what legal aid can be obtained for and who can receive assistance (Scottish Government, 2018c). Recommendations are aimed at ensuring the legal aid system is simpler, user-focused, and more flexible, sustainable and cost effective. The review did not consider solicitor and advocate fees but proposed a separate review be carried out. A small-scale survey (sample size 57) of legal aid law firms carried out in 2017 found that one-third of civil legal aid work, and one-quarter of criminal legal aid work, undertaken by practitioners was unpaid and that this has an impact on the viability of smaller firms (Law Society of Scotland, 2017).

78%

of people were confident that those accused of crimes get a fair trial (2016/17)

6.4.4 Public confidence in the justice system

In 2016/17, 77% of people said that they did not know very much or knew nothing at all about the criminal justice system, compared with 76% in 2014/15. However, 78% were confident that those accused of crimes get a fair trial, compared with 77% in 2014/15; 75% were confident that everyone has access to the legal system if they need it, compared with 76% in 2014/15; and 72% were confident the criminal justice system treats those accused of crimes as innocent until proven guilty (the same as in 2014/15) (Scottish Government, 2018d).

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[67] Unless otherwise stated, the figures reported here on legal aid applications are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Legal Aid Board 2010/11, 2013/14 and 2016/17 (Table JPS.EFF.2).

People from the most deprived areas tended to be less confident across these three measures in 2016/17:

– 73% of people from the most deprived areas were confident that those accused of crimes get a fair trial, compared with 79% in the rest of Scotland.

– 74% of people from the most deprived areas were confident everyone has access to the legal system if they need it, compared with 76% in the rest of Scotland.

– 68% of people from the most deprived areas were confident the criminal justice system treats those accused of crimes as innocent until proven guilty, compared with 73% in the rest of Scotland.

In 2016/17, only 47% of people were confident that cases are dealt with promptly and efficiently, and 39% believed that the system gives punishments that fit the crime. Disabled people reported even lower confidence – only 42% were confident that cases are dealt with promptly and efficiently in the criminal justice system, compared with 48% of non-disabled people, and only 31% of disabled people were confident that the system gives punishments that fit the crime, compared with 41% of non-disabled people (Scottish Government, 2018d).

In 2016/17, 77% of people said that they did not know very much or knew nothing at all about the criminal justice system, compared with 76% in 2014/15

One in five adults (21%) in 2014/15 reported experiencing at least one civil law problem regarding welfare rights, debt, housing, employment, divorce/separation or consumer issues in the last three years, with the most common problems in the areas of home, family or living arrangements. A higher proportion of disabled people (30%) and people living in the most deprived areas (32%) reported having a civil law problem (Scottish Government, 2016d).

In 2014/15, around one in five of those people who had experienced a civil law problem had contacted or intended to contact the Citizens Advice Bureau (21%) or a solicitor (19%). People had various reasons for not seeking help or advice from a solicitor about their civil law issue, including: they felt able to deal with the problem by themselves (33%), they did not consider the problem to be serious enough (17%) and they had concerns about cost (16%) (Scottish Government, 2016d).

6.5 Conclusion

While there have been some improvements in the justice domain, the evidence shows that there are both emerging and persisting problems. The prison population is changing, with falling numbers of adult prisoners and young people held in YOIs, but increasing numbers of older prisoners. Improvements have been made to prison monitoring and support has been put in place to help prisoners to transition back into the community. However, increasing levels of self-harm and assault in prisons are a concern.

Racially aggravated offences are by far the most commonly reported hate crime, although the only hate crime to show a consistent long-term reduction. Most recently there have been increases in charges for offences aggravated by prejudice related to sexual orientation, religion and transgender identity. However, most hate crimes are never reported. Neither gender nor age is covered by current hate crime legislation.

There has been a large increase in the reporting of sexual crimes. The extent to which this is being driven by more sexual crimes taking place, or by increased reporting by victims, or by both is unknown. There has been an increase in sexual crimes that are cyber-enabled, which often include younger victims (generally girls under 16). Efforts have also been made to improve treatment and support for victims and survivors of sexual crimes, but conviction rates, particularly for rape, remain unacceptably low.

The recognition of psychological abuse as domestic abuse and the introduction of laws around non-consensual sharing of intimate images have strengthened protections against abusive behaviour. However, the number of domestic abuse incidents recorded by police remains unchanged.

Most people have confidence in the justice system working fairly and some additional protections have been brought in for children and adults deemed 'vulnerable'.
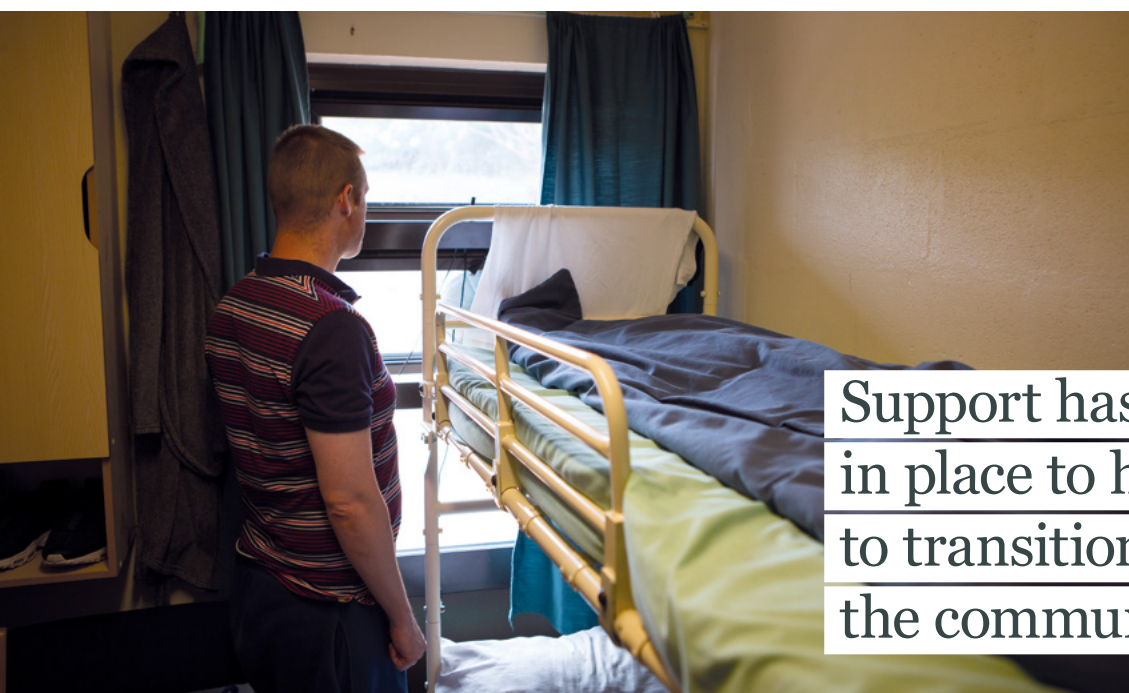
A prisoner looking out of his bedroom window.

Support has been put in place to help prisoners to transition back into the community

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7. Participation

The right to democratic, free and fair elections, and freedom of expression, assembly and association should be respected, protected and fulfilled for everyone.

Key findings

Political and civic participation and representation

The representation of different groups in political and civic life showed a mixed picture:

– Women, people from ethnic minority groups and disabled people continued to be under-represented in all areas of public life, including in the Scottish Parliament.

– While there was improvement in the proportion of women on public boards, the proportion of disabled people on public boards fell.

– Trade union membership continued to fall.

Access to services

Not everyone was able to access services that could enable them to participate in society.

– Lack of access to affordable transport options negatively affected access to other essential services and employment.

– Older and disabled people, and those living in a deprived area or living in social housing were risk factors for exclusion from access to digital services.

– People living in poverty were less likely to have a bank account and more likely to pay more for essential goods and services.

– Attendance at cultural events (includes attending a cinema, library, museum, theatre, or historical place) was much lower for people with a long-term physical or mental health condition, those with no qualifications and those living in the most deprived areas.

– Disabled people and LGBT people reported that they continued to feel discriminated against while participating in sport or attending sporting events.

Privacy and surveillance

Most people who used the internet were able to control their privacy settings, although some were concerned about online security:

– Internet use increased for older people, although they were more likely to give out their personal information online than younger people.

– Security concerns had a greater impact on the use of the internet by people with a long-term physical or mental health condition, who were less likely to shop and bank online.

Social and community cohesion

Most adults felt a sense of trust and belonging in their neighbourhood, but this pattern was not consistent for all groups:

– Young people, single people, people from ethnic minority groups and people from urban areas reported lower levels of trust and belonging in their neighbourhood.

– Disabled people were less likely to say most people in their neighbourhood could be trusted.

– People who had no religion or belief or were living in urban areas were less likely to feel they belonged to their neighbourhood.

Most people had positive attitudes towards young people.

Less than half of young LGBT people said that there were enough places where they could socialise safely and be open about their sexual orientation or gender identity.

7.1 Introduction

The right to democratic, free and fair elections, and freedom of expression, assembly and association should be respected, protected and fulfilled for everyone.

People should be able to influence decisions that affect them, and be free to form and join civil organisations, including trade unions. Transport, digital and financial services, culture, leisure and public places should be available and accessible to all. This chapter discusses political and civic participation and representation; access to services; privacy and surveillance; and social and community cohesion.

7.2 Political and civic participation and representation

7.2.1 Voting

The Scotland Act 1998 (as amended in 2016) devolved further powers regarding local government and Scottish Parliament elections, including those relating to registration of voters, limits on campaign expenses of individual candidates and controlling campaign expenditure at those polls.

The voting age for general elections is 18 and over. Nearly two out of three (64.0%) people who were eligible to vote did vote in the general election in 2017.[68] This was a decrease from 76.5% in 2010.

34.9%

of MSPs are women (2018)

The Scottish Government reduced the voting age to 16 and over for elections to the Scottish Parliament and local government elections through the introduction of the Scottish Elections (Reduction of Voting Age) Act 2015. The Act also requires local authorities to promote awareness of how to register to vote in local government elections for looked after young people and to help them to register to vote in these elections. In the 2017 local government elections, 76.1% of the voting-age population were registered to vote and voter turnout was 46.9%, an increase from 39.6% in 2012 (SPICe, 2017). Turnout at the 2016 Scottish Parliament election (which included those in the 16-17 age group for the first time) was 55.6% and almost 290,000 more people voted than in the 2011 election. The 2016 turnout was the highest ever at a Scottish Parliament election since 1999 (SPICe, 2016).

A Scottish Government consultation on electoral reform that closed in March 2018 sought views on what other action could be taken to widen access and remove barriers to voting and elected office, and to extend voting rights to everyone who is legally resident in Scotland. Actions based on this consultation are not yet known, but in May 2018 a Scottish Minister committed to extending the franchise to EU citizens and asylum seekers and refugees.

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[68] Unless otherwise stated, the figures reported here on percentage who voted in most recent general elections by protected characteristics are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the British Election Study 2010, 2015 and 2017 (Table PPN.PCP.1).

The UK and Scottish Governments, however, continue to operate a blanket ban on prisoner voting, despite judgments by the European Court of Human Rights (ECtHR) that have held it is unlawful for the UK to deny all prisoners the right to vote. In December 2017, the Council of Europe's Committee of Ministers accepted the UK Government's proposals to change its policy and guidance to make clear that prisoners can register to vote and vote while released on temporary licence; to clarify in guidance that prisoners on home detention curfew can vote; and to require sentencing judges to notify prisoners at the time of sentencing that they have lost their right to vote. The UK Government stated that this will require close cooperation with the devolved governments who are responsible for aspects of elections and prisons and which have differences in law and practice. In May 2018, the Scottish Parliament's Equalities and Human Rights Committee published a report on prisoner voting and recommended that the Scottish Government legislate to remove the ban on prisoner voting.

7.2.2 Political participation and freedom of expression, assembly and association

Elected officials

Women are under-represented in both national and local government. In 2016, women represented 52% of the Scottish population; however, women only made up 35% of Members of the Scottish Parliament (MSPs) and 25% of local councillors. There were 45 women elected to the Scottish Parliament in 2016, the same number as there were five years earlier, despite a 10% rise in women standing as candidates (Engender, 2017).

People from ethnic minority groups and disabled people were also under-represented. One male MSP openly identifying as disabled (Inclusion Scotland, 2017) and two ethnic minority men were elected to the Scottish Parliament in 2016, as well as the youngest MSP (aged 21) to be elected ever (SPICe, 2016). No ethnic minority women or women openly identifying as disabled were elected (Engender, 2017).

Section 106 of the Equality Act 2010 requires political parties to publish nomination and candidate diversity data, but this provision has not yet been brought into force. Publication of diversity information is important for public and parliamentary scrutiny of political parties' records in selecting diverse parliamentary candidates, and could inform discussion about the number of nominations and candidates with protected characteristics put forward in an election.

Disabled people face various barriers to being involved in politics or in civic life, including:

– Financial barriers – disabled people are more likely to come from lower income social groups and face extra costs; for example, costs associated with travel.

– Communication barriers – the level of disability awareness varies in political settings; for example, there is sometimes a failure to provide British Sign Language (BSL) interpreters or Braille documents because the cost is said to be too high at branch level.

– Physical barriers – disabled people face barriers by not being able to access venues for political meetings and events (Inclusion Scotland, 2016).

The Scottish Government amended the candidate spending rules for the Scottish Parliament elections in 2016 and the Scottish local government elections in 2017 to tackle some of these barriers and to ensure that additional costs faced by disabled candidates were not included in the statutory limits on campaign spending.

Additional costs faced by disabled people have also been tackled through the Access to Elected Office Fund, which was set up for disabled people standing as candidates in the Scottish local government elections in May 2017. The pilot of the fund ran from August 2016 to May 2017, and the Scottish Government has since agreed to continue the fund until the next Scottish Parliament election in 2021. The fund also remains open for by-elections and is administered by Inclusion Scotland. In the 2017 local government elections, funding was granted to 44 applicants, with 39 going on to stand for election. Of these, 15 were elected from 4 political parties in 12 councils (Electoral Commission, 2017). The Scottish Government has committed to evaluating the Access to Elected Office Fund to ensure that it meets the needs of BSL users who wish to stand for selection and election.

Political activities

Political activities include contacting a public official, attending a political meeting, signing a petition, attending protests, responding to consultations, or actively taking part in a campaign. In 2015, 61.7% of adults aged over 16 took part in one or more political activity in the past few years; an increase from 57.2% in 2013.[69] More than three out of four (76.5%) people in higher managerial, administrative and professional occupations took part in a political activity, but approximately one out of two people in routine occupations (48.6%), semi-routine occupations (52.2%) and lower supervisory and technical occupations (54.6%) undertook one or more political activity. In 2016, young people were more likely to have taken part in at least one political activity compared with people over 65 (74% compared with 58%) (Scottish Government, 2017a).

Assembly

The notice period for planned peaceful assembly is currently 28 days. A Scottish Government consultation found no support to reduce this to 'a few days' as recommended by the UN Rapporteur on the rights to freedom of peaceful assembly and of association (Scottish Government, 2016a).

7.2.3 Ability to influence decisions in local area

Only 23.1% of people agreed that they were able to influence decisions in their local area in 2016 – a similar proportion as in 2015. A higher proportion of adults reported they would like greater involvement in the decisions affecting their local area (34% said they would like to be more involved) (Scottish Government, 2017b).

[69] Unless otherwise stated, the figures reported here on percentage of adults undertaking one or more of a number of political activities by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Social Attitudes Survey for 2013 and 2015 (Table PPN.PCP.2).

Older adults were more likely than younger adults to say they were satisfied with local government performance, and less likely to want to be more involved in making decisions. Adults living in the most deprived areas were less likely to agree that they can influence decisions in their local area (21% agreed in the most deprived areas, compared with 27% in the least deprived areas) and less likely to want to be more involved in local decision making (29% wanted to be involved in the most deprived areas, compared with 38% in the least deprived areas). A quarter (25%) of adults agreed that their council is good at listening to local people's views before it takes decisions (Scottish Government, 2017b).

Community decision making

The Scottish Government has stated its commitment to supporting communities to do things for themselves and have a voice in decision making. The Community Empowerment (Scotland) Act 2015 is a key part of this, providing a legal framework to promote and encourage community empowerment and participation. It places Community Planning Partnerships (CPPs) on a statutory footing and imposes duties concerning the planning and delivery of local outcomes. Guidance states that CPPs must identify and engage with community bodies (communities of place or interest; for example, LGBT groups). The Act enhances the rights of community bodies to be consulted when local authorities wish to dispose of or change the use of common good assets. It also provides a power for Scottish Ministers to make regulations to promote or facilitate participation in public decision making.

Since 2014, the Scottish Government has invested in a range of measures to support the introduction and development of participatory budgeting (PB). The Scottish Government describes PB as a way for local people to have a direct say in how public funds can be used to tackle local needs and help individuals feel connected to one another and to their communities. An interim report of an evaluation of PB activity with a particular focus on local authorities indicated that engagement and commitment to PB by communities, politicians and council officers was mixed. The report also highlighted that provisions of the Equality Act 2010 that have the potential to drive community engagement and empowerment (including the PSED), have not been noticeable drivers of practice change or community engagement. Concern was also raised that some ethnic minority groups appear not to be integrated into the process and continue to be less included in outreach and communications work around PB, although there is some evidence of efforts to reach groups not represented by active community groups (Scottish Government, 2017c).

The Local Governance Review was launched in December 2017. The review will hear from communities across Scotland to gain a clear understanding of the type of changes that are needed to make sure people have more say in how public services are run in their area. The review will work closely with the public, private and third sectors to explore what changes to decision-making arrangements (including powers and functions held at national level) can improve people's lives in different places across Scotland.

Board meeting at the Alternative Futures Group.

In 2016, representation of women on public boards was at its highest level

7.2.4 Civic participation

Public appointments

In 2016, representation of women and people from ethnic minority groups on public boards was at its highest level (45.1% of all board members were women and 3.6% were from ethnic minority groups) since 2004 when recording began (Commissioner for Ethical Standards in Public Life in Scotland, 2017). However, these levels remained disproportionate to population levels.

Women were less likely than men to apply for public board positions but were more successful in the recruitment process. In 2016, 43% of applications were from women; however, they represented 59% of those who were appointed. This was also true for chair positions, with just 22% of applications coming from women but 45% of those appointed being women. In 2016, 5.5% of applicants and 1.0% of those appointed were people from ethnic minority groups (Public Appointments, 2017).

The Gender Representation on Public Boards (Scotland) Act 2018 received Royal Assent on 9 March 2018 and sets an objective for public boards to have 50% of non-executive members who are women. It also requires public bodies to take appropriate steps to encourage women to apply to become non-executive members to achieve the gender representation objective, and requires Scottish Government and other appointing persons to publish reports on progress towards achieving the objective.

The proportion of appointees who declared a disability fell from 15.3% in 2014 to 11.8% in 2015, and fell again to 9.2% in 2016. Of all board members in 2016, 4% were lesbian, gay or bisexual (an increase from 3% in 2015) and 15.9% were aged under 50 (a decrease from 17.6% in 2015) (Commissioner for Ethical Standards in Public Life in Scotland, 2017).

In 2017, only 25% of the Scottish judiciary were women

Women remained under-represented in the judiciary. In 2017, only 25% of the Scottish judiciary were women. The majority (88%) of the judiciary were aged over 50, and more than half (52%) were aged over 60 (Judiciary of Scotland, 2017).

Volunteering

In 2016, 27% of adults provided unpaid help to organisations or groups in the previous 12 months. The profile of volunteers has remained relatively stable over the last five years since 2016, and volunteers were more likely to be women (29% of women compared with 26% of men); from higher socio-economic and income groups (39% of those from the highest income households compared with 21% from the lowest); from rural areas (41% in remote rural areas compared with 26% in large urban areas); from less deprived areas (30% in the rest of Scotland compared with 18% in the most deprived areas). There was an under-representation of disadvantaged groups, including people in low-income households, people from the most deprived areas and people who were sick or disabled (Scottish Government, 2017b). In the 2017–18 Programme for Government, the Scottish Government committed to supporting disabled people, older people and people out of work to take part in volunteering.

Research conducted in 2016 into the Work Capability Assessment (the test for accessing Employment Support Allowance) examined the impact of the assessment on people with mental health conditions. The research reported that some study participants (sample size 30) stopped taking part in work experience or voluntary work because they found the assessment traumatic or because they felt that it was used as evidence that they were capable of full employment. The research considered that the way the assessments were carried out failed to appreciate the value of volunteering and work experience in providing people with structure and purpose and ensuring that work could be managed around fluctuations in mental health (Marks *et al.*, 2017).

7.2.5 Trade unions, legislation and membership

Trade unions play an essential role in providing services to help protect workers' rights. Trade union membership fell by 73,000 between 2015 and 2016 (from 730,000 to 657,000). The proportion of employees who were union members (union density) was higher for women than men; disabled employees; those with UK/British nationality compared with employees of other nationalities; public sector workers; and people with children (Fraser of Allander Institute, 2017).

Between 1995 and 2016, the proportion of employees who were in a trade union decreased from 39.0% to 29.3%, change driven by both an increase in employee numbers and a fall in union membership (Department for Business, Energy and Industrial Strategy, 2017).

The UK Trade Union Act 2016 introduced new restrictions on trade union activity in Britain, such as raising the turnout requirement for a ballot to be valid to 50% and the support requirement to 40%. These higher thresholds may make it more difficult for trade unions to take industrial action. In 2016, the Scottish Government set up the Trade Union Modernisation Fund to assist unions in mitigating the effects of the Trade Union Act, with the aims of ensuring that obligations placed on trade unions through this legislation do not divert trade union representatives away from supporting their members, and helping employers embrace fairer working practices.

7.3 Access to services

7.3.1 Access to transport

In 2016, buses were used more frequently by people who lived in large urban areas – 55% used the bus in urban areas compared with 1% in remote rural areas (sample size 1,480). Women (61%) were more likely than men (39%) to use the bus, and the highest level of use was seen among the 20–29 (19%) and 60–69 (18%) age groups (Transport Scotland, 2018a). The National Concessionary Travel Scheme provides free bus travel to people aged over 60 years and disabled people. In 2017, 29% of all adults over 16 had a concessionary fair pass under the scheme, and 87% of those aged over 60 had a pass. These proportions have changed little over the period since the introduction of the scheme in 2006, although there has been a steady increase in pass holder numbers over the period (Transport Scotland, 2018b).

Almost two-thirds (64%) of respondents to a survey (sample size 3,512) said that they were dissatisfied with service frequency of buses. Other issues included the absence of evening and weekend services, the inability to travel where a respondent wished (for example to work or health appointments), and a lack of services in rural areas (Citizens Advice Scotland, 2018a).

Train use was more likely for those in higher income households – 21% of people with a household income of less than £10,000 had used the train in the last month, compared with 40% of people in households with an income of more than £40,000 (Transport Scotland, 2017).

'Transport Poverty', where people do not have access to essential services or work due to a lack of affordable transport options, has been estimated to affect more than one million people (Sustrans Scotland, 2016).

Travel-to-work patterns also showed that some groups of people such as people from ethnic minority groups, disabled people, young carers, young mothers, and care leavers were less mobile and were more reliant on public transport. In both urban and rural areas, people with lower qualifications or who were unemployed had the least flexibility in where they looked for jobs (Scottish Government, 2017d).

Accessible transport is a particularly important aspect of enabling disabled people to enjoy equal access to full citizenship. In September 2016, the Scottish Government launched an Accessible Travel Framework, a 10-year plan to improve travel access for disabled people. The Framework included commitments to disability training for transport staff, mechanisms for enabling onward travel should journeys be disrupted, and advice on ticketing and pricing.

In 2017, the Supreme Court held that bus drivers should do whatever they reasonably can to ensure that wheelchair users can access wheelchair spaces on buses, even when they are occupied by other passengers *(First Group PLC v Paulley)*. Access to taxis can also be a problem for wheelchair users. Since 6 April 2017, designated taxi and private hire vehicle drivers have been obliged by law to transport wheelchair users in their wheelchair, provide passengers in wheelchairs with appropriate assistance, and charge wheelchair users the same as non-wheelchair users (Equality Act 2010, Section 165).

As well as being accessible, transport should be safe for individuals to use. The number of recorded sexual crimes reported on the rail network in Scotland fell from 59 in 2015/16 to 46 in 2016/17, while the number of violence against the person offences reported increased slightly from 431 to 438 (British Transport Police, 2017). In 2016/17, 7% of religiously aggravated charges took place on public transport (Scottish Government, 2017e).

7.3.2 Access to digital services

As the trend towards a digital society provides users with new ways of accessing information and services, digital services (those delivered online) must be accessible to all users, including older and disabled people and those living in remote areas. People who did not use the internet were likely to have less active lifestyles, have poorer mental health, and feel less socially connected to their local area than those who did have internet access (Carnegie UK Trust, 2016).

In 2017, 93.5% of adults aged 16 and over had used the internet in the past year, an increase from 77.6% in 2010.[70] There was an increase in older age groups using the internet during this period: from 52.0% to 82.0% for people aged 55 and over, and from 47.7% to 92.5% for those aged 65–74.

Disabled people were less likely to use the internet compared with non-disabled people in 2017 (86.4% compared with 95.7%). The gap between disabled people and non-disabled people's internet use decreased in the period from 2010, largely as a result of an increase in internet usage by disabled people (an increase from 53.0% to 86.4% for disabled people, compared with 83.8% to 95.7% for non-disabled people).

The Scottish Government published 'Realising Scotland's Full Potential in a Digital World: A Digital Strategy for Scotland' in March 2016. The strategy acknowledged that the people who are most likely to gain from the benefits of being online (through financial savings, reduced isolation and access to employment opportunities) are those most likely to be excluded. The strategy also set commitments to create digital public services around the needs of their users and enable everybody to share in the social, economic and democratic opportunities of the digital sphere.

Similarly, the Fairer Scotland Action Plan included commitments to ensure that people who currently do not have good internet access will be able to access it by 2021 and to using greater digital access to reduce the 'poverty premium' associated with digital exclusion, helping low-income households to reduce costs.

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[70] Unless otherwise stated, the figures reported here on percentage of adults who have used the internet by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Opinions and Lifestyle Survey 2010, 2014 and 2017 (Table PPN.ACS.1).

People living in deprived areas, in social housing and on low incomes, and people living in remote small towns were less likely to have access to the internet at home. Having a low income and living in social housing also affected how confident people were in carrying out different kinds of online activity (Scottish Government, 2017b). Citizens Advice Scotland clients (sample size 1,200) in 2017 reported a range of difficulties in accessing online services with many needing help completing online forms and attaching documents. One third said they had difficulty using a computer or simply could not use one at all, while respondents living in rural areas were more likely to report that poor broadband signal was a barrier to them accessing the internet. Concerns were also highlighted about moving social security procedures online by default, a move that presented a risk of causing significant detriment to people who rely on social security income but who are unable to access digital services (Citizens Advice Scotland, 2018b).

7.3.3 Barriers to financial access and being at risk of fraud

Reduced access to reliable, affordable sources of credit can be an issue for low-income individuals and families. Those with the lowest incomes are least likely to have access to mainstream credit such as bank accounts, bank loans or credit cards, and are often reliant on non-mainstream money lenders to pay for everyday expenses such as food and transportation (Carnegie UK Trust, 2015). In 2015, households living in the 20% most deprived areas were less likely to have a bank account compared with the rest of Scotland (90% compared with 94%) (Scottish Government, 2016b). People living in poverty were also more likely to pay more for essential goods and services, including communications, energy, food, and banking, due to their weaker position in consumer markets (known as the 'poverty premium') (Citizens Advice Scotland, 2016).

In 2017, it was reported (sample size 1,500) that one in 10 people experienced physical and/or mental health conditions as a result of financial issues

Many people – often members of society from the most deprived backgrounds – used the commercial high-cost credit market because they were unable to access cheaper, mainstream financial products such as bank loans (Carnegie UK Trust, 2016). The demand for credit is likely to become more acute in the coming years and, unless more affordable forms of credit are made available, there is a risk that people will be forced to borrow from friends and family or illegal lenders. In the Tackling Child Poverty Delivery Plan 2018–22, the Scottish Government committed to providing funding to the Affordable Credit Loan Fund to help grow the sector and allow low-income families greater access to affordable credit. The Scottish Government also committed in 2018 to introducing a financial health check for low-income families, which will provide personalised advice to help with the poverty premium and benefit uptake to maximise income.

Financial difficulties, such as being unable to keep up with debt repayments, can have a negative impact on a person's physical and mental wellbeing. In 2017, it was reported (sample size 1,500) that one in 10 people experienced physical and/or mental health conditions as a result of financial issues.

People who lived in council or social rented accommodation were found to be more likely than people in private rented accommodation and owner-occupied accommodation to experience physical and/or mental health conditions as a consequence of financial issues (Citizens Advice Scotland, 2017).

In 2017, 6% of LGBT people (sample size 1,261) who visited a bank or insurance company in the previous year reported that they were discriminated against because of their sexual orientation and/or gender identity. This rate increased to 11% of disabled LGBT people and 30% of transgender people (Stonewall Scotland, 2017).

7.3.4 Access to culture, leisure and sport

Access to exercise

Most adults aged 16 and over (80.0%) participated in exercise in 2015.[71] This proportion represented an increase from 74.2% in 2012. The change is reported as being driven by the increase in recreational walking (Scottish Government, 2017b).

Younger people were more likely to exercise than older people, although there were increases for all age groups between 2012 and 2015, with the exception of people aged 16–24, for whom there was no change. The biggest increase in likelihood to exercise was for people aged 65–74, from 62.5% in 2012 to 71.4% in 2015. In 2015, women were less likely to have participated in one exercise activity in the last four weeks compared with men (78.5% compared with 81.5%). Between 2012 and 2015, participation increased from 71.7% for women and 77% for men (Scottish Government, 2017b).

The gap between men and women's participation in sport was greater among some ethnic minority groups than it was in the population as a whole. Women and girls also faced particular barriers to participation, including negative experiences of physical education at school, lack of self-esteem and body confidence, and rejection from peer groups for continuing an activity that others were not involved with (Sport Scotland, 2016).

In 2015, disabled people were less likely than non-disabled people to participate in at least one exercise activity in the previous four weeks (55.9% compared with 87.0%). Barriers to disabled people's participation in sports included negative attitudes and stereotypes, physical inaccessibility and exclusion, a lack of pathways into sport, under-representation in the coaching workforce, and wider issues of socio-economic disadvantage. When disabled people did take part in sport and exercise, they were almost as likely as non-disabled people to take part frequently (Sport Scotland, 2016).

Access to culture and sport

Most adults (92%) reported being culturally engaged in 2016, either by attending or visiting a cultural event or place, or by participating in a cultural activity. Attendance at cultural events (attending a cinema, library, museum, theatre, or historical place) was much lower for people with a long-term physical or mental health condition, those with no qualifications and those living in the most deprived areas (Scottish Government, 2017b).

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[71] Unless otherwise stated, the figures reported here on percentage of adults who undertook exercise in the last four weeks by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Household Survey 2012 and 2015 (Table PPN.ACS.2).

One in 10 LGBT people (sample size 1,261) who attended a live sporting event in the last year reported experiencing discrimination because of their sexual orientation and/or gender identity (Stonewall Scotland, 2017). Almost half (46%) of LGBT people thought public sporting events were not a welcoming space for LGBT people. The Scottish LGBT Sports Charter was introduced in May 2017 to tackle homophobia in sports (Equality Network, 2015).

7.4 Privacy and surveillance

7.4.1 Internet use and awareness of privacy settings

In 2016, 46.0% of people limited access to their profile or content on social media.[72] Security concerns had a greater impact on internet use for people with a long-term physical or mental health condition. For example, people with long-term conditions were less likely to shop and bank online, which limited the extent to which they could benefit from these services (Scottish Government, 2017b).

Older people were less likely to use online security measures and more likely to give out their personal information online than younger people

Older people were less likely to use online security measures and more likely to give out their personal information online than younger people. In 2016, most adults (78%) who used the internet were able to control their privacy settings, although people in older age categories (aged 60 and over) were less likely to use online security measures than younger people (Scottish Government, 2017b). Over half (57%) of people aged over 70 reported that they would avoid giving out their personal information online, compared with 72% of those aged 16–24. However, younger people were less likely to change their internet use despite security concerns. In 2017, a survey (sample size 1,675) of people under 18 found that the majority of respondents (68.9%) felt that they had enough control over the privacy of their social media accounts (5Rights Youth Commission, 2017).

Scottish Government policy has recognised the importance of protecting children and young people online and making them aware of how to stay safe when using the internet. In April 2017, the Scottish Government released the National Action Plan for Internet Safety for Children and Young People, building on previous action plans on child internet safety. The Plan set out a range of actions, including targeting resources at younger people, strengthening children's resilience, and making younger people aware of their rights online and who to turn to should they encounter abuse.

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[72] Unless otherwise stated, the figures reported here on percentage of adults who limit access to their profile or content on social networking site by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Opinions and Lifestyle Survey 2010 and 2015 (Table PPN.PRV.1).

The Scottish Government has adopted the 5Rights framework, which sets out children and young people's digital rights. The 5Rights approach references sexual exploitation and violent extremism as being factors in online abuse and specifically calls for disabled children to have access to specialist advice and protection. Education Scotland will use these rights during inspections to assess the extent to which schools are promoting the safe use of technologies and staying safe online.

7.4.2 Treatment of personal data

Abuse of personal information

Only a very small proportion of adults reported abuse of personal information.[73] In 2010, only 2.7% of adults who used the internet in the past year reported abuse of personal information, this decreased to 2.4% in 2015.[74] Men were more likely than women to report abuse in 2015 (4.4% compared with 0.3%); between 2010 and 2015, the proportion of women reporting abuse of personal information over the internet decreased from 3.3% to 0.3%.

A survey (sample size 1,029) conducted in 2017 reported that 70% of respondents strongly agreed that it was important for the public to be able to access information held by public authorities (Scottish Information Commissioner, 2017). There was support for the freedom of information framework with most people (58%) strongly disagreeing that the framework was a waste of public money. Three-quarters (77%) said they would be more likely to trust an authority that publishes a lot of information about its work.

The more at risk[75] a person is, the more nuisance calls they are likely to receive; companies making these calls appear to target at-risk people (Convention of Scottish Local Authorities, 2015). In response to the Nuisance Calls Commission the Scottish Government introduced an Action Plan in 2017 that includes a commitment to work with Scottish businesses to implement processes to protect at-risk customers; for example, developing ways for call centre staff to identify customers who may need extra support. The plan also recognised that the greatest threat is the danger of scam calls, especially to at-risk people, and committed to developing a scams prevention strategy.

Controls needed to share data between public sector data holders and other bodies were set out in Scotland's Digital Future: Delivery of Public Services Action Plan 2015–2020. A key theme of the plan is that citizens should feel assured that data they have submitted to public bodies is being used responsibly.

[73] Abuse of personal information sent on the internet and/or other privacy violations (for example, abuse of pictures, videos, and personal data uploaded on community websites).

[74] Unless otherwise stated, the figures reported here on percentage of adults who have experienced abuse of personal information by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Opinions and Lifestyle Survey 2010 and 2015 (Table PPN.PRV.2).

[75] This definition includes people over age 75, with mobility issues, with a mental health condition, who have already been a victim of a scam, who are living in sheltered accommodation or receiving care home services, or who have dementia.

The GDPR came into effect on 25 May 2018 and is regarded as one of the biggest overhauls of UK data protection laws

Data protection

The primary UK legislation governing data protection, the Data Protection Act 1998 (DPA), was repealed and replaced by a new Act following the introduction of the EU General Data Protection Regulation (GDPR), which is intended to give citizens more control over their private information. The GDPR came into effect on 25 May 2018 and is regarded as one of the biggest overhauls of UK data protection laws. Regulated by the Information Commissioner's Office, the GDPR sets out rules concerning personal data and requires organisations to be more accountable and transparent.

7.4.3 Adequacy of the legislative and regulatory framework

Investigatory powers

The UK Investigatory Powers Act 2016 (IPA) introduced major reforms across Britain to the legal and regulatory framework governing the collection, retention, and use of personal data by the state for law enforcement purposes, including by the security services, police and other agencies. The Act followed from criticism of the previous legislative framework over several years (including by our organisation), as outdated, unclear and lacking sufficient safeguards. However, concerns remain about aspects of the IPA.
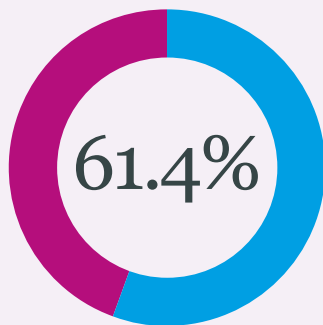
Biometric data

The Scottish Government has established an Independent Advisory Group on the Use of Biometric Data after a 2016 review of the use of photographic images by Police Scotland (HM Inspectorate of Constabulary in Scotland, 2016). In March 2018, the Independent Advisory Group recommended that legislation should establish a code of practice covering the acquisition, retention, use and disposal of DNA, fingerprints, facial and other photographic impacts, which should contain relevant human rights and ethical principles (Scottish Government, 2018a). The Group also recommended that distinct policies should be produced for the acquisition, retention, use and disposal of the biometric data of children aged between 12 and 17, and that there should be legislation to create an independent Scottish Biometrics Commissioner.
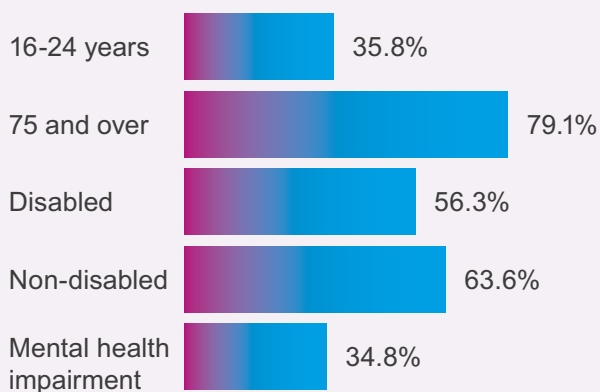
Disclosures

In *P (AP) v the Scottish Ministers* in 2017, the Court of Session ruled that the disclosure of all unspent and certain spent criminal convictions of people seeking employment in regulated work was incompatible with Article 8 of the European Convention on Human Rights. The Scottish Government has since this ruling begun a consultation on proposals to amend the rules on the higher-level disclosure regime. The proposed changes would extend the right to apply to a sheriff against disclosure of a wider range of spent convictions before the disclosure is sent to a third party such as an employer.

% of people who felt they could trust people in their neighbourhood (2015)

61.4%

Breakdown

16-24 years — 35.8%

75 and over — 79.1%

Disabled — 56.3%

Non-disabled — 63.6%

Mental health impairment — 34.8%

7.5 Social and community cohesion

7.5.1 Trust and sense of belonging in the local neighbourhood

In 2015, three in five people (61.4%) said that most people in their neighbourhood could be trusted, but young people aged 16–24, disabled people, people from ethnic minority groups, people from religious minority groups, people from urban areas and single people were all less likely to say this.[76]

– Young people aged 16–24 were less likely to say that most people in their neighbourhood could be trusted than people aged 75 and over (35.8% compared with 79.1%).

– Disabled people were less likely to say that most people in their neighbourhood could be trusted than non-disabled people (56.3% compared with 63.6%). People with a mental impairment were even less likely to say that most people in their neighbourhood could be trusted (34.8%).

– People from ethnic minority (excluding White minority) backgrounds were less likely to say that most people in their neighbourhood could be trusted compared with people who identified as White British (41.5% compared with 62.1%).

– People from religious minority groups were less likely than people of no religion to say that most people in their neighbourhood could be trusted (18.9% compared with 59.6%).

– People from urban areas were less likely than people from rural areas to say that most people in their neighbourhood could be trusted (58.7% compared with 73.6%).

– Single people were less likely to say that most people in their neighbourhood could be trusted compared with those who were married or cohabiting (47.7% compared with 64.8%).

[76] Unless otherwise stated, the figures reported here on percentage of adults who agree that most people in their neighbourhood can be trusted by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Health Survey 2011, 2013 and 2015 (Table PPN.CSN.1).

In 2015, most adults felt they belonged in their neighbourhood

An older and younger man enjoy some tea in a community centre.

In 2015, most adults (77.6%) felt they belonged in their neighbourhood, although some inconsistencies to this pattern existed within categories:[77]

– More people aged 65–74 (87.1%) and 75 and over (88.8%) felt they belonged in their immediate neighbourhood compared with people aged 15–24 (66.7%) and 25–34 (68.2%).

– People from ethnic minority groups were less likely to say they felt they belonged compared with White people (64.3% compared with 78.2%).

– Those married or in a civil partnership were more likely to feel they belonged in their immediate neighbourhood compared with those who were neither married nor in a civil partnership (83.7% compared with 68.5%).

– Christians were more likely to feel they belonged compared with those with no religious affiliation (81.6% compared with 74.7%).

– Those living in rural areas were more likely to feel they belonged in their immediate neighbourhood than those living in urban areas (84.9% compared with 76.2%).

[77] Unless otherwise stated, the figures reported here on percentage of adults who felt that they belonged in their neighbourhood by protected characteristic are from analysis specifically for the 'Is Britain Fairer? 2018' review, using data from the Scottish Household Survey 2013 and 2015 (Table PPN.CSN.2).

## 7.5.2 Social and community cohesion, building relationships to counter radicalisation and extremism

Prevent is a strand of the UK Government's counter-terrorism strategy designed to support people at risk of joining extremist groups and carrying out terrorist activities. In 2016/17, Police Scotland received 59 Prevent referrals, down from 81 in 2015/16. Of the referrals in 2016/17, 15 related to right-wing extremism, 13 related to international extremism, 11 related to 'other' and 20 were unspecified. The large majority of referrals were for men (53). Two of the referrals were accepted into the Prevent Professional Concerns process, which requires a case conference involving multi-agency partners; 31 were referred to other services; and 26 were determined to require no further action (Police Scotland, 2017).

Research carried out on public attitudes towards young people (sample size 1,027) found that 41% of people thought that young people were trustworthy, and 52% thought that the media portrayal of young people was negative (Scottish Government, 2017f). Over half of young people (sample size 1,781) agreed that adults were good at listening to their views (58%) and that adults were good at taking their views into account when taking decisions that affected them (53%). Boys were more positive than girls, and young people with a physical or mental health condition were much less positive compared with those without a health condition (Scottish Government, 2018b).

% of people who felt they belonged in their neighbourhood (2015)

77.6%

Breakdown

16-24 years	66.7%
75 and over	88.8%
Ethnic minorities	64.3%
White people	78.2%
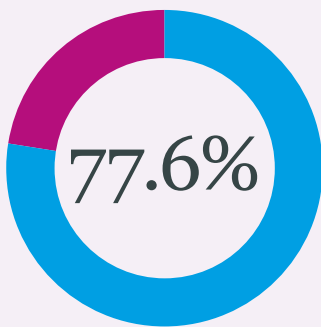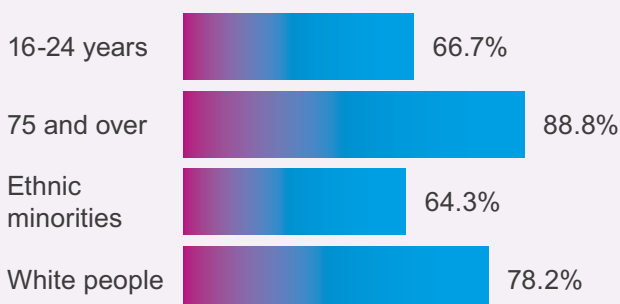
Over 300 people gather from all communities at Ramadan Tent Project's Open Iftar.

7.5.3 Community interaction and use of 'shared spaces'

A 2018 report examining older data on the prevalence of social isolation and loneliness found that one in 10 adults often felt lonely, and four in 10 sometimes felt lonely (NHS Scotland, 2018). Adults who were from deprived areas, were in debt, were economically inactive, had mental health conditions or were women, were more likely to report experiencing loneliness. A quarter of adults aged over 65 also experienced depression when they were lonely (Mental Health Foundation and Age Scotland, 2017). The Scottish Government has recently consulted on social isolation and loneliness and is expected to publish a strategy to tackle this issue.

A survey (sample size 684) conducted in 2017 found that less than half of LGBT young people (43%) said that there were enough places where they could socialise safely and be open about their sexual orientation or gender identity. The age of the respondents did not affect these findings (LGBT Youth, 2017).

Mosquito devices (electronic devices which emit a high frequency sound generally only audible to young people aged 25 and below) have been used in public and private locations to deter young people from loitering and/or carrying out anti-social behaviour. There is a lack of robust data available on the prevalence of the devices, but concerns have been raised about their health effects and discriminatory nature. The Children and Young People's Commissioner Scotland has called for the devices to be banned (Children and Young People's Commissioner, 2017).

7.6 Conclusion

While there have been some improvements in the participation domain, certain groups are still under-represented in many areas of public life and experience difficulties in accessing services.

There has been a drive to increase political and civic participation, with some positive steps already being taken; 16- and 17-year-olds are now able to vote in Scottish elections, and there is ongoing consideration of removing the ban on prisoner voting. Efforts are being made to address the under-representation of disabled people, women and people from ethnic minority groups in political life and on public boards, but there has been only limited success to date and there has been a fall in the number of disabled people on public boards. The lack of official data on protected characteristics in relation to political and civic life has made it difficult to fully assess the extent to which Scotland has seen progress or regress.

Further effort is needed to address inequalities in access to services for disabled people, older people and people from the most deprived areas. Choice regarding how and which services are accessed is restricted – those that can least afford paying more are often paying a higher amount for essential items or missing out on the benefits that such services offer. The move towards the digitisation of services (particularly social security) risks exacerbating exclusion for people who are unable to access and/or use the internet.

Social isolation and loneliness, which can be made worse by poor access to services, can also affect a wide range of people and have implications for physical and mental health. These issues should be seen within the wider context of particular groups – young people, disabled people, people from ethnic minority groups and single people – being less likely to feel that they can trust people, and that they belong, in their local neighbourhood.

8. Conclusion

'Is Scotland fairer?' appears to be a simple question, but it is a question without a simple answer. We have found evidence of progress across the different areas of life captured by this review, but this progress is not consistent or widespread.

'Is Scotland fairer?' appears to be a simple question, but it is a question without a simple answer. We have found evidence of progress across the different areas of life captured by this review, but this progress is not consistent or widespread.

The evidence suggests that, despite efforts made by the Scottish Government and others, the same problems and concerns which were highlighted in previous reviews are still evident. We acknowledge that effecting change requires a long-term commitment and it can take many years before any change is apparent. However, the evidence in this review suggests a general stagnation in progress. We need to recognise where, and question why, stagnation is happening.

8.1 Progress and regress since our last review

We have presented progress and regress here in relation to protected characteristics to give an overview of the challenges that people with, or who share, protected characteristics face. The available evidence shows that women, disabled people, LGBT people, those from ethnic minority groups, and both younger and older people experience the starkest inequalities that cut across many areas of life. Poverty drives or compounds inequality, and many of the worst outcomes are for people living in the most deprived areas. A lack of new available evidence published since 2015, alongside a lack of protected characteristic data from administrative data and surveys, mean that this is not a complete picture. A lack of new evidence does not mean a lack of issues, and work and effort to tackle these evidence gaps must continue.

Girls and young women continue to perform well at school and in higher education, although gender differences in subject choices continue to be evident from school onwards. Early educational success is not reflected in the labour market; women earn less than men and there are low proportions of women in senior roles, even in sectors with a workforce that is predominantly made up of women. While in work, many women face sexual harassment and experience discrimination before, during or after maternity leave. Women continue to be under-represented in local and national government. An increase in the number of women on public boards shows it is possible to make progress in this area. The fall in the number of women held in prison is positive, but the rise in self-harm incidents in prisons, which are more likely to involve women, is a concern. There have been developments to improve and support victims of sexual crimes, although the continued increase in recorded sexual crimes and the growth of sexual crimes involving young girls suggest greater focus is needed to ensure the security of women and girls.

Disabled people continue to face significant challenges across all areas of life, and the disparities with non-disabled people have, in many cases, increased rather than reduced. Disabled children and young people are more likely to leave education with lower levels of attainment and are less likely to go to university. Disabled people are less likely to be working, with employment rates for disabled people decreasing, and those that are in work earn less than non-disabled workers. Disabled people are more likely to be living in poverty.

A lack of accessible housing and long waits for adaptations mean many disabled people are living in unsuitable accommodation and are unable to live independently. Disabled people face barriers to being involved in politics and civic life, which is reflected in the low number of openly disabled people in national government and falling numbers appointed to public boards. Broader participation in culture and sport for disabled people is also limited.

Our last review, in 2015, highlighted a continued rise in public acceptance of LGBT people. However, the 2018 review found LGBT people continued to face prejudice, with many experiencing prejudice from school onwards and with a potential impact on their mental health and wellbeing. Hate crime charges related to sexual orientation and transgender identity continued to increase, but most people who experienced a hate crime or incident did not report it. Evidence continues to be relatively limited on the experiences of transgender people, although available evidence relating to work, financial services and healthcare show transphobia is something many transgender people face.

The relatively small number of ethnic minority groups living in Scotland means that the available evidence is often patchy and incomplete. With the exception of Gypsy/Travellers, young people from ethnic minority groups generally do well in educational attainment. However, it is a concern that, in higher education, those in ethnic minority groups are less likely to get the highest level of degree and are less likely to be in work or further study after graduation. Ethnic minority groups remain under-represented in Modern Apprenticeships. People from ethnic minority groups are under-represented on public boards.

Those from ethnic minority groups are also more likely to live in poverty. The majority of hate crime charges recorded were for racially aggravated offences, although race hate crime charges did continue to decrease. People from ethnic minority groups reported lower levels of trust and belonging in their local neighbourhood.

Age, particularly for younger and older people, continues to affect people's outcomes across many areas of life. Mental health is a key issue for young people. Of concern are the increasing numbers of young people being referred to Child and Adolescent Mental Health Services (CAMHS) alongside a high rejection of referrals and lack of national provision for particular mental health needs of young people. The fall in the number of young people in custody is a positive development, but young people leaving custody must be supported when they return to the community. The fall in youth unemployment is positive, but the rise in insecure employment (where many young people find work) suggests that young people are facing difficulties in securing good quality jobs. Life expectancy continues to rise and, with it, a growing older population. The large increase in older people choosing to exercise is one pattern that will help maintain good health for as long as possible. When support for health and social care is needed, choice and control should be ensured. Ensuring the health and care needs of older prisoners are appropriately met is a challenge. It is not clear whether the small but growing number of older people continuing to work is through choice or necessity. Internet use by older people is increasing, although there is a continuing risk of exclusion for those who are unable to access or use the internet. There is a need to protect older people, and others, from social isolation.

8.2 Evidence gaps

'Is Scotland Fairer? 2015' highlighted the need for more comprehensive and higher-quality evidence, as well as insight, to enable us to assess how fair we are as a society and take action to improve fairness where needed. In response, the Scottish Government published its Equality Evidence Strategy in 2017 to drive action by itself and others to improve equality evidence and analysis over the four years. The Scottish Government will publish a progress report related to the Equality Evidence Strategy in summer 2019.

The need for improved evidence has been highlighted in many Scottish Government strategies since the last 'Is Scotland Fairer?' review; namely, the Fairer Scotland Action Plan; Race Equality Framework for Scotland; A Fairer Scotland for Disabled People; Child Poverty Strategy for Scotland 2014–2017; Tackling Child Poverty Delivery Plan 2018–2022; Delivering Excellence and Equity in Scottish Education – A Delivery Plan for Scotland 2016; Labour Market Strategy 2016; Fair Work Framework 2016; Equally Safe – A Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls 2017; New Scots Refugee Integration Strategy 2018–2022; Mental Health Strategy 2017–2027.

Our data collection and analysis for 'Is Scotland Fairer? 2018' clearly demonstrates that more needs to be done to develop the evidence base, especially regarding data by protected characteristic and for 'at risk' groups. Of particular concern was the lack of routine data by protected characteristic across all of our six domains. Of the nine protected characteristics, most equality data were focused on sex and disability.

There continued to be a lack of data on gender reassignment, pregnancy and maternity, race, and religion or belief

There continued to be a lack of data on gender reassignment, pregnancy and maternity, race, and religion or belief. There was also a lack of routine evidence for specific 'at risk' groups, including: people who experience homelessness; Gypsy/Travellers and Roma; migrants, refugees and asylum seekers; and prisoners.

Similar to the case in 2015, we found that often data sources can only provide evidence for broad overarching categories of people who share particular characteristics, such as people from ethnic minority groups or disabled people. These broad categories mask the variation in people's experiences. Other small groups such as Gypsy/Travellers, transgender people, and and disabled people with specific impairments (for example, hearing or visual impairments) are rendered virtually 'invisible' by the lack of data. Small numbers mean national surveys will not be able to gather information for a sufficiently large enough sample to support robust analysis.

Similarly, there continues to be a lack of intersectional analysis in data sources. People have many different characteristics and the interactions of these characteristics on the experiences people have, and the outcomes that result from those experiences, must be better understood.

Without a strong evidence base we will not be able to comprehensively identify the scale and nature of equality issues and push for action to tackle them.

9. Recommendations for action

The following recommendations are based on the findings in each chapter, with additional recommendations to tackle the overall needs to strengthen the legal framework protecting equality and human rights and to fill gaps in evidence.

The following recommendations are based on the findings in each chapter, with additional recommendations to tackle the overall needs to strengthen the legal framework protecting equality and human rights and to fill gaps in evidence. Our recommendations identify the organisations that we believe must act to tackle the key equality and human rights issues identified in our report.

Having identified the issues and the changes that need to be made, our role will be to work with others to help them effect change, and to use our range of powers to influence policy and legislative change, improve compliance with the law and enforce the law when it is breached.

Realising equality and human rights for everyone

1. To use the leverage of public services and resources to tackle the findings of inequality in this report, the Scottish Government and all public bodies should, in performing their Public Sector Equality Duty (PSED), set equality outcomes and publish evidence of action and progress regarding our key findings that relate to their functions.

2. The Scottish Government should use its forthcoming review of the PSED-specific duties to focus public bodies on tackling the key challenges in this report.

3. The UK Government and the Scottish Government, where they have the power to do so, should implement all outstanding provisions of the Equality Act 2010, including the duty to make reasonable adjustments to common parts of rented residential properties and the requirement for political parties to report on diversity of candidates.

Education

4. To address the key inequalities identified in 'Is Scotland Fairer? 2018', the Scottish Government, education authorities and inspectorates should take action under their PSED obligations to:

   i. address the attainment gaps for children sharing certain protected characteristics (including boys, children with additional support needs and Gypsy/Traveller children)

   ii. reduce the high exclusion rates for children with certain protected characteristics (including boys, disabled children, children with additional support needs and Gypsy/Traveller children)

   iii. tackle and reduce bullying, including prejudice-based bullying and sexual harassment

   iv. Further and Higher Education bodies should improve equality of access to and attainment in higher and further education.

5. To give children effective rights, the Education (Additional Support for Learning) (Scotland) Act 2004 should be amended in respect of the additional rights for children introduced by the Education (Scotland) Act 2016:

   i. so that a child's capacity is assessed under the framework of the Age of Legal Capacity (Scotland) Act 1991

   ii. to remove the requirement for preliminary assessment of adverse impact on the child's wellbeing.

6. To tackle and reduce bullying, including prejudice-based bullying and sexual harassment:

   i. the Scottish Government should ensure that mandatory systems are in place in schools to record and monitor prejudice-based bullying incidents and sexual harassment and use the data to inform their plans to tackle these issues

   ii. education authorities should ensure that teachers receive throughout their careers professional development on and support in recognising, recording and challenging bullying, including prejudice-based bullying and sexual harassment.

7. The Scottish Government and Further and Higher Education bodies should ensure that careers guidance and work experience opportunities tackle stereotypes and encourage wider subject and career choices for women, people from ethnic minority groups and disabled students.

Work

8. To improve employment rates for disabled people, the UK Government should set interim targets for its commitment to a target of one million more disabled people in work over the next 10 years; report regularly on progress, including by impairment group; and identify steps if progress is insufficient.

9. To address the gender pay gap and close the disability employment gap:

   i. the UK Government should introduce the right for all employees to request flexible working from day one of employment

   ii. employers should offer all jobs, including the most senior, as open to flexible or part-time working, unless there is a justifiable business reason to prevent it.

10. To address the ethnicity and disability pay gaps:

    i. The UK, Scottish and Welsh Governments should work together to provide clear guidance on the classification system to be used for ethnic and disability monitoring by all types of organisation, and practical guidance for different types and sizes of employers on how to collect, report on and use the data. This should be done by us in partnership with the Office for National Statistics.

    ii. Once systems are in place, the UK Government should:

    – require private, voluntary and those public sector employers not in the scope of the Scottish PSED-specific duties to monitor and report on ethnicity and disability in recruitment, retention and progression. This should apply to organisations with more than 250 employees.

    – require private, voluntary and public sector employers not in the scope of the Scottish PSED-specific duties to publish a narrative and action plan with time-bound targets, informed by the analysis of their ethnicity and disability data.

    iii. The Scottish Government as part of their review of the PSED-specific duties should consider requiring listed public authorities with over 20 employees to publish a narrative and action plan on how they are monitoring ethnicity and disability in recruitment, retention and progression. This analysis should help explain the factors underlying the data and focus on how to make substantive improvements to the workplace.

11. To reduce workplace harassment and victimisation:

    i. the UK Government should introduce a mandatory duty on employers to take reasonable steps to protect workers from harassment, sexual harassment and victimisation in the workplace and should introduce a statutory code of practice on preventing and responding to sexual harassment and other harassment at work

    ii. the UK Government and employers should implement all the other recommendations in our 2018 report, 'Turning the Tables'.

12. To reduce pregnancy and maternity discrimination and disadvantage, the UK Government should:

    i. amend the Equality Act 2010 to prohibit employers asking job applicants questions related to pregnancy and maternity

    ii. extend the time limit for bringing cases to employment tribunals for discrimination and harassment to six months

    iii. reinstate the power of employment tribunals to make recommendations to reduce discrimination in the wider workforce.

13. To increase the numbers of women, people from ethnic minority groups and people from other under-represented groups on company boards and in senior positions, companies and employers should:

    i. set and report against targets

    ii. seek advice from independent consultancies experienced in making diverse appointments

    iii. advertise widely

    iv. use positive action and tiebreak provisions to promote or recruit equally qualified diverse candidates.

14. To improve access to work for women, people from ethnic minority groups, and disabled people, and to tackle gender segregation the Scottish Government should hold Skills Development Scotland to account, including through their contractors. This should ensure that apprenticeships at all levels improve participation for those not already in work.

Living standards

15. To ensure that there is an adequate supply of accessible and adaptable homes for disabled people, the Scottish Government should:

    i. impose requirements that a minimum of 10% of all new-build homes across all tenure types are built to wheelchair-accessible standards

    ii. undertake a review of Housing for Varying Needs design guidance.

16. The Scottish Government, local authorities and planning committees should ensure that Gypsy/Traveller groups have access to a sufficient number of Gypsy/Traveller sites of suitable quality, and the Scottish Housing Regulator should use its powers to inspect the quality of sites and take action when appropriate.

17. To target tax and spending decisions on minimising and reducing the disadvantage experienced by different groups, the UK and Scottish Governments should conduct and publish a cumulative impact assessment of the varied impact on people with different protected characteristics alongside all national fiscal events (Budgets and Spending Reviews).

18. To ensure a social security system that is accessible to, and provides an adequate standard of living for, all, the UK Government should carry out a comprehensive review of the application of sanctions and conditionality on claimants with different protected characteristics and take steps to tackle any disparities.

19. The Scottish Government should monitor the impact of any reductions in the availability of adult social care on disabled people's ability to live independently and take steps to tackle any adverse impacts identified.

Health

20. To address the key inequalities in access to healthcare and to improve health outcomes:

    i. the Scottish Government, Health and Social Care Partnerships (HSCPs) and health boards should set out how they plan to tackle poor and unequal health outcomes, unequal access to healthcare, treatment times and discrimination

    ii. the Scottish Government, HSCPs and health boards should ensure that they comply with their PSED requirements to better recognise and tackle barriers to accessing all parts of the health services for people with different protected characteristics.

21. To deliver improvements in accessible, appropriate and high-quality mental health care and treatment, and to ensure that the principle of parity of esteem between mental and physical health is reflected in practice, the Scottish Government should ensure there are sufficient appropriate and high-quality mental health services to meet the mental health needs of adults, children and young people, based on a robust assessment of needs.

Justice and personal security

22. To address the key inequalities in justice and personal security identified in 'Is Scotland Fairer? 2018', the Scottish Government, public bodies and inspectorates should take steps under their PSED obligations to:

    i.   improve the treatment of disabled people, people from ethnic minority groups and other 'at risk' groups in the criminal justice system

    ii. strengthen the legal and policy frameworks that protect people from identity-based violence

    iii. improve access to justice for victims of discrimination.

23. To remove barriers to accessing courts and tribunals, the UK Government should identify and expedite refunds for all claimants who have paid employment tribunal and employment appeal tribunal fees during the period of increased fees, and ensure no new barriers to accessing employment tribunals are introduced.

24. To improve the response to hate crime, the Scottish Government should:

    i. improve support for victims and witnesses to report hostility and intimidation wherever it occurs

    ii. develop effective mechanisms for tackling hostility and intimidation wherever it occurs.

25. To reduce levels of violence against women and girls, the Scottish Government should take steps to raise awareness and tackle violence against women, particularly against young women under 18.

26. To improve the response to sexual violence and domestic abuse, the Scottish Government, Police Scotland and Crown Office and Procurator Fiscal Service should:

    i. take steps to improve reporting and recording mechanisms

    ii. increase prosecution and conviction rates, including improving the victim-centred approach, when dealing with sexual violence and domestic abuse.

27. To improve conditions of detention across the prison estate, the Scottish Government should urgently assess the reasons for increased levels of self-harm and assaults.

28. To ensure older prisoners are housed in suitable accommodation, the Scottish Government should assess the prison estate and adapt the estate so that it is fit for purpose.

Participation

29. To increase democratic engagement, the Scottish Government should:

    i. ensure that prisoners released or due to be released on temporary licence and on home detention curfew are able to vote in all Scottish elections

    ii. identify and tackle barriers to voting, including by improved access to polling stations to ensure they are accessible to all.

30. To increase diversity in political representation:

    i.   the UK Government should legislate to exempt costs arising from disabled candidates' impairments from statutory limits on campaign expenditure

    ii. political parties should voluntarily publish diversity data on the selection and election of candidates in local, national and UK elections, and work with the UK Government to set up a fund to meet the additional disability-related costs of disabled candidates for UK Parliament elections.

31. To improve transport accessibility for disabled and older people:

    i.   the Scottish Government and Transport Scotland should report annually on measurable improvements being delivered by the Accessible Transport Framework

    ii. public transport providers and regulators in England, Scotland and Wales should work together to set industry standards that ensure all staff have the knowledge and skills to help meet the needs of disabled passengers.

32. To ensure that the increased digitalisation of services benefits all, the Scottish Government should set specific accessibility requirements for all its initiatives, and the UK Government should ensure that internet safety regulation protects against abuse and intimidation while respecting the rights to privacy and freedom of expression.

Evidence gaps

33. To build a more comprehensive evidence base on the experiences of those who share protected characteristics, governments in England, Scotland and Wales, and other national agencies that routinely collect and use data, should:

    i.   ensure that, where data is collected on protected characteristics, analysis is published as standard

    ii. identify where data is not collected on protected characteristics, and take steps to tackle these gaps

    iii. consider and adapt methodologies to increase the usability of data for protected characteristics, such as increasing samples, boosting samples for particular groups or pooling data across years. Methodologies should ensure analysis of data can draw statistically significant comparisons with other categories and over time.

34. To promote the collection of sexual orientation and gender identity information in survey and administrative data in England, Wales and Scotland, the UK Government should work with the Scottish and Welsh Governments to fulfil the commitment of the LGBT Action Plan 2018 to develop and apply monitoring standards for the collection of data on sexual orientation and gender identity.

35. To tackle gaps in the understanding of experiences of bullying, harassment, prejudice and discrimination, governments in England, Wales and Scotland should institute national surveys, or extend existing surveys, to collect data by protected characteristic. Coverage should include all aspects of life, such as employment, transport, and access to public and private services.

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