

**Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Drais yn erbyn menywod, cam-drin domestig a thrais rhywiol: menywod mudol](#)**

**This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Violence Against Women, Domestic Abuse and Sexual Violence: migrant women](#)**

**MW05**

**Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol | Response from: Equality and Human Rights Commission**

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Consultation response

# Violence Against Women, Domestic Abuse and Sexual Violence: Migrant Women

## Consultation details

**Title of consultation:** VAWDASV: Migrant Women

**Source of consultation:** Senedd Equality and Social Justice Committee

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## For more information please contact

Name: Ruth Coombs

Equality and Human Rights Commission

The Maltings, House 3, East Tyndall Street, Cardiff, CF24 5EZ

Contact number: 02920 447710

Email:

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# Introduction

## About the Equality and Human Rights Commission

The Equality and Human Rights Commission ('the Commission') is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations. Our job is to help make Britain fairer. We do this by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect. The Commission has been given powers to advise Governments across England, Scotland and Wales on the equality and human rights implications of legislation and policy. We can also publish information or provide advice, on any matter related to equality, diversity and human rights.

The Commission has identified work to improve access to justice for survivors<sup>1</sup> of all forms of violence against women and girls (VAWG) as a strategic priority, and we are committed to supporting efforts to improve the policy and legal framework for addressing these acts. We monitor the prevalence of VAWG, as part of our measurement framework,<sup>2</sup> and we report to the UN on the UK's progress in meeting its international human rights obligations to tackle VAWG.<sup>3</sup>

## VAWDASV – The Legal Context

The UK is party to a number of international human rights treaties of relevance to combatting VAWDASV. These, together with domestic human rights and equality legislation<sup>4</sup>, set out the UK's legal obligations for preventing and responding to VAWDASV.

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<sup>1</sup> The term survivor is used in this submission to refer to individuals who are at risk of or who have experienced VAWDASV, except where specifically referring to criminal justice matters or directly citing an external source where the term victim or victim/survivor is also used.

<sup>2</sup> We use a [single measurement framework](#) to monitor equality and human rights in Britain.

<sup>3</sup> See, for example, EHRC (2020), [Civil and Political Rights in Great Britain](#), section 7; and EHRC (2018), [Pressing for progress: women's rights and gender equality in 2018](#), section 3.

<sup>4</sup> [Human Rights Act 1998](#) incorporating the [European Convention on Human Rights](#) into domestic law, and the [Equality Act 2010](#).

**UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** was ratified by the UK in 1986 and is therefore binding under international law. The CEDAW Committee<sup>5</sup> produces General Recommendations that provide authoritative interpretations of the legal duties imposed on states under CEDAW. General Recommendations 19 and 35 set out the range of measures states should undertake to ensure prevention, protection, prosecution, punishment, data collection and monitoring, and redress for acts of VAWDASV.<sup>6</sup> The Committee also issues recommendations to individual states as part of the reporting process under CEDAW<sup>7</sup> and has made a number of recommendations to improve efforts to combat VAWDASV in the UK.<sup>8</sup>

The UK has also signed and committed to ratify **the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**.<sup>9</sup> It places similar positive obligations on the UK Government as CEDAW,<sup>10</sup> and must be implemented on a non-discriminatory basis, including on grounds of migrant status.<sup>11</sup>

**European Convention on Human Rights (ECHR)** also imposes duties on states in relation to VAWDASV and imposes positive obligations on states to protect individuals against abuse or harm caused by other individuals, including a duty to put in place protective law enforcement measures and to prosecute crimes of VAWDASV.<sup>12</sup> Specifically with respect to domestic abuse, the European Court of Human Rights has made clear that a state's "failure to protect

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<sup>5</sup> The Committee is established under Article 17 CEDAW, and is responsible for monitoring the implementation of the Convention.

<sup>6</sup> The CEDAW Committee has confirmed this includes a due diligence obligation to prevent, investigate, prosecute and punish acts of VAWG. See: UN Committee on the Elimination of Discrimination against Women, General recommendation No.35 on gender based violence against women, 14 July 2017, CEDAW/C/GC/35, paras 16 and 24(b) (CEDAW General Recommendation 35); CEDAW Committee, General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention, 16 December 2010, CEDAW/C/GC/28, para 19.

<sup>7</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, articles 17-22.

<sup>8</sup> CEDAW Committee Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 March 2019, CEDAW/C/BGR/CO/8, in particular paras 29-36.

<sup>9</sup> Home Office, Ministry of Justice (2017) New measures to allow ratification of Istanbul Convention.

<sup>10</sup> Istanbul Convention, Articles 5, 8, 20 and 22.

<sup>11</sup> Istanbul Convention, Article 4.

<sup>12</sup> See, for example, Sandra Janković v Croatia, Application no. 38478/05, 5 March 2009, paras 45 and 47; and M.C. v Bulgaria, Application no.39272/98, 3 December 2003, paras 150- 153.

women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional”.<sup>13</sup>

**Equality Act 2010:** The Public Sector Equality Duty (PSED) is particularly relevant to the provision of support services for VAWDASV, as well as prevention and criminal justice measures, as it requires public authorities to have ‘due regard’ to the need to eliminate discrimination in the exercise of their functions. The duty includes a requirement to assess how decisions and policies may adversely affect groups of people with different protected characteristics, and to consider how to meet their particular needs.<sup>14</sup> Wales-specific duties include the requirement for listed bodies to state equality objectives and report on progress towards them and to engage with people with protected characteristics when making policy decisions<sup>15</sup>.

Furthermore, the Socio-Economic Duty (SED) requires that Government officials and listed bodies consider the impact of strategic decisions on those who are disadvantaged due to low income or other material deprivation.

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<sup>13</sup> Opuz v Turkey, Application no. 33401/02, 9 June 2009, para 191; see generally paras 186-191.

<sup>14</sup> Equality Act 2010, Section 149.

<sup>15</sup> For a full discussion of the Wales specific duties, see the Commission’s Essential Guide to the Public Sector Equality Duty: An Overview for Listed Public Authorities in Wales

## Response to the Consultation Letter

- **The scope and coverage of specialist services and interventions which are adequately resourced and trained to support survivors from migrant communities, including meeting cultural and linguistic needs.**
- **Consideration of the barriers preventing migrant women and girls in Wales from accessing services and additional barriers faced by women with insecure immigration status, or whose immigration status is dependent on a spouse or employer or those who have No Recourse to Public Funds (NRPF).**

Some women and girls are more likely to experience VAWDASV. In England and Wales in 2019, disabled, younger, LGBT, and some ethnic minority women were more likely to have experienced domestic abuse.<sup>16</sup> A number of organisations in Wales have evidenced concerns about a lack of sufficient and competent specialist VAWDASV services for LGBT women, disabled women, some ethnic minority women, children and some men. Some studies refer to a postcode lottery in terms of which services are available, where, and designed for whom.<sup>17 18 19</sup>

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<sup>16</sup> EHRC (2020) [How Coronavirus Has Affected Equality and Human Rights](#), page 42.

<sup>17</sup> Wales Audit Office (2019), [Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence Act](#), page 15.

<sup>18</sup> Welsh Women's Aid and Disability Wales (2018), [Supporting Disabled People Experiencing Violence Against Women, Domestic Abuse and Sexual Violence in Wales](#)

<sup>19</sup> Welsh Women's Aid (2020) [Time to Act on Sustainability: State of the Sector 2020](#)

A 2019 study by Wales Audit Office found that survivors are let down by a landscape of services which are fragmented, short term and difficult to navigate and also found there is little oversight of Welsh Government's guidance for commissioning of VAWDASV services.<sup>20</sup> Wales Centre for Public Policy has noted that "fragmented funding and short term settlements" stifle strategic use of funds and ability to plan long term<sup>21</sup> and competitive tendering can lead to price cutting and lower service quality and can hinder collaboration between organisations.<sup>22</sup> There is a well-documented insufficiency in funding for VAWDASV services across Wales<sup>23 24</sup> and research has shown that traditional commissioning practices can exclude smaller 'by and for'<sup>25</sup> organisations as they can lack power when participating in consortiums and are denied the greatest proportion of funds.<sup>26 27</sup> Wales Audit Office has recommended that public bodies revisit and re-map needs assessment and service provision, widening and enhancing involvement to include all relevant stakeholders, to build a more accurate picture of current service provision and identify gaps.<sup>28</sup>

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<sup>20</sup> Wales Audit Office (2019), [Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence Act](#)

<sup>21</sup> Wales Centre for Public Policy, (2020) [Domestic Abuse Interventions in Wales Policy Briefing](#), pages 3-4.

<sup>22</sup> Ibid. p. 23

<sup>23</sup> Welsh Women's Aid (2020), [State of the Sector 2020](#), page 6; Women's Aid (2021), [The Domestic Abuse Report 2021: The Annual Audit](#), page 49

<sup>24</sup> Wales Centre for Public Policy. 2020 Domestic Abuse Interventions in Wales Policy Briefing [Domestic Abuse Interventions in Wales Policy Briefing](#) p.3

<sup>25</sup> Specialist 'by and for' organisations are specialist domestic abuse or VAWDASV services "run by and for the users and communities they aim to serve such as ethnic minority women, disabled women, LGBT and migrant women.

<sup>26</sup> Adisa O et al (November 2020), [Mapping the VAWG funding ecosystem in England and Wales](#).

<sup>27</sup> Imkaan (2016), [Capital Losses](#), page 17.

<sup>28</sup> Wales Audit Office (2019), [Progress in implementing the Violence Against Women, Domestic Abuse and Sexual Violence Act](#)



People who experience VAWDASV along with another form of oppression are also more likely to experience barriers when accessing support services. Barriers include discrimination, inadequate provision that is not designed to meet their needs, disbelief on the part of service providers, or fear of authorities including social services and immigration.<sup>29</sup> Migrant survivors with insecure immigration status may be deterred from reporting abuse to the police for fear that their data may be shared with immigration enforcement,<sup>30</sup> with threat of immigration enforcement also being used as a tool of coercive control by perpetrators.<sup>31</sup> Barriers for ethnic minority survivors include concerns about familial and community stigma, language difficulties.<sup>32</sup> Funding mechanisms are currently inadequate for migrant victims of crime with insecure immigration status and NRPF.<sup>33</sup>

Under the Public Sector Equality Duty, local commissioners and service planners, as well as the Government more generally, are required to identify and meet the needs of survivors with different protected characteristics. The UK and devolved governments are also under international legal obligations to ensure VAWDASV victim services are provided without discrimination.<sup>34</sup> The CEDAW Committee has confirmed these services should be available irrespective of immigration status.<sup>35</sup>

**We recommend that the Welsh Government:**

- **Ensures that VADAWSV policies and strategies:**

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<sup>29</sup> CF. Imkaan [Joint Principles for the VAWG Strategy 2021-2024](#)

<sup>30</sup> HMICFRS, College of Policing, and Independent Office for Police Conduct (2020), [Police super-complaints: police data sharing for immigration purposes](#).

<sup>31</sup> Cathy McIlwaine, Lucila Granada and Illary Valenzuela-Oblitas King's College London and the Latin American Women's Rights Service (2019), [Right to be believed, Migrant women facing Violence Against Women and Girls \(VAWG\) in the 'hostile immigration environment' in London](#), page 4.

<sup>32</sup> Women's Aid (2017), [Survival and Beyond](#), page 24.

<sup>33</sup> Welsh Women's Aid (2020), [Shut out from safety](#); Women's Aid (2021), [Nowhere to turn 2021](#).

<sup>34</sup> CEDAW General Recommendation 35 and CEDAW Committee, [General recommendation no. 28 on the core obligations of state parties under article 2 of the Convention](#), 16 December 2010, CEDAW/C/GC/28, para 19. See also: [Istanbul Convention](#), Article 22, read together with the non-discrimination provision in Article 4(3).

<sup>35</sup> The CEDAW Committee has highlighted that states must ensure protection and support measures are "accessible to all women, in particular to those affected by intersecting forms of discrimination...and provided irrespective of women's residence status". See: [CEDAW General Recommendation 35](#), para 41.

- **Respond to and mitigate the specific challenges faced by survivors who share multiple protected characteristics or status, such as disabled women, LGBT women, ethnic minority women and migrant women, recognising the specific and compounded forms of disadvantage they may experience. Recognise the importance and expertise of specialist VAWDASV organisations, including those providing specialist services ‘by and for’ services<sup>36</sup> for survivors with protected characteristics or migrant status, and enable their meaningful and active engagement in the development and delivery of the strategy, including oversight mechanisms.**
- **Commits to sufficient, sustainable long-term funding for specialist services, with ring-fenced funding for specialist ‘by and for’ services reflected in guidance to commissioning authorities.**
- **Places a duty on commissioning authorities to provide community-based and accommodation-based services to victims, requiring commissioners to provide these services without discrimination, and provide guidance on meeting that requirement.**
- **In addition to this duty, the Welsh Government should undertake central coordination to ensure adequate specialist provision nationally and also monitor and enforce implementation of the commissioning guidance.**
- **Where needed, fund specialist organisations to carry out research to better understand the experiences of ethnic minority, LGBT, disabled and migrant victims of VAWDASV, the barriers they face to reporting and their needs in relation to support services and public education campaigns.**

**Whether the Welsh Government could take any steps to mitigate the disproportionate impact UK immigration policy has on survivors in Wales and deliver its aspiration of Wales as a ‘Nation of Sanctuary’.**

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<sup>36</sup> Specialist ‘by and for’ organisations are specialist domestic abuse or VAWDASV services “run by and for the users and communities they aim to serve such as ethnic minority women, disabled women, LGBT and migrant women.

The Commission has recommended that the UK and the Welsh Government establish a national mechanism for reporting, implementation and follow up of UN recommendations relating to human rights. In the absence of such a mechanism, we have developed a [Human Rights Tracker](#), a searchable online tool which can be used to review the progress the Welsh & UK governments have made towards fulfilling their international human rights obligations and find out what the UN has said about a particular human rights issue or population group in the UK. We also note the current Programme for Government's commitment to incorporating CEDAW and UNCRDP into Welsh law. This commitment must be part of its strategy to tackle VAWDASV.

**We recommend that Welsh Government strategies and policies in relation to VAWDASV:**

- **Are aligned with other existing equalities-related action plans and relevant initiatives, ensuring the oversight board has equalities related performance objectives;**
- **Commit to implementing, within a specified timeframe, the recommendations made by the CEDAW committee report on the UK on VAWDASV that are within its devolved powers.**
- **Include pathways which encourage the UK Government to lift NRPF restrictions to enable all VAWDASV survivors to access appropriate support and refuge services regardless of immigration status.**
- **Take steps to protect and support all VAWDASV victims, regardless of their immigration status, and ensure all migrant victims who need services have equal access to them, including women with NRPF.**