

THE PUBLIC SECTOR EQUALITY DUTY - EMPIRICAL EVIDENCE BASE

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1. Introduction

The following report looks at a range of research and evidence of impact and change in practice resulting from the Public Sector Equality Duty.

The duty was enacted under section 149 of The Equality Act 2010, which harmonised existing equalities legislation, drawing the previous Race, Disability and Gender Equality Duties into one which covers nine protected characteristics of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The single duty, introduced on 5th April 2011,¹ was broadly welcomed by equalities practitioners with some recognition that ‘harmonising up’ the legislation to cover all strands clarified responsibilities and supported the implementation of more widespread equality initiatives, in employment as well as service provision. However, at the same time concerns were raised that some ‘strands’, such as gender, would no longer be seen as a high priority and be subsumed by a single duty. Others feared that protection would be hierarchical with newer strands seen as less important than the old ones (Harding and Peel, 2007, in Colgan and Wright, 2011). Additional concerns were voiced regarding the ‘tensions’ between different strands, and the failure to account for the complexity of intersections (Conley and Page, 2010; Colgan and Wright, 2011).

Changes to the specific duties in particular have given cause for concern. Stephenson and Harrison (2011), for instance, contend that many authorities see their obligations as weakened under the revised structure, including the lack of written equality schemes for specific equality groups or consultation on those schemes. The new specific duties place only two obligations on public authorities: to publish equality information about service users and the workforce (where over 150 employees) and at least one equality objective (Russell et al, 2010; TUC, 2013). Others, though, have argued that the new duty is less onerous and more realistic, allowing a focus on priority areas and the ability to make a difference where it is most needed (Johnstone and Godwin, 2013). This focus, some maintain, is underpinned by the requirement to justify priorities with a published evidence base (Russell et al, 2010).

The following synthesis of research and evidence draws on a comprehensive range of sources which consider the impact of the duty in the workplace and for service users, through changes in organisational behaviour and practice. Analysis focuses, where possible, on change which can be *directly attributed* to implementation of the duty. Though there is an attempt to separate out evidence relating to ‘old’ and ‘new’ duties has been made, in reality there is overlap, with some authorities continuing with initiatives from the previous duties, such as disability equality schemes, after the new act became law. The evidence drawn on broadly comprises evaluation of, research into and the impact of ‘old’ race, disability and equality duties, a small amount of evaluation work around the new, single duty and a range of evidence submitted for the Public Sector Equality Duty Review process which draws on

¹ The revised specific duties, which differ from those in Wales and Scotland, were enacted in September 2011. The reduction from previous requirements was intended to address coalition government concerns about burdens and bureaucracy.

evidence from both ‘old’ and ‘new’. Reports which contain a broad number of points have been summarised in boxes.

2. Evidence of impact and change brought about by the duties

2.1 Evaluating the previous duties

Prior to the introduction of the single duty, the previous duties were for Race (under the Race Relations Amendment Act 2000, introduced 2nd April 2001), Disability (under the Disability Discrimination Act 2005, introduced 4th December 2006) and Gender (under the Equality Act 2006, introduced 2nd April 2007).² A range of material is identifiable which assesses the impact of these, with a small number of studies providing evidence of change brought about by the Race Equality Duty (RED) and the Disability Equality Duty (DED) in particular.

During 2002, Schneider-Ross conducted a quantitative and qualitative evaluation across public authorities and educational institutions which included analysis of a random sample of race equality schemes and policies. At this early stage they identified three levels of responses – those authorities responding well, those with good foundations in place but needing to make progress, and those with a weak response and non-compliance (2002). Aspinall and Mitton (2007) identified the impact ethnic monitoring of benefits claimants under the duty might have on determining racial inequalities reflected in low pay, low employment and overreliance on benefits. They found compliance with data requirements on both a local and national basis “patchy and piecemeal” (p381).

There is much more evidence relating to the progress of the DED, particularly through the involvement of people with disabilities which was a requirement of the legislation. A small, qualitative study produced by the Office for Public Management (OPM - 2007) – ‘Capturing the value of the DED’ - assessed early indicators of success, particularly in developing disability equality schemes and involved interviewing government officials involved in equalities. The duty was found to increase the prominence of and focus on disability equality. Changes to structures resulting from the duty involved creation of inter- and cross-departmental disability equality groups which increased engagement with senior management, facilitated direct conversations between disabled people and policy leads, and enabled sharing of good practice. Direct involvement with disabled people was key in identifying the bullying experienced by disabled children leading to new guidance for schools in logging and dealing with such incidents. One contributor attributed an increase in funding for inclusive design as a direct outcome of the duty. Collecting data on disability in schools was also prioritised more highly which “would not have happened... so quickly without the Duty” (p28).

The necessary focus on disability monitoring was found to help with identifying gaps in data, leading to a more developed and joined-up evidence base across government departments. Wider societal benefits were realised too, including the presentation of information in a more accessible format which had benefits for non-disabled people. A further outcome was support in meeting wider targets such as an increase in disabled people finding work

² Equality and Human Rights Commission, What are the existing public sector duties?
<http://www.equalityhumanrights.com/what-are-the-existing-public-sector-duties/>

meaning progress towards achieving a goal of an employment rate of 80% for people with disabilities.

In addition the OPM for the (now defunct) Disability Rights Commission (2007a) looked specifically at the benefits to be gained and lessons learned through involving disabled people in developing disability equality schemes. A survey conducted across local government, HE and FE, health and housing, internal equalities managers and individuals from disabled people's organisations were interviewed, with this report building on the 'Capturing the Value' study, to ascertain if and how such involvement took place in other public organisations. Specific examples of benefits from involving people with disabilities included: reaching other 'minority groups' in an HEI by improving material to include audio, Braille and large print which in turn benefited older and international students; developing policies in a local authority which incorporated a Bangladeshi and Somali population with different experiences of disability; providing greater career opportunities for disabled staff through the provision of specific training; disability training for taxi drivers which ensured passengers with sight impairment could travel with their guide dogs; an HEI acting on feedback from a review of its educational programme modifying assessments for those with Asperger's who are challenged by group work. Finally, survey respondents felt that involvement, of grass roots organisations with a disabled user-led agenda is more meaningful than consultation as it builds trust in public services.

A number of studies concentrate on the role of the DED in education. Peel and Posas (2009), for instance, looked at initiatives involving undergraduate students working with 'learning disabled' people to help them engage with principles of inclusive design in the built environment and to implement inclusive policy and practice. Beckett (2009) argued that the DED provided "a new window of opportunity to promote the idea that education has a role to play in changing non-disabled children/young people's attitudes towards disabled people" (p317). McLeod and Green (2009) identified the value the DED's 'proactive' approach in a university which encouraged students with 'unseen' disabilities such as Asperger syndrome to work with a disability coordinator, assessing needs in advance rather than waiting for crisis intervention. Sin and Fong (2010) demonstrate the duty's role to involve disabled children and young people in a wide range of service planning. Furthermore, Stalker et al (2011), conducting case studies across a range of parents with different impairments identified increased involvement in the school life of their children, and cite a number of examples of schools making adjustments to involve parents with disabilities such as tailoring the method, venue and timing of communications regarding their children.

A wider, qualitative study of frontline workers, staff and service users across a range of public sector organisations and their implementation of the DED found some progress though great variation between sectors. In this instance, the involvement of disabled people was "patchy" and often "tokenistic" (Pearson et al, 2011, p255). For example, there was a lack of understanding that the underlying principle of involvement required evidence of disabled people influencing development rather than simple consultation on draft policy. There were instances of good practice within this study, however: one Housing Association set up a working group which met six times a year and provided training for the disabled people involved; and greater involvement of groups which were previously poorly represented, for example, people with learning difficulties or mental health problems.

Finally, in an ESRC-funded study of schools across England combined a survey and qualitative interviews with teachers to explore progress against some aspects of the DED and the requirement to take a proactive approach to promoting positive attitudes towards disabled people. This study identified low numbers of schools with disability equality schemes in place, little work on promoting inclusivity and underlined disability's status as a 'poor relation' compared to the promotion of race and gender equality in teaching and learning activities (Beckett and Buckner, 2012).

There are a number of examples of the effectiveness of the Gender Equality Duty (GED) through its use in holding government to account. The Fawcett Society, for example, repeatedly raised concerns about a lack of 'due regard' for the impact of policy on gender equality. Using quantitative data and fiscal analysis they demonstrated that policies on tax and benefits have disproportionately disadvantaged lone mothers, arguing that the government have failed to pay 'due regard' to resulting inequalities. The Society eventually filed an application for Judicial Review of the Treasury's 'emergency budget'. Though unsuccessful in obtaining the Review, the Treasury pledged a different approach in future, and raised awareness about the need to consider differential impact on men and women across the public sector (Sands, 2011; The Fawcett Society, 2012, 2013). The TUC suggest that their high-profile challenge may have led to the formal assessment, launched November 2010, of the extent to which the Treasury met its obligations. This was carried out by the EHRC under powers granted by section 31 of the Equality Act 2006 (TUC, 2011). In addition, subsequent budgetary and spending announcements, for example in March 2011, were accompanied by equalities impact assessment, albeit that these were deemed inadequate by campaigning groups (Annesley, 2012).

The Women's Budget Group, also, have also called the government to account for failing to meet the duty, particularly in their failure to conduct gender impact assessments of successive budgets (2010; 2011), or to critique the assessments which have been completed (2013, 2013a). In addition, the duty has been used to mount a number of successful legal challenges to cuts in public services or cessation of funding for voluntary or community organisations through failure to comply with equality duties including Ealing Council's removal of funding from Southall Black Sisters,³ and Birmingham City Council's failure to consider the race and disability duties adequately when withdrawing funding on legal advice and adult social care services.⁴

An example of using the current duty to tackle gender-based discrimination was Unison's announcement in June 2013 that it is launching a judicial review application to challenge the government's decision to introduce fees for tribunal claims, in part because there has been no PSED assessment and that the changes will have a disproportionately adverse impact on women (Rubenstein, 2013).

2.2 Other equality standards

Conley and Page (2010) found a preference within some authorities for other equality standards in use, such as The Equality Framework for Local Government (EFLG). By following this framework, local councils should also be able to demonstrate compliance with

³ *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2026 (Admin): a successful challenge over funding cuts for minority ethnic women's domestic violence services

⁴ *Rahman, R (on the application of) v Birmingham City Council* [2011] EWHC 944 (Admin)

the PSED. It comprises five performance areas around understanding local communities, leadership, partnership and organisational commitment, Community engagement and satisfaction, responsive services and customer care and a skilled and committed workforce.

In relation to the NHS, the Equality Delivery System (EDS) might be seen in a similar light to the EFLG. This was rolled out in July 2011 and is in part a tool to help NHS organisations demonstrate compliance with the duty (although with a wider remit). An independent evaluation was carried out between January and August 2012, and though in terms of outcomes for patients, communities and staff it was felt too early to evidence impact, there was early evidence of improvement in engagement with local voluntary and community organisations and patient groups, eg, the deaf and hard of hearing. There was also evidence of increased knowledge and awareness of equality with staff at all levels. Furthermore, identification of gaps in data around staff has led to greater engagement, for instance, North East Ambulance Service have established an employee forum to discuss issues such as bullying and harassment (Shared Intelligence, 2012). Further examples of good practice include NHS trusts across Airedale, Bradford and Leeds working in partnership with the voluntary and community sectors to improve evidence collection and use this to inform objectives. Reported outcomes are the ability to identify gaps in services, ensure that all local communities are included in strategic planning and meeting the PSED published information requirements in a clear and accessible way (Equal Opportunities Review, 2012, 2012a).

2.3 Preparing for a single duty

From 2009 a number of assessments and evaluations were carried out which both looked back at the previous duties and, in some cases, looked forward to the single duty. These are summarised here:

i) The Government Equalities Office and Schneider-Ross, Equality Duties: Assessing the cost and cost effectiveness of the specific Race, Disability and Gender Equality Duties

Produced by Schneider-Ross for the GEO (2009), this introduced a quantitative and qualitative study across a wide range of public sector organisations including local authorities, health bodies and schools, looking at the impact of the existing three duties as identified by equalities practitioners.

The research identified the duties as reinforcing and supporting positive cultures which brought equalities into the mainstream by encouraging authorities to confront previously undiscussed issues - despite a 'steep learning curve'. Improvements in decision-making and resource allocation, improved outcomes relating to service provision, employment and community relations were also identified.

The study further identified that the duties had increased access to services by disadvantaged groups, improved feedback from service users and reduced disproportionality in service use between different groups. As employers, outcomes had improved in their tackling of bullying and harassment, staff satisfaction, representation at senior levels and improved retention which was attributed to increased consultation and initiatives such as flexible working.

However, the investigation also identified that a minority considered the duties a burden, using more resource than the value delivered. In addition, some schools felt that they were already doing what was required by the duties within other initiatives.

Finally, the analysis identified a need for simple explanatory guidance on the duties.

Key issues arising

- Equalities practitioners identified that the duties reinforced positive cultures and brought previously un-discussed issues into the open; positive outcomes include increased access to services, and better decision-making and resource allocation.
- Public bodies improved their employment environment.
- A minority consider the duties a burden, with some schools feeling they already meet the requirements.
- Additional guidance is needed.

ii) Sclater, for the Equality and Human Rights Commission, Making practice happen: Practitioners' views on the most effective specific equality duties

Sclater (2009) conducted a study of equality practitioners drawn from a wide range of public authorities including local government, criminal justice, fire and rescue services and central government departments.

Feedback was positive, and identified support for the specific duties, with elements such as Equality Impact Assessments (EIAs) felt to “provide a framework and focus for action” (p3). The examination also identified that Local Authorities effectively aligned requirements for the specific duties with other organisational objectives, for example, using EIAs to successfully achieve the Equality Standard for Local Government and high ratings from the Audit Commission.

The report demonstrated a wide range of impact arising from the original, specific duties including EIAs identifying improved cancer strategies for BME people which were fed into the way health professionals addressed such issues; progress in redressing gender imbalances in the Mental Health Act Commission and the adaptation of hospital wards and staff training to introduce a new system for deaf patients.

Key issues arising

- Equality practitioners give positive feedback for the duties, including elements such as EIAs which give a framework and focus.
- Synergies with other local government standards.
- Real impact on the lives of service users identified resulting from the duties.

iii) Focus Consultancy for the Equality and Human Rights Commission, The performance of the health sector in meeting the Public Sector Equality Duties: moving towards effective equality outcomes

Focus and the EHRC (2011) also looked at a sample of Strategic Health Authorities and Primary Care Trusts to evaluate their performance on the duties, conducting a desktop review of published and internal materials supported with follow-up interviews. This review found a “significant lack of evidence of implementation and impact” (p7). The assessment concluded that compliance was seen by the authorities and trusts involved as a ‘box ticking’ exercise. Their investigation uncovered a lack of leadership, inadequate planning and

tangible priorities and poor levels of equalities data inclusion in mainstream reports. In addition, the authorities were failing to hold procurement to account for the duties.

Key issues arising

- Identification of some poor adherence to the duties in the health sector.
- Compliance seen simply as 'box ticking'; poor reporting.
- Lack of leadership, clear planning, reporting and setting priorities.
- Failure to hold procurement to account.

iv) Equality and Human Rights Commission, the Public Sector Equality Duty: a way forward for the health sector

As a result of the Focus Consultancy/EHRC investigation, it was argued that a "fundamentally different approach" (2011, p2) was needed to meet the new duty. EHRC used this policy document to identify a number of 'next steps' to ensure the Department of Health created a strong evidence base across all the protected characteristics. Emphasis was on:

- Identifying key gaps in information and taking action to fill them; providing guidance.
- Evaluating commissioning bodies and ensuring equality is a key consideration in the process.

Also important were reflecting the PSED in quality standards and on-going monitoring, plus an increased emphasis on the publication of equality information and setting measurable objectives.

Key issues arising

- Identification need for a new approach in the single duty.
- Gaps in information and evaluation.
- Need to set measurable objectives.
- Strong evidence base needed, plus feeding into quality standards and monitoring.

v) Bukowski et al with Ipsos Mori – The Equality Duties and Schools

ECHR contracted Ipsos MORI to conduct qualitative research into how schools in England and Wales had implemented the Race, Disability and Gender duties (2011). Ipsos Mori identified examples of positive practice, with a key focus on pupil outcomes. They found a 'mixed' picture, though were able to link successful pupil outcomes directly to initiatives implemented under the duties.

Action plans which had been developed to address the duties included action to improve learning, adapting the curriculum to meet the needs of boys and encouraging pupils to take up non-traditional subjects. Outcomes linked to these actions involved increased participation rates in sporting activity, improved subject attainment, better wellbeing and self-esteem and higher aspirations for girls. They also found evidence of increased key stage and subject attainment for disabled and ethnic minority pupils, and a reduction in racist incidents.

vi) EHRC, The Equality Duties and Schools: lessons for the future. A policy paper for England

This policy paper (2011a) built on the findings of the Ipsos Mori study, aimed at helping schools recognise the positive outcomes resulting from the existing duties in attainment, wellbeing and encouraging pupils' aspirations.

The Ipsos Mori research had helped ECHR identify a lack of awareness of the need to challenge disadvantage within schools as well as the fact that efforts were concentrated on increasing openness and inclusion. There was a lack of awareness of the requirements of the new PSED and 'gaps' were identified such as the need to include disabled pupils in developing equality schemes.

Key issues arising

- Both the Ipsos Mori and ECHR work identified a lack of full understanding of legal obligations under the duties, and a number of areas where schools were not doing a great deal, eg, tackling prejudice-related bullying.
- The perception was that these schools were concentrating on the issues that are easier to deal with.

2.4 The impact of the single duty

Some evidence has emerging on the impact of the new single duty, though it is still soon after the introduction of the legislation.

i) Government Equalities Office, Evaluation of the Implementation of the Equality Act 2010: Report I – Organisational Approaches to Equality

This study (2012) investigated workplace equality and how different organisations vary in their ethos on equality and engage with the legislation. The study showed widespread engagement with legislation across all sectors, with increased awareness of equality issues in the workplace for public sector organisations.

ii) Government Equalities Office, Evaluation of the Implementation of the Equality Act 2010: Report II – Awareness and Impact of the Equality Act

This report (2012a) focussed on the awareness of the Act and its impact on practice, finding that public sector organisations displayed higher levels of both general and detailed awareness of requirements around equality issues such as considerations about disability in recruitment; and had greater experience of using positive action and addressing under-representation of minority ethnic employees than the private and voluntary sectors (although the research did not seek to directly attributed to the Public Sector Equality Duty).

iii) Office of the Children's Commissioner (OCC), Children and Equality – Equality Evidence relating to children and young people in England

The OCC published this document (2012) as a statement of intent in response to the Equality Act, and are clear that the PSED is a prompt to demonstrate commitment to equalities. They include examples of undertaking EIAs, exploring more thoroughly issues of gender, ethnicity, age, sexuality and disability than might previously be done, and expanding their evidence base through research into these areas to identify specific types of disadvantage, eg, a disproportionate effect of welfare cuts on minority ethnic families. They also express intent to improve recording and monitoring where little is known such as gender identity or religion and belief, and improving recording and monitoring.

iv) Other

There is evidence available of behavioural change through good practice examples of initiatives, some beyond the statutory requirements, for example (Equal Opportunities Review, 2012; 2012a):

- **Genesis Housing Association** has produced an equality scheme focusing on gender, transgender, age, sexual orientation, ethnic origin (including caste and race), disability and faith. Other authorities such as **Harrow Council** and **Lancashire Care Foundation Trust** have maintained single equality schemes to comply with the PSED.
- **The Crown Prosecution Service, Imperial College London** and **Harrow Council** have continued to produce Equality Impact Assessments because of their effectiveness for fair decision-making.
- **The Open University** have included characteristics beyond those necessary such as students living in low socio-economic areas and “caring responsibilities” in their equality plan.
- **The University of Chichester** and **Tyne and Wear Fire and Rescue Service** have adopted more positive approaches to data-collection, with these organisations focusing on increasing disclosure of sexual orientation. **Genesis Housing Association** have also increased focused on data collection through staff briefings and articles on the company intranet, seeing an impact of completion rates on questions about sexual orientation and religion and belief “from virtually zero ... to between 50% and 60%” (Equal Opportunities Review, 2012a, p23).
- **Cornwall Council** have developed a set of county-wide, shared equality objectives co-designed and owned with organisations across Cornwall’s public and voluntary sector and developed through extensive consultation.

There are few published examples yet available of the impact of these particular initiatives, though Johnstone and Goodwin (2013) identify evidence of a beneficial impact in many organisations.

In addition, the EHRC (2012) report conducted an assessment which focused explicitly on public authorities and their compliance with the specific duty to publish equality information.⁵ Though there is no prescribed process for authorities to assess the impact of their policies and practices, EHRC argue that the collation of data as a robust evidence base is a key underpinning principle in meeting the duty.

The report found that around half were fulfilling the requirement to publish equality information on staff and service users in April 2012, and were more likely to publish information on staff than service users. Many, though, were partially meeting the new requirements by publishing details on either staff or service users (with six percent failing to meet their legal obligations). There was significant variance in implementation within sectors – probation and police services performed particularly well with the NHS and national

⁵ Equality and Human Rights Commission, (2012), Publishing equality information: Commitment, engagement and transparency (Assessment of public authorities' implementation of the specific duty to publish equality information), http://www.equalityhumanrights.com/uploaded_files/PSD/publishing_equality_information_final.pdf, Accessed 1st July 2013

organisations the worst. The report identified a number of organisations which demonstrate the impact of the duty on their practices, including:

- **Staffordshire and West Midlands Probation Trust** who have identified gaps in the staff information on protected characteristics they collect in relation to sexual orientation, religion or belief and gender reassignment, updating their internal forms and with plans to report on these to comply with the specific duty.
- **The London Borough of Harrow** which published extensive information on its general population as well as actual service users, disaggregated by protected characteristics where possible. This has helped the council develop specific and measurable equality objectives, such as increasing “the proportion of users who say that their cultural and religious needs are being met to above 86%, by March 2013” (p37).
- **Derbyshire Police** publishing demographic data disaggregated by all protected characteristics (except maternity and pregnancy), in addition to information on actual users, for example, around stop and search, victims of crime and domestic abuse. Alongside, is ‘Working Towards’ information which shows what the force is doing to improve their approach. This allows them to identify trends over specific periods, helping with planning and response to changing demands.

3. Public Sector Equality Duty Review

3.1 Context

In May 2012, the government announced that it would bring forward the review of the PSED from 2015 to 2013 as part of its ‘Red-tape Challenge’. A general invitation then was issued on 11th March 2013 with a submission deadline of 12th April (extended to 19th) for evidence about how the PSED works. The review report was delivered on 6th September (Government Equalities Office – Independent Steering Committee, 2013), and supported by a report of the qualitative research which informed the review (NatCen, 2013).

The review aimed to focus on the key themes:

- How well-understood is the PSED and guidance?
- What are the costs and benefits of the PSED?
- How organisations are managing legal risk and ensuring compliance.
- What changes, if any, would ensure better equality outcomes (legislative, administrative and/or enforcement changes, for example).

Its parameters were to:⁶

- look at Great Britain in terms of the general duty, but taking account of the different Specific Duties and implications for the Devolved Administrations and specific evidence arising from their experiences.
- consider the breadth of protected characteristics within the context of the PSED.
- take account of the budgetary position facing public bodies.

⁶ GOV.UK, Review of public sector Equality Duty, <https://www.gov.uk/government/policy-advisory-groups/review-of-public-sector-equality-duty-steering-group#terms-of-reference>

- consider the duties and powers conferred on the EHRC, by the Equality Act 2006.
- have its costs met from existing budgets.

A whole raft of evidence has therefore become available in relation to the operation of the PSED as part of the submissions to the review. A summary of some key submissions, representing a range of sectors and protected groups, is provided in the following.

3.2 Concerns about the review process

A consistent theme of submissions to the consultation was concern that the review was premature, and the impact this would have on the quality of evidence available, particularly for the grounds not previously covered including age, religion or belief and sexual orientation. As the duty has been in place for less than two years at the point of the review, many of the submissions argued that organisations are still embedding practice to meet current requirements.

A number of contributors also expressed concern over the short timescales for submitting evidence. Indeed the ECU were unable to send a response in the time allowed and instead cited their core messages, which mainly support the PSED as providing impetus for step-change and providing goals for public bodies to move towards a fairer society, on their website.⁷ Nevertheless, a range of material containing supportive evidence for the duty was submitted, and a number of these are summarised below in an attempt to highlight the broad scale of submissions and topics covered.

3.3 Evidence submitted for the PSED Review

i) North West BME Policy Forum submission in response to the Public Sector Equality Duty: reducing bureaucracy policy review paper

One North West is a race equality organisation working with the BME voluntary and community sector, aiming to provide policy-makers with insight into the sector. They make the case that the 'Big Society' aims of government and the Localism Act both had goals to involve communities in local decisions (2013). They argue that less involvement may have a disproportionate effect on BME people in rural areas that are already underrepresented in decision-making due to low numbers. They emphasise the need to publish information and data before decisions are made as publishing after means the erosion of transparency. In addition, they express concern over the limited tools available to ensure compliance with the duty, because of the costs and time restraints of judicial review and development of case law. It is further argued that Freedom of Information requests will be the only remaining method if judicial review is too costly; this will have resource implications which contradict the Review's aim to reduce bureaucracy.

Key issues arising

- If requirements to consult are removed, this contradicts other government policies on involving communities. Reducing the 'voice' of BME people may have a disproportionate effect on rural areas where there is already underrepresentation.

⁷ Equality Challenge Unit (2013), Responding to the public sector equality duty review.

<http://www.ecu.ac.uk/news/responding-to-the-public-sector-equality-duty-review>, Accessed 19th June 2013

- Data used in decision-making should be published before the decision is made to support transparency.
- Existing tools to hold authorities to account are already costly and time-consuming; if FOI requests become more common as the only means of identifying shortcomings, this will increase rather than reduce bureaucracy.

ii) Justice, Response to GEO "Call for Evidence"

Justice is a UK-based law reform organisation with a mission to advance access to justice, human rights and the rule of law. They consider that the duty has enabled bodies to improve their approach to the needs of people with protected characteristics by giving “conscientious consideration” to the duty (2013, p9): this, they argue leads to more transparent, fairer decisions which are less susceptible to change particularly when supported by local data. They also cite incidences where the PSED has helped manage legal risk, for example in *Hunt v North Somerset Council*⁸ the local authority was assisted by having rolled out a training programme for senior officers and councillors. They argue that in the current financial climate the PSED is strength, as it helps inform difficult decisions and steer authorities towards policies less susceptible to legal challenge.

Justice recommend changes to strengthen the duty such as an increased role for inspectorates, a statutory code of practice, a statutory requirement to collect, retain and monitor diversity data in connection with goods, facilities and services (not just employment) and revision of Best Value Guidance,⁹ to ensure that local authorities are compelled to gather necessary data to meet the 'due regard' standard'

Key issues arising

- The duty improves the approach to those with protected characteristics and leads to more transparent, fairer decisions.
- Decisions which consider the duty are less susceptible to change.
- Local data is important.
- Key in managing risk of litigation.
- An increased role for inspectorates, statutory requirements for monitoring, collecting and retaining data would be improvements.
- Data should be collected for goods, facilities and services as well as employment.
- Best Value Guidance should be revised to meet the 'due regard' standards.

iii) Stonewall, Call for evidence - Stonewall response

Stonewall is the leading organisation campaigning and lobbying for lesbian, gay and bisexual (LGB) equality in Britain, and they have campaigned for a single equality duty for a number of years. Though representing a group whose protected characteristic has only been covered for two years, they have, however, through working with over 400 public sector organisations, found the duty helpful in introducing or improving policies, practices and procedures which improve outcomes for LGB people. Their experience was that some

⁸ *R (Aaron Hunt) v North Somerset Council* [2012] EWHC 1928 (Admin), which found against a group who had challenged cuts to local youth services.

⁹ www.GOV.UK, (2011), A fair deal for the voluntary and community sector: from Whitehall to town halls. <https://www.gov.uk/government/news/a-fair-deal-for-the-voluntary-and-community-sector-from-whitehall-to-town-halls>, Accessed 20th June 2013)

authorities began work in anticipation of the duty. In particular, the duty has been useful for holding public bodies to account for their performance (2013). A range of case studies is provided showing the usefulness of the duty, including:

- **Brighton and Hove City Council** - formed a steering group from a number of schools to develop a model equality policy, set equality objectives and develop a toolkit; ran workshops on tackling homophobic bullying; began monitoring schools' compliance with the duty and encouraged LGB parents to participate in school governing bodies.
- **Bury Council** - produced a simplified process for analysing EIAs of services, policies and practices which were mainstreamed throughout the council. The analysis conducted for the council's review of its library services identified a positive impact on LGB people due to its collection of LGB books.
- **Cardiff University** - held an engagement event with staff and students to establish its equality objectives; identified through workshops issues such as a lack of awareness of support for LGB staff and students and incidents of homophobic bullying; developed an LGBT working group and action plan which led to a specific campaign dealing with homophobic language in the athletic union and encouraged LGB participation in sport. Monitoring the sexual orientation of staff highlighted gaps in information, including a lack of student monitoring, which then led to detailed analysis, eg of academic performance and dropout rates of LGB students.
- **Nottinghamshire Healthcare** - used the duty to justify updating its database and extended this to include monitoring of sexual orientation. The data has been used to identify under-representation in use of services, has influenced patient care plans and identified the need for LGB support groups. In addition, an update of its Procurement Policy in 2010 anticipated the introduction of the duty and requires contractors to train all staff in equality and diversity, assess the impact of their practices and collect and report on equality monitoring data, inclusive of sexual orientation at all levels to Board level.
- **Oxleas NHS Foundation Trust** - introduced monitoring data on sexual orientation of service users to support LGB health needs, which identified an existing lack of confidence amongst staff about asking users to disclose their sexual orientation. This led to building an e-learning package for staff which gives guidance on sensitive questioning, covers why monitoring is important, raises awareness about LGB health inequalities and helps develop services as welcoming environments for LGB people.
- **Tower Hamlets** - based on experience of promoting good relations between people of different groups, developed further work on tackling high-profile incidents of homophobia building a partnership of public and community sector organisations to act together and challenge those who promote hate. Additionally, TH funded a conference on Faith Communities and Homophobia, undertaking significant outreach work and involving a wide range of faith communities.

Key issues arising

- Despite the short time since the duty's introduction, it is useful in improving outcomes for LGB people and holding public bodies to account.
- Public bodies began work in anticipation of the duty.

- Considerable amount of evidence of change in organisations and some indication of the effectiveness of the duty for LGB people.

iv) The Fawcett Society, The Fawcett Society's Policy Submission to the Review of the Public Sector Equality Duty

The Fawcett Society, a charity campaigning for women's equality and rights, expresses concerns about the current review in a context of "dismantling the wider equalities infrastructure of government" (2013a, p4), for example the lack of a cross-departmental strategy for women and disbanding of organisations such as the Women's National Commission. In common with many of the other submissions, they express concerns about the lack of a statutory code of practice and less prescriptive specific duties giving rise to inconsistent practice, both within and between different public authorities.

The less prescriptive specific duties, they argue, have led to less adequate gender analysis and less thought put into mainstreaming gender equality than the original GED which imposed a clear legislative obligation to adopt a substantive or outcomes-based equality approach. This, they contend, recognises that some inequalities – including gender inequality – "are so persistent, durable and institutionalised (in both formal and informal structures and processes", (p11) that treating people the same way can perpetuate discrimination.

They raise concerns about the lack of clarity around meaning for 'due regard': EHRC guidelines are for public authorities to "consciously consider the need to do the things set out in the general equality duty" (p15), however understanding is more likely to evolve from case law.¹⁰ In some cases, authorities have maintained processes developed under the previous duties such as EIAs, equality schemes and action plans. However, in a time of cuts many public authorities will do only the bare minimum.

Fawcett believe there are too many bodies of different sizes to be able to stipulate the costs of the duty, though they obtained figures from and NHS Trust which believes that without the duty there would be an impact via:

- Recruitment and training costs, because of the effect on morale and motivation.
- Legal costs in managing disciplinary cases.
- Loss of revenue through services being less accessible.

Key issues arising

- Lack of statutory code and the erosion of the specific duties give rise to inconsistent practices.
- In particular, removal of the GED has led to less adequate gender analysis and mainstreamed initiatives to combat entrenched gender inequality.
- Duty is important both for promoting good practice and as a means for challenging public authorities.

¹⁰ They cite *R (Brown) v Secretary of State for Work & Pensions* [2008] EWHC 3158 (Admin) which has set out clear guidance on what organisations must do to have 'due regards, for example, to be aware of their responsibilities under the duty, make sure they have adequate evidence, consciously and actively consider the relevant matters, do this before and at the time a decision is taken, not after the event, etc (The Fawcett Society, 2013, p15).

- Case law has been more important than guidelines in setting standards.
- Though some evidence of good practice in maintaining EIAs, action plans, etc, the austerity measures will encourage authorities to do the 'bare minimum'.
- The costs of the duty are hard to assess, but failure to comply can mean costs from increased staff turnover, litigation and loss of revenue through lack of accessibility to services.

v) The Race Equality Commission, Submission to the Review of the Public Sector Equality Duty

The Race Equality Coalition (REC) brings together national and regional leading race equality-focused voluntary and community organisations - with their networks and a wide range of expertise across a national geographical spread. In common with other submissions, they stress the need for good quality guidance and strong leadership, especially for "authorities who are tying themselves up in knots and those who are not doing what they should" (2013, p14).

REC expresses concerns about the limited role of inspectorates and regulatory bodies such as the EHRC. They also stress the importance of procurement and commissioning in extending the supply chain to BME groups. They address the 'cost' of the PSED, pointing out that failing to reduce health inequalities related to discrimination costs the tax payer excessive amounts.

Key issues arising

- Guidance and strong leadership of key importance.
- Role of inspectorates and regulatory bodies currently too limited.
- Procurement significant for inclusiveness of BME groups.
- BME health inequalities cost the tax payer excessive amounts which could justify the cost of implementing the duty.

vi) Equality South West, Submission to the government's Public Sector Equality Duty Review

Equality South West (ESW) is a charity which progresses equality and diversity in South West of England. They emphasise the need for the duty to be implemented in schools to combat, for example, prejudice-based bullying because of the impact on young people's attainment and mental health (2013). They would add a specific duty to gather equality data for transparency and evaluation of progress. In addition, based on a real-life scenario encountered, they urge that training is available for sectoral scrutiny bodies on how to embed equality awareness, for example, Police and Crime Panels.

Key issues arising

- A lack of implementation in schools is highly problematic.
- Identity-based prejudice should be recognised as a social problem.
- The specific duties should be extended to include data collection and evaluation of progress.
- More training on the duty is required for sectoral scrutiny bodies.

vii) Insted Consultancy, Reviewing the public sector equality duty

Insted Consultancy works mainly in the education sector and has worked with large numbers of head teachers, governors and other education personnel. They maintain that the equality duty and related guidance are not yet well understood in the sector, and that an important role in compliance can be played by governing bodies, Ofsted and OCC (2013). The legislation does not need to be changed in the short term, but official guidance, including EHRC 'Technical Guidance on the Public Sector Equality Duty' does need modification and more clarity. In particular, clearer guidance and support on practical matters is needed, better signposting and more leadership by central government, local authorities and academy chains. Based on evidence from the OCC and their own subsequent experience, they argue that awareness of the duty is low in schools. In addition, equality outcomes such as levels of attainment across ethnic groups show there is much to be done, though government-funded projects are demonstrated to improve these. They also provide an example of an 'outstanding' school supported by an extract from an Ofsted report showing that the school:

- assesses all new policies for impact on equalities;
- makes equality data available for public scrutiny;
- tracks pupil data to identify barriers for different groups;
- includes equality training in staff CPD;
- has clear, published policies;
- includes tackling prejudice, community cohesion and understanding diversity in its curriculum;
- obtains feedback from staff and students to ensure they feel safe from bullying and are confident in the school's ability to act on discrimination.

Instead conducted desktop research showing disparity across schools in setting and publishing the measurable objectives required by the specific duty. An example of excellent practice is provided, describing a report from one school which:

- Sets out the factual information about its makeup according to the protected characteristics.
- Conducts a discussion for each asking what they are doing to eliminate discrimination, advance equality of opportunity and foster good relations. They also look at impact, and what next steps should be.
- Involves all staff and key stakeholders in discussion.
- Highlights areas for special attention and sets measurable targets, for example, "to achieve a 40% reduction in prejudice related behaviour, in relation to homophobia, racism and religious stereotyping over 2012-13 and 2013-14" (p10).

Key issues arising

- Governing bodies, Ofsted and OCC can play an important role in compliance.
- Official guidance on existing duty rather than change is required in the short term.
- There are areas of good practice of compliance to the duty in the education sector which can set an example, though currently these are in the minority.

viii) TUC, Public Sector Equality Duty Review – response to GEO call for evidence

The TUC produced a significant document drawing on a range of evidence (2013). They maintain that the PSED plays a vital role in underpinning their protection of employees and service users, particularly against a backdrop of economic downturn which is affecting the most disadvantaged. Their evidence shows that the duty has given rise to:

- A positive impact overall in the public sector, enabling the gathering of equality information, transparency and accountability and a basis for action to improve policies and decisions. This position is based on responses to a TUC/Labour Research Department survey on the effectiveness of the former and current duties.¹¹ Examples of improvements in employment practices and service delivery were given and included the MOD ‘Diversity Dashboard’ giving quarterly information on how the MOD is achieving its equality and diversity objectives; college course cuts being reconsidered because of a disproportionate effect on women.
- Better engagement with protected groups, by encouraging public authorities to engage with and accommodate the concerns of groups such as disabled people and LGBT communities. The TUC/LRD survey also provided evidence that public authorities were taking steps on engagement, with examples of new LGBT staff and student groups, and disability networks. There was also evidence that weakening of specific duties has combined with cuts to services to reduce the input of disadvantaged groups, for example, people with disabilities.
- Improved employment outcomes - examples were provided of interventions for disabled workers such as the spreading of costs for ‘reasonable adjustments’ and the maintenance of lifts to access the workplace. The duty, it is argued, provides leverage to improve outcomes in the face of employer discrimination.
- Improved service delivery outcomes, with examples provided such as improved accessibility on public transport, better disabled access and audio loops in public buildings, and raised awareness across organisations about minority groups and the need to challenge stereotypes, leading to a more positive experience for service users.

Though the duty is seen as driving progress, there were also a number of issues raised, including disappointment at the removal of EIAs because of their ‘transformative’ effect. There was, however, admission that these had been done badly and sometimes after the policy has been developed. The lack of a statutory code of practice, weakening of the specific duties, the government’s undermining of the duty, and cuts in staff and resourcing on equality, for instance, the GEO and EHRC, it is argued, have all had a negative effect.

Key issues arising

- Duty plays a vital role in underpinning protection of employees and service users, particularly in economic downturn.
- Research shows a positive impact overall around gathering information, transparency and improving policy.

¹¹ The TUC along with the Labour Research Department conducted an online survey in November and December 2012 of trade union workplace representatives and trade union officers of the effectiveness of the former duties and the PSED <http://www.tuc.org.uk/equality/tuc-22115-f0.cfm>, Accessed 1st June 2013.

- Equality data has been used to hold authorities to account over the impact of cuts, and leverage in the face of employer discrimination.
- There is increased engagement with disadvantaged groups, though weakening of specific duties plus the cuts has reduced this.
- EIAs could transform services, and their removal is a disappointment.
- There is an overall negative effect from the combination of weakening the duties with the government's undermining of equalities plus cuts in resources to GEO and EHRC.

ix) Age UK, Submission to PSED Review

Age UK contends that research and initial feedback show the PSED is driving improvement in decision-making and that when working well the duty will mitigate the risk of litigation (2013).

In the absence of extensive evidence about the effectiveness of the duty on age equality (due to the short time since this protected characteristic was introduced), their evidence is obtained from a survey of English Local Authorities on compliance with the specific duty to set and publish equality objectives. Their survey found that 93% of LAs had published one or more equality objectives on their website, in compliance with the duty and 67% had published objectives specifically referring to one or more protected characteristics: 88% specifically referring to age which making this the most commonly referred to characteristic.

Feedback from their survey also gave evidence of the use of the duty, for example the London Borough of Bexley set up a Single Equalities Panel in 2011 to advise the council on the duty, on which Age UK Bexley was invited to sit and resulting in the local authority re-writing its Ageing Well Peer Review action plan to make it more user-friendly and action-focused.

Key issues arising

- The PSED is driving improvement in decision-making and mitigating the risk of litigation, if implemented well.
- Age features well as a protected characteristic in the published objectives of LAs.

x) The Office of the Children's Commissioner, Response to the government's Equality Duty Review

The Office of the Children's Commissioner (OCC) argue that their work highlights why the PSED is needed, as a number of their reports contain evidence of inequality including health outcomes, children living in poverty, children and young people being bullied and sexual exploitation, though a lack of awareness of the duty (2013).

They identify a lack of awareness of the Equality Act as it relates to children with protected characteristics (other than SEN) who are being excluded. They also cite the NFER Teachers Voice survey, 40% reported that they had not been made aware by their school of any equality duties.

OCC identified a fear of being penalised by Ofsted for not 'doing equality' correctly and schools are concerned that they may be inadvertently breaking the law. Though many schools are taking effective action on equalities, this is not always systematic and evidence-

based in the way it needs to be to meet the duty. This is attributed to a lack of clear guidance. Also, as EHRC technical guidance and non-statutory guidance on implementation are non-statutory, there is concern about these having fewer impacts.

The collection of equality data is held to be particularly important, for example only the collection of this data relating to exclusions has helped understanding of which groups are disproportionately excluded.

Key issues arising

- Identification of a lack of awareness of the duty in education.
- Pointing to a lack of leadership and guidance around its implementation.
- A request for statutory guidance.
- Data collection to identify disadvantaged groups is essential.

xi) Citizens Advice Bureau, Public Sector Equality Duty: Submission to Government Equalities Office Review

The Bureau (CAB) has produced a broad document as evidence for the PSED Review (2013). They have extensive contact with public bodies in their dealings which include client needs around debt, housing, welfare and education, and from their experience feel that “there is a net positive impact but with still some way to go” (p28). They emphasise the importance of the PSED as informing decision-making and practical solutions so that services and decisions empower consumers and “services and decisions are not simply “done to” them and hence do not meet their needs” (p2). CAB argue that they are in a strong position to have insight into issues on the ground, and make use of a business case, arguing that it should be a driver for quality as well as helping to avoid unnecessary complaints and costly ‘market failures, which can have both a human and an economic cost. They give examples of:

- A ‘designed right the first time’ approach which may prevent legal challenges and save litigation costs. Evidence is cited from a number of cases, for example the case of *Gorry*¹² where criteria for sharing a room under the ‘bedroom tax’ provisions did not properly incorporate the needs of disabled children – a case which may have been avoided by paying due regard and ‘designing in’ such provisions at outset.
- Responsiveness to changing needs, for example using equalities data to monitor increasing numbers of homelessness applications from women which led to a change in provision previously aimed at men.

The CAB surveyed their member bureaux about engagement with public authorities on equality issues, finding 45% had engaged with a public authority about an equality issue over the preceding year and over 25% reporting they had helped a public authority to meet one or more equality objectives or specifically mentioning the PSED. There is, they contend, “a very positive story to be told about the PSED and that it makes a real difference where it matters on the ground” (p5). They cite a number of examples of making positive use of the

¹² *Gorry v SSWP* [2012] EWCA Civ 629, which found that the size criteria used for determining housing benefit, in the light of removal of the spare room subsidy (commonly known as the ‘bedroom tax’) discriminated unlawfully against disabled children who are unable to share a room because of their disability.

duty and a partnership and engagement tool, and also in a casework context to help clients find solutions, including occasions when they have successfully “threatened judicial review” (p12) (based on legal provisions which included the equality duty) to the NHS to obtain medical provisions for a client.

Approaches suggested for learning about equalities across the public and private sectors by looking at comparable processes, data enhancement and customer feedback, are:

The Public Services (Social Value) Act 2012 which places a statutory obligation on public bodies to consider how procurement decisions may improve social, environmental and economic well-being;

The Sustainable Communities Act 2007 which involves wide-scale engagement, consultation and agreement with local groups and community organisations over priorities;

The Public Health Responsibility Deal which aims to tap into the potential for businesses and other organisations to contribute to improving public health - though a voluntary scheme there is statutory underpinning in the Health and Social Care Act giving local authorities new responsibilities for improving the health of their local populations;

The government’s **Civil Service Reform Plan (CSRP)** aims to bring substantial changes to the policy making process and new methods of persuasion in policy making such as “nudge techniques” and more wide-scale stakeholder engagement;

Work towards achieving a **Child poverty target** by 2020 providing a proactive model to realise equality.

The CAB also demonstrate some areas of the private sector which are already 'ahead of the curve' in getting to grips with the *anticipatory* character of the equality duty. For example: Total Hygiene has developed solutions to address disabled toilet needs regardless of available space, specifically citing the duty as impetus for change. In addition, they cite the requirement to comply with BSI Standards, with the example of toilet cubicles needing to accommodate a wheelchair and a carer: as one washroom replaces all the others it potentially releases valuable floor-space and thus offsetting the capital investment whilst addressing everyone’s needs. They do note that the market forces of consumer choice do not apply directly to the relationship between statutory services and their customers, and that many service providing bodies do not operate under a direct democratic mandate either. The PSED fills this space by requiring that public bodies are responsive to diverse user needs.

Finally, the CAB provide some examples of the PSED working as evidence of its worth. These include:

- Working with Great Ormond Street Hospital in London to assist a client with a disabled child in being rehoused to meet the child’s access needs, using the need to have ‘due regard’ to disability provisions within the PSED;
- A Devon CAB advisor working to ensure translation services for a client undergoing medical examination in line with the duty to eliminate discrimination and promote equality.

Key issues arising

- The business case for the PSED in driving quality and informing decision-making and practical solutions is key.
- CAB has used the ‘threat’ of the PSED to help clients.
- Call for more clear-cut procedures, especially as compliance is not consistent.
- Benefit of duty is cross-cutting nature, eg, cross-sectoral.
- Overlap with other legislation and initiatives such as the Civil Service Reform Plan and The Public Services (Social Value) Act 2012 can be exploited.
- Some aspects of the PSED are informing private sector practice.

xii) Disability Charities, Submission to PSED Review

This was a joint submission from a group of disability charities who see the duty as important as a “framework and catalyst for action” (2013, p1). They argue that delivering the duty is a ‘journey’, and the complexity of tackling persistent and hard-to-shift inequalities means time is needed to break down structural and systemic causes of disability discrimination. It’s important to differentiate between effectiveness of the duty as a tool to advance equality and how well it can be used to keep public authorities to account. Failure to make involvement a specific duty under the new duty is seen as problematic, as is the lack of specific duties for procurement. Evidence for the success of the PSED is provided with a range of case studies, and includes positive practices that some public authorities have adopted as a result of the duty and the improvement in outcomes for some disabled people.

The submission includes an example of engagement events facilitated by disabled people around the suitability of play areas in a city’s playgrounds leading to increased information about and access to inclusive areas for disabled children. Elsewhere, disabled people were trained in reading planning documents to involve them in planning for substantial regeneration work, ensuring that access requirements are considered at outset and avoiding expensive retrofitting. Other examples include consultation of people living with HIV in modernising support services; and a dedicated access officer (himself with disabilities) who provides practical advice to the council, eg, on access to museum and public buildings.

The Olympic Delivery Authority is provided as a case of procurement being used to effect change through integrating a requirement to improve supplier diversity into ODA’s procurement which led to the appointment of a small catering company run by and staffed by visually impaired individuals.

Key issues arising

- PSED one of a number of factors, and strong leadership also required; change will happen over time – it’s still a learning process for public authorities.
- There’s uneven progress with some authorities showing little effort to meet the duties.
- There are potential cost savings involved when consulting disabled people during the planning stages of an initiative.

xiii) Centre for Research in Equality and Diversity, Submission of evidence to government review of the Public Sector Equality Duty

This submission (Wright, 2013) relates to a workshop of experts and practitioners to promote equality through procurement, in particular that this is an area where equalities are seen as a 'nice to have' rather than a requirement by procurement professionals. Evidence presented about the success of the PSED in driving an equality and inclusion strategy includes the Olympic Delivery Authority (ODA): by contracting out to a delivery partner subject to the PSED equality objectives such there was increased engagement with local communities, with one major employer holding a supplier equality conference and training.

This experience and learning is now being put into practice in other major projects such as CrossRail – a cultural change which is a 'legacy' or 'ripple effect' of the PSED. The contractors felt that there were business benefits to be gained and against this the equality requirements were not burdensome or costly.

Key issues arising

- Need for guidance on the duty around procurement.
- Evidence of successful engagement with local communities by major employers, with key learning from this passed to new projects.

xiv) The Discrimination Law Association, Submission to the Review of the Public Sector Equality Duty Call for Evidence

The Discrimination Law Association argue that failure for all public authorities to understand and fully meet the PSED is not evidence that it is not working as intended (2013). They argue that this actually points to a need for it to be better explained or enforced, identifying examples of guidance from government departments as a possible cause of uneven compliance.

They further argue that the cost of the PSED should be measured against the cost of no PSED, ie, inaction by government and state bodies, quote The Government Equality Strategy figures, eg, failing to use the talents of people from ethnic minorities costs around £8.6bn per annum. Furthermore, they identify the 'double benefit' of equality in procurement, both in securing the service, works or goods to best meet their needs and also the improvement in the approach to equality by providers. Examples include the improvement of employment and business opportunities for groups defined by protected characteristics, citing the London Borough of Hackney which has set a target of 10% for spending on local SMEs and BME businesses. The DLA also gives examples of the PSED being used to support claims for services through judicial review, improve services to disabled employees and maintenance of a mentoring service for young BME prisoners.

Key issues arising

- Need for guidance on the duty around procurement; guidance issued by professional bodies (eg Office of Government Commerce) has more weight than EHRC.
- The need for a specific duty on procurement (as exists in Scotland and Wales).

xv) Police Federation of England & Wales (PFEW), Submission to the consultation on the Public Sector Equality Duty

The PFEW is the staff association for the 43 Home Office police forces in England & Wales, with a statutory responsibility to represent the interests and welfare of its members. Their submission (2013) identifies the important role of the Police Service in society, and that they can only police with the consent of the public. This, they argue, requires the confidence of the communities they serve which can only be achieved if these are properly represented.

In particular, PFEW argue that there have been missed opportunities for a proper assessment of equality. They cite examples of policies which were introduced but when monitored subsequently were found to be discriminatory. These include a fitness test during recruitment which disadvantaged women, and the use of 'Stop and Search' powers being used unfairly on black and minority ethnic people. These policies, they argue, would have been avoided if undergoing a full EIA. They contend that lack of understanding has contributed to these shortcomings, and call for statutory guidance to overcome this.

A key point PFEW makes is that not accounting for equality when developing policy "is significantly more expensive and time consuming than trying to get it right after the event." (p6). The removal of the duty, they argue, will not prevent legal challenges if service providers do not provide services to fit people's needs.

Key issues arising

- Missed opportunities for equality assessments which only become apparent when looking at the results of monitoring. These have led to unacceptable discrimination.
- It is sometimes more expensive and time-consuming to rectify equalities issues than to conduct an EIA up front when designing policy.
- Even if the duty is removed, there will still be scope for legal challenges.

xvi) Unison Public Sector Equality Duty Review. UNISON response to government call for evidence – April 2013

UNISON is the UK's largest public service union with more than 1.3 million members who work in or provide public services. These include employees from local authorities, NHS, the police service, colleges and schools, transport, the utilities industries and the voluntary sector. Over 70% of their membership is female with many in low paid or part-time work. The membership has extensive experience of implementing the PSED as well as being service users.

Unison argue that the introduction of the original race equality duty "represented a sea-change in public policy, away from a reactive, sticking plaster response to discrimination to a proactive pursuit of equality outcomes" (2013, p2).

They draw on evidence from the EHRC/Ipsos Mori research on schools, to support their contention that where the duty has been ineffective, it has been a result of a lack of authoritative guidance. Furthermore, there has yet been little opportunity to share good practice in the newer aspects of the duty, eg, sexual orientation. They also argue that past good practice has been built into equality schemes but not yet mainstreamed, and if the PSED framework goes these will be side-lined further.

Unison draw on good practice evidence from the NHS, including the involvement of diverse patient commissioning boards in NHS Leicester City; and the involvement of executive board members as equality leaders in NHS North East. In addition, they cite the TUC/Labour Research Department survey to which Unison representatives contributed and highlight positive outcomes of the duty. Examples of this include Newcastle City Council, where enhanced equality monitoring and information gathering in the housing sector has ensured more vulnerable people are easier to identify and help; and also assisted in more sensitive procedures for individuals with disabilities. They do, though, highlight the specific duty as less effective, for example, where the DED previously ensured involvement of disabled people: this now happens less as a result of the reduced duty combined with cuts. As a union, Unison have used the duty on a number of occasions to protect the interests of their members, for example, on behalf of low paid women who would be adversely affected by cuts to family-friendly policies.

Finally, a range of examples are provided to show that confusion about the duty has led to variable quality of application. They cite the case of a domestic violence refuge which was severely reduced without an assessment of the impact and has led to staff working above the working time regulations and a compromise to health and safety. Compulsory equality impact assessment would, they argue, help to avoid such outcomes and possible litigation.

Key issues arising

- Unison membership has extensive experience of duty, both as service users and implementing it in their public service roles.
- Where the duty has been ineffective so far this is due to lack of guidance.
- The good practice built up is still evidenced in equality schemes which will not be continued if the duty goes.
- Monitoring, involvement of people with disabilities in decision-making and union intervention to protect child-friendly policies are some of the examples of how the duty can be used for good.

xvii) Equality and Diversity Forum (EDF) Submission to the Government’s Equality Duty Review

The EDF is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability gender and gender identity, race, religion or belief and sexual orientation. Their membership represents some of the most disadvantaged groups in the UK, such as Age UK and RNIB. They argue that as a practical tool for modern government, the duty is particularly useful in times of austerity, through recognising different people’s needs and making best use of limited resources (2013). They maintain that the central requirement for ‘due regard’ is inherently proportional, requiring public bodies to consider equalities in a proportionate way. They do, though recognise that there is confusion around what this means in practice, arguing that though many consider it is simply to give ‘consideration to equality’ case law actually requires more.

EDF provide a number of examples of good practice as “snapshots of a continuing process” (p6), including:

- Partnership projects developed by **Leicester City Council**, to meet their obligations under the DED, whereby they facilitated a disabled person’s access

group to ensure these became involved in the development of public facilities. Such involvement included consultation exercises and running a panel to advise on design matters to accommodate disabled people's needs. Along with an ongoing project to increase awareness of inclusive design, this initiative ensures that inclusive design issues are incorporated at outset of all projects. This helps the council to 'get it right first time' avoiding discovering access problems too late when it is more costly to rectify them.

- **Merseyside Fire and Rescue Authority (MFRA)** used statistics on age and deprivation to map those at greater risk from fire. They identified that older people are particularly vulnerable to fire which can be accompanied by other factors such as mobility and sensory difficulties. This allowed MFRA to target prevention and protection resources for those at greatest risk, carrying out interventions and employing advocates who then disseminate training further. Overall, there has been a significant reduction in fires in the home in this area.

Key issues arising

- The Duty is particularly useful in times of austerity through recognising particular needs to make the most of scarce resources.
- There is some confusion around what is required for 'due regard'.
- Good practice examples exist, for example, under the 'old' DED, though involving disabled users from outset in designing facilities therefore avoiding possible costly adaptations later. Data collection across diverse groups has also helped identify vulnerable and disadvantaged people who can then be singled out for help.

4. Conclusions

This report has summarised research output which supports the Race, Disability and Gender Equality Duties and the subsequent single duty, showing ways in which these have brought about change within public authorities.

Our meta-study ran in parallel to the GEO Public Sector Equality Duty Review, drawing on a similar evidence base.¹³ This report therefore shows the current state of the evidence for the duty, and is a point against which to measure progress on the duty's further implementation over the next three years at which stage the duty will be subject to its next review.

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October 2013

¹³ An analysis of this meta-study is available in the Oxford Brookes Centre for Diversity Policy Research and Practice Report: The Public Sector Equality Duty - Analysis of Supporting Evidence (2013), available at <http://www.brookes.ac.uk/services/hr/cdprp/>

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