



Government  
Equalities Office

# Review of the Public Sector Equality Duty:

Report of the Independent Steering Group

6<sup>th</sup> September 2013



# Contents

Chair’s foreword	6
Executive summary	8
1) Introduction	8
2) Background to the Duty	8
3) Background and scope to the review	9
4) ‘Operating as intended’	9
5) Methodology and related issues	10
6) Conclusions of the Steering Group	11
7) Context	11
8) Costs and benefits	12
9) Implementation and associated burdens	13
10) Is the Duty operating as intended?	14
11) Recommendations	15
Full report	18
1) Introduction	18
2) Methodology	18
3) Report structure	20
4) Costs, Benefits and Burdens	21
Costs	22
Benefits	23
Burdens	24
5) Compliance with the General Duty, Enforcement and Legal Risk	26
Compliance with the General Duty	26
Regulatory bodies	27
Legal challenges	27
Case law	28
Management of Legal Risk	29
Guidance	30
6) Compliance with the Specific Duties and Data issues	32
Data Collection	32
Challenges in Collecting Data	33
Effective data collection	34
Compliance with Specific Duties and Publication of Equality Information	35
7) Procurement	38
Commissioning and paperwork	38

Proportionality	39
SMEs	40
Delivery and contract management	41
Annexes	44
Annex A – Terms of reference	44
Annex B – Steering Group members	46
Annex C – Organisations and individuals providing evidence to the PSED Review	48
Annex D – Examples of specific costs identified through the review	54
Annex E – Local Authority Compliance – Publication of Data on Workforce and Service Users	57



# Chair's foreword

We all want a public sector which respects who we are – which does not discriminate against us, which delivers services which are sensitive to our needs, and which is proactive in helping the most vulnerable and disadvantaged.

Equally, particularly in these difficult economic times, we want our public bodies to be efficient, professional, and to make very careful use of the funding and other resources available to them.

These two aims are not mutually exclusive.

When the government implemented the Public Sector Equality Duty in 2011, it was with a clear objective – to ensure public bodies consider equality when carrying out their functions without adding unnecessary processes and bureaucracy.

Almost two years later, I was asked by the government to lead a review to ensure this objective is being achieved. In doing so, I have had the support of a Steering Group comprised of experts from across the public sector.

Together, we have led an extensive programme of work aimed at understanding how the Duty is working and what improvements can be made.

My colleagues and I were disappointed by some of what we found.

There is undoubtedly support for the principles which underpin the Duty – and some public bodies are doing a good job in mainstreaming equalities considerations in their work. But, in far too many cases, we have uncovered useless bureaucratic practices which do nothing for equality. No-one seems to ask, “Could I do less and have the same beneficial effect?”

Scarce resources are also being diverted from the front-line services where they are needed. In one extreme case I believe emergency services would be better resourced by a reduction in these unnecessary practices – and in another the private sector is unnecessarily burdened by hours if not days of work by 'requests' for information from the public sector.

This red tape is not just a burden to public bodies. It affects the users of public services who may be asked for sensitive personal details, often with no justification. It creates barriers for small businesses and charities that wish to bid for public contracts but do not have the data which some public bodies insist upon. And, ultimately, it discredits the vitally important aim of creating a fairer, more equal society.

**Review of the Public Sector Equality Duty: Report of the Independent Steering Group**

While we do not recommend any changes to the Equality Act 2010, it is very clear that government, the Equality & Human Rights Commission and public bodies themselves must act urgently to address these issues. Accordingly, we have made several recommendations aimed at helping them do so, which we hope and expect to be implemented in full.

I would like to thank the Ministers – Maria Miller and Jo Swinson – who I have worked with through the review, as well as my fellow Steering Group members, and the civil servants in the review team for their efforts and support in carrying out this important review.

Equality is too important to be tied up in red tape. Let's cut it out.

**Rob Hayward OBE**

# Executive summary

## 1) Introduction

1. This review arose from the government's Red Tape Challenge and was established to examine whether the Public Sector Equality Duty (PSED) is operating as intended. A key aim of the PSED was to sensitise public bodies to equality while addressing the bureaucracy associated with the previous duties on race, disability and gender.
2. This executive summary summarises the key findings and recommendations of the Steering Group to improve the operation of the PSED. The Steering Group's conclusions are informed by the evidence gathered and presented by the GEO review team over the course of 2013.

## 2) Background to the Duty

3. The first public sector equality duty related to race and was introduced in 2001 in response to the Stephen Lawrence Inquiry Report. Since then, duties on disability (2006) and gender (2007) have followed, and more recently via the Equality Act 2010, a single Duty was introduced encompassing all of the characteristics protected under the Act.
4. The PSED consists of a general duty, with three main aims (set out in section 149 of the Equality Act 2010). The general duty applies equally across Great Britain and commenced in April 2011. It requires public bodies to have due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - Advance equality of opportunity between people from different groups; and
  - Foster good relations between people from different groups.
5. The general duty is underpinned by a number of specific duties, set out in secondary legislation to accompany the Equality Act 2010, which provide a framework to help public bodies meet the general duty. Most public bodies subject to the general duty are also subject to the specific duties. The specific duties commenced in England in September 2011 and require public bodies:
  - To set and publish equality objectives, at least every four years; and
  - Publish information to show their compliance with the Equality Duty, at least annually. The information published must include information relating to employees (for public bodies with 150 or more employees) and information relating to people who are affected by the public body's policies and practices.
6. The Devolved Administrations are subject to the same general duty but have their own specific duties, determined by the Scottish and Welsh Governments.

### 3) Background and scope to the review

7. The PSED review was announced by way of Written Ministerial Statement in May 2012: *“We committed last year to assess the effectiveness of the PSED specific duties. We have decided to bring forward that review and extend it to include both the general and specific duties to establish whether the Duty is operating as intended.”* (Written Ministerial Statement – Tuesday 15th May 2012)
8. The review’s terms of reference set out the purpose of the review, its objectives, its scope, the review’s parameters, broad governance arrangements and a high level method for carrying out the review and preparing the report (including broad timescales). The full terms of reference are attached at **Annex A** for information.
9. The review has considered both the general and the specific duties. The review has looked at the operation of the Duty across Great Britain but takes account of the different regimes in Scotland and Wales and specific evidence arising from their experiences. In doing so, we recognise that the specific duties for Scotland have been in place for just over a year and that organisations subject to the duty in Scotland had until 30 April 2013 to publish their equality outcomes and mainstreaming reports. We have not examined the effectiveness of these duties in this report.

### 4) ‘Operating as intended’

10. The phrase ‘operating as intended’ is key. While the overall aim of a ‘due regard’ duty is to sensitise public bodies to equality issues, the government’s aim in introducing the PSED in its current form is as follows:
  - To build on the previous equality duties, to simplify the previous duties and to extend the duty to other protected characteristics;
  - To be outcome-focused; and
  - To reduce the bureaucracy associated with the previous duties.
11. The review has also considered the role of the specific duties that apply to English and non-devolved public bodies, and what was intended by these. These duties were intended to help public bodies perform the Equality Duty more effectively, by requiring public bodies to be transparent and accountable to their service users.
12. The review has not attempted to reach a conclusion as to whether public bodies should be subject to the PSED. Rather, as per the terms of reference, it has concentrated on whether the implementation of the Duty has been effective based on the intentions set out above. It is clear, however, that there are divided views on the Duty – whether it should be removed, reduced, strengthened, or even expanded to cover other characteristics and sectors. This debate is for another time, but we hope this report will be useful in identifying the key issues to consider.

## 5) Methodology and related issues

13. As part of the evidence gathering phase of the review, a wide range of views on the effectiveness of PSED have been sought from public bodies, Voluntary and Community Sector (VCS) organisations, Trade Unions, claimant lawyers, equality and diversity (E&D) practitioners, procurement experts, businesses and inspectorates and regulators. The government commissioned independent research (in-depth telephone interviews) with public bodies and also launched a public call for evidence, to which we received over 100 submissions. We held a series of roundtable discussions with stakeholders in England, Wales and Scotland which involved a wide range of public bodies, private sector and NGOs. A list of all those organisations we have heard from is attached at **Annex C**. The Steering Group has also received evidence from the GEO review team on available literature about the PSED, a summary of case law and international comparators.

14. The terms of reference for the review specified that it should “explore the impact of the Duty in terms of costs, burdens and a range of benefits (including policy improvements, efficiencies and equality outcomes).” There have been four key methodological issues the Steering Group wish to flag in their report:

- **Separating the requirements of the Duty from wider equality work:** In undertaking the review, it has proved difficult to establish whether action taken is directly in response to the PSED or driven by other factors. The conclusions and recommendations reached through the review may therefore go beyond the operation of the PSED to examine wider equality practice. We have tried to distinguish where possible between the requirements of the Duty and the interpretation of these requirements by public bodies.
- **Lack of evidence on costs and benefits:** There is little understanding of costs and benefits even by those most closely involved in implementing the Duty. Despite the current financial climate, we have not found any public bodies that have sought to monetise either the costs or benefits of applying the Duty as a whole (although some have been able to monetise certain aspects of compliance). To some extent this is unsurprising as public bodies found this similarly difficult under the previous equality duties, where research suggested that they did not have the data to enable them to do so, particularly because of the thrust towards “mainstreaming”.
- **Engagement with business:** Recognising that the review arose from the Red Tape Challenge, the Steering Group were keen to engage with the business community to explore how burdens related to the PSED may be passed on to those organisations that bid for and deliver public contracts. Despite the best efforts of the Chair and review team, there has been very limited engagement by the business community as a whole to the review.
- **Engagement with E&D practitioners:** By contrast, the greatest engagement by far has been with E&D practitioners who generally champion the PSED and promote its value to public bodies and the community. The balance of evidence received reflects the views of those individuals and organisations who responded to the review.

## 6) Conclusions of the Steering Group

15. The Steering Group believes it is too early to make a final judgement about the impact of the PSED, as it was only introduced in April 2011 and evidence, particularly in relation to associated costs and benefits, is inconclusive. While the Steering Group has found broad support for the principles behind the Duty, the review has found the main challenges lie in its implementation, which varies considerably across the public sector.
16. The nature of a 'due regard' Duty is that it is open to interpretation by public bodies. What amounts to 'due regard' depends on particular circumstances and only a court can confirm that a public body has had due regard in a particular case. This uncertainty has on many occasions led to public bodies adopting an overly risk averse approach to managing legal risk in order to rule out every conceivable possibility. This has been a recurring theme throughout the review.

## 7) Context

17. The Steering Group believes it is important to recognise that some of these implementation challenges are a direct result of the broader political, economic and legal context and related uncertainties. For example:
  - **Political context:** There has been a change of government since the Equality Act received Royal Assent in April 2010. The coalition Government has a different approach to equalities, with a focus on equal treatment and equal opportunities.
  - **Economic context:** The earlier equality duties were introduced at a time of public sector expansion, but the PSED has been introduced at a time of austerity when all public bodies have faced and will continue to face reductions in spending.
  - **Legal context:** Although the number of Judicial Reviews (JRs) brought under the PSED is low, it is still a significant proportion of the overall number of JRs and there have been several high profile cases. In all the cases we have seen, the PSED is just one of a number of grounds, which suggests that these JRs would have arisen even in the absence of a PSED. Central and local government are particularly sensitised to the risk of legal challenge and the impact on a public body facing a legal challenge can be significant. The review has found that, even where decisions are overturned due to non-compliance with the PSED, it is not uncommon for the initial decision in question to remain unchanged following further work by the authority to demonstrate they had discharged the duty effectively. It is not clear how this benefits anyone.
  - **Guidance:** The right guidance has not been available at the right time to enable public bodies to implement the PSED effectively. The Equality and Human Rights Commission (EHRC) has produced a range of guidance, including technical guidance that was published during the course of this review, which may mean some respondents engaging with the review were not yet aware of it. However, this is intended for courts and tribunals when interpreting the law, and

lawyers, advisers, trade union representatives, human resources departments and others who need to apply the law. Public bodies reported a need for clear, more tailored guidance on how to comply with the PSED that is specific to their sector, function and circumstances. The Steering Group suggests that more could be done around sign-posting, practical examples (including examples where a public body has considered equality but still prioritised other considerations such as budgets, the needs of other groups etc.), inclusion of case law (e.g. meaning of 'due regard', the Brown principles and how to balance effectively different protected characteristics), suggested alternatives to EIAs, and light-touch ways of reviewing and monitoring the on-going impact of policies.

### The 'Brown principles'

In *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158, the court considered what a relevant body has to do to fulfil its obligation to have due regard to the aims set out in the general equality duty. The six Brown principles it set out have been accepted by courts in later cases.

These principles are that:

- Decision makers must be made aware of their duty to have 'due regard' to the identified goals.
- Secondly, the due regard duty must be fulfilled before and at the time that a particular policy is being considered by the public authority in question.
- The duty must be exercised in substance, with rigour and with an open mind.
- The duty imposed on public authorities ... is a non-delegable duty.
- The duty is a continuing one.
- It is good practice for those exercising public functions in public authorities to keep an adequate record showing that they had actually considered their ... duties and pondered relevant questions.

## 8) Costs and benefits

18. A formal Cost Benefit Analysis of the PSED has proved impossible to develop and, while there are clear costs to public bodies associated with the PSED, these have not been monetised; the evidence of benefits is also unclear. After considering the evidence presented by GEO, the Steering Group has found that:

- The previous government's published Impact Assessment on the general duty was wholly inadequate and palpably inaccurate in suggesting costs would only arise from the specific duties. It did not put any monetary value on the costs or the benefits arising from the

PSED, though it cited savings from removing the previous duties on race, disability and gender.

- A subsequent Impact Assessment relating solely to the specific duties, published under this government, did seek to monetise both familiarisation and on-going costs to public bodies; however, the assessment that adopting the new specific duties would lead to an annual benefit to the public sector in the region of £40 to £45 million is not credible.
- Except in relation to start-up costs (e.g. costs of establishing new processes such as additional data collection related to the introduction of new protected characteristics under the PSED), the review has not found the PSED significantly increased costs in comparison with previous duties. These start-up costs have now been largely borne.
- On-going costs vary according to the size and nature of public bodies and their approach. For example, where public bodies seek to embed the PSED in other work, the costs directly associated with the PSED may be lower and within ‘business as usual’ range. Conversely, public bodies that treat the PSED as an “add-on” are likely to incur higher costs as a result.
- In some cases, costs may have been higher than necessary due to a lack of clear guidance on how to implement the PSED, leading to the adoption of overly onerous practices by some public bodies as protection against risk.
- The risk of legal challenge is also a significant factor in determining costs, i.e. in activities undertaken to reduce risk and direct costs of defending a legal challenge.
- Although many participants attributed general benefits to the PSED, there is little hard evidence to support this or demonstrate that the PSED is leading to better decision-making and improvements in policy and service delivery.

## 9) Implementation and associated burdens

19. The Steering Group has found burdens associated with the implementation of the PSED, which has required new processes. These burdens are not limited to the public sector but may be passed on to private and VCS contractors and to members of the public. The Steering Group has identified the following burdens in English and non-devolved bodies:

- **Procurement:** Many public bodies are attempting to embed equality considerations into their procurement and commissioning processes, but the review has found that too many are adopting a formulaic, ‘tick-box’ approach which they do not vary regardless of the size or nature of the contract. The review has found that this creates a barrier for smaller charities and companies wishing to tender for public contracts.
- **Data collection:** The Steering Group has seen examples of excessive and unnecessary collection of data. Key to effective data

collection is having and communicating a clear rationale for its collection, as well as making it clear whether and how the data will be published. Public bodies do not always do this. It is recognised that proportionate data collection can be valuable for public bodies to understand the make-up of their employees and the population they serve, but existing data should be used wherever possible and the PSED should not be seen as requiring the collection and storage of huge amounts of personal information. We wrote to a number of local authorities whose data collection had been criticised in the media, but only one chose to respond and defend their practice.

- **Data publication:** There are few examples of how the legal requirement to publish data helps public bodies give effect to the general “due regard” duty. Some public bodies are over-complying and publishing very significant amounts of data. This has resource implications for the public body involved as well as creating of risk of contravening data protection legislation. At the same time, other public bodies are publishing no or very little information. It is arguable that the costs and risks (which includes the very serious risk of data mining) associated with publishing such data outweigh the benefits to citizens, although it is recognised that publication of a select quantity of meaningful and high quality data can be helpful to stakeholders, VCS organisations, trade unions and others that have an interest in holding public bodies to account.
- **Limited data:** The data that is currently collected by many public bodies is patchy, sometimes because of new systems that are not yet established but also because of low reporting on new protected characteristics (sexual orientation, religion and belief, gender reassignment). Public bodies and businesses that contract with public bodies fear they are vulnerable to legal challenge if there are gaps in their data.
- **Equality Impact Assessments (EIAs):** EIAs are not a legal requirement in England but they are still widespread, often formulaic and seen as protection against risk of legal challenge. Some public bodies found EIAs helpful as a tool to identify potential equality issues and record how equalities had been considered. When carried out well they can highlight examples of good practice. However, poor EIAs can also be overly long and inaccessible, enshrining a “tick-box” approach which may add little value and be resource-intensive. The review has also found that EIAs may be a burden for businesses in bidding for government contracts. In most cases those bodies that have mainstreamed equalities issues and moved away from EIAs appear to be less bureaucratic in process. Where EIAs are not used, the general duty still needs to be acknowledged fully in relation to each protected characteristic. Guidance plays a role in suggesting alternatives to EIAs.

## 10) Is the Duty operating as intended?

20. Returning to the question of whether the PSED is achieving the aims that government had in mind in introducing this legislation, our conclusion is that it is not as yet.

- **To build on the previous equality duties, to simplify the previous duties and to extend the duty to other protected characteristics.** Evidence considered by the Steering Group suggests that this aim has not yet been met and that an unofficial hierarchy of protected characteristics remains, although there are some signs of progress.
  - **To be outcome-focused.** The Steering Group recognises that the legislation is primarily aimed at driving culture change in public bodies rather than driving improvements in outcomes, but we have looked at the extent to which improved outcomes have arisen from operating the PSED. We have heard many reports of generalised benefits which can be ascribed to the duty but, as yet, very few concrete examples of where the PSED has led to improved outcomes
  - **To reduce the bureaucracy associated with the previous duties.** In England, the detailed ‘specific duties’ which characterised the race, gender and disability duties were replaced with much less prescriptive specific duties in support of the single PSED to set equality objectives and to publish information demonstrating their compliance with the duty. This hasn’t yet been achieved, and in too many cases it may even have led to increased bureaucracy and paperwork.
21. There was not agreement across the Steering Group on the effectiveness of the specific duties that apply to English and non-devolved bodies. Some members thought the specific duties have embedded equality within the business processes of public bodies. Other members thought the specific duties do not help public bodies give effect to the general Duty and that their aims might be achieved in other ways. The Chair’s view is that these duties do not apparently serve their intended purpose to ‘drive better performance of the equality duty without burdening public authorities’ and, where used, add instead a layer of unnecessary bureaucracy.

## 11) Recommendations

22. Based on the conclusions drawn by the Steering Group and suggestions for improvements raised by participants in the review (i.e. those with whom we engaged), the Steering Group has developed the following recommendations. The recommendations for public bodies apply to those in England or those carrying out non-devolved functions:

### For the EHRC:

- I. **Guidance must be clearer on the minimum requirements placed on public bodies.** Building on its technical guidance, the EHRC should produce shorter, more bespoke guidance clearly setting out what is necessary for compliance.
- II. **Sector regulators have an important role in supporting implementation.** Regulators, inspectorates and relevant ombudsmen services should integrate the PSED in their core functions and collaborate closely with the EHRC with respect to compliance action. In some cases there may be a case for co-production of tailored sector-specific guidance

where required, although it is recognised that some functions are so broad as to make such guidance virtually impractical.

- III. Public bodies should not collect diversity data unless it is necessary for them to do so.** The EHRC and Information Commissioner should work together to provide greater clarity on the role of data and its collection, the use to which data is put, and what is necessary for compliance with the PSED. In respect of both data collection and procurement, public bodies should take a genuinely proportionate approach.

**For public bodies:**

- IV. Public bodies must ensure they adopt a proportionate approach to compliance and not seek to “gold plate”.** Public bodies should seek to benchmark their processes for compliance with the PSED with their peers, with a view to reducing unnecessary paperwork.
- V. Public bodies must reduce the burdens placed on small employers.**
- Public bodies should remove Pre-Qualification Questionnaires (PQQs) for contracts below £100k and utilise the government’s core PQQ, which does not include equality requirements, for contracts over this amount.
  - Public bodies should not impose onerous or disproportionate requirements on contractors delivering services (particularly those with fewer than 50 employees) to provide equality data on workforce and service users.

**For contractors:**

- VI. Public bodies should be challenged where their procurement processes creates barriers for small businesses and charities.** Private and voluntary sector employers in England should refer any potentially inappropriate equality requirements that have been applied to a particular procurement exercise to the Cabinet Office Mystery Shopper scheme.

**For Government:**

- VII. Public bodies must be proportionate in publishing information.** Although consensus was not reached in the Steering Group on the effectiveness of the specific duties, the Chair’s view is that these do not serve their intended purpose and that the Government should consider their removal or modification.
- VIII. Enforcement of the PSED needs to be proportionate and appropriate.** In light of the findings around Judicial Review, the Government should consider whether there are quicker and more cost-effective ways of reconciling disputes relating to the PSED.
- IX. It is too early to make a final judgement about the impact of the PSED.** Government should consider conducting a formal evaluation of the Duty in three years’ time. This would enable the PSED to embed more thoroughly and should consider whether the Duty is an effective means of achieving the goal of sensitising public bodies to equality issues and what alternatives there might be. This work could also be informed by the

EHRC's medium-term work on how the PSED and the more prescriptive specific duties operate in Scotland and Wales.

# Full report

---

## 1) Introduction

1. The review of the Public Sector Equality Duty (PSED) arose from the government's Red Tape Challenge and was established to examine whether the duty is operating as intended. A key aim of the PSED was to sensitise public bodies to equality while addressing the bureaucracy associated with the previous duties on race, disability and gender.
2. The review's terms of reference set out the purpose of the review, its objectives, its scope, the review's parameters, broad governance arrangements and a high level method for carrying out the review and preparing the report (including broad timescales). The full terms of reference are attached at **Annex A** for information.
3. The government appointed an independent Steering Group to oversee the review, made up of senior figures with experience in public sector delivery. The Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) also sat on the group. Members are listed at **Annex B**.
4. The broad methodology for the review is set out below. The Steering Group's conclusions and recommendations were informed by evidence that was gathered and presented by the GEO review team over the course of 2013.

## 2) Methodology

5. The PSED Review's programme of activity included the following:
  - **Desk-based research.** The Steering Group considered evidence on the Duty, from literature, case law and information from EU member states and others on their experiences of equality mainstreaming and the costs and impact of different approaches.
  - **Roundtables.** The Steering Group considered evidence from six roundtables as follows:
    - VCS sector and trade union representatives;
    - Legal advisors to public bodies;
    - Public sector equality and diversity practitioners and trade unions;
    - Inspectorates and regulators
    - Claimant lawyers
    - Private sector and VCS contractors.
  - **Site visits.** The Steering Group considered evidence from visits to a private sector company that provides a range of outsourced services

to public bodies; a police authority; a VCS organisation operating at both national and local level; and two local authorities (which involved a more in depth programme of interviews). The evidence presented from these visits provided the Steering Group with a greater understanding of how organisations with experience of working under the PSED manage their processes.

- **Meetings and telephone interviews with stakeholders.** GEO provided notes and feedback to the Steering Group about meetings with a range of stakeholders – trade unions, equality stakeholders, business representative organisations, businesses and roundtables held in Scotland and Wales.
  - **Call for evidence.** This was live on the gov.uk website for 6 weeks from March – April 2013 and received over 100 submissions. Evidence was requested about the following themes:
    - how well is the PSED and guidance understood
    - what are the costs and benefits of the PSED
    - how organisations are managing legal risk and ensuring compliance with the PSED
    - what changes, if any, would ensure better equality outcomes (legislative, administrative and/or enforcement changes, for example).
  - **Independent qualitative research.** GEO commissioned independent research to assess views on the Duty in greater depth, involving telephone interviews with a range of public bodies, which was presented to the Steering Group.
6. The Chair of the Steering Group attended most of the visits, roundtables and interviews with the GEO-based review team, and the findings were presented to members at each Steering Group meeting.
  7. The review has considered both the general and the specific duties. The review has looked at the operation of the Duty across Great Britain but takes account of the different regimes in Scotland and Wales and specific evidence arising from their experiences. In doing so, we recognise that the specific duties for Scotland have been in place for just over a year and that organisations subject to the duty in Scotland had until 30 April 2013 to publish their equality outcomes and mainstreaming reports. We have not examined the effectiveness of these duties in this report.
  8. The Steering Group's recommendations for public bodies apply to those in England or those carrying out non-devolved functions, as we recognise that the main focus of evidence gathering has been in England and that devolved public bodies are subject to different specific duties to those of English and non-devolved public bodies.

### 3) Report structure

9. The remainder of this report sets out the key evidence gathered and presented by the GEO review team over the course of 2013, which inform the Steering Group's conclusions and recommendations.

10. This evidence is presented thematically in the following chapters:

- **Costs, benefits and burdens** – the Steering Group were keen to explore the impact of the Duty in terms of costs, burdens and benefits. Through all the activity strands, the GEO review team asked for information about costs, benefits and burdens and asked respondents to quantify these. A formal Cost Benefit Analysis of the PSED has proved impossible to develop and, while there are clear costs to public bodies associated with the PSED, these have not been monetised; the evidence of benefits is also unclear.
- **Compliance with the General Duty, Enforcement and Legal Risk** – the Steering Group considered formal enforcement and sanctioning mechanisms to ensure compliance, as well as looking at how legal risk is managed by public bodies.
- **Compliance with the Specific Duties and Data issues** – the Steering Group considered how the PSED specific duties have been interpreted by public bodies in terms of the data they collect and publish. Many of the findings are not necessarily driven by the PSED itself, but rather how public bodies have interpreted what is required by the legislation.
- **Procurement** – recognising that the review arose from the Red Tape Challenge, the Steering Group were keen to engage with the business community to explore how burdens related to the PSED may be passed on to those organisations that bid for and deliver public contracts.

## 4) Costs, Benefits and Burdens

### Key points

- A formal Cost Benefit Analysis of the PSED has proved impossible to develop.
- There are clear costs to English and non-devolved public bodies associated with the PSED which can vary enormously between public bodies; the evidence of benefits is less clear.
- Except in relation to start-up costs, there is little evidence that the PSED significantly increased costs in comparison with previous duties.
- Although many respondents and participants in the review attributed general benefits to the PSED, the Steering Group found little evidence on whether PSED is leading to better decision-making and measurable improvements in policy and service delivery.
- Most evidence was found around burdens. Implementing the PSED has required new processes and, perhaps because the threshold for demonstrating “due regard” is unclear, there is evidence of public bodies adopting blanket, formulaic approaches to issues such as procurement and data collection. These burdens are not limited to the public sector but may be passed on to private and VCS contractors and to members of the public.
- Given the patchy evidence in relation to associated costs and benefits, the Steering Group believes it is too early to make a final judgement about the impact of the PSED. The main challenges appear to be associated with its implementation, which is where the majority of the Steering Group’s recommendations are therefore focussed.

1. Throughout the different evidence collection strands (case studies, roundtables, call for evidence, independent qualitative research) GEO asked for responses about the costs, benefits and burdens of the Duty and where possible asked for respondents to quantify these.
2. A key methodological issue for the Steering Group is that there is very little understanding of costs and benefits, even by those most closely involved in implementing the Duty. The lack of evidence is striking, and despite the current financial climate, we have not found any public bodies that have sought to monetise either the costs or benefits of applying the Duty as a whole (although some have been able to monetise certain aspects of compliance). To some extent this is unsurprising as public bodies found this similarly difficult under the previous equality duties, where research suggested that they did not have the data to enable them to do so, particularly because of the thrust towards “mainstreaming”.

3. Nonetheless, there are very clear messages on costs, benefits and particularly burdens arising from the review. The main sources of evidence available to the review in this regard are the following:
  - Impact assessments produced by the previous government in April 2010 and by this government in 2011;
  - Qualitative evidence commissioned by government to inform the review;
  - Research and analysis captured via the literature review; and
  - Roundtables with public bodies; and
  - Evidence from site visits to public bodies.

## Costs

4. A formal Cost Benefit Analysis of the PSED is not possible. The previous government's published Impact Assessment was wholly inadequate and palpably inaccurate in suggesting costs would only arise from the specific duties. It did not put a monetary value on the costs or the benefits arising from the PSED, though it cited savings from removing the previous duties on race, disability and gender. A subsequent Impact Assessment published under this government which related solely to the specific duties did not provide a monetary estimate of the costs to public bodies and business, citing only the 'benefits' to public bodies. The Steering Group considers the assessment that adopting the specific duties would lead to an annual benefit to the public sector in the region of £40 to £45 million is not credible.
5. The review team found no methodology which could provide a robust sample given the number and variety of bodies subject to the PSED, or to quantify costs and benefits as these are highly contingent. Government attempted to commission a survey of public authorities which would have collected such data where available, but received no bids.
6. The call for evidence generated little quantitative information which could be used to understand or estimate costs and benefits to public bodies. A summary of the most useful quantitative evidence is at **Annex D**. We must therefore largely rely on qualitative evidence; however this evidence is weaker on costs and benefits than on other issues examined through the review.
7. Nevertheless, there is some evidence of cost to English and non-devolved public bodies associated with the PSED. For example, the qualitative evidence gathered by independent research found evidence of significant start-up costs associated with new processes, for example additional data collection related to the introduction of further strands covered under the duty, arising from implementing the PSED. In some cases, these costs may have been higher than necessary due to a lack of clear guidance on how to implement the PSED, leading to the adoption of overly onerous practices by some public bodies as protection against risk. These start-up costs have now been largely borne.
8. It is clear both from roundtables and the site visits conducted through the review that there are on-going costs which can be significant, for example expertise in equality analysis, legal costs, training and consultancy fees. The independent research found that most resources associated with implementation of the PSED were the time/salary for specialist equality and

diversity practitioners, the cost and time of collecting and processing data, the costs of consideration by senior decision-makers and extra governance.

9. With the exception of start-up costs, there is little evidence that the PSED significantly increased costs in comparison with previous duties; however, public bodies report experiencing far greater resource constraints in general than prior to April 2011. The previous duties on race, gender and disability were widely held to be bureaucratic and linked to process burdens on public bodies. Although practice relating to the single PSED varies, as explored here and elsewhere, the review has found on the whole that any costs arising from the PSED are broadly in line with those incurred previously.
10. The independent research found little specific information given about costs incurred as a result of the PSED and/or English and non-devolved public bodies' interpretation of the duty, and no sense of whether equality burdens were increasing or decreasing over time or in comparison with the previous equality duties.
11. The review team also reported that costs can vary significantly within and between public bodies. For example, the Steering Group heard that some public bodies are doing the bare minimum, with little perceived risk of legal challenge or enforcement action from the Equality & Human Rights Commission, and therefore face very low costs. However, the independent research and evidence from roundtables found that, where English and non-devolved public bodies seek to embed the PSED in other work, the costs directly associated with the PSED are low and within 'business as usual' range. For a minority, there can be significant costs, for example where public bodies face a high risk of legal challenge or adopt very onerous practices in response to the PSED and treat the PSED as an "add-on". In the case of legal challenge, both the central and local government sectors have seen a rise in legal challenges under the PSED. This is a significant factor in determining costs, i.e. in activities undertaken to reduce risk and direct costs of defending a legal challenge.

## Benefits

12. There is very limited evidence on whether PSED is leading to improved outcomes such as better decision-making and improvements in policy and service delivery. This is one of the more challenging findings from the review. There are a number of issues to factor in when considering the impact of the PSED; one view that the review team reported to the Steering Group is that many public bodies believe it is too early to be able to identify improved outcomes, particularly in Scotland where the specific duties have been in place for just over one year. Another finding was that, in the current financial climate, the PSED is used to mitigate the disadvantage arising from cuts to budgets or services rather than to improve outcomes in the absolute sense. Finally, many respondents suggested that, if the PSED is appropriately mainstreamed, it becomes just one of many factors which determine the quality of decision-making and therefore causal effects cannot be identified.
13. The Steering Group heard reports from the roundtables and call for evidence that most participants identified general benefits. For example, although unable to provide or point to evidence of the impact of the PSED, a common

view amongst those the review team spoke to was that the Duty provided a useful framework for equality analysis which improved the quality of decision-making in public bodies and led to other benefits such as improved staff and community engagement.

14. At roundtables involving Scottish and Welsh stakeholders, participants suggested that a particular benefit of the duty was that it encouraged dialogue between authorities and equality communities, which in turn helped to prevent cases ending up in court. Early engagement could avoid 'costly' penalties of correcting or a process or policy to appropriately meet the needs of communities. This sentiment was echoed by many participants.
15. The review team also reported to the Steering Group that different groups were likely to accept decisions which had a negative impact on them if there had been an open dialogue at the outset of a policy or service development, although this cannot be readily proven.

## **Burdens**

16. The PSED is associated with a process burden to English and non-devolved public bodies. It can be argued that the PSED is not intrinsically burdensome and that any burdens arise solely from poor implementation; however, to have 'due regard' when making a decision does require a process and case law has been clear that public bodies must be able to provide a record which demonstrates that they have had 'due regard'. These requirements would not exist without the PSED so this does represent an additional burden on public bodies. As above, this will be greater where there is greater risk of legal challenge or enforcement action. Perhaps because of uncertainty over what is required, we have also found public bodies adopting blanket, burdensome processes.
17. English and non-devolved public bodies are also required to publish information to demonstrate compliance with the PSED, as per the specific duties which apply to English or reserved functions. While this aim may be achieved without new collection or reporting, in many cases this requirement had represented a new burden.
18. This burden extends beyond public bodies:
  - To private & VCS contractors fulfilling public functions, who must comply with general duty. One business umbrella organisation said that the main cost to business was incurred upfront, in preparing data / equality policies. EIAs in particular were referenced as an example of an unnecessary burden;
  - Bidders for public contracts, particularly SMEs who find it harder to meet E&D requirements put in place by public bodies. Generally however businesses found it hard to separate out equalities-related burdens from more general issue of "red-tape" in public procurement processes; and
  - To citizens through data collection.
19. There remains a perception of unnecessary bureaucracy associated with Equality Impact Assessments (EIAs), which are not a legal requirement in England. The Steering Group heard some evidence that formal EIAs as

stand-alone documents are becoming less commonplace. In some cases, this happened immediately that the PSED came into force, while other organisations have been slower to respond.

20. Despite case-law and government guidance, the Steering Group has found that a strong perception remains that EIAs are or should be required by English and non-devolved public bodies. There are examples of compliance culture, where EIAs may be inappropriate (for example, we came across an example of an EIA being completed for the installation of an air conditioning unit) or take the form of 'standard paragraphs' which do not substantively represent 'due regard'.

#### Recommendation

Given the patchy evidence in relation to associated costs and benefits, the Steering Group believes:

- **It is too early to make a final judgement about the impact of the PSED.** Government should consider conducting a formal evaluation of the Duty in three years' time. This would enable the PSED to embed more thoroughly and should consider whether the Duty is an effective means of achieving the goal of sensitising public bodies to equality issues and what alternatives there might be. This work could also be informed by the EHRC's medium-term work on how the PSED and the more prescriptive specific duties operate in Scotland/Wales.

## 5) Compliance with the General Duty, Enforcement and Legal Risk

### Key points

- The PSED can be enforced through the Judicial Review procedure or through the Equality and Human Rights Commission.
- For the vast majority of public bodies, such enforcement action is highly unlikely; however, for these bodies, the PSED can still provide an effective means of challenge.
- Many participants felt there was scope for other regulators to play a stronger role in driving compliance with the PSED.
- The number of legal cases brought under the PSED is relatively low and therefore the legal risk to public bodies is small, although the impact on the public body facing a legal challenge can be significant.
- Legal challenges under the PSED are most commonly taken against central and local government bodies.
- Challenges have been based on the fact that what it means to have “due regard” in a particular situation is not qualified in the legislation. Participants, whether from the private sector or public sector, thought there could be greater clarity and precision in what were the legal requirements under PSED.

### Compliance with the General Duty

1. There was general agreement that accountability and formal enforcement and sanctioning mechanisms are important in ensuring compliance. Some of the organisations that the review team spoke to were of the opinion that there was little concern about enforcement as public authorities do not believe there are any sanctions or consequences of non-compliance. For example, both race and disability stakeholders were concerned that the reduction in the Equality and Human Rights Commission (EHRC) role and functions means that it may no longer have the resources to deliver adequate enforcement, and that was supported by an example given at the Trade Union roundtable of a case against a local authority that was dropped as it didn't fit with the EHRC's priorities.
2. The regulatory bodies and inspectors also felt that some sectors cut corners as they were unlikely to be challenged. While fear of Judicial Review was thought to encourage compliance (or displays of compliance) in some areas, this was not thought to be the case in most sectors, as Judicial Reviews are rarely brought. It was thought this was possibly down to a lack of knowledge among citizens of the legal options available to them.

## Regulatory bodies

3. Several organisations felt that there was a role for inspectorates and regulatory bodies to play in enforcement; with the Information Commission being cited as an example of a regulator that can ensure strong enforcement. Regulatory bodies themselves felt that they, rather than the EHRC, should be the primary pressure on organisations to comply.
4. Ofsted do include equality and diversity within their regulatory framework and other regulatory bodies felt that this approach could only help drive change. Linking compliance to more general performance would ensure that everyone was aware of its importance.
5. There was some support at the Inspectorates roundtable for regulatory bodies having a Memoranda of Understanding (MoU) with the EHRC, particularly from the organisations who are unable to do anything but nudge and advise on equality issues at present. A MoU would clarify the roles and enable the EHRC to become involved where the inspectorate raised concerns about compliance.

## Legal challenges

6. The PSED review has considered how the legislation has been interpreted in practice by public bodies, those carrying out public functions and the courts. Various submissions and types of evidence have been examined to assess how organisations fulfil their equalities requirements and how the Duty has been used as a challenge function.
7. The Steering Group heard that several of the people the review team spoke with said that PSED provided a useful way of lobbying and settling complaints outside formal litigation routes. Judicial Review is costly for all parties and the costs and bureaucracy can be prohibitive for small organisations and individuals considering legal action. The PSED can help overcome this as a route for informal challenge. Equality and Diversity officers within public bodies also found that PSED was being used to challenge organisations and hold them to account. Lawyers had found that threat of litigation alone could have a powerful effect in ensuring equality issues were effectively addressed by decision makers, negating the need for legal action.
8. Cases brought under the PSED are still relatively rare, and cases are seldom brought solely under the PSED. The review team were unable to provide comprehensive evidence on the number of Judicial Review (JR) challenges which have involved the PSED to varying degrees as such information is not collected centrally; however, the following information was obtained:
  - An independent research project conducted by the Public Law Project and the University of Essex, funded by the Nuffield Foundation, has undertaken a breakdown of the civil JRs that went to a full hearing (i.e. cases that were granted permission and did not settle);
  - This identified 27 cases raising the equality duties (former or present) in 500 JRs over a 20 month period (July 2010 – Feb 2012). Of these cases, 15 are against local government, seven against central government, one against a prison, one against a school, one against

an independent adjudicator and two against a government agency (LSC). A more detailed analysis as to what extent the equality duty was relevant to the overall case and how it was used is currently being undertaken by the researchers, and will be published in their report 'The Effects and Value of Judicial Review; Bondy V and Sunkin M' in October 2013 (temporary title); and

- Our own analysis of the 18 reported cases brought under section 149(1) by 1st August 2012: only three claimants have been successful in challenging decisions taken by public bodies.
9. Although the number of JRs brought under the PSED is low, it is still a significant proportion of the overall number of JRs and there have been several high profile cases. In all the cases we have seen, the PSED is just one of a number of grounds, which suggests that these JRs would have arisen even in the absence of a PSED. Central and local government are particularly sensitised to the risk of legal challenge and the impact on a public body facing a legal challenge can be significant. The review has found that, even where decisions are overturned due to non-compliance with the PSED, it is not uncommon for the initial decision in question to remain unchanged following further work by the authority to demonstrate they had discharged the duty effectively. It is not clear how this benefits anyone.

## **Case law**

10. An analysis of the available case law, from the single duty together with decisions from the three previous duties which also required decision makers to have "due regard", provide an understanding of how the duty has been interpreted by the courts and legal advisors to date. In the review team's analysis of the growing body of case law relating to the duty, the Steering Group noted that the main themes arising are:
- Challenges have been based on the fact that what it means to have "due regard" in a particular situation is not qualified in the legislation. Only the court can confirm that a public body has had "due regard" in a particular case;
  - While courts have said the duty should not be too burdensome and completion of an EIA is not a statutory requirement, in the majority of cases public bodies have nevertheless completed EIAs. EIAs were commonly interpreted to be a requirement of the previous equality duties;
  - The completion of an EIA did not necessarily equate with the 'due regard' element of the duty being met as some challenges had been upheld where an EIA had been produced if the quality of the analysis was not judged to be sufficient;
  - The term 'due regard' was deemed to be ambiguous and could lead to either over compliance or organisations paying 'lip service' to equality aims.
  - Many respondents to the Call for Evidence found that case law was filling the space of formal guidance in enabling public bodies to comply with the duty. For example, local authorities said that the

Brown principles (see page 9) were helpful in enabling staff to understand what it means to show “due regard” in the absence of other guidance.

- A number of participants noted that judicial review applications that are being brought against public authorities had little or no chance of success. Even for those cases which were successful, it was not uncommon for the initial decision in question to remain unchanged following further work by the authority to demonstrate that they had discharged the duty effectively. The process could lead to considerable delays to decisions and high levels of resources.
- Claimant lawyers indicated that more challenges involving the PSED had been brought at the same time as austerity measures had been announced. Although the majority of challenges in respect of budgetary decisions had been unsuccessful, public authorities were now more sensitive to equality considerations when setting budgets.

### Case study

A lawyer from the Department for Education (DfE) attended a Steering Group meeting to provide a verbal summary of two recent judicial review cases involving the department – Building Schools for the Future and unused funding for Early Years.

Within the challenge on the Building Schools for the Future policy, which was announced in July 2010, local authorities challenged the decision under numerous grounds and lost the case under two grounds for failing to consult and discharging the PSED. Following this decision, a consultation was carried out but the decision did not change as a result. In the ruling, the Judge stated that there had not been an appropriate record of how the duty had been discharged.

It is worth noting that both challenges would have still occurred regardless of the Duty. In order to avoid further legal challenges, the department has delivered training to raise awareness of equality issues amongst officials and there is a dedicated equality legislation team who interact regularly with policy officials.

## Management of Legal Risk

11. Some participants of the roundtables noted that public authorities and other organisations (including private sector contractors) are choosing to employ consultants to consider equality on their behalf in an attempt to mitigate the risk of legal challenge. As well as the issue of resources, there is a need to ensure decision makers are confident in meeting the terms of the PSED without external expertise. Concern was raised about the creation of a ‘mini industry’ for lawyers and consultants on both sides which could be down to a limited understanding of concepts and case law. This could recede in the future as knowledge increases.

12. Legal advisors have told the review team that authorities did not have to set thresholds for meeting a perceived risk of legal challenge. The level of work needed on equality considerations tended to vary and could be considered on a case by case basis. The threat of litigation was perceived as not always proportionate to the scope of given measures. As a consequence, over-compliance and 'tick-box' exercises were at times applied on issues where they appeared disproportionate.
13. Many equality stakeholders argued that the PSED needs to be treated as a challenge function and some felt that this could be achieved if the EHRC are given more resources to conduct investigations and 'teeth' to enforce decisions.

## **Guidance**

14. Related to compliance and management of legal risk, the review has looked at awareness of the PSED in public bodies and the extent to which there is suitable guidance available on implementation. Across all the review's activities, public bodies and others suggested there is a wide variety in their understanding and awareness of the PSED. Guidance is seen as critical for public bodies in terms of complying effectively with the duty. There is a plethora of guidance in this area but not all of it is necessarily helpful to public bodies. For example, many respondents referenced the GEO quick start guidance, EHRC technical guidance, but also spoke about internal guidance particular to their organisations too.
15. Legal advisors to public bodies said that the quick-start guides published by the GEO on the general and specific duties were helpful in terms of offering practical guidance, although these came out too late. Many people (VCS organisations and public bodies) argued that GEO guidance is too broad-brush and doesn't provide any real answers, whereas EHRC guidance is useful for experts but could do with being repackaged and is too long. Many authorities said they supplemented available official guidance with internal guidance and templates for decision makers published on departmental intranets.
16. Respondents to the call for evidence felt there was currently a lack of clear, authoritative guidance, and that this was hampering the potential of the PSED. For example, the independent research found that the absence of precise guidance on what must be published to achieve compliance led to a tendency to publish 'everything' and this issue extends to other areas of over-compliance with the Duty flagged, such as disproportionate use of EIAs. A number of public bodies said that guidance should spell out more clearly the meaning of "due regard", that the PSED requires public bodies to consider the needs of all the protected groups, and is not a requirement to meet all the needs of the protected groups.
17. There is a gap in guidance around how the Duty should balance the interests of the different protected characteristics. Decision makers are identifying how people will be affected but it is not immediately clear what can be done to mitigate the impact on protected groups. Some reported that guidance did not sufficiently differentiate between good practice and basic compliance, i.e. it had a tendency to "gold-plate", and did not provide enough concrete examples and good practice. It was also reported that people don't know where to go for authoritative guidance.

## Recommendations

While the review has found broad support for the principles behind the Duty, it has identified key challenges in how it is implemented. There has been consensus from Steering Group members on certain common issues raised throughout the review, such as problems associated with over-compliance and “gold-plating”. The Steering Group therefore believes:

- **Guidance must be clearer on the minimum requirements placed on public bodies.** Building on its technical guidance, the EHRC should produce shorter, more bespoke guidance clearly setting out what is necessary for compliance.
- **Sector regulators have an important role in supporting implementation.** Regulators, inspectorates and relevant ombudsmen services should integrate the PSED in their core functions and collaborate closely with the EHRC with respect to compliance action. In some cases there may be a case for co-production of tailored sector-specific guidance where required, although it is recognised that some functions are so broad as to make such guidance virtually impractical.
- **Public bodies must ensure they adopt a proportionate approach to compliance and not seek to “gold plate”.** Public bodies should seek to benchmark their approach and compliance with the PSED with their peers, with a view to reducing unnecessary paperwork.

The Steering Group also considered the role of judicial reviews (JRs) brought against public bodies where it has been claimed that they have failed to comply with the PSED. Although the number of JRs where it has been claimed that a public body has failed to comply with the PSED is relatively low, it has featured in several high profile cases. Even where the court has found that a public body failed to comply with the PSED and ordered the body to re-take a decision, it is not uncommon for the body to arrive at the same conclusion following further work to demonstrate it had discharged the duty effectively. It is not clear whether this ultimately benefits anyone. The Steering Group therefore recommends:

- **Enforcement of the PSED needs to be proportionate and appropriate.** In light of the findings around Judicial Review, the Government should consider whether there are quicker and more cost-effective ways of reconciling disputes relating to the PSED.

## 6) Compliance with the Specific Duties and Data issues

### Key points

- Compliance with the specific duties has been weak so far, with wide variation in the volume and nature of data being published.
- Data collection is seen as important to many public bodies, as well as equalities stakeholders, VCS organisations, trade unions and other groups that have an interest in improving service provision.
- Although several public bodies described how data had enabled them to improve their services, either to employees or staff, there are few concrete examples of how the legal requirement to publish data helps bodies give effect to the general “due regard” duty.
- There seems to be a tendency amongst some public bodies to over-comply and publish all the data they collect. This has both resource implications as well as potentially contravening data protection legislation.
- The data that is currently collected by many public bodies is patchy, either because of new systems that are not yet established or because of low reporting on new protected characteristics (sexual orientation, religion and belief, gender reassignment). Public bodies and businesses that contract with public bodies fear being non-compliant as a result of this patchy data.
- We have found little consideration given to the safe storage of data or to the risks of ‘data mining’ arising from collecting and publishing personal information.

1. The review considered how the PSED specific duties have been interpreted by English and non-devolved public bodies in terms of the data they collect and publish. Evidence gathered through the review suggests data to support the PSED is a major issue, both in terms of what is collected and what is published. Some of the findings set out below are second order effects that are not necessarily a direct result of the PSED itself, but rather how public bodies have interpreted what is required by the legislation.

### Data Collection

2. The independent research found that the collection of equalities data was seen as having two purposes:
  - To highlight inequality issues and target resources appropriately to address discrimination among employees or deliver appropriate services, and
  - To measure progress against equality objectives.
3. Participants in many roundtables (E&D practitioners, VCS, claimant lawyers) clearly saw the collection of equalities data as being about good customer service, saying that the only way you can understand the make-up of your employees and the population you serve is by collecting data. Participants at

the E&D practitioner roundtable, for example, said that proportionate data publication could be valuable in establishing what equalities trends are, but existing data and more creative use of existing sources should be used wherever possible. This finding was backed up by other discussions with equalities stakeholders and trade unions, who said that publication of equalities data was extremely helpful to them in terms of holding public bodies to account.

4. Some English public bodies responding to the call for evidence stated that the publication of data is helping build trust with the communities they serve, although the review team did not receive any concrete examples of this working in practice through the call for evidence or via other review activities. Some examples public bodies shared are as follows:
  - Local authorities that responded to the call for evidence explained how the equalities data they collect is used to inform strategic/financial planning, commissioning and service delivery, equality objectives and compliance with the general PSED by providing data that is then scrutinised by decision makers.
  - A police force the review team and Chair visited told us that equalities analysis and diversity information has been used to improve HR processes. For example, analysing diversity data showed that BME officers were not being promoted and were failing assessment centres despite similar levels of skills and experience as white officers. Further work identified that the white officers tended to group together and get mentoring advice from senior officers whilst BME officers did not have equivalent officers to whom to turn. A corporate study group was formed to enable officers to get advice and this led to a much higher pass rate for BME officers. Similar schemes have since been introduced for other groups.
5. The Steering Group heard that several businesses as well as people from the public sector also made the point that collection and publication of data is becoming increasingly important for private as well as public sector organisations, driven by corporate social responsibility, transparency considerations as well as the need to understand its customer base.
6. It seems likely (and some local authority responses to the call for evidence suggest) that many organisations, both within the public and private sector, would be collecting and publishing diversity data even without the existence of the PSED.

## Challenges in Collecting Data

7. The independent research found that data collection was most challenging and burdensome for public bodies when processes for gathering data had to be established from scratch, although it then became easier once systems were established. A few organisations had tried to use existing administrative data (e.g. information gathered as part of clinical assessments in the health service) but, in some cases, found that the information needed still did not give the full picture and was not always fit for purpose.

8. A significant challenge for public bodies was data collection across the newer protected characteristics (gender reassignment, religion and belief, sexual orientation) covered by the PSED, as this data is more likely to be sensitive and challenging to collect, leading to either low disclosure rates or no data collection at all. For example, a police force visited by the Chair and review team said that data collection on characteristics other than race or gender was difficult, as staff were often unwilling to provide other information fearing it may impact on career progression. They instead used softer evidence such as engagement with staff bodies, networks and similar groups.
9. Health care providers responding to the NHS Employers consultation found the assembling of evidence for their Equality Delivery System and sharing it with local interest groups challenging due to the lack of data in relation to all the protected characteristics and the difficulty in making the evidence accessible to local people.
10. Several VCS organisations said that there were also inconsistencies across public bodies in terms of what information is asked for and how questions are phrased. Again, this was particularly seen as an issue for more sensitive questions, for example on faith, sexual orientation and disability.
11. There was clearly anxiety amongst some public bodies that they might not be compliant, either because they were not collecting data on all the characteristics, or because the data was patchy and incomplete. We found this anxiety extended to some of the discussions that the review team and Chair had with business, too. For example, two business umbrella bodies explained that since some protected characteristics were more difficult to collect than others, they feared this might mean they were penalised in bidding for public sector contracts.

## **Effective data collection**

12. Key to the issue of effective data collection seemed to be the issue of having and communicating a clear rationale for its usage, as well as making it clear how/whether the data would be published. However, this is not always undertaken either in respect of public sector employees or service users, and clearly risks causing offence.
13. Linked to this, we found very little variation in data collection, either in relation to employees or service users; instead, a blanket approach asking for the same information is often used whatever the purpose of the data collection exercise.
14. In relation to employment, low response rates were seen to be a result of staff not understanding why the data was important or how in part it would be used to make better policy. We found some positive examples of public bodies addressing this, for example by using staff networks in order to try to raise response rates.

### Case study

As part of the review the Chair and review team conducted a site visit to a voluntary sector organisation that collects diversity data voluntarily, despite not being required by law. They provided an example of how data can be collected sensitively and in a meaningful way (which was in line with examples from the public sector). For example, this organisation said they are guided by the fact that people are more comfortable in disclosing certain characteristics, so do not mandate collection of data on religion and sexual orientation.

This organisation told us that trust is an essential issue for their clients and needs to be won; they therefore have to be careful about the questions they ask so they don't impact on trust. They recognise the need to protect people with the characteristics they don't collect data directly on, however, adopting alternative methods of finding out this information. For example, local advisors will take a view as to when to ask certain questions based on the individual case, rather than adopting a one size fits all approach. They also use proxy data (e.g. census) and other forms of intelligence, for example many of the organisation's volunteers are also former clients so can provide a useful insight into issues and use feedback from projects on the types of clients involved. Again, this organisation told us that people generally seem happy to provide information if they know why the data is needed and see how it is being used.

## Compliance with Specific Duties and Publication of Equality Information

15. The EHRC published an assessment of public authorities' compliance with the need to publish information on their staff and service users in 2011/12<sup>1</sup>. Their findings showed just 50% of public authorities meeting those requirements in full, with 78% partially meeting the requirement by publishing information on either their staff or their service users. There was a very wide variation between different sectors and types of public authorities, with national organisations being the worst performers. **Annex E** outlines information on what data has been published by a selection of local authorities on workforce and service users.
16. The report found that public authorities were far more likely to publish information on employment (72%) than on service users (56%) and concluded that this was because organisations are more experienced in collecting information on the protected characteristics of their staff as it is routinely collected at the point of recruitment. In comparison, mechanisms are

---

<sup>1</sup> Publishing equality information: Commitment, engagement and transparency.

often only just beginning to be put in place to capture equality information about service users.

17. This would appear to be confirmed by a desk based study undertaken by the review team that looked at a small selection of Local Authorities. The Steering Group heard that while the publication of workforce data was widespread, not all appeared to have published data on service users on their websites.
18. The EHRC report found that while 86% of Public Authorities published information on race, gender, disability and age; only 56% published information that included religion or belief or sexual orientation and significantly fewer (14%) also had information on pregnancy and maternity and/or gender reassignment. It was a similar picture with the information published on service users.
19. The independent research found that the absence of precise guidance on what must be published to achieve compliance led to a tendency to publish 'everything'. This is confirmed by some of the data provided via the call for evidence which suggests that public bodies are collecting data indiscriminately, with little evidence they are thinking about whether and how it will be used. For example:
  - The roundtable the review team and Chair held with equality and diversity (E&D) practitioners looked at this question. They felt that excessive collection may be protection against risk, fearing litigation.
  - In the call for evidence, a number of VCS organisations pointed out that there is a lack of consistency and little or no benchmarking in the quality of data published by local authorities.
  - The independent research found that such extensive collection / publication was regarded by public bodies as resource intensive, increasingly burdensome in the context of austerity and, in some cases, seen as preventing people from actually doing anything to address the general duty that would make a real difference to staff or service users.
  - There was no clear data on the resource implications of a proportionate approach to data collection. A business umbrella organisation also said to the review team and Chair that smaller businesses had capacity concerns in terms of their administrative capability and expertise to collect and publish information requested by public bodies in the delivery of public sector contracts.
20. There is also an issue about compliance with Data Protection legislation, particularly where the publication of data meant that individuals were identifiable. For example, a number of authorities are collecting large quantities of data about all the protected characteristics, from which individuals might be identifiable if the data were to be published and cross-referenced. Two umbrella business organisations also expressed a fear that business might inadvertently contravene data protection legislation by being required to publish diversity data. They suggested that smaller companies were particularly fearful of litigation.

## Recommendations

The Steering Group is concerned about implementation challenges around disproportionate levels of data collection, which has implications for both resources (public bodies but also contractors) and also potential breaches of data protection legislation. The Steering Group therefore believes:

- **Public bodies should not collect diversity data** unless it is necessary for them to do so. The EHRC and Information Commissioner should work together to provide greater clarity on the role of data and its collection, the use to which data is put, and what is necessary for compliance with the PSED. In respect of both data collection and procurement, public bodies should take a genuinely proportionate approach.

There was no consensus among the Steering Group on the effectiveness of the specific duties that apply to English and non-devolved bodies. Some members thought the specific duties have embedded equality within the business processes of public bodies. Other members thought the specific duties do not help public bodies give effect to the general Duty and that their aims might be achieved in other ways. The Steering Group's recommendation is that:

- **Public bodies must be proportionate in publishing information about their equality objectives and performance.** Although consensus was not reached in the Steering Group on the effectiveness of the specific duties, the Chair's view is that these duties do not serve their intended purpose and that the Government should consider their removal or modification.

## 7) Procurement

### Key points

- All the people and organisations the review team and Chair spoke to, whether from the private sector or public sector, had a strong view that equality and diversity considerations should be part and parcel of good service delivery, regardless of the existence of the PSED.
- Public procurement was commonly held to be far more bureaucratic than the private sector, but the PSED was only one driver for this bureaucracy.
- Many public bodies are attempting to embed equality considerations effectively into their procurement and commissioning processes, but there is also evidence that too many are adopting a formulaic, 'tick-box' approach which they do not vary regardless of the size or nature of the contract.
- There is evidence of such practices creating a barrier for smaller companies and charities wishing to tender for public contracts.

### Commissioning and paperwork

1. Recognising that the PSED review arises from the Red Tape Challenge, the review considered how public bodies embed equality considerations in their procurement and commissioning procedures and looked at where potential barriers lie. The information considered by the Steering Group suggests the effectiveness of embedding equalities in procurement processes is very mixed. There was very limited engagement by the business community as a whole to the review.
2. The Steering Group learned that businesses told the Chair and review team that public sector procurement processes in general can be overly bureaucratic; this is not necessarily because of equalities considerations. Evidence provided by businesses also suggested that equality and diversity requirements were likely to be a relatively small component of public sector procurement processes that represent a burden for business.
3. The Steering Group heard that businesses and business bodies said that many but not all public bodies require contractors to produce Equality Impact Assessments (EIAs), diversity policies, publish diversity data etc. under the aegis of PSED, even though the Duty itself does not require this. The Steering Group consider that many of the "requirements" set out by public bodies in procurement processes are not necessarily a direct result of the PSED itself but rather in how they have interpreted the duty. From the Chair and review team's discussions with business, it is clear that equality considerations have become increasingly important in bidding for private sector as well as public sector contracts, driven by corporate social responsibility and transparency considerations. Equalities can be an

important reputational issue for businesses in the private sector and often form part of their corporate brand identity.

4. Public bodies told the Chair and review team that they include equality considerations within tender documentation because they view it as important in terms of social responsibility and understanding their communities. One local authority the Chair and review team visited, for example, included service users in the commissioning process (e.g. young people added in questions to a tender for foster care), a decision that was taken because it was felt it would benefit service users, rather than a direct result of the PSED.
5. The Steering Group also heard that there are other drivers affecting how and why public bodies incorporate equalities considerations into commissioning processes. For example guidance and initiatives such as the Stonewall Workplace Equality Index which encourages employers to actively use procurement policy to promote equality and inclusion.
6. All the business organisations the Chair and review team spoke to said that there was variation in what public bodies ask for in commissioning services, even between central Government departments. Some departments ask for Equality Impact Assessments (EIAs) and some don't, and there is great variation in how questions are phrased and how they believe the information is used and assessed. For example, the review team and Chair spoke to a large contractor who provided examples of two central Government departments that adopted two very different approaches to the PSED in terms of the information requested at tender stage. This contractor said that in one Government department, questions about service delivery factored in equality dimensions wherever relevant as part of the tender; whereas another Government department asked separate equalities questions, treating equalities more as an "add-on". This contractor thought that mainstreaming equalities considerations as part of the bid reflected better practice and was less formulaic.
7. The businesses the Chair and review team spoke to were generally committed to ensuring equalities considerations were considered and strongly built in to their bids, and were keen to consider ways of doing this more effectively. For example, a participant in the procurement roundtable said that they found the competitive dialogue process more complex and "dominated by procurement and business consultants, who have no interest in making it quick and easy." One business thought that, rather than filling in paperwork, the best approach was to incorporate equalities issues into competitive dialogue sessions, as this enabled more detailed discussion and a better understanding of equalities considerations ahead of making a final submission, which in turn would lead to better quality bids and contract management.

## Proportionality

8. Business groups said that equalities information requested by public bodies was not necessarily proportionate to the contract size, nor was it always relevant.

9. Businesses also felt that most equality and diversity considerations were binary, that you either passed or failed as a result of the information supplied, and there was considerable scepticism whether material was considered seriously beyond the pre-qualification questionnaire (PQQ) stage or that it had any bearing on whether or not to award the contract.
10. The Steering Group heard that several local authorities had in the past used PQQs to ascertain that a supplier is compliant with the statutory requirements of the Equality Act, *“a backward look at the track record of an organisation with regard to equalities and are they suitable partners to work with going forward”* (a local authority who responded to the call for evidence). For example, a large county council that the Chair and review team visited said that their commissioning process asks for minimum standards, similar to those asked about financial probity.
11. Participants in the E&D roundtable supported this use of ‘minimum standards’, saying that some questions needed to be asked regardless of proportionality as suppliers are delivering on behalf of public bodies and therefore needs to ensure the same level of compliance with the duty.
12. There was however a sense across all the businesses and business representative organisations that complying with the PSED at tender stage can be formulaic or “tick box” for some public bodies. Many suggested that some public bodies give the impression that they want contractors to comply with the PSED on their behalf, despite it being a non-delegable duty. There was a sense that some public bodies use paperwork to protect against risk, and that an industry has developed around this risk protection which encourages paperwork.

## **SMEs**

13. Larger businesses and business umbrella groups thought that equality and diversity considerations were not a problem for large companies, who were easily able to fulfil public bodies’ equality requirements because they had the paperwork and processes already. For example one large contractor was able to commit dedicated resources to equality and diversity and had a diversity steering group, with an external chair. They said they could easily produce monthly management reports covering diversity data on all protected characteristics.
14. However, there was a recognition amongst all businesses we spoke to that equality requirements could be an issue for SMEs. Two large companies, for example, said that they thought smaller sub-contractors may require a great deal of support to meet equalities requirements. Another large contractor said they were not able to commit time and resources to ensure SME sub-contractors meet the requirements, so 80% of SMEs are excluded from working with them. One umbrella business body said that large businesses regularly bidding for public sector contracts are more likely to support small businesses to complete paperwork. However, they said this could be a barrier to trade for the smaller business. It was reported that some businesses, particularly smaller ones, pay external contractors to write equalities policies, believing that if their policy is more glossy/branded then they may be more likely to win the contract.

15. While there is no legal requirement in the Equality Act 2010 for businesses to have a diversity policy, the Steering Group are aware that a recurring issue mentioned at roadshows GEO held with SMEs to explain the Equality Act was the rigid diversity requirements imposed on businesses by local authorities during the tendering and grants process. This was felt to be typical of local authorities and other public sector bodies more generally. Participants in these roadshows said that the local authority procurement process was seen as overly bureaucratic (considering there is no legal requirement for an employer or service provider to adopt a diversity policy in the Act) and was viewed by many small businesses as very much as process for process's sake. They also said that it was disproportionately burdensome to small businesses, as many lack the resources and capital of larger companies to produce the detailed diversity policy required or complete questionnaires in tender documents. For example, one small business said that it cost them £2-3K each year to tender for local authority contracts and felt this was an unfair expense which put off small businesses from applying.
16. Many contributors at these roadshows felt that local authorities should be encouraging a diverse and competitive local market by being more flexible with small businesses and the voluntary sector to allow them to compete with larger companies.
17. Interestingly, some local authorities responding to the call for evidence asserted that the PSED is helping them support SMEs in securing government contracts. Some are building in to their procurement processes different requirements for small and large organisations to address potential barriers to SMEs. However, the review team has not tested how widespread this is, and due to limited engagement by the business community, the Steering Group has no evidence of this from a business perspective.

## **Delivery and contract management**

18. Although the main focus of questions asked of the business community was on the tendering process, the Chair and review team also asked all the businesses about how the information they provided at tender stage was used in delivery / contract management. Again, there seemed to be a disconnect between what was demanded of business in the tender documentation and how equalities considerations were embedded in delivery and contract management.
19. The Steering Group has seen an example of equalities documentation that public bodies request of suppliers once they have been appointed. However, contract leads in a few businesses said they were not generally aware of being asked to supply further documentation with the exception of a couple of specific instances (e.g. where equalities was clearly absolutely central to delivery of a contract). The burden of paperwork therefore seems to be, according to the contractors that provided evidence to the review, mainly present at the bid stage and, as discussed earlier, only an add-on.
20. There is a related issue about how well PSED is built into the delivery of public sector contracts. Despite the extensive paperwork that is often required by many public bodies at bid stage, it is not clear whether this translates into improved equality outcomes. For example, evidence the Steering Group has considered from equalities stakeholders suggests that there are post-

commissioning issues about some public bodies washing their hands of the supply chain, meaning the PSED fails to have the desired impact of driving improved equality outcomes.

21. Participants in the procurement roundtable (particularly those from VCS organisations) also said that more work needed to be done on the sub-contracting process, for example training frontline staff. They said that while the bid may reference equalities considerations in a formulaic, tick-box way, this didn't subsequently filter down to improved frontline delivery. There was a discussion at this roundtable about the issue of size and attitude in an organisation, with participants suggesting that while those involved in bidding for public sector contracts might have a good understanding of equalities considerations (or at least sufficient to respond to the paperwork), not enough was done to ensure frontline staff delivering the contract were also aware and sensitive to equality and diversity issues:

*"The bids have enough to tick boxes but frontline staff delivering services do not have the required sensitivity. Senior level people don't see it. It's the front line and none of it [good practice/knowledge] trickles down."* (Participant in procurement roundtable)

22. A local authority procurement lead said that monitoring is a vital part of the procurement process, but that too often things aren't looked at until something goes wrong. They said that their monitoring form was often not completed, so it is being amended to make it more meaningful for providers and to ensure that requirements set out in the tender specification also flow through the contract. A social services operations and partnership manager from the same local authority said that *"it is easy to write E&D requirements into a contract but they need to be explicit. There can't be an expectation that suppliers will deliver something the local authority hasn't requested."*

## Recommendations

The Steering Group is concerned about PSED-inspired burdens imposed on private and VCS contractors, particularly SMEs, by some public authorities when they undertake public procurement. The Steering Group therefore recommends:

- **Public bodies must reduce the burdens placed on small employers.**
  - Public bodies should remove Pre-Qualification Questionnaires (PQQs) for contracts below £100k and utilise the government's core PQQ, which does not include equality requirements, for contracts over this amount.
  - Public bodies should not impose onerous or disproportionate requirements on contractors delivering services (particularly those with fewer than 50 employees) to provide equality data on workforce and service users.
- **Public bodies should be challenged where their procurement processes creates barriers for small businesses and charities.** Private and voluntary sector employers in England should refer any potentially inappropriate equality requirements that have been applied to a particular procurement exercise to the Cabinet Office Mystery Shopper scheme.

# Annexes

---

## **Annex A – Terms of reference**

### **Purpose**

A review of the public sector Equality Duty to establish whether the Duty is operating as intended.

### **Objectives**

To provide a report for Ministers by July 2013 on:

- How both the General and Specific Duties are working;
- How effectively the Duty supports delivery of the UK Government's Equality Strategy; and
- Options and recommendations for changes or improvements in the way the Duty operates.

### **Scope**

The review will:

- a) Examine evidence about the effectiveness of both the General Duty and the Specific Duties, drawing on views from public bodies with first-hand experience of fulfilling the Duty, as well as from practitioners, voluntary bodies and private sector organisations upon whom the Duty has had an impact;
- b) Explore the impact of the Duty in terms of costs, burdens and a range of benefits (including policy improvements, efficiencies and equality outcomes) ;
- c) Consider comparative models internationally to understand the range of levers available to help public bodies deliver equality of opportunity;
- d) Consider how the Duty functions in the context of the UK Government's equality strategy and its new approach to achieving change, including transparency; devolving power to people; supporting social action; and integrating equality considerations into policy and programmes;
- e) Examine the role of support and guidance given to public bodies and how legal risk is managed within different types of public bodies; and
- f) Consider what further measures could be taken to improve operation of the Duty.

### **Parameters**

- 1) The Review will look at Great Britain in terms of the General Duty, but will take account of the different Specific Duties and implications for the Devolved Administrations and specific evidence arising from their experiences.
- 2) The Review will consider the breadth of protected characteristics within the context of the PSED.

- 3) The Review will take account of the budgetary position facing public bodies.
- 4) The Review will consider the duties and powers conferred on the EHRC by the Equality Act 2006.

The costs of the Review will be met from existing budgets.

### **Governance**

A Steering Group - with an independent chair – will oversee the Review. It will include senior level figures with experience of the main delivery public sectors of policing, education, health, local and central Government. The Government Equalities Office and Equality and Human Rights Commission will also be represented. It will meet every four-five weeks beginning in November 2012.

The Steering Group will consider how best to develop and gather evidence that will inform the review findings. Throughout the process, members will be expected to offer challenge and support to conduct the review effectively, and ensure the findings are backed up by robust and credible evidence.

The Review and Steering Group will be supported by the Government Equalities Office.

### **Method for carrying out the Review and preparing the Report**

The approach to the review will be to:

#### **Phase 1 – Initiation**

- Form a Steering Group by end of November including appointment of chair.
- Develop and agree an evidence approach which supports the purpose of the Review, its findings and conclusions.

#### **Phase 2 – Evidence Gathering**

- Using public sector bodies to gather evidence through their channels.
- Review existing research and evidence.
- Conduct a series of round-table evidence-gathering exercises by theme or sector.
- Manage other information requests.

#### **Phase 3 – Findings and Conclusions**

- Analyse material.
- Develop review conclusions.
- Produce report by July 2013.
- Conclude review.

## **Annex B – Steering Group members**

### **Rob Hayward OBE (Chair)**

Rob Hayward OBE is a former MP for Kingswood/Bristol.

### **Councillor Mark Loveday**

Mark Loveday is a barrister specialising in property law.

### **Cathy Bakewell MBE**

Cathy Bakewell MBE was a Councillor on Somerset County Council until May 2013 and continues to be a Councillor on South Somerset District Council and an independent board member of Equalities South West.

### **Councillor Edward Lord OBE**

Edward Lord OBE is Chairman of Capital Ambition and an elected member of the City of London Corporation. He is former Chairman of Local Partnerships LLP and was until recently Lead Member for Equality of the Local Government Association (LGA).

### **Charlie Pate**

Charlie Pate is a senior civil servant at HM Treasury, overseeing various Departments' spending and with lead responsibility for the Treasury's equalities work.

### **Stephen Otter QPM**

Stephen Otter is HM Inspector of Constabulary for the National Team.

### **Rachel de Souza**

Rachel de Souza is chief executive of the new East Norfolk Academies Trust and executive principal of Victory Academy.

### **Paula Vasco-Knight**

Paula Vasco-Knight is the chief executive of South Devon Healthcare NHS Foundation Trust, a practising nurse and a senior manager at the NHS Commissioning Board (National Equality Lead).

### **Dr Munira Mirza**

Dr Munira Mirza is London's Deputy Mayor for Culture and Education.

**Rachel Clark**

Rachel Clark is the Director of the Government Equalities Office (GEO), taking up this post in January 2013.

**Baroness O'Neill**

Baroness O'Neill is the Chair of the EHRC. She is a cross-bench peer in the House of Lords.

## **Annex C – Organisations and individuals providing evidence to the PSED Review**

### **Meetings**

#### Bi-lateral:

- Equality and Diversity Forum
- Fawcett Society

#### Gender organisations:

- Fawcett Society
- National Alliance of Women's Organisations
- Eaves Housing
- Women's Budget Group
- Older Women's Network
- Single Parent Action Network (SPAN)
- Rights of Women

#### Disability organisations:

- Inclusion London
- National Aids Trust
- Scope
- Mind
- Disability Rights UK
- Action on Hearing Loss
- RNIB

#### Race Organisations:

- ROTA
- Race Equality Coalition
- Race Equality Foundation
- Equanomics
- Voice for Change

#### Trade Unions:

- TUC
- FDA
- Prospect
- NASUWT
- Unite
- Unison
- ATL
- UCU
- PCS
- NUT

#### Welsh Roundtable:

- Welsh Government

**Review of the Public Sector Equality Duty: Report of the Independent Steering Group**

- Welsh Local Government Association
- Caerphilly Local Authority
- NHS Centre for Equality and Human Rights
- Betsi Cadwaladr Health Board
- Wales TUC
- Age Cymru
- Wales Council for Voluntary Action
- School of Sociology and Social Policy, University of Liverpool
- Tai Pawb
- Race Equality First
- Guide Dogs
- Children in Wales
- Diverse Cymru
- Chwarae Teg
- Race Council Cymru

**Scottish Roundtable:**

- Scottish Government
- The Equality Network
- Coalition for Racial Equality and Rights
- Council of Ethnic Minority Voluntary Organisations
- Black and Ethnic Minority Infrastructure Scotland
- Engender
- STUC
- Scottish Councils Equality Network
- City of Edinburgh Council
- Convention of Scottish Local Authorities
- Scottish Police Service
- NHS Health Scotland

**Roundtables**

NB To encourage open conversation we guaranteed anonymity to participants in the roundtables. Participants were from the following sectors:

**Voluntary and Community Sector/Trade Unions:**

- Trade union
- Umbrella organisation
- Advisory body
- Two BME charities
- Disability charity
- Age charity
- Gender charity
- LGB charity
- Religious charity
- Trans charity
- Service provider

**Equality and Diversity Practitioners:**

- Two police bodies
- Central Government Department
- Large regional local authority
- Local Authority Network
- Healthcare Trust
- NHS Foundation Trust
- Higher Education Sector
- Two trade unions

#### Discrimination lawyers

- Large London based public law chambers
- Two small regional based solicitors with experience of the duty
- Large London based solicitors with experience of the duty
- Legal charity
- Lawyers association
- Specialist EHRC lawyer

#### Procurement

- Large supplier of goods to Local and Central Government
- Large service provider to Local and Central Government
- Small VCS service provider to Local Government
- Large VCS supplier of goods and services to Local Government

#### Inspectorates and regulatory bodies

- An ombudsman
- A funding body
- Two regulatory bodies
- An inspectorate

#### Public Sector Legal Advisors

- Three large central government departments
- A London Borough
- Two regional City Councils
- Private sector supplier to local government

#### **Site Visits and Case Studies**

- A large urban police force
- A major national charity
- A predominantly rural County Council
- An metropolitan unitary authority
- Large private sector contractor to local and central government

#### **Telephone Interviews**

- A major non-Russell Group university
- British Chamber of Commerce
- A county councillor
- A small private sector recruitment company with experience of central Government contracts

**Call for Evidence**

- Age UK
- APPG on Gypsies, Roma and Travellers
- Association of Colleges
- Association of Teachers and Lecturers
- Bar Council and Bar Standards Board
- Basingstoke and Deane Borough Council
- Bill Bolloten
- Black Training & Enterprise Group
- Blackpool Council
- Bracknell Forest Council
- Brighton & Hove City Council
- Brighton & Hove City Council
- Bristol City Council
- British Computer Association of the Blind
- British Dyslexia Association
- Cambridge City Council
- Cardiff University
- Centre for Studies on Inclusive Education
- Children and Young People's Services, Buckinghamshire County Council
- Children's Commissioner
- Citizens Advice
- City of Lincoln Council
- CIVITAS
- Coalition for Racial Equality and Rights
- Community Youth Provisions Association
- CYPs Equality Network
- Dacorum Borough Council
- Deighton Pierce Glynn Solicitors
- Denise Ham
- Derbyshire Constabulary
- Derbyshire Police and Crime Commissioner
- Devon and Cornwall Police
- Devon and Somerset Fire and Rescue Service
- Devon County Council
- Disability Politics UK
- Discrimination Law Association
- Dr Tessa Wright, Centre for Research in Equality and Diversity, Queen Mary College
- Eamon Toner
- East Riding of Yorkshire Council
- Equality and Diversity Forum
- Equality Challenge Unit
- Equality South West
- Equality580 Ltd
- Exeter City Council
- Fair Play South West - Gender Equality Network
- Fawcett Society
- Fay Best

- FDA
- Friends, Families and Travellers
- Gender Identity Research and Education Society
- Gloucestershire County Council
- Greater London Authority.
- Harrow Council
- Health and Safety Executive
- Insted Consultancy
- Institute of Equality and Diversity Practitioners
- Jane Young
- Joint Response – Grampian Regional Equality Council, Aberdeen City Council and Aberdeenshire Council
- Joint response – Action Disability Kensington and Chelsea, Action on Hearing Loss, Disability Rights UK, Inclusion London, Leonard Cheshire Disability, Mind, National AIDS Trust, Royal National Institute of Blind People, Scope and Sense.
- Just Lincolnshire
- Justice
- Kent Council
- Kingston Race and Equality Network
- Kirklees Council
- Lancashire County Council
- Law Society of Scotland
- Leicester City Council
- Leicestershire Centre for Integrated Living
- Local Government Association
- Local Government Association's Equality Community of Practice
- London Borough of Camden
- London Borough of Havering
- London Borough of Southwark
- London Borough of Sutton
- London Councils
- London Equalities Network
- Manchester City Council
- Metropolitan Police Service
- National AIDS Trust
- National federation of Gypsy Liaison Groups
- New Devon Clinical Commissioning Group
- NHS Employers
- NHS England
- North East Women's Network
- Northamptonshire County Council
- Patients' Forum Ambulance Services
- Police Federation of England and Wales and
- Preston City Council
- Prisoners' Advice Service
- Public & Commercial Services
- Queen Mary University London
- Race Equality Coalition
- Race on the Agenda
- Reading Borough Council
- Royal College of Midwives
- Royal College of Nursing

- Salford City Council
- School of Law at Queen Mary University
- Scottish Council for Voluntary Organisations
- Single Parent Action Network
- Skills Funding Agency
- Slough Borough Council
- Solicitors Regulation Authority
- Solihull Council
- Stonewall
- South Somerset District Council
- South Wales Police & Crime Commissioner
- Southend-on-Sea Borough Council
- Staffordshire County Council
- Stonewall Housing
- STUC
- Suffolk County Council
- Surrey Heath Borough Council
- Swindon Borough Council
- The Christian Institute
- The Law Society
- Traveller Law Reform Project on behalf of the All Party Parliamentary Group for Gypsies Travellers and Roma
- TUC
- UNISON
- Vaughan Bruce
- Wales Council for Voluntary Action
- Welsh Local Government Association
- Women's Budget Group
- Working Families
- World of Inclusion Ltd

## Annex D – Examples of specific costs identified through the review

**A) Costs of Judicial Reviews:** We have only been able to estimate the costs of a couple of JR cases, however the costs of these were considerable (60-70k)

### Somerset CC

The Guardian reported that Somerset County Council spent around **£70K** fighting a JR over its library closures, which it lost, including:

- £24,573.38 for internal solicitors' fees
- £44,034.08 for external counsels' fees
- £135.00 for court fees
- £2,590.78 for other associated costs (travel and accommodation for people attending legal hearings)

### Children's centres Hammersmith and Fulham:

From data provided by Hammersmith and Fulham, legal costs were as follows:

- Counsel fees £34,626
- In house lawyers £22,484

There were also minor disbursements and this does not include the significant cost in officer time spent by the Assistant Director, Head of Service, and the Opportunities Manager. The Opportunities Manager estimates that one working week was spent in total on matters to do with the EIA for the report and then on the claim. It is likely that the other officers spent more time on the claim as they had more grounds to cover in the other witness statement, which they both worked on together.

This suggests that over £57,000 has been spent on this case.

**B) Time delays due to JRs:** Based on estimates provided by Hammersmith and Fulham, the process of JRs can take between two months and a year, adding considerably to the timetable for implementing policies.

Public Body	Decision Date	Judgment Date	Delay
Isle of Wight Council	8 Feb 2011	11 Nov 2011	9 months
Sefton Council	16 Dec 2010 (effective 1 April 2011)	9 Nov 2011	13 months (or 7 months)
Leicestershire County Council	7 March 2011 effective 1 April 2011	02 Dec 2011	9 months or 8 months
Pembrokeshire County Council	28 April 2011 (proceedings began)	16 Dec 2011	9 months
London Councils	Consultation: 03 Sept to 10 Nov 2010 London Councils Leaders' Committee: 14 Dec 2010 (decision in principle) Budget decision:	Hearing: 27 Jan 2011 Judgment: 28 Jan 2011	2 months

## Review of the Public Sector Equality Duty: Report of the Independent Steering Group

	26 Jan 2011 Letter Before Claim: 15 Nov 2011 Permission to proceed: 13 Jan 2011		
Secretary of State for Education	5 July 2010 (Statement to Commons)	11 Feb 2011	7 months
W v Birmingham M, G, H v Birmingham (FACS)	Adoption of Business Plan: 1 March 2011 ASC Policy: 14 March 2011 Application for JR: 25 Feb 2011 Permission for joint rolled up hearing: 02 March 2011	Hearing: 14, 15, 18, 20 April 2011 Judgment: 19 May 2011	2 months
Rahman v Birmingham (grants)	Nov 2010	31 March 2011	4 months
London Borough of Brent	27 April 2011	High Court: 13 Oct 2011 Court of Appeal: 19 Dec 2011	8 months

**C) Number of JRs involving PSED:** Evidence from the 'Value and Effect of Judicial Review' project suggest a reasonable proportion of cases refer to equalities duties (around 5%)

The research conducted by the University of Essex and the Public Law Project provides a database of 500 civil JRs heard between July 2010 and February 2012; these include all types of challenges. A preliminary breakdown of JRs that went to a full hearing (i.e. beyond the permission stage) identified 28 cases raising the equality duties (former or present). Of these, 15 are against local government, 8 against central government, 1 against a prison, 1 against a school, 1 against an independent adjudicator and 2 against a government agency (the LSC). We hope to supplement the data we have on the impact of JRs with further evidence from this project.

**D) Time spent on EIAs:** Based on evidence provided by Hammersmith and Fulham LA on a small number of their EQIAs, the time spent on supporting the EQIA process varies (with examples ranging between 2 – 17 days of support provided)

Earls Court Conditional Land Sale Agreement

In terms of officer time, it is slightly difficult to quantify, as the regeneration team was careful to involve the Opportunities Manager for advice and guidance at the right time. They also gave a reasonable amount of notice and time to get back to them. However, the Opportunities Manager has attended around eight formal meetings between March 2011 and despatch for Cabinet in August 2012. Two of these were to do with the legal threat of Judicial Review. Support has involved iterations of the EIA, as well as sifting through consultation responses to scan for equality issues that were raised, as many were. A total estimate of time over this period is about 15 to 17 working days of support.

Tenancy agreement

Around two working days of support from the Opportunities Manager – as this followed the Scheme of Allocations (see below) and borrowed from that analysis, less support was required

Scheme of allocations

Around seven working days of support would have been provided by the Opportunities Manager on this.

## Annex E – Local Authority Compliance – Publication of Data on Workforce and Service Users

Local authority	Workforce data – no of pages	Service user data – no of pages
Kent	Nothing apparent on website	Links on ONS census data
Sandwell	80	Nothing apparent on website
Sefton	28	18
Selby	1	5
Sheffield	3	Small amount in wider report
Shropshire	Nothing apparent on website since 2007	28
Slough	Combined in a 45 page equality report	
Solihull	1 table within wider report	Solihull observatory data sets
Somerset	12	20 pages within wider audit
South Lakeland	7	4
South Tyneside	2	9
Southampton	1	2 – within wider digest of statistics
Southend	Nothing apparent on website	Nothing apparent on website
Southwark	36	Nothing apparent on website
South Derbyshire	Combined in a 26 page report	
Stevenage	Combined in a 13 page report	
Stockport	31	Links to ONS census data
Stoke on Trent	19	8
Suffolk	45	5
Sunderland	15	26
Surrey	17	Links to ONS census data
Surrey Heath	4	Links to ONS census data
Swale	2 paragraphs on website	7 paragraphs on website
Swindon	12	3

Summary:

- Workforce - 21 out of 24 sites visited had data available; ranging from 2 paragraphs to an 80 page report.
- Service Users – 21 out of 24 sites visited had data on services users available, of whom four only provided ONS census data and had not appeared to collect data themselves. Data on service users was more likely to be mainstreamed in general social/economic audits than the workforce data.



Government  
Equalities Office