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# **Views and experiences of the Public Sector Equality Duty (PSED)**

**Qualitative research to inform the review**

**Authors:** Sue Arthur, Martin Mitchell, Jenny Graham and Kelsey Beninger

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NatCen Social Research  
35 Northampton Square  
London EC1V 0AX  
T 020 7250 1866  
[www.natcen.ac.uk](http://www.natcen.ac.uk)

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# Key Findings

- The general view from participants was that PSED either was working well or had the potential to do so, and it would be a backwards step to change it significantly. There was a strong concern about the upheaval and costs associated with any major change.
- The general principles of the equality duty were felt to be simpler and easier to grasp than previous equality requirements, particularly the application of the same duty to the nine protected groups. This made it easier to promote understanding across organisations. Nonetheless, understanding and knowledge of the duty varied within organisations, with participants feeling that understanding was more limited in back office functions such as procurement.
- The legal leverage offered by the duty was felt to be a necessary condition to ensure that equalities work gets done, and the concepts of due regard and proportionality helped in managing implementation and compliance.
- The greater flexibility around process compared to previous legal requirements allows for different approaches to compliance with the duty, and there were examples in this research of possible ‘under’ or ‘over’ compliance. We identified three broad approaches:
  - a proportionate response where organisations used the flexibility in the duty to determine the most relevant equalities work to carry out relative to resources available and their organisational goals;
  - under-compliance, with reduced or limited consideration of equalities work, on the basis that there was no prescribed process and limited likelihood of enforcement; and
  - a risk-averse or ‘extended’ response to the duty where organisations chose to carry out a full range of equalities work, either to be sure that they were legally compliant or because they had a strong ethical or political drive to ‘gold plate’ their equalities work.
- Participants called for improved guidance around the process required to comply with due regard and the data that needs to be published in order to comply, including examples of ‘success stories’ based around proportionate implementation and practical equality outcomes. The purpose behind publication of data needs to be clearly set out so that organisations know what to collect and engage with how to use it.
- To address potential under-compliance and issues of accountability, some participants called for improved enforcement of the duty, greater clarity of the penalties for non-compliance and the creation of outcome-based measurement frameworks.
- On the whole, PSED was seen as less of a burden than preceding legal duties because of i) the consistent treatment across all groups and ii) a reduction in prescribed processes. The largest amount of work tended to have been required in setting up new systems to implement the new duty rather than ongoing activities.
- An established body of equalities work and good awareness across the organisation made it easier to implement and comply with the duty. Having an ‘equalities

infrastructure' in place also helped: this included senior leadership and cross-organisational steering groups. When this infrastructure was not in place, dedicated equality and diversity staff were more important to get things done and promote awareness.

- Where organisations' equalities work was less well established, elements of the duty had been harder to put in place. Organisations struggled with data collection relating to new protected groups, especially when there was low commitment to or awareness of the value of collecting data and the best ways to do it.

# Executive Summary

## Research methods

This piece of qualitative research was carried out to inform the review of the Public Sector Equality Duty (PSED) carried out by the Government Equalities Office (GEO). The research involved two elements of data collection from representatives of a range of public sector organisations: i) 55 people submitted detailed answers online to a small number of open-ended questions and ii) 47 people took part in an in-depth telephone interview.<sup>1</sup> Eighty three organisations were represented in the research, including local organisations across four sectors (local government, education, health, criminal justice) and national bodies. There were a range of organisations represented, although it is worth noting that they tended to be medium or large rather than small organisations.

The sample was made up of a mix of equality and diversity representatives (who were able to give detailed and specialist information about the way the equality duty is working) and non-specialists who were selected because they had some awareness of the duty. With both types of respondent, the research investigated what was working well and what was working less well about PSED.

## Understanding and interpretation of the equality duty

Understanding and knowledge of the duty varied within organisations with the core of expertise sitting with staff in equality and diversity roles. Service areas where it was felt that understanding may be more limited included back office functions, for example procurement. Staff were felt to be 'ahead' in their understanding of equality issues in areas that deal directly with service users, particularly where the protected characteristics are dominant among their user group.

The general principles of the equality duty were felt to be simpler and easier to grasp than previous equality requirements, particularly the application of the same duty to the nine protected groups. This made it easier to promote understanding across organisations. At the same time, the new duty also brought increased flexibility and less prescription around required activity. This led to three different types of response: i) a risk-averse response where organisations chose to carry out a full range of equalities work in order to be sure that they were legally compliant; ii) a proportionate response where organisations used the flexibility in the duty to determine what was the most relevant equalities work to carry out; and iii) a limited focus on equalities work on the basis that there was no prescribed process.

There was a general view that guidance around the equality duty could be improved. Particular areas which were felt to need clarity were the requirements for data publication and for Equality Impact Assessments (EIAs), where it was felt by some that case law and government announcements offered conflicting viewpoints. In addition, there was a call for more practical learning resources around good practice in interpreting 'due regard' and 'proportionate' and on the application of the duty to areas involving arrangements between organisations, such as procurement or partnership arrangements.

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<sup>1</sup> 11 people took part in an interview as well as providing written answers, so that the total number of individuals taking part was 91.

An issue for some national bodies and regulators was that the government's policy to devolve power and localise decision-making meant that the top-down approach which they felt was implied in PSED did not work well because they were no longer able to tell local organisations what their objectives should be or what data they should collect. This view was also reflected among some larger organisations, particularly among education and health sector participants, that with increasingly devolved budgets and decision-making it went against the grain for them to implement what they thought was a 'one size fits all' approach.

Given the variation in knowledge and understanding within organisations, it was apparent that equality and diversity representatives were playing a key role in training, raising awareness and acting as a hub of expertise.

### **Managing implementation and compliance**

Three approaches to the management and implementation of the general and specific duties emerged:

- Ambiguities about how many objectives were relevant to different types and sizes of organisations and what was required to show 'due regard' led some organisations to take an ***extended approach*** in the sense of possible *over-compliance* through concern about the risks of a legal challenge on costs and reputation. This level of extended compliance was also driven by a desire to 'gold plate' or be top of the equalities league.
- Conversely, difficulties engaging with the duty due to poor understanding, lack of engagement or the view that equality was no longer a priority led some who were resistant to PSED towards ***under-compliance***. This position was backed up by a view that the duty was not adequately enforced or equalities activity scrutinised, resulting in no real need to comply.
- Some organisations and individuals had begun to introduce a middle way that was more ***proportional*** to their organisation but that also underlined the approach with a good equalities infrastructure (e.g. good E&D advice, relevant training, proactive consultation and engagement) that promoted essential qualities of pragmatism and critical thinking. This approach gave organisations greater confidence that they were compliant if they were challenged.

The extent to which PSED was seen as a 'burden' was informed in part by an organisation's view of the value of the work and also by the extent to which the work was carried out in a proportionate and reflective way. Smooth and successful implementation was underpinned by:

- a cross-organisation commitment to equalities (linked to organisational ethos and/or specific business cases);
- existing work in the area under previous legislation or other equality frameworks;
- established equalities infrastructure in the organisation, and
- good levels of knowledge and understanding across the organisation.

The lack of these elements hindered implementation turning it into more of a burden. However, on the whole PSED was seen as less of a burden than its predecessor.

Participants' views of the extent to which the equality duty was difficult to implement were also influenced by how it compared to what they were previously doing and the structures they already had in place. For example, participants who felt that the duty



had increased their workload worked in organisations where they had to set up new data collection systems to fulfil the specific duties in relation to all protected groups, and had little cross-organisational awareness of the value of data collection. Participants with less experience of equalities work were unsure how to deal with potential sensitivities around collecting data for some of the newly protected groups.

### **Benefits and impacts of PSED**

Participants tended to find it difficult to identify clear impacts from the equality duty. This was partly because it was early days and not yet bedded down, but also because their work had not necessarily changed considerably and/or it was hard to attribute specific changes to PSED compared to other ongoing equalities work.

However participants identified a range of ways where they said PSED had made a difference to the equality work of their organisation. While participants generally identified positive changes, some talked about a negative impact of increased bureaucracy, for example where they were struggling with new data collection requirements in relation to the extended coverage. Changes discussed tended to be in comparison with their equalities work before the duty. The following perceived impacts were discussed:

- reduced bureaucracy, processes now embedded in decision-making
- strengthening equalities infrastructures
- lending leverage and status to equalities work
- introducing a pro-active approach to equalities work
- improved awareness of equalities issues among staff
- extending the groups included in equalities considerations
- improved decision-making.

### **Suggestions for improvement**

The general view from participants was that PSED was either working well or had the potential to work well and that it would be a backwards step to change it significantly. The legal leverage it offered was felt to be a necessary condition to ensure that equalities work gets done, and the concepts of due regard and proportionality helped in managing implementation and compliance. There was a strong concern about the upheaval and costs associated with any major change.

However, there were a number of key areas where participants felt that implementation under PSED could be improved:

- Improve guidance around the process required to comply with due regard and the data that needs to be published in order to comply. The purpose behind publication of data needs to be clearly set out so that organisations know what to collect and can engage with how to use it.
- Provide practical resources to help smooth implementation and improve confidence around interpretation and compliance. This would include examples of good practice and 'success stories' based around proportionate implementation and practical equality outcomes. This was seen as particularly important given budget cuts to equality teams. Specific areas where there is greater uncertainty include: procurement, the application to employees, and the role of PSED in the context of locally devolved decision-making.
- Improve compliance and accountability, noted particularly by equality and diversity reps. Two ways were suggested to do this: i) bolster the enforcement

role of the EHRC and make clear the penalties for non-compliance, and ii) create outcome-based measurement frameworks which link to existing regulatory and inspection frameworks, so that performance is monitored and assessed.

# Introduction

## 1.2 Introduction to the research

This report presents the findings of research conducted by NatCen Social Research on the implementation of the Public Sector Equality Duty (PSED) within public sector organisations. This research was commissioned by the Government Equalities Office (GEO) as part of a review which aims to understand whether PSED is being applied as intended and whether it has reduced bureaucracy compared to the previous duties. The research provides qualitative insight into the understanding, experience, burdens and value of PSED in order to inform the wider review of the duty being conducted by the GEO.

### 1.2.1 Background to the research

As part of the Equality Act (2010), PSED (the duty) aims to encourage public sector bodies to eliminate unlawful discrimination, advance equality of opportunity and to foster good relations with reference to nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

PSED includes a general Equality duty to show ‘due regard’ in the way that public sector organisations exercise their functions and activities with regard to the three aims above (often referred to as the general duty). It also requires compliance with two specific duties: (i) to set itself one or more specific and measurable objectives felt to be necessary to achieve due regard in relation to the general duty and (ii) to publish data evidencing compliance (Government Equalities Office, 2011). Responsibility for monitoring compliance and enforcing the Equality duty sits with the Equality and Human Rights Commission (EHRC).

### 1.2.2 Aims of the research in the context of the wider PSED review

The Government’s Red Tape Challenge seeks to give organisations more responsibility and freedom to achieve their goals, and to reduce the overall burden of regulation. The Equality duty aligns with these intentions to remove unnecessary ‘burden and bureaucracy’ believed to be characteristic of the previous approach.

The research aims of this study were to provide qualitative insight into:

- how well PSED is understood,
- what experiences are of it operating in practice,
- what the burdens and benefits are, and
- how bodies manage legal risk and compliance.

## 1.3 Methodology, recruitment and sample

### 1.3.1 Methods

The research used two qualitative data collection methods;

- individual written contributions via a secure website;
- in-depth telephone interviews.

Written submissions were based on responses to four key questions: evidencing compliance; level of work required; whether equality impacts are evident; and any implementation challenges (See Appendix B). Telephone interviews were also conducted using a topic guide agreed with the GEO, covering themes of decision-making and implementation; effectiveness of PSED; and suggested improvements (See Appendix C). The telephone interviews were digitally recorded and transcribed verbatim.

### 1.3.2 Recruitment

Email invitations with information leaflets were sent to 483 equality and diversity specialists in a range of organisations across five sectors - national bodies, local government, health, education and criminal justice (police and probation). Individuals were asked to forward the email to anyone with an interest in the research, particularly human resources (HR) personnel and senior management. The email contained information about the study and a link to a secure website where they could find out more, give their contact details if they wanted to take part in a telephone interview, and/or make a written submission. Other recruitment strategies included posting an advert about the research on the Police OnLine Knowledge Area (POLKA), Equality and Diversity Forum (EDF) and the Local Government Association's knowledge hub.

### 1.3.3 Sample

In total, we heard from 91 individuals from 83 public sector organisations. Written submissions were received from 55 organisations representing a range of views. Depth interview participants were selected from those who volunteered to be interviewed to ensure a diverse sample by sector, equality and non-equality roles, seniority of role and whether participants viewed PSED positively or not. To ensure our sample includes sufficient range and diversity of views, we asked participants to suggest a colleague who was not a equality and diversity specialist but whom may provide valuable insight, such as HR personnel, chief executives, senior management and front line practitioners. Tables 1.1 and 1.2 below give details of the sample by employment sector and job role. (Further details of the achieved sample are given in Appendix A).

**Table 1.1 Achieved sample of participating organisations and individuals, by employment sector and involvement type**

Employment sector	Written submissions	Written submission then interview	Interview only
National	1	1	6
Local Government	31	4	10
Health	10	2	7
Education	4	2	8
Police/Probation	6	2	5
Other	3	0	0
<b>TOTAL</b>	55 Organisations	11 individuals	36 individuals

\*We conducted 47 telephone interviews, of which 11 had also contributed a written submission. This represented 39 different organisations.

**Table 1.2 Achieved sample of telephone interviews, by job role of individuals**

Job Role	Achieved Sample
Equality and Diversity Lead, with formal E&D responsibilities	29
Non Equality and Diversity professional, but with some E&D responsibilities (e.g. equalities champions)	12
Management, with limited E&D responsibilities <ul style="list-style-type: none"> <li>• CEO/Deputy/Director/Head</li> </ul>	6
<b>TOTAL</b>	47

## 1.4 Strengths and limitations of the research

This research offers insight into a broad range of views about how well PSED is working and its burdens and value. In particular, the inclusion of a variety of non-equality and diversity roles, from chief executives to front line practitioners, provides breadth and depth of views. However, qualitative research provides in-depth understanding of experiences and views but cannot indicate how prevalent they are. Despite a considered approach, we were unable to include as many smaller organisations as hoped. Resources and time restrictions also meant that wider experience of PSED, such as that among trade unions, schools, and advocacy organisations were not able to be included in the sample. The research therefore needs to be seen within the context of these strengths and limitations.

## 2 Understanding and interpretation of PSED

### Key Findings

- There was variation across organisations in knowledge about the duty and also how it was interpreted, with equality and diversity reps playing a key role in acting as hubs of expertise
- PSED was generally felt to be clearer to understand than its predecessors but a number of areas of ambiguity were identified, largely driven by the increased flexibility of interpretation
- Key areas where it was felt clearer guidance was needed were : what constitutes due regard and proportionate action, and what data should be published in order to comply

This chapter looks at understanding and interpretation of the equality duty, the role of guidance on the duty and the role of equality and diversity representatives in aiding understanding. The research did not set out to evaluate levels of understanding of PSED across public sector organisations. However, the views of participants help to provide some insight into the issues surrounding both understanding and interpretation of PSED and point to where further guidance could help enhance understanding and therefore implementation.

### 2.1 Variation in understanding of PSED

Participants' comments suggested that understanding of the equality duty and how it works varies within organisations. There was a strong sense that the expertise in understanding the details of what was required to comply with the law as well as the legal language of the duty rested with equality and diversity representatives. This was clear from our interviews with non E&D professionals, who tended to defer to the detailed knowledge of their organisational experts when asked about the duty in any depth.

It was generally felt that senior colleagues were more likely than junior or front-line staff to understand the legal requirements, but that front-line staff in some organisations nonetheless had a good 'common sense' idea of how the duty applied to their day to day work. However, some senior staff were felt to be 'clueless' about equality issues and responsibilities. As described in chapter 3, a low level of understanding among colleagues can act as a significant barrier to successful implementation.

This 'common sense' approach was one which some equality and diversity representatives deliberately adopted when they were looking to raise awareness of equality issues across the organisation. The Head of Administration at a Higher Education Institute (HEI) said she communicates 'due regard' to her team as '*being thoughtful, fair and encouraging good relations*'.

Public-facing service areas were generally felt to have better levels of understanding than back office functions, and similarly understanding the implications of the duty for

service users was felt by some to be better than understanding the implications for employees. Procurement was cited as an area where understanding about how to apply the duty had been relatively low, partly because there had been little guidance about this area until shortly before the research was carried out.

Despite this varied understanding within organisations, equality professionals expressed a view that PSED was an easier piece of legislation to communicate than the previous requirements. This was due to the fact that all protected characteristics were dealt with in the same way and that the basis of what was required (i.e. promoting equality) was clear and simple for people to grasp. This helped in raising the profile of the duty and some also felt it helped in raising its status and therefore supporting implementation.

*'I certainly hear a lot more people around the organisation referring to the Public Sector Equality Duty and understanding what that means. As opposed to with the previous legislation where I think it was something really that only equalities people understood'. (E&D, Local Authority, Large size organisation)*

Public understanding of the duty was generally felt to be fairly low. Some participants felt the accountability of organisations under the duty was limited because individuals did not understand how to interpret legal compliance nor did they understand how to make a legal challenge.

## 2.2 Variation in interpretation of PSED

There was considerable variation between participants about how easy they found it to interpret the duty, as well as how they actually interpreted it. More detail is given in the next two chapters about the different ways in which organisations interpreted their legal requirement under the duty, and the confidence they felt in doing so. There was a general view that in moving to the new legal requirements under PSED, the equality duty had become a more flexible tool, capable of being tailored to the context of an organisation's decision-making. There were two different responses to this flexibility. The first was that flexibility of interpretation enabled an organisation to respond in a proportionate and relevant way, compared to the old duties which had been 'cumbersome' and process-driven. As one participant in describing the activities of their organisation under PSED said, '*we do not make a habit or an industry out of producing evidence*'.

The alternative response was to see the flexibility as an unhelpful ambiguity around what is required to evidence the 'due regard' requirement. Here it was argued that the shift in emphasis towards less prescription and greater interpretation (and hence greater significance of case law) had two divergent effects:

- to open up the opportunity for organisations to reduce their focus on equality work if it didn't suit their circumstances (the duty was in this case seen as a 'dilution' of the previous requirements)<sup>2</sup>, and
- to adopt a risk-averse approach, involving 'blanket' Equality Impact Assessments (EIAs) in order to avoid any possible legal challenge (this was felt to be even more important in a context of austerity cuts where legal challenges were more likely).

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<sup>2</sup> This is a question of perspective and is not a comment on whether their activity was compliant or proportionate

For this group of participants, there was felt to be particular confusion around the extent to which EIAs should be carried out or not. They felt that announcements that EIAs were not compulsory were at odds with recent case law which implied that EIAs were the only way to evidence ‘due regard’.

## 2.3 Role of official equality guidance and other frameworks

There was frustration among some participants that guidance in the early stages of implementation had come late and that when it had arrived there were still key areas of vagueness, which was felt to undermine compliance. There was also concern that it was amended without organisations being notified of changes. Some participants also felt it was a shame that the guidance was non-statutory as it carried less weight with senior decision-makers. GEO and EHRC advice at this stage were sometimes seen to be contradictory, causing concern about what was appropriate for compliance. A few participants expressed concern about the level the guidance was pitched at, saying it was not user-friendly enough for officer-level staff. While some participants praised the GEO newsletter highlighting guidance updates, others were unaware of this and were frustrated they had to hunt around on the GEO website.

Areas where it was felt that further guidance would be helpful included:

- what data needs to be published in order to comply: whether data is required for all protected groups and all service areas, and at what level (e.g. organisation versus department level; employees versus service users). The absence of guidelines on whether to publish data on sexual orientation and religious beliefs was felt to imply that there was no need to do it. This is discussed further in Chapter 3.
- what constitutes ‘due regard’ and how ‘proportionate’ should be interpreted
- how activities carried out under the duty would be scrutinised, e.g. what procedures are in place for quality assurance, measuring compliance and benchmarking across organisations
- how the duty applies to national bodies responsible for regulating local organisations, in terms of enforcing or scrutinising activity under the duty
- how the duty applies to bodies such as Registered Social Landlords or Clinical Commissioning Groups as well as to service delivery delivered through partnership working.

Sector specific guidance and frameworks had often been found helpful in providing clarity around achieving equality outcomes compared to PSED. Examples given were the health service’s EDS framework and in the education sector, the advice from the Equality Challenge Unit and from Office for Fair Access (OFFA). These were valued for being practical and relevant in helping to interpret legal requirements.

## 2.4 Role of Equality and Diversity Representatives

In order to promote understanding and enable confidence around interpretation, it was clear that an equality and diversity representative played a key role. A general view was



that implementation of the equality duty worked more smoothly when it was 'mainstreamed' across the organisation and not just the responsibility of the equality professional(s). An important part of the role of the E&D representative was therefore to set up equalities training across the organisation. Carrying out routine equality analyses for key activities throughout the organisation also served the purpose of raising awareness. One participant noted that their ultimate goal in successful mainstreaming of equalities work would be to put themselves out of a job. However, it was also clear that maintaining a 'hub' of specific knowledge and expertise within an individual served a valuable purpose.

As well as guidance on the equality duty itself, E&D professionals built up their own understanding and expertise about the duty in a number of ways:

- information-gathering from journals, newsletters, and following case law (the Brown principles were referred to by participants as aiding understanding)
- networking with other equality professionals within their local area or within their sector
- drawing on other frameworks or guidance: for example participants in the health sector who were implementing the EDS said that they partly relied on this to ensure they were fulfilling the requirements of PSED.

## 3 Implementation: Facilitators and Challenges

### Key Findings

- A wide range of factors helped facilitate or act as challenges to the implementation or consolidation of activities supporting compliance with PSED
- These included: the level of commitment across the organisation to equality and to PSED, existing equalities infrastructure and knowledge levels, and the level of resourcing for equalities work
- Particular implementation challenges emerged around the collection of potentially sensitive data and lack of clarity about what should be published
- The approach to managing legal risk also played a role in how PSED was implemented
- Poor enforcement and monitoring of non-compliance was felt to underpin some instances of poor compliance

This chapter looks at the implementation of PSED - what had been done to comply with the general and specific duties and which factors had made implementation easier or more difficult.

PSED has two distinct parts. The 'general duty' requires that public bodies have due regard to the way they carry out their functions and activities with a view to eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations in relation to groups represented by nine protected characteristics (outlined in chapter 1). The specific duty requires public bodies to set one or more specific measurable objectives that it considers necessary to achieve due regard to the general duty and to publish data or information providing evidence of compliance.

### 3.1 Implementation and compliance with the 'general duty'

A broad range of activities were being undertaken that helped organisations comply with the general duty. A good deal of this activity had been developed prior to PSED as a result of a previous commitment to equality, diversity and inclusion or as a response to previous anti-discrimination legislation, public sector duties on race, gender and disability and sector-based equality schemes. The range of activities discussed by participants and issues arising from them in terms of whether they helped achieve compliance are shown in Table 3.1 (Reference Tables at the end of this report) and included training, action planning, governance and leadership, equality analyses and consultation and engagement.

Exceptionally, some organisations and/ or individuals said they had done little to implement the duty; this was where the organisations were less public-facing, and where - as individuals or collectively - they had less understanding of how to deal with equality and diversity issues at a practical level. A more typical pattern, however, was that organisations and individuals had responded to PSED as creating opportunities to

consolidate existing activities or develop new ones thereby enabling them to comply with the duty.

### 3.1.1 Variations within organisations

Variation was described across organisational departments in their understanding and awareness of PSED and their level of engagement or willingness to consider equalities issues in their work. This variation was driven by relevance (or perceived relevance) to the departments' work, their experience of equalities issues and the attitudes of the leadership across departments.

Departments that were described as '*further ahead*' in thinking about and applying PSED were often those at the front line of working directly with service users and especially service user groups where protected characteristics were dominant amongst the service user profile. E&D staff described a need to offer training to help some areas see the relevance of PSED for their work (e.g. refuse collection departments thinking about the needs of older residents).

Procurement and commissioning were sometimes highlighted as areas where practice had yet to '*catch up*' to other areas of an organisation's approach. This was raised by participants in local authorities, and in the education sector. Here there was uncertainty about whether and how an organisation should hold external providers to account on equalities approaches and how to build this into procurement practices. For participants from some though not all local authorities, difficulties associated with a perceived lack of guidance on the way the requirements of PSED should be integrated into procurement procedures was compounded where the commissioning out of services was relatively new for them.

*'We need to make sure that we are giving the right information to potential suppliers and then we're very clear in the procurement what we expect and how we expect things to be measured. I think it is difficult to build that in sometimes because we're still in the early stages, as many authorities are, of commissioning out lots and lots of services that we used to do ourselves, that will be a process that needs continual refinement'. (E&D manager, Local Authority, Medium size organisation)*

## 3.2 Implementation issues relating to the 'general duty'

This section looks at the factors which were felt to affect implementation of the general duty, including: i) the level of commitment to equality and PSED, ii) existing equality infrastructure and levels of understanding, and iii) resources available to implement PSED.

### 3.2.1 Level of commitment to equality and PSED

Organisations varied in the extent to which there was an existing organisational commitment towards equality and diversity. Commitment to equality work tended to be characterised by one or both of the following elements. This meant that it was easier to implement PSED and new elements of it.

#### **Alignment with organisational ethos and the relevant business case for equality**

Both E&D and non-E&D participants generally saw the duty – and the wider drive towards equality of opportunity that it represented – as the *‘right thing to do’*. There were participants from all of the sectors represented in the research who said that they believed in the broad principles of equality, diversity and inclusion and that this was part of their organisation’s ‘ethos’. As one participant said, a breach of PSED general duty would therefore be seen as a breach of their own organisational ethos. This perspective was also reinforced by the perceived business case<sup>3</sup> for equality relevant to their sector and organisational aims; that for public bodies like their own it absolutely made sense to collect and publish data on the diversity of the communities they served in order to ensure equal access and evidence-based decision-making and planning that doesn’t overlook or exclude a section of the population.<sup>4</sup> However, other participants felt there was a lack of commitment to equalities at a senior level in their organisation, which resulted in a minimal approach to implementation sometimes leading towards under-compliance (see chapter 4).

### **Implementation of previous frameworks and schemes promoting equality**

Participants from across different sectors felt that pre-existing activities and policies promoted equality and these helped to support compliance with PSED. Examples from different sectors included: (a) sector-based equality frameworks or schemes such as the Equality Delivery System in the NHS, HEFCE’s Research Excellence Framework and the Equality Challenge Unit with higher education; (b) awards or charter marks aimed at demonstrating commitment to equality of opportunity or good anti-discrimination employment practices, such as Stonewall’s good employer index and; (c) wider sector-based drivers towards equality such as attempts to improve diversity of recruitment.

## **3.2.2 Existing equality infrastructure, understanding and confidence in compliance**

The extent to which organisations felt confident they would be able to fulfil the requirements of PSED and be able to respond to complaints, grievances or legal challenges were among implementation issues raised. Three important areas relating to confidence came up:

### **Extent of equality infrastructure**

Organisations that had a developed equalities infrastructure were more confident that they would be compliant with PSED than those that did not. In particular, several key aspects of an equality infrastructure were thought to be helpful for an organisation to feel confident that they would comply, with E&D specialists and non-E&D specialists both consistently holding these views. The key aspects were:

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<sup>3</sup> We note that research on the business case for equality by BIS in January 2013 found that there is no single business case for equality and that the firm’s economic and organisational context is crucial in determining how equality brings about business benefits: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/49638/the\\_business\\_case\\_for\\_equality\\_and\\_diversity.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49638/the_business_case_for_equality_and_diversity.pdf)

We use the term here to refer to particular business cases that participants thought were relevant to their sector and organisational aims.

<sup>4</sup> Although this was the case across different types of organisation, support was particularly strong in HEIs where evidence on access and attainment were thought to be part of the evidence that students and employees would look at when choosing a university or college.

- *Good governance* – having a group chaired by someone at a senior level (e.g. Chief Executive, Deputy Director) that oversees objective setting, action planning and publication of data related to equality. (This was particularly reflected in the views on non-E&D participants in senior management and director roles).
- *Established networks, forums or groups* - that could facilitate efficient consultation and engagement of groups reflecting protected characteristics or key objectives, whether on a regular or ad hoc basis.
- *Work place champions* – with a commitment to equality and PSED within each directorate, department or team, or for each protected characteristic, that can help explain the importance of equality and assist in gathering information needed to demonstrate compliance.
- *An E&D specialist or specialists* – to help mainstream consideration and compliance with PSED, while also maintaining advice, support and training to staff level familiar with equalities and the duty.

These elements of infrastructure did not necessarily require significant resources to be put in place.

### **Levels of knowledge and understanding**

Participants in both E&D and non-E&D roles emphasised that knowledge and understanding on equalities issues and PSED were crucial to successful implementation and confidence that their organisation was compliant. A key barrier to successful implementation was whether there was engagement by senior managers, especially where they still saw the promotion of equality as *'political correctness'* rather than in terms of the business benefits or where lack of understanding of PSED meant that employees in general felt they were *'stepping on eggshells'*. As one Chief Executive of a national public sector body put it, *'you can train people but they can't remember all of it unless they use it every day'*. There was evidence that attempts to mainstream responsibility for PSED without some degree of E&D support made employees feel less confident that their organisation would comply with the duty because of insufficient knowledge about how to apply the duty in practice. Others observed that lack of understanding was linked to lack of engagement by employees as well as more senior management.

### **Mixed messages from government**

Recent government communications around the duty, including the announcement of the review, were felt to be sending out mixed messages. There was a worry that this could potentially undermine equalities work and the need to evidence 'due regard' particularly in organisations where equalities were a relatively low priority. Reviewing PSED in the context of the Red Tape Challenge was thought to imply that the current duties were in themselves burdensome with little value when the feeling was that requirements had already been reduced compared to the previous duties.

## **3.2.3 Resources and austerity**

Resources and capacity were becoming an increasingly challenging issue in terms of complying with PSED, particularly in local authorities. Part of this related to restructuring and redundancies arising from austerity, which E&D participants said made it increasingly difficult for them to be proactive and to keep equality issues as a priority on their organisations' agendas. Cuts to service delivery within public sector organisations

and also to partner organisations in the public or voluntary sector sometimes made it difficult to harness the support required to deliver equalities objectives.

There were reports of cuts to already small E&D teams supporting hundreds or thousands of staff. As one E&D Manager in a Local Authority said, E&D staff are often the first cut in difficult times, which was thought to be short-sighted because it left the organisation without capacity and capability: the implication being that it would be difficult to sustain compliance in the longer-term. Nonetheless, the duty did sometimes play a role in maintaining budgets for equality work that might otherwise not be the case.

E&D and non-E&D staff said that austerity had sometimes forced their organisations to reconsider what was a proportionate approach to the duty because of reduced resources. In some cases this led to a decision to place greater emphasis on mainstreaming of the day-to-day work of meeting the duty with ordinary managers; although it was clear that this strategy had not been successful if there was not adequate training and/ or continuing E&D-specialist co-ordination and support. Although there was support for a more proportional approach to compliance among non-E&D and E&D staff (see section 4.3), there was no evidence that austerity was seen as a welcomed or appropriate driver towards reducing an equality 'burden' or achieving this approach among non-specialists or specialists.

## 3.3 Implementation related to data collection and publication

Participants discussed a great deal of work that had already taken place in relation to implementation and compliance with the specific duty, although compliance with this part of PSED was sometimes seen as raising more difficulties and burdens than the general duty. The discussion of such difficulties was different in relation to data collection and publication of data and information.

A wide range of data and information was being published by organisations in order to comply with PSED as they understood the requirements. The type of data published and specific issues arising are shown in Table 3.2 in the reference tables. The implementation issues around data collection and publication are discussed below.

### 3.3.1 Data collection

With the exception of those participants and their organisations that were still '*grappling*' with the implementation of the duty, E&D and non-E&D participants identified two distinct useful purposes of collecting equalities data:

- to highlight inequality issues and target resources appropriately to address discrimination among employees or deliver appropriate services, and
- to measure progress against equality objectives.

Data collection was seen as more challenging and burdensome where the processes for gathering data had to be started from the beginning, although it then became easier once the systems were established. Some organisations had tried to use existing administrative data (e.g. information gathered as part of clinical assessments in the

health service) but found that the information needed still did not give the full picture and was not always fit for purpose.

Even for organisations with a track record of collecting equal opportunities monitoring data, a significant challenge was the extension of PSED for some of the 'new protected characteristics' (e.g. gender reassignment, religion and belief, and sexual orientation) because of the need to collect new data that was potentially sensitive. This issue appeared to have been particularly difficult for participants working in Local Authorities<sup>5</sup> and for organisations less advanced in their equalities work.

This extension had created anxiety among some participants that they were not being compliant because they were not collecting data on all of the protected groups or it was patchy and incomplete. Difficulties such as continuing discrimination against some of the groups concerned, resistance to collecting or providing the data, fears about disclosure and confidentiality all made gathering such data more challenging and concerning. In addition, staff collecting data also felt embarrassment when asking about transgender, sexual orientation, ill health and religion and belief. Nonetheless, there was a view that simply saying that data collection on these characteristics was too difficult or sensitive to worry about was not the answer; because it would be problematic to demonstrate compliance without it. Instead, there was an emphasis on providing guidance or examples of good practice where organisations had already tried to address these problems.

Despite these difficulties, there was a broad acceptance and enthusiasm for extending data collection to the new characteristics across all sectors sampled.

### 3.3.2 Data publication

#### Value of data publication

There was a strong view that publication of information in relation to PSED was important for openness, transparency and accountability in the public sector. There were, however, concerns about whether this would happen in terms of who would see and use the data. One key theme was access to and interpretation of data if organisations were to be held to account by the public (see section 3.4).

Publication of equalities data was also seen as worthwhile among E&D specialists and non-specialists as providing a baseline in relation to staff and/ or service users and to show progress against stated objectives. It was least valued where gathering data was not understood as being relevant to a particular service group or to organisational aims or aligned with specific organisational objectives. Without such clarity and understanding equality data was seen as *'tokenistic'* or as an *'extra'* only required to comply with PSED. Data collection and publication was also seen as lacking real meaning or purpose for the organisation unless it provided a basis for comparison against the sector as a whole.

#### Requirements for data publication

The absence of precise guidance on what *must* be published to achieve compliance was thought to lead to a tendency to publish *'everything'*. This was regarded as resource intensive, increasingly burdensome in the context of austerity and, in some

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<sup>5</sup> No clear reason emerged for this, although it is possible that an additional sense of workload arose because of the diversity of functions and roles that local authorities perform within their communities

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.

Participants from the higher education sector particularly struggled with these issues, although the concerns they raised would also apply in other sectors. The key issues identified were:

- Confusion over whether the focus of data collection should be for staff and/ or students.
- Whether it made sense to publish data at a university/ college-wide (organisational) level or a department/ faculty level
- What data would be most useful to collect and publish that would allow one organisation in their sector to be meaningfully compared with another in terms of performance on addressing equalities issues.

Notably, although participants understood that the current form of PSED was intended to give greater flexibility in the way that organisations complied with the duty, there was a consistent view among participants from across the sectors included in the research that absence of sufficient guidance on what to publish made PSED vague when compared to other equality schemes (e.g. HEFCE's Research Excellence Framework).

### 3.4 Perceptions of legal requirements and enforcement

There were divergent views about the extent to which the legal aspects of PSED had made a real difference to the way that organisations approached equality issues.

On the one hand, organisations felt that the **risk of legal challenge** was a key driver in their decisions about implementation, tending to lead to an approach of 'extended compliance' in order to be certain they were evidencing due regard sufficiently (see chapter 4). They emphasised (i) knowledge of judicial reviews (particularly against attempts to reverse cuts in services by local authorities); (ii) increased challenges in relation to employment practices by employees and unions (e.g. 'reasonable adjustments' for staff with disabilities or suggested disproportionate impact by protected characteristics of redundancies) or (iii) the negative effects of reputational damage in terms of the views of service users and recruitment of employees.

Others responded less strongly to the idea of legal threat, but nonetheless observed that the duty had helped to give '**gravitas**', '**status**' or '**leverage**' in organisations where senior managers and particular sections of organisations (e.g. procurement) had not given serious attention to equality in their day-to-day practises before. In these and other organisations with strong commitment, pro-active implementation and equalities infrastructure, there was a reasonable confidence of legal compliance. Some participants said they felt more confident about avoiding legal challenge in relation to their service users than employees because they had a pro-active consultative approach with service users.

A third response to the legal requirement was the view (mainly although not exclusively among E&D specialists) that implementation would not happen fully without sufficient



**enforcement.** These participants, including a HR director, noted the relatively small number of legal challenges from service users and mixed messages from government which meant that these participants and/ or the organisations they represented did not feel there was a significant threat of legal challenge. Three main issues reinforced the view that enforcement was not strong enough among this group:

*Lack of awareness of clear penalties* – there was seen to be a lack of clarity about the nature of ‘penalties’, ‘ramifications’ or ‘consequences’ for failing to comply.

*Limited resources and power to enforce the duty* – there was a clear view that it wasn’t possible for the EHRC to act as the enforcer of the duty by itself because increasingly limited resources and powers meant it could only take on large, high profile cases. As a member of the senior management team in a national organisation put it, ‘*PSED is seen as low risk in terms of legal consequences relative to other more pressing legal requirements because of the low risk of enforcement*’ (non-E&D, HR, National, medium-sized organisation). In some cases this made staff engagement with the duty more difficult potentially leading to under-compliance. In others, however, the fear of becoming one of the high profile cases taken outweighed assessment of the likelihood of enforcement (see section 4.1.2 on the ‘fear of litigation’).

*Limited capacity and resources among the public to instigate challenges* - one alternative to enforcement by the EHRC was for members of the public or advocate organisations to make a legal challenge or make a case for legal review. While challenges were being made by employees, unions and charitable organisations, there was scepticism that the public as individuals would have the capacity or resources to instigate challenges under the review in relation to services. Individuals might find it challenging to review and assess published data or to understand the process involved in bringing a judicial review.

## 4 Managing Compliance and Risk

### Key Findings

- PSED was felt to provide greater flexibility than under previous duties for organisations to determine what action to take. There were divergent views about whether this was positive or not.
- Ambiguity over interpretation could lead to ‘over’ or ‘under’ compliance ; some organisations adopted a risk-averse approach of extended compliance to guard against legal challenges
- Other organisations used the flexibility to put in place processes which they felt were proportionate and relevant
- Having senior support and equalities infrastructure in place helped to enable a proportionate, pragmatic and embedded approach to implementing the duty

This chapter looks at the way in which the implementation issues discussed in the last chapter informed the experience of how well PSED was thought to be operating in practice. It also outlines the different ways that were found of managing PSED, perceptions of legal risks linked with these strategies and ways in which participants tried to manage legal risk and compliance.

Overall, we found three ways organisations were responding to PSED:

- extended compliance;
- under compliance; and
- medium or proportionate compliance.

Rather than being typical of particular organisations, participants revealed the way in which organisations sat along a spectrum from under to extended compliance in relation to the variety of actions they had taken to comply with the equality duty (although that isn't to say that some organisations or participants would not fit wholly with one of the ways of responding to the duty when compared with others). The drivers, characteristics and consequences of each approach are considered in the sections that follow. A summary of the characteristics of each approach is shown in Table 4.1 in the Appendices.

### 4.1 Extended Compliance

Extended compliance refers to practices or actions that participants described within their organisation that went beyond what they thought were needed for a minimum response to PSED. In some cases this was because organisations feared litigation and

were risk adverse, while in others the approach was seen as appropriate to their organisational goals or to the fact that they served an especially diverse community.

### 4.1.1 Characteristics

Key characteristics of this approach included:

- Having numerous equality objectives as part of an equality scheme or plan that were not always manageable;
- Equality training, infrastructures and promotion of equality of opportunity that wasn't always actively linked to resources available;
- Continuing use of relatively complex equality impact assessments for most decision-making;
- Inclusion of a statement of the requirements of PSED during procurement but without consideration of what would be a proportional response in terms of the amount of information to be submitted by contractors as evidence of compliance;
- Large amounts of data and information that were gathered and published, sometimes without clear focus on what data was needed to comply with PSED and/or to improve planning and decision-making affecting protected groups.

### 4.1.2 Reasons for the extended approach

There were essentially three reasons for 'extended compliance':

#### **Historical legacy and existing commitment to equality**

Some participants noted that they had done a lot of equalities work prior to PSED coming into effect and continued to do so in order to meet current and past equality schemes. Additionally, where there was seen to be such an alignment between the organisational ethos and a commitment to equality – on business and moral grounds – that it was thought that it would be a shame not to continue with this work and/ or to use it to comply with PSED and other sector-based equality frameworks. This approach may be completely legitimate where resources support it but may prove more difficult where resources have been reviewed in the context of austerity or for other business reasons.

#### **View that having fewer objectives can be insufficient to promote greater equality**

A recurring view from participants across a number of different sectors was that the statutory requirements associated with PSED had already been stripped back too far. One aspect of this view was the feeling that one (or few) equality objectives every few years were an inadequate minimum to properly promote equality. This was especially the case in larger organisations (such as local authorities or NHS trusts) or in organisations with relatively devolved decision-making about objectives (such as faculties within universities). Having too few objectives was seen to *'dilute'* the promotion of equality which did not sit easily with organisations with a commitment to it. Instead, participants who took this point of view said that they wanted a *'gold plated'* approach or to be seen as *'world class'* organisations in relation to equality. This meant they thought it was appropriate to go beyond the bare minimum needed to comply and to set a number of objectives as appropriate to their organisation and its aims.

### **Ambiguities of PSED and fear of litigation**

Rather than indicating a commitment to PSED and the promotion of equality, participants who adopted an extended approach in this case did so more reluctantly because of what they saw as *ambiguities* in the requirements of the duty and associated risks of litigation. Several factors contributed to this sense of ambiguity and risk and the need to address PSED as comprehensively as possible:

- *Flexibility leading to too much interpretation* – a perception that increased flexibility in the way organisations could decide on the number of equality objectives and the evidence needed to demonstrate compliance with them had translated into ‘woolliness’ and grounds for too much interpretation of the duty; this in turn left their organisations open to risk of complaint and legal challenges because the detail of what was required was not clear.
- *The view that equality related decisions needed to be documented* - the perceived need for equality impact assessments or some other way for equality analysis to be documented in order to provide evidence or an audit trail that ‘due regard’ had been given.
- *Perception that not addressing these ambiguities had led to legal challenges* - publicity relating to judicial reviews stemming from the duty, legal challenges related to employment practices by employees and unions and the effect of reputational damage to organisations in relation to unpopular policy decisions challenged using PSED were all thought to contribute to a greater need to be watchful in these respects.

The consequences that participants felt came from adopting an extended approach differed depending on the extent to which previous equality work had been done; commitment and resources available to achieve it; and whether the form of equality analysis used to inform decision-making was proportionate to the issue. In particular, some E&D specialists found that too much paperwork associated with EIAs led to less enthusiasm about completing them. A fairly consistent view was that the ability of organisations to decide when equality analysis was needed, and in what form it should take under the current PSED, had facilitated a more flexible approach than under the previous duties. In some circumstances, therefore, it is possible that an extended approach was appropriate to circumstances and objectives of an organisation. In others, where resources, knowledge and equalities infrastructure are not in such a strong a position, the flexibility of the current PSED to adopt a more proportional approach may be welcomed.

#### **Case Example 1 – Extended Compliance**

The organisation’s approach to equality and diversity considerations had remained unchanged under the current duty compared to the previous regime. The participant felt that the new duty was not directive enough with regard to what needed to be done to demonstrate due regard. In particular, there was criticism of the specific duty for only requiring one E&D objective – seen as sending a message that it is not important. A full EIA is carried out on any policy or process decision that will have an impact on people. They utilise a previous equality scheme and have a senior level Equalities Group that review assessments and decide on the equalities objectives. This is based on the data gathered and published - in part as a response to the specific duty - as well as other sources of information, such as the

## 4.2 Under Compliance

### 4.2.1 Characteristics

Under compliance was characterised principally by low engagement with PSED and attempts to promote equality more widely. Some views about under compliance came from participants in E&D roles who referred to their perception of limited equalities activities in other organisations. However, in other cases both participants in E&D and non-E&D roles specifically referred to practices they have experienced or seen themselves, sometimes suggesting evidence of under-compliance. The discussion below focuses on more direct experience and knowledge rather than the broader expression of views. Key evidence of under compliance was regarded as characterised by:

#### **Lack of engagement with PSED at a senior level beyond E&D specialists**

One non E&D participant said that his organisation had not really done anything yet to respond to PSED because they were still '*grappling*' with what needed to be done. Such failures to comply were regarded as '*wilful non-compliance*' by some participants in E&D roles. Others were more inclined to put such failings down to a lack of knowledge about the variety of business cases that can be made for equality and practical and cost-effective ways to respond to or prevent discrimination (see below).

#### **Poor consideration of relevant issues and information at the right times**

Here it was thought that PSED had not been fully integrated into an organisation's strategic decision-making. Where consideration was given to the duty it was seen to be happening in '*pockets*' and in a very '*fragmented*' way. Equality analysis and use of information from consultations was seen to be used retrospectively to justify decisions that had been made rather than to inform them; this sometimes occurred in relation to procurement decisions. Consideration of equality and PSED was described as '*tick box*', '*mechanistic*' and '*superficial*' in ways that would not stand up to scrutiny by enforcement agencies. Indeed, one participant indicated that the organisation she worked for had already lost a judicial review.

### 4.2.2 Reasons for under compliance

A number of issues were thought to influence this unengaged, fragmented and retrospective approach:

#### **Lack of engagement stemming from lack of understanding**

For example, participants described senior colleagues as '*absolutely clueless*' about the duty. But rather than attribute this to a deliberate attempt to avoid the duty, participants talked about the assumption that everyone knows what discrimination means and that in actuality there is a long way to go in terms of educating people about how to respond to PSED in ways that are pragmatic and proportional.

#### **Difficulties linked to staff resources, capacity and capability**

A recurring theme among participants – especially from local authorities – was that restructuring, downsizing and reductions in E&D staff meant that there was a lack of

capacity and capability within their organisations to respond to PSED. The main effects were that work related to PSED became seen as a *'luxury'* that was less important and/or separate from the main part of business delivery. In one case a participant said that this had resulted in her organisation becoming more *'inward looking'*, focusing on issues related to staff rather than service users since it was no longer possible to do both.

### **Consideration of the minimum work needed to avoid legal scrutiny or challenge**

Here the main or only motive for equality was regarded as the minimum that needed to be done to avoid a legal challenge or judicial review. While minimal compliance may be an acceptable and proportional strategy for some smaller organisations or organisations with limited resources, minimum work in these cases tended towards under compliance through prolonged under investment and ownership. The reduction in statutory requirements under the current PSED compared to the previous regime and the flexibility that it gave was interpreted in some organisations that there was less work that was a *'must do'*. A view that led from this was that the government had sent a signal that equality had been *'de-prioritised'* compared to other agendas. A perceived low level of enforcement (discussed in chapter 3) meant that some organisations also felt they now needed to do very little, if anything, to comply with the duty because there was a *'low risk'* of any consequences. The result was under-compliance.

#### **Case Example 2 – Under Compliance**

The organisation no longer has any E&D roles following cuts to staff and responsibility for equality now rests with Head of Service. The participant felt that the sole motivation in response to PSED was to avoid legal challenge. Awareness, knowledge and expertise are patchy and inconsistent. The approach to equality is to treat everyone 'the same'. The 'senior' sponsor for equalities in the organisation wasn't very senior and lacked authority to drive work through. Perceived lack of enforcement or repercussions for failing to comply mean that equalities issues have been pushed down the organisational agenda.

Data gathering in relation to the specific duty is inconsistent and incomplete. Equality impact assessments/ equality analysis are rarely used; when they are the assessments are done as 'tick box' exercise in a 'closed room'. There is little engagement or consultation with experts or service users with relevant protected characteristics. Where it is used, it is usually seen as a way to gain approval for a decision already made. (Non-E&D Manager with previous experience in an E&D role, Large organisation).

## **4.3 Medium or 'Proportionate' Compliance**

Medium compliance reflected attempts to adopt an approach to PSED somewhere between extended and under compliance. It was proportionate in the sense that overall there was an emphasis on *critical thinking, pragmatism* in the way organisations responded and documented what they had done, and having the structures and support in place that gave *confidence* to individuals and organisations that they were compliant. For smaller organisations with fewer staff and resources this sometimes meant doing the minimum required to comply with the general and specific duties but with care – reflecting the characteristics below – that meant they did not tip into under compliance.

### 4.3.1 Characteristics

Key characteristics of the medium or proportionate approach were:

- **Pragmatic advice and support** - having an E&D specialist or HR person who acted as an expert who could offer pragmatic advice about how the principles of PSED could be implemented: *'if we didn't have any of the expertise there would be people who would come a cropper definitely and that could have serious consequences'* (Equality and Diversity Lead, Local Authority, Large).
- **Equalities infrastructure** - establishment or consolidation of an equalities infrastructure including strategic leadership and planning, efficient and proportionate consultation and engagement with stakeholders.
- **Relevant training** - provision or organisation of good quality, relevant training at all levels within the organisation that gave employees the confidence that they were implementing PSED in correct ways without unnecessary extra work.
- **Analytical and reflexive thinking** - an emphasis on giving employees the skills they need to think through policies and practices and showing *'moral awareness'* and commitment to *'fairness'* that would stand up to scrutiny rather than writing lengthy EIAs: *'A lot of people see this whole arena as something which is bogged down by complicated legislation and see past the fact actually the application of fairness and equality is common sense and moral awareness'* (Non-E&D, HR, Police and probation, medium-sized organisation)..
- **A proactive approach** – especially to awareness of equality issues that did not involve *'reinventing the wheel'* in relation to every challenge that arises. This involved, for example: keeping abreast of equality issues and pragmatic ways to address them through sector-based networks to discuss issues arising (e.g. equality networks described among police forces and probation trusts) and in the media; keeping an open dialogue with networks and forums for protected groups; watching for emerging patterns of discrimination or exclusion in organisational data and more broadly in media reports.
- **A business as usual approach** - integration of the need to provide data related to compliance with PSED into *'business as usual'* and not as an extra that isn't sufficiently linked to organisational objectives.
- **Mainstreaming of equality analysis** - achieving objectives relating to PSED through mainstreaming the issues and embedding them in everyday practices (e.g. making equality analysis part of business action plans and risk assessment rather than a separate task):

*..we're having normal conversations right at the beginning about how our change and the various changes that we're putting in place will impact upon people for those different groups. So, it's not a, it doesn't then become an individual process, it becomes part of actually the whole process of change...it doesn't become something that we do specifically because we want to, to comply with the duty, it becomes actually this is, this is normal business (Local Authority, fire service, E&D Adviser, medium-sized organisation).*

## 4.3.2 Values associated with the approach

This approach was underpinned by a number of values. These were:

### **Size and capacity of organisations**

While larger organisations sometimes felt PSED had been stripped back too much, there was greater support among participants from medium-sized organisations for the fact that the current duty gave them the flexibility to take an approach that was proportionate to their size, resources and the capacity of E&D staff.

### **Ensuring that equality analysis was relevant**

A number of E&D specialists and senior managers had tried to develop principles and systems that allowed other staff to decide whether a change in policy or practice needed an equalities consideration. Participants discussed asking staff to look at whether a policy would impact on people or what useful purpose an EIA would potentially serve in order to decide if PSED was relevant. The emphasis was on only carrying out work that was truly *meaningful*. One participant referred to the ‘Brown Principles’ (in the case of *Brown v the Department of Work and Pensions*<sup>6</sup>) as a useful way of looking at due regard. Others only considered changes that had significant budget or resourcing implications.

### **Desire for timely and proportionate action**

Decisions about EIAs or equality analyses were one of the biggest challenges in terms of achieving documentation that demonstrated due regard and compliance in a proportionate way. Several E&D participants said they had spent a lot of time trying to move away from an ‘*if it moves assess it*’ approach to a process and form of documentation that was more ‘manageable’. For instance, one participant from the health sector had developed a triage stage of analysis that allowed senior managers and E&D specialists to decide which developments or changes i) needed assessment at all, ii) could adopt a light touch equality or analysis or iii) required greater consideration and scrutiny by senior management. The emphasis in all cases was that the process should be timely in relation to changes being made and reflect resources and budgets.

Among organisations adopting a proportionate approach, there was much greater support for PSED in its current form than among organisations adopting an extended approach or under compliers. In particular, those adopting this approach appreciated the flexibility and independence of decision-making it gave them. However, participants thought that the approach only worked well where there were structures and knowledge to support it.

### **Case Example 3 – Proportionate approach**

Approach to E&D considerations PSED is viewed as a “sophisticated tool helping local government decisions to be more informed, considered... before implementation”. It is seen as shifting the emphasis away from an individual citizen having to demonstrate discrimination onto a ‘conscientious consideration of its decisions on its residents’ on the part of public bodies. It was felt that it had given the organisation a real appreciation of who will be affected by decisions and how adverse effects can be alleviated, even if a decision was going to be made.

<sup>6</sup> [http://www.supremecourt.gov.uk/docs/UKSC\\_2009\\_0177\\_Judgment.pdf](http://www.supremecourt.gov.uk/docs/UKSC_2009_0177_Judgment.pdf)



At a practical level they had adopted a three pronged approach. 1. A two level process requiring any reports to Cabinet or decisions by members to show analysis of equalities implications. Report authors judge which tier is required although there is a basic rule of thumb to help them. Where less relevant or appropriate, a short paragraph is used. Where more relevant a fuller analysis of equalities implications is used. The idea is to employ a 'pragmatic and proportionate' approach, focusing time and resources where there is likely to be impact for different types of service user. 2. Pro-active targeting of equalities groups in consultations 3. Training for relevant staff which looks at complaints under equalities issues and uses legal challenge examples within the specific service areas to help progress thinking and understanding.

#### Case Example 4 – Proportional Approach

This organisation acts as a regulator for professionals. Their approach to E&D considerations is to ensure that it is core to their work and values. There is strong senior support and the senior sponsor is at executive level. PSED is not seen as fundamentally shifting their approach but helps to ensure principles are embedded proactively, thought about up-front and evidenced in a way that sufficiently shows due regard.

Training is provided to each directorate's policy team around compliance and the principles of E&D work. The approach to equality analysis is to ensure that it is a core part of planning and thinking and not a bolt-on tick box exercise that happens retrospectively. Assessments of policies are bespoke for each policy or process reflecting their likely importance and impact, which was thought to be more flexible than under the previous duties. (E&D Lead, National, medium-sized organisation).

## 5 How PSED makes a difference

### Key Findings

- PSED was felt to be working well or have the potential to work well and to be bringing benefits
- Having a legal requirement was seen as key to raising the status and helping ensure work gets done (provided there is a belief that the legal risk is real)
- The duty was said to bring about reduced bureaucratic processes with equalities considerations mainstreamed and embedded in decision-making
- It was also felt to provide a 'step change' from the previous legislation in requiring organisations to become more pro-active
- Where benefits were less obvious, this appeared to be driven by lack of understanding of PSED or a risk-averse interpretation of 'due regard'

This chapter looks at the benefits and impacts of PSED as described by participants as well as the lack of impact in some cases.

### 5.1 A note on impact

Pointing to the impact of PSED specifically was difficult for all types of participants to do for three key reasons: i) it was too early since implementation to have yet seen or measured outcomes; ii) isolating the impact of PSED from the organisational ethos and approach to equalities issues could still be difficult; iii) the introduction of PSED had not changed the equalities work conducted by an organisation and therefore the effect of the legislation could not be separated from the outcomes overall. This had happened either where changes were not seen as necessary following the introduction of PSED (sometimes due to a desire to continue with extended compliance in light of legal risk) or where awareness and implementation were limited.

The impact of PSED was also seen to be limited where an organisation's approach placed the value in equalities work as central to its overall approach.

*'Equality considerations have had to be part of our work from inception. Whilst, clearly, an additional statutory obligation ensures that commitment stays focused and is evidenced – the latter being critical – I am not convinced that the duty has necessarily led to 'improvements' (Management, National, small size organisation) .*

PSED is the latest in a range of relevant legislation in recent history and participants described their organisations as having included equalities considerations for a good number of years. In this sense, PSED was not introducing something new but was something that required a review and a revision of an approach, where any change was

deemed necessary. For this reason, when talking about the impact of PSED participants often spoke about the benefits of their equalities work more broadly.

While the study asked participants to describe outcomes and impacts as a result of PSED, the research was not an evaluation. The chapter reports participants' perceptions on these rather than outcomes measured or observed.

## 5.2 How PSED makes a difference

Those who felt PSED had benefits described a wide range of ways in which PSED was seen to improve organisational approaches to equalities issues, their processes for dealing with them and improved decision making, ultimately improving equalities outcomes for people using their services as well as employees.

There were more unusual cases of PSED being seen as responsible for an increase in burden and bureaucracy. The discussion of these impacts follows the discussion of perceived benefits.

### 5.2.1 Reduced bureaucracy and process embedded in decision making

PSED prompted a reduction in bureaucratic burden (compared to the previous duties) in some cases. This was because the notion of due regard allowed processes to be followed only where relevant and in a proportionate way (see chapter 4 for further discussion). The fact that EIAs are no longer compulsory was also helpful. The introduction of PSED allowed organisations to design a process whereby an analyses of equalities issues is only carried out where relevant and is done in a briefer document or is embedded into other documents alongside other issues to consider in decision making and planning (e.g. sustainability, finance, resourcing).

*'The change from impact assessment to analysis is much more effective- the emphasis is now the actual equality impact rather than complex paperwork'. (E&D, Education, medium sized organisation)*

E&D officers described training policy makers and managers to consider the likely impact of any piece of work and take an informed decision as to whether an equalities analysis was needed. Other organisations had employed a filtering or two tiered process whereby any piece of policy, development or planning work needed to include a brief paragraph on whether a full equalities analysis would be relevant. Where appropriate, they then used a specifically designed equalities analysis tool that asked for a fuller consideration of the likely effect of the proposed policy on the protected groups.

In this sense, analysing the equalities issues involved in a decision or new policy was seen as having become better embedded in the organisational process rather than being done as a bureaucratic *'bolt on'* as compulsory EIAs had become. This impact was described across sectors and amongst medium and large organisations. It was also described as sharpening the process and ensuring consideration of equalities issues happened earlier in the process of planning and decision making.

*'PSED helped to devise new tools, a simpler tool for equality analysis, so that it was part of the planning process. So ...it's an integral part of thinking about whatever you're*

*thinking about: policy, service redesign... the time to think about is at the outset, and not at the end of the process'. (E&D, Health, medium size organisation)*

#### Case Example 5

This council required all reports to Cabinet and any other reports which require member decision to include an analysis of the equality implications of their proposal. Where a report has only a remote or low relevance to the substance of the equality duty, a short standard paragraph is selected. This is a judgement call by report authors to decide if the equality duty is engaged and they are not required to fill in any equality analysis or relevance tests. The rule of thumb is that any reports which make reference to users or equality groups are likely to engage PSED.

This system created a valuable screening tool and enabled a more proportionate and pragmatic application of the equality duty. It ensured that the emphasis was on application of the duty on decisions where equalities groups were likely to be affected by a proposal. This method concentrated time and effort on reports that affected an end user e.g. closure of sheltered schemes, changes in warden service, introduction of fees and charges, reconfiguration of adult and health care services etc. (E&D, Local Authority, large organisation)

## 5.2.2 Strengthening equalities infrastructures

As a result of PSED equalities infrastructures were extended and strengthened in some organisations. This was attributed to the responsibility for due regard resting firmly with the senior management of an organisation which prompted senior management to ensure they had a stronger infrastructure to keep them better strategically involved with equalities work.

The inclusion of new protected groups and the need to evidence due regard prompted the extension or establishment of service user consultation groups. These groups provided feedback that was helpful in decision making, especially in raising issues not anticipated by the organisation previously.

The infrastructures were seen as useful tools but did not guarantee equalities outcomes. There were examples where it was felt that the equalities outcomes remained unchanged despite the improved infrastructures. Here it was thought that the improved infrastructure of equalities boards etc was in place to ensure the senior management were meeting their responsibility by being informed but had not changed any work conducted.

## 5.2.3 Lending leverage and status

One of the key benefits of PSED was described as lending leverage to equalities work. The fact that it is a legal requirement was said to give status to equalities considerations and ensure they were included where they otherwise might not have been.

While leverage had undoubtedly been lent by the old duties, there was a view that bringing all the duties together and making them simpler and more comprehensive in the form of PSED helped clarify the legal requirements for public bodies.

This was described as particularly important when an organisation's leadership did not see value in equalities work. Leverage was also seen as of increasing importance within the current financial climate of austerity. The reason for this was twofold: i) without a legal requirement, cost-saving pressures could mean equalities considerations 'slip off the agenda' as there are so many other competing priorities and ii) cuts in services and benefits meant some service users were more vulnerable than they may have previously been, making it particularly important to consider the impact of decisions on them.

This benefit was described across sectors but was particularly emphasised in Local Authorities.

*The duty has assisted us to embed equality and fairness in all that we do, we are not fully there yet and a legal duty keeps it on the agenda.” (E&D, Local Authority – fire service, medium-sized organisation)*

For some this outcome was mitigated by a perceived lack of enforcement. Equalities issues were described as having a reduced priority in organisations where there was little leadership support and the reduced level of enforcement was felt to lessen the motivation to comply.

## 5.2.4 Introducing a proactive approach to equalities work

PSED was seen to shift the onus of responsibility away from individuals and on to public bodies to work proactively rather than react to challenges. Through PSED, public bodies have a requirement to demonstrate evidence of consideration of its decisions on different groups. This was viewed by one respondent as its “most enlightening feature” and as a “a radical departure from the citizen having to demonstrate discrimination.”

The proactivity required through the duty, alongside the notion of due regard, was seen as enabling an implementation that actively embeds equalities issues in day to day business and so improves equalities outcomes for the end service users.

*‘It has allowed an implementation that is intelligent and orientated around quality improvement rather than compliance. Using this approach within the organisations I work for has been beneficial as it allows staff in the 'mainstream' to relate to equality and diversity within their area rather than seeing it as something that is complicated’ (E&D, NHS Trust, Large sized organisation).*

The following example was cited as an illustration of the proactive nature of this approach within decision making:

### Case Example 6

The Council was considering the impact of the reduction of Council tax subsidy following the Welfare Reform Act, abolishing the current system for Council Tax Benefit. The equality analysis looked at the likely effect on all the groups within the protected characteristics and this demonstrated a lack of likely effect for most. The exceptions were disability and age, which were regarded as being very relevant to this proposal and the impact on those characteristics was then considered in more detail. The Equality Analysis revealed that around 500 working age claimants were disabled residents who were in receipt of Higher Mobility Allowance. This group was least likely to benefit from any work incentives because they are in receipt of Higher DLA precisely because they were unable to work. Therefore this

group was considered to be particularly more disadvantaged than other residents of working age if the proposal was implemented. The council explored a number of options to minimise disadvantage for Disabled Working Age Claimants on the Higher DLA. This would not have been ordinarily considered. PSED required consideration of mitigation and the Equality Analysis presented a number of options to members highlighting the group who are least able to pay and the mitigation focused on the most vulnerable disabled working age claimants rather than offer exemptions to all disabled working age claimants (E&D, Local Authority, large sized organisation).

### 5.2.5 Improved awareness of equalities issues amongst staff – ‘*mainstreaming*’ equalities thinking

Because PSED requires a proactive consideration of equalities issues with due regard and because it is a legal requirement and so has status, staff in public bodies have needed to be able to think through and evidence due regard in their areas of work in policy making, decision taking, HR etc. In this sense, PSED was seen as ‘*mainstreaming*’ equalities ‘*thinking*’ far beyond the specialist E&D roles and in doing so had the ability to shift the culture of an organisation in this way.

### 5.2.6 Improved accountability and transparency

The requirements of PSED had improved accountability and transparency. This was particularly emphasised in relation to the data published to meet the specific duty as well as the need to be able to evidence ‘due regard’ in decision making. In a public body accountability and transparency were seen as helpful in improving engagement with service users and a key part of an organisation’s reputation.

### 5.2.7 Extending the groups included in equalities considerations

The introduction of new characteristics within PSED (compared to the previous legislation) has been reflected in the equalities work described by participants. This has broadened the focus to groups typically not included previously.

PSED was described as having prompted organisations to think beyond the ‘*big three*’ of race, disability and gender. Thinking about the impact of age has been particularly useful in an HR/employer context (although was in fact present in previous legislation). While organisations across sectors referred to a new focus on LGBT issues, data was seen as sensitive and difficult to collect in this area (see chapter 5). Approaches in this area were described as ‘*in progress*’. A similar sensitivity was also described in collecting data on religion and belief although concerns here were less pronounced.

E&D staff and participants in other roles saw the nine protected groups of PSED as more inclusive and so more useful than previous legislation. For other participants expansion to the nine protected characteristics was not comprehensive and still risked overlooking key groups. These were groups who were not necessarily covered by those characteristics but who are relevant to an organisation or department’s service provision and who may be effected differently by decisions because of these characteristics. Examples of these groups were homeless people, sex workers and refugees.

*‘It may deflect attention away from the root of equalities work; that no one should ever be disadvantaged because of their difference...by listing some groups [and not others] you*

*kind of lose that overall sentiment'. (Director of Strategic Procurement, Local Authority, medium sized organisation).*

## 5.2.8 Improved decision making

As a result of PSED, participants pointed to improved planning and decision-making and ultimately to improved service provision. This improvement was comprised of many of the benefits cited above but specifically pointed to in ensuring better decision making was:

- Ensuring consideration of equalities issues early in the decision making process.
- Making equalities 'business as usual'. This was described where a policy or decision making process incorporated an embedded equalities analysis, owned by the decision maker rather than the E&D specialist
- Ensuring the consideration of equalities happens at a strategic level
- Ensuring relevant decisions are soundly evidenced from an equalities perspective
- Emphasising the proportionate and relevant dimensions in considering equalities issues.
- Aligning objectives with the data. Collecting data to meet the specific duty had highlighted areas of need and work to be done. Aligning pieces of work with the data helped with planning and decision making.

*It has given us more confidence to take tricky decisions about resource allocation based on a stronger evidence base and understanding. It has also helped us communicate why we are making our choices about priorities and non-priorities'. (WS23, Management role, Local Authority, medium sized organisation)*

Examples of decisions made or improved planning as a result of PSED included:

### Case Example 7

In one health Trust as a result of an equalities analysis, an Acute Care pathway evaluation was looking at the demographics of people who might be falling away from the service, characteristics such as gender, disability, age etc. Based on what this evaluation finds, strategies will be put in place to meet the needs of different groups of patients in keeping them engaged with acute care. (E&D, Health, medium organisation)

### Case Example 9

Data gathering on the student side highlighted an attainment gap between BME and white students. It also showed variation within departments. Different work is happening in different departments as a result – with a particular focus given to the Law Department to investigate a substantial attainment gap. There is now a strong emphasis on mentoring as a mechanism for reducing the gap.

(Education, Non E&D/ Deputy pro-vice Chancellor, large organisation)

### Case Example 10

This council considered a proposal to make savings on its 'in house' transport expenditure. The proposal affected disabled residents as they relied on council transport to attend local clubs. The equality analysis showed that around 70 residents benefitted from the service. The Equality Analysis calculated the costs to the council for transporting each user per week and the costs to the council of securing alternative transport providers. The nature of the service users' needs because of their disabilities required a trusted alternative provider - this had been made clear through significant feedback during the consultation with blind and partially sighted transport users. The 'in house' provision had included the driver helping blind users from their door to the vehicle and helping with alighting the bus and egress from the bus. The council made the necessary budget savings and contracted out the service, but identified a service that would mitigate and minimise disadvantages. (E&D, Local Authority, large organisation)

*'The duty has added value to our decision making processes across the organisation and helped us to provide more efficient services that are tailored to the specific needs of our customers e.g. ensuring "hard to reach" communities can access employment services, improving attainment of minority groups in schools' (E&D, Local Authority, medium organisation).*

## 5.2.9 Improved working with partner agencies

PSED was described as lending a shared understanding around equalities considerations when working with partner agencies. It gave a point of commonality to which all agencies were working and so helped facilitate joint work. PSED was also described as lending leverage when partner agencies seemed less aware of the duty or reluctant to work with people from protected groups. Citing PSED was a helpful leverage to front line staff in these situations. One example given was of a probation officer working with an offender with mental health issues. This had caused difficulties in their housing situation and when talking to the housing provider the officer had referred to the legislation to encourage them to take a different view.

## 5.3 Increased bureaucracy and burden

In addition to the benefits attributed to PSED, there were examples of participants describing an increase in burden and/or bureaucracy. This was sometimes also linked to a reduction in staff resources to carry out equalities work; E&D roles had been cut or reduced as part of cost saving measures. Chapter 6 provides a more detailed discussion of resourcing the duty.

As well as the cost cutting context, the duty was sometimes cited as increasing the burden on organisations. This was in part because the extension of protected characteristics required the consideration of impact on more groups of people but more typically, the data collection requirements of the specific duty were seen as burdensome. This is discussed in Chapter 6.

Where organisations had less previous experience of equalities activities, participants spoke about trying to catch up with their legal duties and struggling to work out how to meet the duties in ways which were proportionate.



The duty was also seen as increasing or maintaining bureaucracy where organisations based their interpretation on the need to always evidence due regard in all areas and the fear of legal challenge - this was described as resulting in a 'risk averse' or gold plated approach. In this context, where there weren't available resources to match the activity required by the organisation, this led to some feelings of heavy rather than proportionate workload.

*'Despite the intention to reduce the burden on public bodies and ensure that effort on equalities is expended on real outcomes, the current legal interpretation of the new PSED has meant that need to demonstrate compliance is just as onerous as under the previous legislation... The interpretation of the general wording of the legislation, coupled with the current significant reduction in public funding has resulted in extreme caution being employed to demonstrate compliance to avoid judicial review on processes - particularly equality and consultation' (Policy and research, Local Authority, large organisation)*

## 6 Resources required to deliver PSED

### Key Findings

- PSED was generally seen as less bureaucratic than its predecessor and the value of the benefits outweighed the work involved, particularly where it was mainstreamed and implemented in a proportionate way
- Some aspects of the duty were seen as burdensome in terms of the difficulty of implementing them: this included the collection of potentially sensitive data, and ongoing use of cumbersome EIAs without a clear rationale or purpose
- Promoting equalities was also seen as burdensome for E&D reps where there was limited senior engagement or within a context of reduced capacity within equality teams
- PSED was less likely to be seen as resource-intensive where the equalities work was linked to the organisational ethos or business case, where there were already established equality systems, and where there was a proportionate approach taken

This chapter looks at the resources required to fulfil PSED and considers the notion of proportionality. Is the cost in fulfilling PSED proportionate to its benefit or value? Under what circumstances is fulfilling PSED burdensome or not?

### 6.1 The context of resources and benefits

#### 6.1.1 Assessing financial costs and value

Participants found it difficult to itemise the resources and costs incurred in fulfilling the duty. This was because equalities work was described as becoming ‘business as usual’, embedded within other work and so incorporating costs that were hard to isolate from other elements of staff work. Some core costs were possible to identify (see 6.2 below) but beyond these, the additional resources needed were the time spent by non E&D staff thinking about due regard or promoting relations. This could include how front line staff operated in their day to day work as well as the time spent on equality analyses on the part of staff writing policies or taking business decisions.

*‘For me it’s in there with everything that you do, or it ought to be. Obviously there will be specific monitoring requirements, that we might have had to amend and I fully accept that there would be a cost in there, but in my working week I don’t, and I don’t think any of my staff spend their time doing their day job and then a bit on top complying with the Equalities Duty. The two are intertwined’. (Chief Operating Officer, Police/probation, medium sized organisation)*

In thinking about the costs and resources required, participants emphasised the need to assess the value added as a result of fulfilling the duty. Where value was attributed to

it, participants rejected the notion that fulfilling it was burdensome. Where the aims of the duty were seen as aligning with organisational aims, fulfilling PSED was seen as ‘good business’ and adding value. This was a point emphasised by both E&D specialists and those in other roles across the sectors included in the research.

*‘Is it [the resources used in equalities work] disproportionate? It depends on your perspective of what you think the opportunity is. My personal view is it’s big opportunity in terms of reputation, in terms of the - the richness of the work that we do’ (Deputy CEO/COO, National, medium sized organisation)*

Thinking proportionately about the impacts of policies and decisions on protected groups early on in the decision making process, allowed organisations to ‘get it right first time’. This potentially saved costs further down the line if a service or policy once implemented later failed to treat people fairly and could face a legal challenge.

## 6.1.2 Comparison to the previous legislation

There were diverse views on the comparison of PSED to the previous legislation. There were four broad positions:

- For organisations (typically without a strong track record in equalities work), PSED **could be seen as unhelpfully vague** compared to its predecessor. This was because the notion of ‘due regard’ required interpretation and there was a fear that an organisation’s interpretation may not match that of a judicial review, should there be a legal challenge. The process of interpretation, combined with setting up systems for collecting data, led to a **burdensome transition period**. During this initial period the early guidance was described as unhelpful and untimely as well as changing without warning or notice. This was a criticism made across organisations regardless of their track record in equalities. Checking whether the guidance has changed during these early periods was in itself seen as burdensome.

*‘Each duty appears to have been built on learning from the previous ones and that has how it has been for us in implementation at a local level. The current EHRC technical guidance on PSED was needed from the start. It is very helpful, but we needed it much earlier in the form of a Code of Practice. Government has hindered us at local level by not having clear Code of Practice with current PSED 2011 from the start’ (E&D, Local Authority, medium size organisation)*

- In cases where PSED was seen as **similarly burdensome as its forerunner**, this was based on a particular interpretation. Here, because of the ‘vagueness’ in the legislation and because case law was also used to inform practice, there could be a decision that the safest understanding of due regard was to consider equalities issues in a standard way across all decisions.
- In other organisations PSED was seen as resulting in a **reduced burden** compared to its forerunner. This happened where organisations were confident in their interpretation of due regard enshrining the concepts of proportionality and relevance. These were typically organisations who also had a more established baseline in equalities work. This was described where organisations no longer conducted blanket EIAs and where they demonstrated confidence in employing a consideration of proportionality and relevance within due regard.

- A **reduced burden** was also described in less positive ways in other organisations as a **result of a reduced focus on E&D considerations**. The current legislation was described as a ‘diluted’ version of its predecessor which, coupled with a perceived lack of enforcement, meant that resources had been diverted away from equalities work and had become less of an organisational priority.

## 6.2 Resources identified

### 6.2.1 The resources required

Broadly speaking, the resources required were the time/salary for the E&D manager(s) (or the proportion of time spent by someone who carried E&D within their remit in the absence of a specialist member of staff), the cost and time of collecting and processing data and the hard to quantify costs of undertaking equalities work as part of ‘business as usual’ and within structures like equalities boards.

The role of E&D specialists was described as adding value particularly where these professionals focused on ‘*mainstreaming*’ equalities work - training other staff as well as supporting and advising others to carry out equalities work within their day to day work.

In discussing proportionality, participants saw the E&D role in the context of the size of i) their organisation’s staff, ii) their service user body and/or iii) turnover level. Examples were given of between 1 and 3 E&D staff serving a large staff and service user/student body.

*If you build it into a process as we've done.. it is almost resource neutral. I'm one individual that oversees this work and I'm responsible for making sure the strategy meets the need. But, you know we're an organisation of over 1000 people. We work with billions of pounds and it isn't resource intensive. The whole issue is about the mindset for the organisation'. (E&D, National organisation, medium sized organisation)*

### 6.2.2 When resourcing is seen as ‘burdensome’

Even where there was an overall view of the duty as less burdensome than its predecessor, there were participants who described elements of their work around PSED as burdensome. This was the case in a smaller organisation without an E&D specialist, where blanket EIAs were still employed (‘extended compliance’) or related specifically to aspects of the data collection interpreted as required by the specific Duty<sup>7</sup>.

The issued that contributed to ‘burden’ were:

- The initial set up and implementation costs prompted by legislative change
- Establishing a data collection system where nothing existed previously and where there was little buy-in from staff in other departments. The buy-in issue was

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<sup>7</sup> Organisations exempt from these elements of PSED include organisations with less than 150 staff and some regulators

described as a particular challenge in larger organisations where departmental willingness to provide data varied.

- Collecting data *only* in order to fulfil the duty and not using the data or seeing value in it beyond this
- The challenges in collecting sensitive data
- Extending equalities work to cover a larger number of protected groups
- Resourcing PSED during and after organisational restructuring.

Participants across the sample recognised the implementation of new legislation as a period of particular burden requiring familiarisation, interpretation, training staff and setting up systems for data collection and analyses. The view here was that legislative change incurs a period of heavier burden which had taken place relatively recently in making a transition from the previous legislation to PSED.

Where no equivalent data collection system was already in place, this process was described as a burdensome 'set up cost'. Once systems were established, meeting this element of the specific duty was less burdensome.

Data collection was also seen as burdensome where it was felt to be done purely with the intention of meeting the requirements of the duty, rather than adding value to an organisation in other ways. Participants who talked about their data adding value described how the data offered accountability to the public, allowed them to track progress around equalities issues and highlighted needs and areas where work was needed.

Specific difficulties were also described in the sensitivity of collecting data related to some of the newer protected groups, especially around sexual orientation and transgender identities as well as religion and belief. This was often seen as something that would improve in the future as it becomes more routinely collected and supplied.

As well as in data collection the inclusion of new protected groups had prompted an increase in the volume of work around consultations and equalities analysis. Significant organisational restructuring had happened in participants' organisations across sectors. In some cases this had resulted in the disappearance of the E&D specialist function. Participants spoke of the difficulty for other staff in fulfilling their function on top of other work and felt that if an organisation had yet to successfully 'mainstream' equalities work the absence of an E&D professional would mean that they could lack both the *'capability and the capacity'* to fulfil PSED.

### 6.2.3 When resourcing is seen as proportionate/not burdensome

Resourcing PSED was described as proportionate and not burdensome when the following elements were in place:

- Implementation of PSED reflected confidence around interpreting due regard – especially in emphasising relevance and proportionality. (See 4.3 for a description of how this was determined by organisations.) Proportionality was sometimes discussed in relation to the resources available as well as the size of the

organisation. What may be proportionate for a university with thousands of students will be markedly different to what proportionate means to a school.

*'I think it's proportionate because they haven't prescribed, they haven't said you will do it in this way. All they've said is you've got to evidence that you've thought about it and you've given due regard and I guess we've interpreted due regard...as consciously thinking about the aims of the duty when we're making decisions. But really you should be doing that anyway, shouldn't you' (E&D, National, Medium size organisation)*

- Fulfilling PSED was seen as closely aligned with an organisation's aims, ethos and approach and achieving equalities outcomes was seen as 'good business', therefore equalities work added value.

*'If you take a compliance approach to E&D you're, I wouldn't say ...you're getting about 10 per cent of the potential value you could get out of taking a much more open and progressive approach. I suppose my key message would be think very hard before you think, 'Oh, this is just bureaucracy.'* (Deputy CEO/ COO, National, medium size organisation)

- Work around equalities issues was part of 'business as usual' and was conducted by staff making decisions or working with the public and so had become 'mainstreamed'.
- Systems around data collection were well established and set up
- The data collected was clear and seen to have purpose and value. This happened where data was used to highlight areas of work needed and track progress on issues of equality for employees or service users.

#### Case Example 10

The COO in a probation service described how they now collect and analyse data in ways they did not previously, as a result of PSED. The focus on age in the data had helped highlight an issue around transition from Youth Offending Teams to adult probation services. As a result they have done lots of work around transitions and understood that there is a sliding scale in maturity and needs and they now work with bespoke arrangements for transfer. This has moved away from the 'one-size-fits-all plunge pool' experience into adult probation. As a result they are seeing better compliance, higher completion rates and less offending. 'It's good business'. (Senior manager, Probation, Medium sized organisation)

## 7 Conclusions

The aim of this research was to investigate the views and experiences of a qualitative sample of representatives from public sector organisations. The value of the research lies in its ability to explain the decision-making behind how organisations are implementing the equality duty and the reasons for their responses to the duty. The research did not however seek to understand the *weight* or *prevalence* of opinion about the duty. Many of our participants were involved at some level in implementing equalities in their organisation and were therefore well-informed about the working of the duty. However, apart from distinctions in their level of knowledge and understanding about the duty, we did not find any clear differences in views between participants who were from an equality background compared to those who weren't.

The research highlighted differences across public sector organisations in interpretation and practice relating to PSED. Organisations varied in the extent and level of implementation and compliance with the duty: we have classified three levels of implementation practice – ‘under compliance’, ‘extended compliance’ and ‘proportionate compliance’.

PSED was felt to have created greater flexibility in the way that organisations could meet legal requirements compared to previous duties. There were divergent views about whether this was a positive or negative development. Ambiguities about how many objectives were relevant to different types and sizes of organisations and what was required to show ‘due regard’ led some organisations to take an extended approach in the sense of possible *over-compliance* to avoid legal risk. Conversely, difficulties engaging with the duty due to poor understanding, lack of engagement or the view that equality was no longer a priority led some who were resistant to PSED towards *under-compliance*.

Some organisations and individuals had begun to introduce a middle way that was more *proportional* to their organisation but that also underlined the approach with a good equalities infrastructure (e.g. good E&D advice, relevant training, proactive consultation and engagement) that promoted essential qualities of pragmatism and critical thinking. This approach gave organisations greater confidence that they were compliant if they were challenged. In some cases a minimal approach was appropriate to the size, resources and capacity of the organisation but there was a danger where this wasn't supported by adequate equality structures that this could veer towards under-compliance.

The duty was generally felt to have produced less bureaucratic processes where equalities considerations are mainstreamed and embedded in early decision making. Importantly, PSED lends leverage, status and ensures work around equalities is kept on the agenda. The extension of a consistent legal requirement to nine protected groups was felt to add simplicity and clarity as well as appropriate legal protection, although some participants felt that there was a risk of losing sight of a broader equalities agenda by naming specific groups. The introduction of PSED was also described by some as a ‘*step change*’ from previous legislation in requiring public bodies to be proactive. For these reasons it was seen to be working well or have the potential to work well and having a legal requirement was seen as particularly crucial. Where the benefits were less obvious or lacking, it often seemed to be driven by a lack of awareness and understanding or a risk-averse interpretation of ‘due regard’.

The current legislation was therefore generally seen as less bureaucratic than its predecessor and not currently burdensome, especially when adopting an approach to equalities work of *'business as usual'* and one based around relevance and proportionality. However, some participants had struggled with implementing aspects of the duty, including i) ongoing use of cumbersome EIAs, ii) setting up new data collection systems for the new protected groups and iii) engaging senior staff where equalities issues were not prioritised and there was a perception of limited enforcement.

Difficulties in implementation tended to be more difficult where there was reduced resource and capacity following budget cuts. In some cases this led to a decision to place greater emphasis on mainstreaming of the day-to-day work of meeting the duty with ordinary managers (in keeping with a proportional approach) although it was clear that this strategy had not been successful without adequate training and/ or without some continuing E&D-specialist co-ordination and support.

The current processes required by PSED were sometimes described as minimal but necessary to ensure that work is done and organisations are accountable. It was noted that *'what gets measured gets done'* and some element of *'slick and quick'* process was necessary. This is closely aligned to the view that having a legal requirement lends status – both the legislation and some form of process are needed to ensure work happens.

## Suggestions for improvement

There was a strong view from research participants that broadly speaking the equality duty is working, that it has real benefits compared to previous legislation and that with the concepts of due regard, proportionality and relevance it has the potential to address equality issues for a broad range of protected groups with minimal burden for the organisation. Any radical change to PSED would be felt as a backward step and involve upheaval and costs for organisations in responding to further change. The legal leverage was felt to be important to get equalities work done in most organisations where it was not sufficiently embedded.

In the light of perceived mixed messages from government raised by participants, it was also suggested that there would be value in re-asserting government commitment to equalities and backing the equalities work of organisations in order to re-focus on the importance of the equality agenda. The value of framing the aims of the equality duty in terms of business goals and customer focus was highlighted and felt to be particularly relevant in times of austerity cuts.

The research also highlighted some clear areas where participants felt that PSED could be improved. The emphasis on improving levels of confidence around interpreting the duty also chimes with our findings about how knowledge and understanding around compliance play a key role in successful implementation.

### Improved guidance and learning resources

- There was a clear call from participants for reduced ambiguity and improved guidance around the duty. This included clarification of the **requirement for EIAs** (in the light of perceived contradiction between current guidance and case law) or Equality Analyses. Some participants called for clear guidelines for a simple equality analysis process to be required where relevant (e.g. when the service or function has an end user) to avoid ambiguity.



- There was also a need for clarity around the requirement for what **data needs to be published** in order to comply. Government and organisations may have to work harder in explaining why data needs to be collected and to clarify to what purpose/s it will be put (e.g. will it be used to compare one organisation against another in the same sector) to help engagement with the collection and publication process.
- In addition, participants felt that there would be great value in providing pragmatic and consolidated **learning resources** around the interpretation of the equality duty, using case studies of good practice or *'success stories'*, for example in how to use the duty in a proportionate way to achieve equality outcomes (ie relative to their size and resources) or how to collect potentially sensitive data. This could also include publicising the principles and practice of good equalities infrastructures which underline the proportional approach. While they may involve initial start up costs, in the longer-term this would lead to a more pragmatic and strengthened approach.
- Areas where there is still some lack of clarity, for example around procurement, would also benefit from case study examples. Equality professionals in particular would value having sector-specific sources of advice and guidance to answer queries and provide relevant examples of practice.
- There were examples of **sharing resources** and tools across public bodies within a particular area. This was felt to lessen the burden. Having a pool of resources and tools available centrally may be something that could lessen the burden for individual organisations.

### **Strengthen enforcement and scrutiny of PSED**

- Improving enforcement was felt to be important to encourage adherence to the duty, especially among some E&D specialists. This included: (a) penalties to be more clearly publicised and more effective; (b) less complex and less expensive ways than judicial reviews to be found for service users to make challenges or complaints under the duty (e.g. a way of making complaints and discussing/mediating issues without resorting to legal challenges); (c) a stronger role for the EHRC in enforcing the duty and helping members of the public to make legal challenges.
- Linked to the above, some participants suggested that compliance could be improved through reinforcing or broadening responsibility for the duty as part of sector-based equality assurance frameworks such as those already employed in education, for instance, HEFCE's Research Excellence Framework and OFSTED inspections, with failure to comply being linked to future funding or performance tables.
- Sector-based benchmarking of practices or outcomes would also enable comparison to be made across organisations using consistent measurement frameworks. This would be helpful for organisations wanting to gauge their own performance against others as well as for the public to hold organisations to account. In addition, there was a suggestion that establishing equality outcome measures, rather than detailed process requirements, would help overcome difficulties of implementing over-prescriptive processes in locally-responsive ways.



# Reference tables

Table 3.1 Activities undertaken perceived to help comply with PSED		
Type of activity	Activity	Issues arising
<b>Training, awareness raising and mainstreaming E&amp;D</b>	<ul style="list-style-type: none"> <li>• Training at induction and for existing staff, introducing core requirements of PSED, the principle of due regard and encouraging professional self-awareness and cultural competence in the commissioning, development, planning and delivery of services or in policies relating to staff.</li> <li>• Awareness raising about issues related to the protected characteristics through training and events.</li> <li>• Training and production of documents necessary to support mainstreaming of equality and diversity issues into everyday management.</li> </ul>	<ul style="list-style-type: none"> <li>• Type of training needed and whether it should be compulsory for all staff.</li> <li>• Ways to make training more accessible such as e-learning.</li> <li>• Importance of adequate training and support from E&amp;D specialists in order to mainstream the duty effectively.</li> <li>• The danger of not complying with the duty where mainstreaming happened too soon (e.g. there was no E&amp;D support at all) or where no mainstreaming happened (e.g. E&amp;D specialist tried to take all responsibility for PSED themselves)</li> </ul>
<b>Action planning</b>	<ul style="list-style-type: none"> <li>• Establishment or consolidation of decision-making structures in order to inform and agree one or more objectives related to the duty.</li> <li>• Writing a publishable plan that documents objectives in a transparent and accountable way.</li> </ul>	<ul style="list-style-type: none"> <li>• Flexibility in setting objectives under the new PSED was broadly welcomed (<a href="#">see also section 1.1.2</a>).</li> <li>• Objective setting needed to be size, resources and roles of the organisation; for some larger organisations a small number of objectives weren't enough.</li> <li>• It was sometimes unclear where PSED or other sector-based schemes – that were more comprehensive in their requirements (e.g. the Equality Delivery System in the NHS) - should take precedence.</li> </ul>
<b>Governance and leadership</b>	<ul style="list-style-type: none"> <li>• Strategic equality groups or steering groups had been established or taken on the overseeing of PSED and related activities.</li> <li>• Such groups were sometimes chaired by senior staff at chief executive or director level and/ or involved stakeholders associated with protected characteristics.</li> <li>• The groups provided leadership and oversight and acted as places where policies, actions and achievements could be reviewed and risks managed.</li> </ul>	<ul style="list-style-type: none"> <li>• Senior level involvement and engagement were seen as crucial for E&amp;D and other staff to have confidence that their organisation would comply with PSED.</li> </ul>
<b>Consultation and engagement</b>	<ul style="list-style-type: none"> <li>• Organisations had used existing staff and service user forum/ networks or community groups, or set up new ones, to engage and consult protected groups on policies and practices that affected them and to help avoid legal challenges to them.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishing groups made consultation and engagement less onerous and gave greater confidence that legal challenges were less likely.</li> <li>• Some groups related to protected characteristics were harder to establish than others (e.g. trans, religion)</li> </ul>

		and belief) due to sensitivities and capacity within different organisations and communities.
<b>Workplace champions</b>	<ul style="list-style-type: none"> <li>Organisations asked for or identified individuals who could champion understanding of PSED, equality and diversity issues and assist in disseminating information and gathering equality monitoring data.</li> <li>Champions could be along the lines of protected characteristics or champion anti-discrimination, equality of opportunity and good relations within a particular part of the organisation. They sometimes participated in governance structures.</li> </ul>	<ul style="list-style-type: none"> <li>Played a key role in promoting understanding of PSED and reducing resistance among staff based on misinformation.</li> </ul>
<b>Equality analysis</b> (also referred to as Equality Impact Assessments)	<ul style="list-style-type: none"> <li>A means to encourage managers and staff within an organisation to consider the impact of new or reviewed policies and practices on stakeholders, including staff and service users.</li> <li>Acted as a way of raising questions and leaving an audit trail of responses and decisions to demonstrate due regard.</li> <li>Varied from short guidance documents with key questions to lengthy templates or documents to be completed.</li> </ul>	<ul style="list-style-type: none"> <li>Liked where there was proportionality to the size of the organisation and relevance to stakeholders in the approach.</li> <li>Disliked where the removal of requirement for EIAs was interpreted within organisations as meaning that no form of analysis or consideration to equality, diversity or inclusion was necessary.</li> <li>View that without some documentation of equality analysis organisation were more open to legal challenges.</li> <li>Provided an opportunity for PSED to be mainstreamed; local managers conducted analysis but with continued support from fewer E&amp;D specialists.</li> </ul>
<b>Procurement</b>	<ul style="list-style-type: none"> <li>'Due regard' integrated into the commissioning contractual processes when purchasing services or goods (e.g. consideration of the distinctive needs of groups associated with protected characteristics or other issues related to PSED).</li> <li>Establishment of Commissioning Groups responsible for the equality performance of providers delivering contracted services (e.g. Clinical Commissioning Groups within the NHS)</li> </ul>	<ul style="list-style-type: none"> <li>Great variation on the extent to which this was happening due to different levels of understanding about how PSED should affect procurement and how to monitor compliance.</li> <li>Greatly different levels of engagement between E&amp;D and procurement staff, with the result that understanding of PSED also varied enormously.</li> </ul>

**Table 3.2 Publication of data and information seen as complying with PSED**

Form of data or information published	Characteristics	Issues arising
<b>Objectives and plans</b>	<ul style="list-style-type: none"> <li>• One or more equality objectives for the organisations or for directorates/ departments/ teams within the organisation.</li> <li>• Publication of the way in which the organisation is meeting, or planning to respond to other sector-based equality plans, schemes or frameworks (e.g. Equality Delivery System in the NHS, Research Assessment Exercise with HEIs, equality schemes within Local Authorities).</li> </ul>	<ul style="list-style-type: none"> <li>• View that the number of published objectives should relate to size and resources of the organisation; smaller organisations and organisations less familiar with the equality agenda welcomed the flexibility to have fewer objectives enabling them to prioritise work over time; larger organisations thought that a small number of objectives did not reflect their wide remit.</li> <li>• Danger of a top-down, one size fits all approach in the context of devolved power within organisations and the localism agenda (e.g. school academies, faculties within HEIs)</li> <li>• The need for greater clarity about the relationship between PSED and other sector-based equality frameworks and the degree of overlap.</li> <li>• Greater clarity about the precise form of data to be collected was needed to facilitate greater sector-based benchmarking.</li> </ul>
<b>Board, Equality or Steering Group papers</b>	<ul style="list-style-type: none"> <li>• Approval of equality objectives and plans by the group.</li> <li>• Reports by E&amp;D specialists, managers and/ other stakeholders (e.g. representing protected characteristics, equality champions) on progress against objectives, issues arising and ways to manage risks of non-compliance with PSED.</li> <li>• Agreement to fund and commission new activities or services, or review existing ones, in order to respond equality needs.</li> </ul>	<ul style="list-style-type: none"> <li>• Considered to demonstrate greater transparency and accountability to stakeholders.</li> <li>• BUT whether publication is a requirement under PSED in order to comply.</li> </ul>
<b>Policies and procedures</b>	<ul style="list-style-type: none"> <li>• Relating to equality and anti-discrimination, recruitment, staff terms and conditions, complaints and grievances, equality monitoring, commissioning and procurement, access for stakeholders, consultation and engagement of protected groups etc. as they relate to eliminating unlawful discrimination, promoting equality of opportunity and fostering good relations.</li> </ul>	<ul style="list-style-type: none"> <li>• Belief that this created greater transparency and accountability and reduced the likelihood of legal challenges by staff and the public.</li> <li>• Seen to be good practice among many organisations already.</li> <li>• BUT whether publication is a requirement under PSED in order to comply.</li> </ul>
<b>Data related to service users</b>	<ul style="list-style-type: none"> <li>• Information and data access to services, outcomes from contact with services, customer satisfaction, stop and search by the police, etc.</li> <li>• Outcomes from engagement and consultations with stakeholders (especially in relation to protected characteristics).</li> </ul>	<ul style="list-style-type: none"> <li>• Views that this information would help organisations learn better how to target resources, reduce discrimination and exclusion in their practices and avoid legal challenges.</li> <li>• Publication of data and information had not always fully integrated into organisational infrastructures in order to effect planning and decision-making; seen as 'tokenistic'.</li> <li>• Gaps in published data related to new protected characteristics; how to deal with</li> </ul>

		<p>embarrassment, disclosure and confidentiality when gathering data on protected characteristics such as trans, sexual orientation, religion and belief, etc.</p> <ul style="list-style-type: none"> <li>The relevance and usefulness in all circumstances of collecting such data related to all protected characteristics and how to decide when it should or should not be done.</li> </ul>
<b>Data related to staff and employment</b>	<ul style="list-style-type: none"> <li>Workforce data related to recruitment, retention, training provision, equal pay (although not a requirement of PSED), number of complaints and grievances.</li> <li>Equality monitoring data by protected characteristics.</li> </ul>	<ul style="list-style-type: none"> <li>View that information could help make organisations more inclusive, with less discrimination and better equality of opportunity.</li> <li>Knowledge about the best way to collect data on all protected characteristics.</li> <li>Start-up costs in adapting policies, procedures and systems to gather new data.</li> </ul>
<b>Equality reports</b>	<ul style="list-style-type: none"> <li>Annual or bi-annual reports bringing all work and information on equality together in one place, allowing organisations and stakeholders to assess progress against action plans.</li> <li>Considered at executive level to help inform future plans.</li> </ul>	<ul style="list-style-type: none"> <li>Important as a way for an organisation to take stock; believed to be important to stakeholders in terms of transparency and accountability.</li> <li>A good way for organisations to publish what they are doing on equalities in clear, succinct and coherent way; easy to find in one place.</li> <li>Where and in what ways reports should be published to make them most accessible (usually published on websites).</li> <li>Innovative developments in publication such as publishing the report in alternative formats (audio/video)</li> </ul>

**Table 4.1 Summary of characteristics of different approaches or levels of compliance**

<b>Activities</b>	<b>Extended approach</b>	<b>Under compliance</b>	<b>Medium/ Proportionate approach</b>
<b>Training and main-streaming</b>	<ul style="list-style-type: none"> <li>Comprehensive and informed by previous equality work</li> <li>Knowledge still sometimes largely in the hands of E&amp;D specialists</li> </ul>	<ul style="list-style-type: none"> <li>Poor knowledge and understanding of PSED sometimes based on misinterpretation of it</li> <li>Sometimes mainstreamed too soon without training and advice needed</li> </ul>	<ul style="list-style-type: none"> <li>Appropriate to the roles of staff</li> <li>Intention to mainstream with suitable training on legal requirements, reflexivity about equality, diversity and inclusion in decision-making</li> <li>Mainstream staff supported by E&amp;D specialists or someone in HR with E&amp;D knowledge</li> </ul>
<b>Objectives and action planning</b>	<ul style="list-style-type: none"> <li>Numerous equality objectives linked to PSED and other equality frameworks BUT not always fully integrated in order to reduce overlap</li> <li>Larger number of objectives linked to large organisations with diverse remits (e.g. local authorities)</li> </ul>	<ul style="list-style-type: none"> <li>Small number of objectives that can be too broad and vague to assess progress</li> <li>Integration between compliance with PSED and the use of equality information for decision-making can be poor; decisions made retrospectively</li> </ul>	<ul style="list-style-type: none"> <li>Number of objectives dependent on size of organisation, previous equality work and resources available</li> <li>Planning and prioritising where everything cannot be done at once</li> </ul>
<b>Governance and leadership</b>	<ul style="list-style-type: none"> <li>Commitment by management and staff beyond that required by PSED</li> <li>Infrastructure established but may need review and</li> </ul>	<ul style="list-style-type: none"> <li>Sometimes reflects poor leadership and commitment</li> <li>Implementation and review in line with PSED are patchy</li> </ul>	<ul style="list-style-type: none"> <li>Understanding of PSED and good commitment by management and staff</li> <li>Commitment to actions and publication of data that is relevant an</li> </ul>

	consolidation	<ul style="list-style-type: none"> <li>Some elements of an equality infrastructure may be missing</li> </ul>	<ul style="list-style-type: none"> <li>proportionate</li> <li>Consideration of plans and review of progress through equality infrastructures/ roles</li> </ul>
<b>Consultation and engagement</b>	<ul style="list-style-type: none"> <li>Extensive but possibly costly</li> </ul>	<ul style="list-style-type: none"> <li>Limited, retrospective or poor quality engagement</li> </ul>	<ul style="list-style-type: none"> <li>Attempts to build effective forums, networks and communities that can be drawn on quickly and at minimum cost</li> </ul>
<b>Workplace champions</b>	<ul style="list-style-type: none"> <li>Established but may need review to see how they can help in the implementation/ consolidation of PSED</li> <li>Possible overlap in the work of champions in the same work field</li> </ul>	<ul style="list-style-type: none"> <li>Few, if any, and left to enthusiastic individuals; not necessarily in a position to influence decisions</li> </ul>	<ul style="list-style-type: none"> <li>Individuals identified and asked to be champions in a strategic way</li> <li>Help explain the PSE, gain commitment to it and assist in gathering data and information</li> </ul>
<b>Equality Impact Assessments / equality analysis</b>	<ul style="list-style-type: none"> <li>Flexibility about when to use is sometimes seen as problematic</li> <li>Tends towards blanket use of EIAs for all decision-making</li> <li>Commitment to detailed equality analysis documentation can distract from the actual work that will make a difference</li> </ul>	<ul style="list-style-type: none"> <li>Flexibility about when to use can be misinterpreted to suggest analysis is no longer necessary</li> <li>Documentation of equality considerations sometimes happens after the decision has been taken</li> <li>Decisions are made without sufficient supporting evidence, behind closed doors and in a superficial, mechanistic and tick box fashion</li> </ul>	<ul style="list-style-type: none"> <li>Flexibility seen as an opportunity to take a more proportionate but not limited approach</li> <li>Training in place to make better judgements about when analysis is needed and to encourage reflexive thinking about equality issues</li> <li>Processes designed to make effective judgements about when analysis requires less or more scrutiny</li> </ul>
<b>Procurement</b>	<ul style="list-style-type: none"> <li>Training and information for procurers in place</li> <li>PSED included in tender requirements but sometimes without clear indication of what is specifically required of contractors/ providers</li> </ul>	<ul style="list-style-type: none"> <li>Limited, if any, knowledge among procurers</li> </ul>	<ul style="list-style-type: none"> <li>Training of PSED specifically targeted for procurement staff</li> <li>Clear and proportionate requirements for contractors/ providers</li> </ul>
<b>Data gathering and publication</b>	<ul style="list-style-type: none"> <li>Data gathered extensively but sometimes without clear purpose about how it will be used</li> <li>Publish everything in order to be transparent or because of perceived lack clarity about what needs to be published</li> </ul>	<ul style="list-style-type: none"> <li>Limited data gathering or use of existing sources that aren't always fit for purpose</li> <li>Limited use of data to inform decisions</li> <li>Confusion about data and information that needs to be published</li> <li>Patchy publication, if any</li> </ul>	<ul style="list-style-type: none"> <li>Gathering of data in different ways to meet relevant objectives</li> <li>Integrated into everyday work so that data gathering is part of 'business as usual' not an added extra</li> <li>Clear strategy for the collection and publication of data</li> <li>Questions related to the parameters of data to be published for government</li> </ul>

## Appendix A Methodology

In total, we heard from 91 individuals in 83 public sector organisations. Written submissions were received from 55 organisations representing a range of characteristics such as their employment sector, equality and non-equality roles, seniority of role and whether participants viewed PSED positively or not. A break down of both organisations who contributed written responses and individuals who participated in a telephone interview, by employment sector and role type, is shown below.

The written submissions collected via the secure website were based on the responses to four questions that related to evidencing compliance; level of work required; whether equality impacts are evident; and any implementation challenges (see Appendix B). The submissions were downloaded daily.

Table 1 Total written submission, by employment sector

Employment sector	Achieved Sample
National	1
Local Government	31
LA	25
Fire Services	5
Transport	1
Health	10
Education	4
Higher Education	3
Further Education	1
Police/probation	6
Other	3
Trade Union	1
Private Law	1
Exec Agency	1
<b>TOTAL</b>	<b>55</b>

Table 2 Total written submissions, by role type

Role Type	Achieved Sample
Equality and Diversity	32
Human Resources	7
Policy/Research	5
Finance/Procurement	1
Learning and Development	1
Practitioner	1



Management <ul style="list-style-type: none"> <li>• CEO/Deputy</li> <li>• Director/Head</li> <li>• Manager</li> </ul>	2 1 5
<b>TOTAL</b>	55

Table 3 Total written submissions, by overall views of PSED

PSED Views	TOTAL
Generally positive	26
Mostly positive	24
Some positive, some negative	4
Mostly negative	1
Generally negative	0
<b>TOTAL</b>	55

Table 4 Individuals interviewed, by employment sector

Employment Sector	Achieved sample
National	7
Local Government	
Local Authority	11
Fire Services	2
Transport	1
Health	9
Education	8
Higher Education	1
Further Education	
Police/Probation	7
Private	1
<b>TOTAL</b>	<b>47</b>

Table 5 Individuals interviewed, by job role

Job Role	Achieved Sample
E&D	28
HR	1
Policy/Research	1
Practitioner	1
Management	
CEO/Deputy	3
Director/Head	8
Manager	4
Other	1
<b>TOTAL</b>	<b>47</b>

## Appendix B Written submissions questions

**Q1. What do you do to provide evidence of legal compliance with the Equality Duty?** Please be as specific as possible and provide examples of practice from across different parts of your organisation where possible. Please draw on your experience of implementing the specific duties under the Equality Duty as well as the more general duty.

*Please be brief, limiting your response to up to 500 words*

**Q2. Thinking about the activities described above, what are your views about the level of work required?** Please provide examples of what you feel are appropriate and/or inappropriate levels of work (either too much or too little) and give reasons for your views.

You can draw comparisons with your experience of implementing equality work before the Equality Duty if this helps.

*Please be brief, limiting your response to up to 500 words.*

**Q3. In what ways (if any) has the Equality Duty helped you to improve equality considerations both within your organisation and in the service you provide?**

Please provide specific examples of how the duty has been of benefit.

*Please be brief, limiting your response to up to 500 words.*

**Q4. In what ways (if any) has the Equality Duty been difficult to implement across your organisation?** Please provide examples.

Please also suggest up to three ways in which your work to implement the duty could be made easier.

*Please be brief, limiting your response to up to 500 words.*

**Q5. Is there anything else that you would like to say about the Public Sector Equality Duty, bearing in mind the aims of the research?**

*Please be brief, limiting your response to up to 500 words.*

# Appendix C Telephone interview topic guide

## Participant introduction and overview of PSED

Aim: to obtain information about the participant, their role re PSED and the context of their organisation

- Current role and organisation
  - Specific roles in relation to duty
- Understanding of requirements made by the duty for their organisation
  - Differences in awareness and understanding in different parts of the organisation
- Other key roles/colleagues in relation to planning for and undertaking the duty
  - General and specific duties

## Decision-making, implementation and compliance

KEY SECTION. Aim: understand how the organisation approaches and implements the duty in relation to issues around compliance and legal challenges; the extent to which these & other factors drive decision-making re the Duty.

- Key considerations in making decisions for fulfilling the Duty: (e.g. relative importance and balance of: improving equalities; ensuring compliance; avoiding legal challenge)
  - Who within organisation is involved in shaping decisions
  - Organisational approach: 'gold plated' vs. lighter touch
    - Thinking/justification behind approach
    - Views of approach
    - Variation in approach across organisation – 'audiences'; departments
  - Role of any PSED guidance used to help shape decisions
- Implementing the duty
  - How the duty is fulfilled in practice and what this looks like (specific examples). Probe the general as well as the specific duties, and any differences in relation to the different protected groups.

- For people who use their services
  - Employees
  - Commissioning/tendering/procurement/grant-giving
  - Engaging with the voluntary and community sector
- Level of concern about legal challenge; perceived likelihood of legal challenge
  - Differences across the organisation in perceived legal risk – how different business areas vary
  - Safeguarding against legal challenge – extent to which fulfilling the duty does this and/or whether any other activities are undertaken (e.g. legal review of documents)
- Any experience of legal challenge(s)
  - Impacts (if any) on activities undertaken to meet the duty
  - Other impacts
- Other drivers for fulfilling PSED
  - reputational issues (eg. relating to media coverage)
  - making a good business case

## Effectiveness of the duty

KEY SECTION. Aim: To map the effectiveness of the duty. This includes perceptions of the extent to which the duty has progressed an equalities agenda, the proportionality of benefit to cost

- Whether and how duty has impacted on equalities outcomes
  - In what ways the duty has brought about these outcomes (explore whether these were activities/outcomes that would have been happening irrespective of the duty being in place)
  - Variation of impact across different parts of the organisation
  - Any differences in outcomes across different protected groups
  - Any outcomes anticipated but not yet experienced
- Any barriers or obstacles to implementing the duty
- Cost/benefit implications of the duty
  - Overview of resources required to fulfil the duty
    - Overarching: staff time, training, costs, other resources involved

- Balance of resources in executing the duty vs. evidencing the duty (i.e. general vs. specific)
- Views on the balance
- Proportionality/ the balance of costs vs. benefits
  - Probe for examples of proportionate and disproportionate costs
  - Variations across the organisation
- Comparison of duty to costs vs benefits under the previous arrangements
- Extent to which the duty is effective in enabling organisations to ensure equalities outcomes
  - Any ways in which the working of the duty hinders equalities outcomes
  - Any other impacts of the duty (on services/employment/other areas)

## **Suggested improvements and key messages**

Aim: identify suggested improvements and wrap up by looking at the most salient or key messages for the review from this participant.

- Key suggestions for improvement generally
  - in view of spotlight on Cutting Red Tape Challenge
- Key messages for GEO re the duty and more importantly, its implementation
- Check whether anything else to add