

Fair Financial Decision-Making 2014 Progress Report



What is the aim of this publication?

The aim of this report is to give an update on the work that the Commission has been doing with Treasury and government departments following on from the publication of the section 31 assessment report *Making Fair Financial Decisions* in May 2012.

Who is it for?

This report has been prepared for government departments, the individuals and organisations that contributed to the original section 31 assessment project, members of the Fair Financial Decisions Advisory Group and other interested parties.

What is inside?

This report covers:

- Background and summary of the section 31 report *Making Fair Financial Decisions*
- Elements of the follow-up work
- Monitoring of issues identified in the section 31 assessment report
- Developments since the section 31 assessment was published
- Overall progress on the section 31 assessment report recommendations
- Progress on equality monitoring of Spending Review decisions by department

When was it published?

This report was published in June 2014.

Why have the Commission produced this report?

The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect. This report is within its remit.

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Section 1:

Background and summary

The section 31 assessment report

1. The Equality and Human Rights Commission (the Commission) published the report of its assessment under section 31 of the Equality Act 2006 (s.31 assessment) of HM Treasury's 2010 Spending Review (Making Fair Financial Decisions) in May 2012.¹ The assessment was undertaken with the principal aims of discovering to what extent and in what manner decisions in the 2010 Spending Review were taken in accordance with the public sector equality duties in place at the time, whether there might be improvements in the process of decision-making, and proposing ways in which future such exercises could ensure that spending was better targeted with fairness and transparency at the heart of difficult decisions.
2. The report found that among the large number of measures outlined in the Spending Review, only a small number raised concerns, with six out of nine measures detailed in case studies fully in accord with the duties. The Commission acknowledged the merits of this given the size of the challenge in applying the requirements of the relatively new equality duties to such a significant project, recognising in particular the scale and speed of the 2010 Spending Review.
3. In three cases, however, detailed examination was unable to establish whether or not decisions were in full accord with the requirements of the duties because of a lack of clarity as to where the true site of the decisions lay. The assessment also found evidence of gaps in data and information, hindering impact analysis. It made a number of recommendations for ways of building more effective assessment of the impact on people with different protected characteristics into decision-making processes for Spending Review decisions in the future.

¹ <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/section-31-assessment-of-hm-treasury/the-assessment-final-report/>

The recommendations were:

- Greater transparency, including clear HM Treasury guidance on data and analytical requirements for the whole of government.
- Common rules to allow easier sharing of equality data within government, such as standardised data collection rules.
- Authoritative sources of advice and support for government departments on equality impact analysis.
- The development of a common model of analysis to predict the likely equality effects of policy.

Government was also asked to consider:

- A single point of government responsible for monitoring and assessing the cumulative impact of future Spending Reviews and budgets.
- Independent and authoritative equality analysis of public spending policies.

Additional recommendations:

- Case law confirms that public authorities need to analyse and understand the impact of proposed policies and decisions on people with protected characteristics at the formative stages of policy development, in advance of the adoption of such policies. For future Spending Reviews HM Treasury should bear this in mind during the early stages of policy development. This allows HM Treasury Ministers to judge what actions would be considered proportionate, and should also inform the prioritisation of objectives and policies.
- All departmental functions or services under consideration for change under future Spending Reviews should be subject to an initial screening for their potential impact on the different protected characteristics as set out under the Equality Act 2010. This would ensure that HM Treasury Ministers are better informed on whether it may be necessary to gather further evidence on which to base their final decision.
- An evidence base relating to current consumption and participation by equality groups would help to reduce pressure within the Spending Review process and to ensure that the focus of analysis can be on the proposed changes. Government could make better use of existing data and improve data collection processes, to help inform policy development and decision-making.
- Ministers should be provided with information about the potential impact of decisions that they are taking. Where complete analysis is unavailable, for

- example due to data gaps or policy not yet being fully defined, the best possible proportionate analysis should be provided, with the necessary caveats.
- When potential adverse impact is identified for individuals with protected characteristics, consideration should be given at the early stages to mitigation and to the effectiveness of any proposed mitigating actions.
4. The Commission decided that further formal action on the findings of the assessment was not appropriate and the public interest would be better served by developing a programme of action with HM Treasury and others to take forward the recommendations for improvements that would support compliance with the requirements of the public sector equality duty (PSED) in the future. This would include work to ensure that the impact of the 2010 Spending Review on people distinguished by various protected characteristics was being monitored and understood as the measures were rolled out. The Commission received assurances from HM Treasury that both Ministers and officials were fully committed to addressing the concerns set out in the report, and we welcomed this positive response to our findings and recommendations.
 5. Since the assessment report was published, the Commission has worked with HM Treasury, government departments and other experts and interested organisations to follow up the recommendations and assess progress on their implementation. We have also worked with a range of organisations to develop the tools to support improved decision-making in the future. In this report we describe the extent of progress on each of the recommendations, where work is continuing, and what needs to happen for the next Spending Review.

Elements of the follow-up work

Advisory Group

6. A key step in the follow-up work was the establishment by the Commission of the Fair Financial Decisions Advisory Group. This group is chaired by the Commission's Chief Executive, and its members include officials from HM Treasury and other government departments, other interested stakeholders and expert advisers. The role of the Group is defined in its Terms of Reference as: 'to advise on ways of implementing the recommendations of the Commission's s.31

assessment report: *Making Fair Financial Decisions* and to support the development of efficient and effective ways of assessing impact of proposed spending measures on individuals with protected characteristics as an integral part of good policy and decision-making’.

7. The Group has provided a valuable forum to support the Commission’s continuing work by bringing together practitioners within government departments, outside experts and interested groups in an informal setting. This has allowed the discussions to cover a broad range of issues and identify areas for further work.

Development work

8. The Commission has initiated a number of projects to support its work and provide input to the Advisory Group. These include:
 - The National Institute for Economic and Social Research (NIESR) and Landman Economics are developing and piloting an approach to cumulative impact modelling. A proposed approach to modelling, with a case study of the cumulative impact of tax, welfare and other spending changes in the 2010-15 period on people with different protected characteristics, is being finalised. This project will deliver a report to the Commission in summer 2014 setting out the findings and a proposed modelling methodology.
 - NIESR, with the Social Market Foundation (SMF), has carried out exploratory and development work focusing on ways of implementing the recommendations to improve analysis of the impact of fiscal events on people with different protected characteristics. This took the form of interviews with a number of officials from HM Treasury and other departments on the current process of equality evidence-gathering and decision-making, changes since Spending Review 2010 and the scope for further improvements. There have also been informal discussions with a number of former civil servants, Special Advisers and Ministers to get a broader perspective on how decisions in fiscal events are actually taken in practice, and with a number of academic experts and researchers on how modelling of the impacts on people with different protected characteristics of tax and spending decisions might be possible in practice.
9. The Commission also funded the University of Nottingham to explore monitoring of the impact of welfare measures on people with different protected characteristics. This took the form of a desk-based review, a series of structured

interviews and a briefing report for the Commission. The Department for Work and Pensions (DWP) helpfully hosted a discussion for policy leads on the findings and provided additional material to supplement the evidence base.

Actions by departments

10. The Commission has had regular meetings with HM Treasury officials to discuss progress on the assessment report recommendations and follow-up work. There have also been meetings between the Commission and officials in the Department for Education (DfE), Department for Transport (DfT), Ministry of Justice (MoJ), Department for Communities and Local Government (DCLG), and the DWP to understand the arrangements in place and plans to monitor the impact of Spending Review measures on people with different protected characteristics, and to review early evaluation of those spending measures.
11. There has been good progress on HM Treasury's collection and use of equality evidence for fiscal decision-making, with action taken to address the recommendations.

HM Treasury has started to collect qualitative submissions from departments on key areas of spend. A standardised template has been developed for this purpose for departments to complete and return to HM Treasury. Departments base their submissions on analysis they carry out on the best available data on a case by case basis. In the earliest round, departments identify their six largest areas of spending and classify these, for each of the nine protected characteristics, as:

- a. The spend is underused by or inaccessible to the given group
- b. The spend has an undifferentiated impact
- c. The spend has a significant disproportionate positive impact on the given group
- d. The spend has a significant and very large disproportionate positive impact on the given group.

Departments have indicated that this template is a useful step which helps to give prominence, across government and within their own departments, to equality issues.

12. For work within HM Treasury, a policy 'toolkit' has been created recently, which sets some standard questions and tables aimed at helping teams consider impacts on different groups during policy development. A list of useful sources of

quantitative data on equalities has also been produced. These are recent and the challenge now is embedding their use across HM Treasury teams.

13. Qualitative data from departments is aggregated and used as follows:
 - It becomes the first port of call for information HM Treasury requires on equalities.
 - Submissions are aggregated to inform assessments of impacts on different groups of decisions on the overall Departmental Expenditure Limit (DEL) spending envelope (known as the 'DEL screening tool').²
 - It can be used to brief HM Treasury Ministers ahead of meetings with Ministers from other departments.
 - When necessary, this data is supplemented with additional data requests on specific policies being considered.
 - All this informs decision-making during the Spending Review process.
14. This data is also used for the production of a published summary note on impacts on people with different protected characteristics of the Spending Review. HM Treasury's 'Impact on Equalities analysis' report at Spending Round 13 set out a descriptive analysis of the high level impacts of certain measures on people sharing the protected characteristics principally affected (race, age, gender and disability).
15. Consideration of impacts on equality in decision-making for budgets and Autumn statements now also follows a clear process:
 - All submissions made to Ministers in a Budget or Autumn statement context require a statement on the impact of the policy on equality for people sharing different protected characteristics, both at the beginning of the process and at the point where the decision is made
 - Where a measure or other initiative has a significant impact on a particular group, policy leads are expected to explore the impact in detail as part of the policy development process
 - Stand-alone submissions on the equalities dimension are also produced as appropriate when equality issues are identified

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² DEL spending is planned and set at Spending Reviews. Departments receive separate DEL resource and capital budgets.

- Each individual tax measure is the subject of a published Tax Information note, which includes an assessment of the impact on equality for different groups of each measure.
16. Overall, these developments represent a substantial amount of progress in HM Treasury's approach to equality compared to the situation in recent years when both analysis and policy consideration of equalities at fiscal events was at best ad hoc. The volume and quality of analysis has improved, with the introduction of some systematisation, particularly for individual measures. The changes introduced go some way to ensuring that collection and consideration of equality evidence is now an integral and ongoing part of the Spending Review process, with clear expectations on departments for baseline evidence and impact analysis.
 17. In assessing the extent of change, context is important. Spending Reviews inevitably involve a large number of decisions, in a complex process which has several iterations and in which dialogue between the Treasury and spending departments will cover both broad spending envelopes and some of the larger individual decisions by which departments will live within their means. HM Treasury runs a process that enables the government to make overall budget allocations to departments. That involves a dialogue between the Treasury and departments about the steps departments plan to take to live within budgets and, where appropriate, plans for new investments so that departmental Ministers agree the budget allocation given to them. But the key decision at this point is the broad departmental budget allocation. In this process, HM Treasury meets its PSED responsibilities by making an assessment of the potential impact on people with different protected characteristics and providing appropriate advice to HM Treasury Ministers to enable them to make those decisions.
 18. Departments will then conduct their own planning processes to determine precisely how allocated budgets will be used and are responsible for the specific spending decisions and hence the PSED responsibilities in relation to these decisions. HM Treasury is therefore responsible for advising Treasury Ministers and ultimately the government as a whole on the broad allocation decisions. Departments are responsible for the more detailed decisions on how the resources they are given are used in the specific policy areas for which they are responsible. At some level these specific measures will differ from some of the broad propositions that informed the original budget allocation decision as circumstances change, new ideas emerge, or the government adjusts certain proposals. Each decision-making stage could raise equality implications. The

Commission believes it would be helpful to map this process and where PSED responsibilities lie for decision stages more explicitly to benefit decision-makers, who can then see clearly where and when they need to ensure they have adequate information available to discharge their responsibilities.

19. Overall, the Commission welcomes progress made by HM Treasury on ensuring that equality evidence informs the decisions taken in the Spending Review process. We recognise that these developments represent a step change, with more attention now than at Spending Review 2010 or previously to the importance of understanding the impacts of proposed measures on people with different protected characteristics.

Monitoring of issues identified in the s.31 assessment report

20. Overall, our work with departments has found that monitoring of the impact of Spending Review 2010 measures is in place and that impact on people with different protected characteristics forms some part of this. National evaluation will usually be in the form of commissioned studies by departments. Those responsible for policy implementation, such as local councils, also play a key role in understanding and dealing with impact as the policies are rolled out and the effects are felt by local people.
21. We have also found evidence that understanding the impact on people sharing different protected characteristics is helping to shape policy, avoid negative impacts and extend positive benefits. Examples of good practice include:
 - Mitigations introduced as the policy is being finalised and implemented as a result of assessments of impacts on different groups – e.g. DWP’s 2012 equality impact assessment extended exemptions and support arrangements prior to the implementation of the benefit cap.
 - Additional mitigations introduced after implementation to widen the reach of the policy - e.g. extension of the pupil premium to include those registered as eligible for Free School Meals at any point in the last six years; also consideration of how people eligible for but not claiming Free School Meals (ethnic minority families are over-represented in this group) can be targeted.
 - At local level, anecdotal examples of where consultations on proposals for local council support schemes have widened the reach to bring in other

- groups, and where councils are targeting families to move them into work, in line with the policy intention, e.g. Manchester, Leeds.
- Similarly, while some local transport authorities have reduced services and withdrawn non-statutory concessionary bus fares for disabled people and pensioners, other local transport authorities (e.g. Norfolk) have worked hard to mitigate the impact of changes to the Bus Services Operators Grant (BSOG) on those most likely to be affected by a reduction in bus services.
22. However, PSED requirements for ongoing consideration of the impact of policy decisions are not widely recognised by departments and need to be more formalised as part of monitoring and evaluation planning. More systematised collection and sharing of evidence between central government and local councils and other delivery arms would ensure that departments are able to provide evidence of impact on equality as part of submissions to HM Treasury for decision-making in future Spending Reviews (see Section 3 for monitoring of the Spending Review 2010 measures).

Developments since the s.31 assessment report

The review of the PSED

23. In May 2012 the government announced the outcome of the ‘red tape challenge’ spotlight on equalities. This included a decision to bring forward the scheduled reviews of the PSED general and specific duties to begin shortly. An independent review group was established to undertake this work, under the chairmanship of Robert Hayward. The review group completed its work in summer 2013 and its report and the government response to its proposals were published on 6 September 2013.
24. The report’s recommendations are set out fully in Annex A, and could be summarised as:
- The Commission should produce shorter, more bespoke guidance clearly setting out what is necessary for compliance.
 - Public bodies should not collect diversity data unless it is necessary for them to do so.

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- The Commission and the Information Commissioner should work together to provide greater clarity on the role of data and its collection.
- Public bodies must ensure they adopt a proportionate approach to compliance and not seek to 'gold plate'.

The government agreed with the recommendations, including that a full evaluation should be undertaken in 2016 when the PSED will have been in force for five years.

25. The Commission was an observer on the review group and, in responding to the report, the Chair of the Commission made three principal points:
- The Commission would respond positively to the conclusions on data and, as suggested, work with the Information Commissioner.
 - The Commission continued to believe, as it had fed into the review group, that the most effective step to reduce gold plating by public bodies would be to produce a statutory code of practice on the PSED which would offer much greater confidence to public bodies than guidance can on what was actually necessary for compliance.
 - The Commission entirely shared the broad objectives of ensuring the PSED is implemented effectively and with minimum costs and bureaucracy.

Independent Living Fund judgment

26. In November 2013, the Court of Appeal handed down a judgment overturning the government's decision to close the Independent Living Fund.³ The Court found that there was insufficient evidence of compliance with the PSED. The Commission had intervened in the case brought by several disabled claimants in order to clarify what is required for a public body decision-maker to show that proper consideration has been given to the impact of a proposal which affects people sharing a particular protected characteristic. The judges decided there was insufficient evidence that the very grave impact on some of those affected was properly brought to the Minister's attention, despite officials having been clearly informed of the possible impacts not only by service users but also by local authorities.

³ The Independent Living Fund is a government-funded programme currently providing support to enable nearly 19,000 severely disabled people in the UK to live independent lives in the community.

27. Subsequent to the judgment, the government conducted a new analysis of the impact on different groups of closing the Fund, on the basis of which a decision was made to resume plans to close the Fund on 30 June 2015. After that date, responsibility for supporting Fund-users will fall on individual local authorities.

Key points from the judgment are:

- An important ‘evidential element’ is the recording of steps taken by the decision-maker.
- The relevant duty is on the Minister or other decision-maker personally – they need to know the full facts and it is not enough to say that officials had the information.
- Ministers must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before adoption of the policy.
- The ‘Brown’ principles apply – there must be awareness of the duty; the duty must be fulfilled before and at the time the policy is being considered; the duty must be exercised in substance, with rigour and an open mind, it is not about ‘box-ticking’; the duty is non-delegable; it is a continuing duty; and it is good practice for the decision-maker to keep records.
- A general regard for equality issues is not the same as having specific regard – equality issues must be examined closely. Considerations of equality of opportunity, where they arise, should be placed at the centre of formulation of policy, side by side with all other pressing circumstances.
- Officials must be ‘rigorous in both enquiring and reporting’ to the Minister or other decision-maker.
- The court can determine only whether ‘due regard’ has been had to the impact of a proposed policy on equality for different groups; it is not the role of the court to make a judgment on the appropriate weight given to the duty in relation to the policy or the outcome; it is not for the courts to decide on the merits of public decision-making.
- Public authorities should be properly informed before taking a decision and, if the relevant material is not available, there is a duty to acquire it, frequently meaning that some further consultation with appropriate groups is required.

Conclusions

28. There has been good progress made by HM Treasury in the collection and use of equality evidence to support Spending Reviews and fiscal decision-making and implementation. These improvements are to be welcomed. The next stage is to embed them across government and to secure a more consistent and joined-up approach to the assessment of the impact of spending and fiscal decisions on equality for people with different protected characteristics.
29. This report sets out areas of further improvement which the Commission will continue to discuss with HM Treasury and other stakeholders. These areas include:
 - a. Clarifying a single point within government with formal responsibility for monitoring and assessing the cumulative impact of future Spending Reviews on people sharing different protected characteristics.
 - b. Continuing to make improvements in the quality of data collection and use in order to support the assessment of impacts on different groups.
 - c. Developing a cumulative impact modelling methodology for use with future Spending Reviews and fiscal events.
 - d. Considering building on the report on equalities impact that HM Treasury published alongside the Spending Review 2013, by producing brief summary reports alongside fiscal events.
 - e. Improving scrutiny of impact on different groups by: (a) extending the role of the Independent Challenge Groups for Spending Reviews to include equality as one of the issues they look at, and (b) identifying an independent body to scrutinise the impact of Spending Reviews and fiscal events on people sharing different protected characteristics.

Section 2:

Progress on the s.31 assessment report recommendations

30. The assessment report made 11 recommendations for improvements to support future compliance in cross-government Spending Reviews. Overall, there is good progress to report on collection and use of equality evidence for fiscal decision-making, with actions taken to address the recommendations and improvements from the position described in the original report.
31. The extent of progress on each recommendation and where more needs to happen is set out below.

Recommendation 1: Greater transparency, including clear HM Treasury guidance on data and analytical requirements for the whole of government

32. The assessment report identified a lack of transparency on equality evidence-gathering and impact analysis across government departments. This was attributed partly to the confidential nature of the Spending Review process and concerns about sharing the detail of sensitive proposals as they were being developed. This meant that departments were undertaking equality analysis in isolation and with no common approach or way of understanding the impact of their measures on people with different protected characteristics when combined with other measures.
33. There is good progress on this recommendation with HM Treasury taking a lead role in creating a more joined up and transparent approach to assessment of the impact of proposed measures on people with different protected characteristics within the Spending Review process. This is evidenced by the introduction of some common requirements for equality data and analysis from departments and a clearer process for collection and use of equality evidence for fiscal decision-making (see sections 11-18 above).

34. HM Treasury has described how data collected in this way is used to inform decision-making during the Spending Review process. It is the first point of call for information on equalities and is used to brief HM Treasury Ministers ahead of meetings with Ministers from other departments. Supplemental data is sought from departments when necessary on specific policies being considered. Data submissions from departments are aggregated to inform impacts on different groups of decisions on the overall DEL spending envelope.
35. A clear process has also been established for consideration of impacts on equality for different groups in decision-making on Budget and Autumn Statement measures.
- All submissions made to Ministers require a statement on the impact of the policy on different groups at the beginning of the process and at the point where the decision is made.
 - Where a measure has a significant impact on people with a protected characteristic, policy leads are expected to explore the impact in detail as part of the policy development process.
 - Stand-alone submissions are also produced when equality issues are identified.
 - Each individual tax measure is the subject of a published Tax Information note, which includes an assessment of the impacts on equality for different groups of each measure.
36. Follow-up work has highlighted where further improvements could address continuing evidence gaps in departments' qualitative submissions and also support quantitative cumulative impact assessment. These are set out under recommendations 2 and 4.
37. While the evidence template is a good first step in standardising data requirements, there is still no formal guidance from HM Treasury to departments on equality evidence collection and use in Spending Reviews. The Green Book – where HM Treasury sets out its core principles for all public sector economic assessment for spending measures – includes the statement that impacts on various groups in society should be considered as part of an appraisal of spending measures. This was welcomed in the original Assessment with the recommendation that the Green Book be updated to include all the protected characteristics, and ensure due regard is paid in value for money assessments.

38. Formalising enhanced equality expectations and requirements in guidance, perhaps as part of an Annex to the Green Book alongside other issue-based annexes, would bring additional clarity and transparency and secure equality coverage as an integral part of the Spending Review process

Recommendation 2: Common rules to allow easier sharing of equality data within government, such as standardised data collection rules

39. The assessment report highlighted gaps and variability in equality data and since then, equality requirements have been extended to include new protected characteristics under the Equality Act 2010.⁴ The lack of data on the new protected grounds has added to the challenge of creating standardised data collection rules for conducting comprehensive equality analysis across government.
40. HM Treasury has introduced a more systematic approach to collection of qualitative equality evidence as described above. While this is a welcome improvement, in practice departments still only have patchy information, reflected in the variability of data returns to HM Treasury. The quality of submissions is dependent on how much of a priority departments give to assessing impact of policy measures on different groups.
41. The validity of this qualitative approach for assessment of impact on people with different protected characteristics requires HM Treasury to ensure that the standardised data collection requirements it has introduced are applied and that submissions are taken seriously by departments. Departments too need to be more engaged with their responsibilities to provide HM Treasury and Ministers with the level of equality evidence needed to inspire public confidence that Spending Review decisions are made in full knowledge of their impacts on people with different protected characteristics.
42. More direction from HM Treasury to departments on ways of addressing evidence gaps in their qualitative submissions, with common rules for data collection and sharing would help to drive improvements. Creating new data-sets may add disproportionate burdens on departments, so HM Treasury should consider standardising an approach to using alternate sources of available evidence as proxies in submissions, and ask departments for the best position in light of limited

⁴ Protected characteristics under the Equality Act 2010 are: Age, Disability, Gender reassignment, Marriage and civil partnership, Race, Religion or Belief, Sex, Sexual orientation.

data. This could be set out in guidance, alongside principles from case law on issues of proportionality in data collection.

43. Administrative data held by departments potentially offers a useful source of equality evidence and has been used alongside other data for policy impact assessment of Spending Review 2010 measures by DWP. While administrative data does not currently offer a viable option for assessment of impact on people with different protected characteristics across government, consideration should be given to extending administrative data-sets where this would be relevant for specific policy areas and spending measures and would not add disproportionate burdens.
44. Given the decision to collect qualitative data as its current way of informing decisions, HM Treasury has to be confident that the evidence it receives is sufficiently robust to meet the requirements of the Equality Act. HM Treasury has recognised that there is scope for doing more on raising awareness of its qualitative data requirements and on providing more clarity for departments on alternate sources of equality data that can be useful in driving policy and public understanding.

Recommendation 3: Authoritative sources of advice and support for government departments on equality impact analysis

45. The assessment report recognised that improvements in equality coverage required more advice and support for departments on how to carry out proportionate assessment of the impact of spending measures on people with different protected characteristics.
46. The introduction of a policy 'toolkit' for use within HM Treasury is a welcome step. This sets some standard questions and tables aimed at helping teams consider impacts on different groups during policy development. A list of useful sources of quantitative data on equalities has also been produced. These are relatively new and HM Treasury recognises that the challenge now is embedding their use across HM Treasury teams.
47. More widely, follow-up work has shown that departments do have internal authoritative sources of equality advice on the requirements of equality legislation. However the reality is that these roles tend to operate across each department and are separate from the policy teams and analysts doing the detailed equality evidence-gathering for assessments of spending measures.

48. Policy teams across government expressed uncertainties about aspects of equality assessment and monitoring of policy and fiscal impacts. They considered there to be a pressing need for more authoritative advice on evidence requirements, particularly in the light of the conclusions of the PSED Review⁵ and recent commentary on assessments of the impact on people with different protected characteristics.
49. The view that more clarity was needed on how the PSED legal framework applied to impact analysis for Spending Reviews was endorsed by the Fair Financial Decisions Advisory Group. Clear guidance would help to improve the quality of evidence supplied to HM Treasury by departments for Spending Review decision-making.
50. Follow-up work has identified some issues where more guidance would help:
- Equality Act requirements and legal principles on evidence-gathering for impact assessment as set out in the Bracking judgment and other relevant case law.
 - What the PSED review recommendations will mean in practice for Spending Review assessments.
 - Proportionality in relation to limited availability of data-sets for people with a specific characteristic and using the best evidence available.
 - Measuring disproportionate impact and the groups used for comparison.
 - Intended consequences and justifiability where a spending measure is directed at people with a protected characteristic and has a negative impact but might be justifiable to meet longer term policy aims.
 - Types of mitigations and case study examples.
 - Using monitoring and evaluation evidence as measures are rolled out to re-shape policy and to feed back to HM Treasury for future fiscal decisions.
 - Signposting to expert organisations and external research and data sources.
51. In considering progress on recommendations 1 and 2, we identified a role for HM Treasury in creating cross-government guidance for departments on data and analytical requirements with standardised data collection rules for Spending Reviews. Ideally this would also include the detailed advice requested by departments to support improvements in operational delivery of impact assessments. Alternately this type of guidance could be developed by the Commission separately or working with HM Treasury.

⁵ See Annex A that sets out the conclusions of the Review.

52. Expert organisations also have an important role to play in providing external sources of advice and support for government departments on analysis of impact on different groups. Many have research arms and can bolster evidence, particularly where departmental data is limited. Examples were given of where departments had identified gaps in evidence for assessing impacts on lesbian, gay, bisexual and transgender people and religious groups and officials had consulted organisations with knowledge of the situation on the ground. Also where consultations with equality stakeholders had provided evidence that re-shaped policies and led to mitigations.⁶ This type of external support should be included in guidance with signposting to lead expert organisations for each of the protected characteristics.

Recommendation 4: The development of a common model of analysis to predict the likely equality effects of policy

53. The assessment report found that one of the factors making the task of formal cumulative assessment extremely difficult was the absence of a common model of analysis. At recent fiscal events, HM Treasury has been publishing an assessment of the distributional impact of major tax, benefit and some (but not all) spending measures. The merit of this type of impact modelling for good, transparent decision-making was recognised in the assessment report, with a recommendation that the distributional impact analysis should be extended to consider impact on those sharing protected characteristics.

54. Distributional impact assessment is a welcome innovation, which has a genuine impact on policy decisions. Moreover, because of the focus of HM Treasury on quantification, this approach commands considerably more attention (internally and externally) than qualitative assessment of the impact of spending measures – currently HM Treasury’s preferred methodology for impact on different groups. For this reason, while welcoming the standardisation of qualitative evidence collection introduced by HM Treasury, follow-up work has explored whether distributional impact analysis could be extended to provide a common model of cumulative impact on different groups.

55. The way that distributional impact analysis is done was described in a briefing note for the Commission from NIESR.⁷ HM Treasury’s tax and benefit micro-simulation

⁶ Fair Financial Decisions Advisory Group, 25 March 2013.

⁷ Briefing notes for the Equality and Human Rights Commission from NIESR, forthcoming.

model uses survey data from the Living Costs and Food Survey (LCFS). Firstly, the model calculates each household's net income under a given tax and benefit system without new policy measures. This is known as the base. This is then repeated to estimate each household's net income after policies introduced at fiscal events. The difference between the two results produces the change in net income for each as a result of the policy decisions. HM Treasury has been working hard to extend this modelling to include spending decisions, with information on who benefits from individual spending areas and programmes constructed from departmental data and other surveys. The model is currently primarily used to estimate the impact of policy measures across the income distribution. This is done by allocating households to one of 10 deciles going from the poorest to the richest.

56. Three main obstacles were identified in using this approach for cumulative impact assessments of fiscal events: a) data availability, b) sample size, and c) final incidence (including assumptions on household sharing). HM Treasury remains cautious about the possibility of overcoming these obstacles and hence of the genuine utility of attempting cumulative impact assessments for different characteristics.
57. There was a view amongst members of the Commission's Advisory Group on Fair Financial Decisions that modelling of impact in a way that would, in fact, produce some genuine utility for policy-makers should be possible, although it might be easier for some protected characteristics than others and there would be complex methodological and modelling issues to overcome as identified by HM Treasury. Balanced against this were the benefits of this type of modelling for its potential influence on Spending Review decisions and mitigations and for improving transparency and accountability to the public for the impact of decisions on people with different protected characteristics.
58. The Commission has put in place further work by NIESR with Landman Economics to develop and test an approach to modelling cumulative impacts on different groups. This has included ways of addressing the methodological issues raised by HM Treasury, with the Advisory Group providing robust debate and challenge as the project has progressed.
59. The model has been piloted through a case study assessment of the cumulative impact on different groups of fiscal measures in the 2010-15 Parliament. A draft report with results from the project was considered by the Advisory Group in April 2014. The Commission is considering the report and expects to publish the final version over summer 2014. The issues raised and the possibilities for

implementation of this type of cumulative impact modelling will be discussed with the Advisory Group in the summer.

Recommendation 5: A single point of government responsible for monitoring and assessing the cumulative impact of future Spending Reviews and budgets

60. The s.31 assessment report found that whilst HM Treasury and departments assessed the impacts on people with different protected characteristics of specific policy measures, ‘as no department or body has clear responsibility for working out the cumulative impact of separate departmental measures within a Spending Review... this analysis does not happen in any meaningful or comprehensive way. Thus an opportunity to make better policy and to mitigate impact is being missed’.
61. HM Treasury identified the underlying issue as ensuring that government takes a joined-up approach to policy-making and assessing impacts on different groups and described how this operates in practice. HM Treasury discharges its equality responsibilities for Spending Review decisions working closely with departments. While individual departments have lead equality responsibility for their policy areas, they will ensure that for any given proposal they work with other departments to understand the impact on different groups. In addition, there are a number of mechanisms for ensuring that policy-making is joined up, for example cabinet committees and cross-departmental working at official level.
62. The Commission’s follow-up work focused on identifying where responsibility might lie for effective cumulative impact assessment and how it could be operationalised. In doing this we considered some of the current arrangements in place, for instance:
 - HMRC and HM Treasury are responsible for analysing individual tax measures for fiscal events. Tax Information and Impact Notes (TIINs) that are published alongside new tax measures include a section on impacts on different groups.
 - HM Treasury also shares responsibilities with other departments to assess impacts of welfare measures.
 - Departments are responsible for analysing the impact of specific spending proposals.

63. Spending Reviews inevitably involve a large number of decisions, in a process which has several iterations and in which dialogue between the Treasury and spending departments will cover both broad spending envelopes and some of the larger individual decisions by which departments will live within their means. This means that locating specific decision points can be complex. However, the development of judicial opinion on the PSED has made it in some ways clearer in that courts have found that the duty is a continuing one and is not delegable. In other words, the PSED would apply to each successive decision-making stage and is not limited to either an original decision point nor to the final stages of detail in a spending measure. And that it is a duty on the final decision-makers, i.e. Ministers, though the courts have of course recognised that in exercising the duty Ministers depend on the advice they are given.
64. At Spending Reviews HM Treasury runs a process that enables the government to make overall budget allocations to departments. That involves a dialogue between the Treasury and departments about the steps departments plan to take to live within budgets and, where appropriate, plans for new investments so that departmental Ministers agree the budget allocation given to them. But the key decision at this point is the broad departmental budget allocation. In this process HM Treasury meets its PSED responsibilities by making an assessment of the potential impact on people with different protected characteristics and providing appropriate advice to Treasury Ministers for them to make those decisions.
65. Departments will then conduct their own planning processes to determine precisely how allocated budgets will be used and are responsible for the specific spending decisions and hence the PSED responsibilities for these decisions. HM Treasury are therefore responsible for advising Treasury Ministers and ultimately the government as a whole on the broad allocation decisions. Departments are responsible for the more detailed decisions on how the resources they are given are used and the specific policy areas for which they are responsible. At some level these specific measures will differ from some of the broad propositions that informed the original budget allocation decision as circumstances change, new ideas emerge, or the government adjusts certain proposals. Each decision-making stage could raise PSED implications. The Commission believes it would be helpful to map this process and the PSED implications of decision stages more explicitly to benefit decision-makers who can then see clearly where and when they need to ensure they have adequate information available to discharge their responsibilities.

66. Improvements since the 2010 Spending Review show that HM Treasury recognises its lead role in gathering equality evidence for fiscal events. However as described above the decision-making process as a whole is complex and involves both strategic decisions on departmental allocations, and individual budgetary measures decided by departments. Within that system there is no single point of government responsible for monitoring and assessing the concerted impacts of a set of decisions on specific protected characteristics taken within a spending round, nor the cumulative impact of those fiscal decisions over a period. The Commission continues to believe that this means it is more difficult to assess how the PSED is being met and that identifying such a single point and mandating their responsibility for providing the best available advice on concerted and cumulative impacts would benefit policy-making and help to evidence the application of the PSED.
67. HM Treasury has already formalised an important element of this accountability role through its publication alongside the Spending Review 2013 of an 'Impact on Equality' statement.
68. This was based on evidence gathered from departments' submissions and set out a descriptive analysis of the high level impacts of certain measures on people with protected characteristics that were principally affected (the statement considered race, age, gender and disability). While the commitment of Ministers to publish an equalities report is welcomed, the analysis was quite short and light on detail. The continued development of an equality statement would help to command greater confidence externally. It could include more description of the equality evidence gathered, quantitative as well as qualitative analysis and more systematisation, with impacts highlighted for specific high profile measures in each spending department, along with possible mitigations. Commentary on the cumulative impact of spending measures would also be an important element of such a statement.

Recommendation 6: The government should consider independent and authoritative equality analysis of public spending policies

69. Continued improvement in collection and use of impact data would be assured by independent scrutiny of the equality consequences of fiscal and spending decisions. For the 2010 Review, HM Treasury appointed the Independent Challenge Group (ICG) to 'act as independent challengers and champions for departments' throughout the Spending Review process. This consisted of 38 people, mostly from within the civil service, with three external experts from the

financial sector and one from the voluntary sector. The ICG was given a remit to ‘think innovatively about the options for reducing public expenditure and balancing priorities to minimise the impact on public services’.

70. The ICG established smaller sub-groups that reported on seven departments (DWP, Department of Health, DfE, Her Majesty’s Revenue Collection, Department of Business, Industry and Skills, DCLG and the criminal justice system), and four cross-cutting topics including one on distributional impact. At that time, the ICG and sub-groups were not specifically briefed to consider the impact of measures and spending decisions in departments on equality. The Commission suggests that this should be considered for independent scrutiny of equality coverage for Spending Review 15.
71. In addition, consideration should be given to identifying an independent body to scrutinise the impact on different groups of Spending Reviews and fiscal events.

Additional recommendations

Recommendation 7: Case law confirms that public authorities need to analyse and understand the impact of proposed policies and decisions on the protected groups at the formative stages of policy development, in advance of the adoption of such policies. For future Spending Reviews HM Treasury should bear this in mind during the early stages of policy development. This allows HM Treasury Ministers to judge what actions would be considered proportionate, and should also inform the prioritisation of objectives and policies

72. The assessment report acknowledged that the assessment of the impact on people with different characteristics for the 2010 Spending Review was an ‘unprecedented exercise in an unprecedented economic situation with the scale of the exercise, the speed of its execution and the novelty of the process’ all contributing to the challenge it presented. HM Treasury agreed that for future Spending Reviews taking place in less pressured circumstances, it would be good practice to aim to request information on impact on different groups at an earlier stage.⁸ HM Treasury has built on this first experience and has put in place improvements within HM

⁸ Lessons learned on Equalities, internal HM Treasury document, oral evidence, Chief Secretary to the Treasury, 4 July 2011.

Treasury and across government to ensure that consideration of impact happens in the early stages of policy development.

73. HM Treasury described bringing together all the planning for Spending Reviews and fiscal events over a long period of time to ensure that advice is passed up to Ministers at specific points and key factors are taken into account from the beginning of the process.
74. Within HM Treasury, staff are trained on what their responsibilities are in relation to the PSED and what that means for giving advice to HM Treasury Ministers, including the importance of ensuring equality is assessed and flagged to Ministers for fiscal events in a timely way.
75. HM Treasury provided assurances that equality is now part of the internal launches of the budget process, equality information is provided for Ministers as early as possible and proper records are kept with full audit trails to support informed decision-making from early on. Ways that early scoping of impacts now takes place are described below.

Recommendation 8: All departmental functions or services under consideration for change under future Spending Reviews should be subject to an initial screening for their potential impact on the different protected characteristics. This would ensure that HM Treasury Ministers are better informed on whether it may be necessary to gather further evidence on which to base their final decision

76. The assessment report recognised that while it was not feasible or proportionate for HM Treasury to undertake detailed consideration of the impact on different groups of all the decisions being proposed at an early stage, it would have been appropriate for HM Treasury in their planning assumptions and for departments in their initial submissions to have given broad consideration to possible disproportionate impact on people with different protected characteristics.
77. The report recognised the value of the screening tool developed by HM Treasury to assess annually managed expenditure (AME)⁹ for carrying out initial screening of spending measures for their potential impact on the different protected characteristics and suggested that HM Treasury should consider extending this to

⁹ AME typically consists of spending programmes which are volatile and demand-led, and which are therefore not subject to firm multi-year limits in the same way as Delegated Expenditure Limits. The biggest single element is social security spending.

DEL measures. HM Treasury agreed that they would develop a screening tool for those areas (essentially most areas other than tax, welfare and public sector pay and pensions) where HM Treasury set high-level budgets for departments.

78. Action has been taken to deliver this improvement. Departments' pro-forma submissions to HM Treasury on key areas of spend now provide baseline screening for assessing impact of proposed policy changes and spending measures in the early stages of their development.
79. As part of the Commission's development work to drive improvements, the Social Market Foundation with NIESR carried out a screening of policies and services that might be subject to change up to 2015 under current fiscal plans and their potential impact on people with different protected characteristics. This factored in those policy areas protected from spending measures and others more directly affected. Potential impacts from spending measures on people across the nine protected grounds were identified.
80. The Advisory Group considered the merits of this type of high-level screening for assessment of impact on different groups. It was recognised that the value of impact assessment was its requirement for a strong evidence-base that could identify impacts and outcomes. Screening using top-line evidence only could potentially exclude some policies from full impact when more detailed scrutiny might surface a potential negative impact on people with a particular protected characteristic and the need for further evidence. Avoiding stereotyped views or assumptions about potential impact was key to this type of screening.
81. Government scoping of indicative impacts at a high level was a useful indicator of where more detailed assessment was needed on individual measures and illustrated the importance for departments of collecting data and using existing data well in relation to their policy proposals and impacts.
82. A welcome innovation has been equality workshops led by GEO and HM Treasury (2012), and the Chief Secretary to the Treasury (2013) bringing together expert groups to consider likely impacts on different groups of spending reductions currently and in future spending rounds. Opening up spending discussions to external organisations supports greater transparency and widens the equality evidence base for future decision-making. Regular workshops to support more high-level scoping for future planning would add to improvements already introduced.

Recommendation 9: An evidence base relating to current consumption and participation by equality groups would help to reduce pressure within the Spending Review process and to ensure that the focus of analysis can be on the proposed changes. Government could make better use of existing data and improve data collection processes, to help inform policy development and decision-making.

83. This recommendation has been addressed through the introduction of the pro-forma for departments to complete with qualitative equality data and evidence. HM Treasury has clearly defined the evidence-base required (see sections 11-17 above).

Recommendation 10: Ministers should be provided with information about the potential impact of decisions that they are taking. Where complete analysis is unavailable, for example due to data gaps or policy not yet being fully defined, the best possible proportionate analysis should be provided, with the necessary caveats.

84. Under recommendation 1 and 2 improvements to the process of impact evidence collection and use are described. These changes represent significant progress and a step change in the systemisation of assessment of impact on people with different protected characteristics across government for Spending Reviews.

85. The Bracking judgment has confirmed the importance of Ministers being provided with information about the potential impact of decisions that they are taking. This reinforces the need for HM Treasury and departments to recognise that where complete analysis is unavailable the best possible proportionate analysis should be provided, with the necessary caveats.

Recommendation 11: When potential adverse impact is identified for a protected group, consideration should be given at the early stages to mitigation and to the effectiveness of any proposed mitigating actions.

86. The assessment report found that the consideration of mitigating actions was inconsistent. For some measures, there was no assessment of possible mitigating actions for fear that mitigating would undermine the policy intent, and for others the effectiveness of the proposed mitigating action was not considered. The report highlighted as good practice the inclusion of a mitigating action to address the

potential impact of the benefit cap on disabled people by excluding DLA claimants (see paragraph 21).

87. Our follow-up work has found some evidence of good practice with mitigations being introduced by government and departments in response to evidence of impact on different groups as spending decisions are being shaped and implemented.
88. Departments indicated that they would value further support and guidance on types and use of mitigations in different policy circumstances.

Section 3:

Progress on equality monitoring of Spending Review decisions

The Commission has monitored progress on a number of specific measures from the Spending Review 2010. This monitoring can provide departments with evidence of how people are being affected, highlight any unintended consequences and so improve the policy impact.

The Department for Work and Pensions (DWP): The benefit cap and Time-limiting Employment Support Allowance

The objective of the benefit cap is to restrict the total amount of welfare benefits a working age household can receive, broadly to the level of the average take-home pay of working households.

Original impact evidence

The benefit cap was one of three cases where the Commission was unable to establish whether or not the decisions were in full accord with the requirements of the equality duties. However the inclusion of a mitigating action to address the potential impact of the benefit cap on disabled people by excluding Disability Living Allowance claimants was identified by the Commission as an example of good practice by DWP. In relation to race, a mitigating action was also included by DWP as, 'funding streams to support those with a rent shortfall'.

Prior to implementation of the policy in April 2013 several equality impact assessments were conducted. The first in March 2011 was updated in October 2011.¹⁰ This

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220153/eia-benefit-cap-wr2011.pdf

highlighted the impact on single females; families with five or more children; people with disabilities and ethnic minority groups.

The most recent Equality Impact Assessment (EIA) was published in July 2012.¹¹ It covered individuals with the protected characteristics of age, disability, gender and ethnicity and provided quantitative data drawing on modelling from DWP administrative records to estimate the impact of the policy in terms of who will be affected by the benefit cap. It found a disproportionate impact of the policy on age, gender, disability and race. The evidence provided pointed to people aged 25-44 (80 per cent), and women (60 per cent) being most affected by the policy. Despite those on disability benefits being exempt, around half of households affected are likely to contain someone who is classed as disabled under the Equality Act 2010, and the 40 per cent of ethnic minority households affected is significantly greater than the proportions of ethnic minority benefit claimants generally.

Mitigation was identified as supporting people to change their circumstances by moving into and incentivising work, listing information provision about changes, Jobcentre Plus employment support, referring to exemptions for people working up to 16 hours per week in line with Working Tax Credit (to address lone parent impact) and the 'grace period' for new claimants with substantial work history.

The government has also increased the budget for discretionary housing payments in Great Britain as a whole by £110 million over the Spending Review period to enable local authorities to help workless families who may have to move if their benefit is capped and have committed to working with all local authorities on the impacts of welfare reform to ensure they fully understand the implications for local authorities and their staff. Further consideration of the impact of the benefit cap on families has produced 'strengthened legislation so authorities must, if they regard it as essential to move a family, carefully consider the impact a change in location would have, including possible disruption to employment, education and caring responsibilities of the claimant and their family'.¹²

DWP aim to publish a report in 2014 on the operation of the first year of the policy and is working with local authorities to identify data requirements.

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220178/benefit-cap-wr2011-ia.pdf
DWP Benefit Cap (Housing Benefit) Regulations 2012: Impact assessment for the benefit cap - 16 July 2012.

¹² <http://www.theyworkforyou.com/wrans/?id=2013-01-30a.138839.h&s=welfare+reform#g138839.r0> accessed 20 November 2013.

Time-limiting contributory Employment Support Allowance (ESA)

The Spending Review time-limited contributory Employment and Support Allowance (ESA) for those in the Work Related Activity Group.

ESA provides financial help to people who are unable to work because of illness or disability and personalised support to those who are able to work. Making a claim for ESA involves a medical assessment called the Work Capability Assessment. This assesses what a person can do, rather than what they cannot, and identifies the health-related support they might need. Most people claiming ESA will be expected to take steps to prepare for work.

Original impact evidence

The screening document from HM Treasury stated that the policy would impact on disabled people. The ability to access other funds, such as the Disability Living Allowance (DLA), was suggested as mitigation. The document also noted that the policy was likely to affect more men than women and would impact slightly more on white British claimants than those from an ethnic minority. It stated that a full EIA would be carried out by the DWP when the primary legislation was introduced.

Specific recommendations from the original report

The Commission recommended that as the reform came into force, the DWP should monitor the impact of the measure on people with different protected characteristics to ensure that the desired outcome of improved work incentives was achieved. DWP should also monitor the effectiveness of the mitigating actions and make changes as necessary.

What has happened to monitor impact of this measure

DWP produced two EIAs. The first covering the impact of the policy was published in October 2011 and a second in April 2012, coinciding with the introduction of the policy. This assessment found that the impacts tended to reflect the composition of the caseload, for instance losses were higher for some groups, notably, women and people aged 50 plus, where a lower proportion will be eligible for income-based Employment Support Allowance. However, no mitigating actions were identified for women or the older age group.

The DWP are seeing an increase in the proportion of 'Credit Only ESA Cases' in their administrative data and have noted this within the DWP Quarterly Statistical Summary (as last published in November 2013).¹³ DWP are reviewing whether it is feasible to link this data with other administrative sources and are considering examining survey data such as the Family Resources Survey to review any policy impacts.

The DWP's EIA: Changes to National Insurance Contribution Conditions For Employment and Support Allowance and Jobseeker's Allowance states that the policy will be subject to ongoing review and that the introduction of ESA will be fully evaluated by 2014. ESA statistics, which include the numbers on ESA by age, gender, main medical condition and ethnicity will continue to be published on a quarterly basis.

Next steps

Our work with DWP has identified a wide range of assessments of the impacts on people with different protected characteristics and evaluations of spending measures, with examples of how evidence is being used to shape policy and mitigations. It has also highlighted some areas of practice for government departments where further guidance would be helpful to support improvements in assessment of impacts on different groups and monitoring:

- How to fill data gaps in proportionate and cost effective ways.
- Reviewing the comparator used for measuring disproportionate impact in assessment of impact on different groups.
- Identifying cumulative impacts on individuals with protected characteristics.
- Types of mitigations, including targeting people with different protected characteristics impacted intentionally by specific welfare measures.

¹³ A 'credit only' case is one where the person only receives a national insurance credit and no payment of Incapacity Benefit, Severe Disablement Allowance, Employment Support Allowance and occurs when someone does not fulfil the contribution conditions (or has exhausted their entitlement to contributory benefit) and are not entitled to the benefit in question on income-related grounds.

Ministry of Justice (MoJ): Reform of legal aid

Policy intention

The government's proposals were aimed at delivering 'access to justice at lower cost to the taxpayer' and to 'increase competition in the market and reform remuneration for providers to ensure the legal aid system is effective and affordable'.¹⁴

Original impact evidence

The MoJ's equality data submission to HM Treasury contained information on people with protected characteristics, including race, gender and disability. It showed that compared with the population overall, legal aid recipients are more likely to be women, in an ethnic minority group and to have a disability.

It also outlined mitigation for the potential adverse effect of legal aid reform in the form of an exceptional funding mechanism where there was a risk of access to justice being undermined.

Specific recommendations from the original report

The Commission recommended that MoJ should monitor the outcomes of reforms and any mitigating actions on people with different protected characteristics.

What has happened to monitor impact of this measure

In November 2010 the MoJ published a consultation paper on *Proposals for the Reform of Legal Aid in England and Wales* which included several EIAs.¹⁵ The Commission noted the proposal for an exceptional funding mechanism to mitigate the effects of exclusions from legal aid and the need to ensure it would have the positive impact intended in practice. The Commission has specific reservations about the introduction of a single telephone gateway recognising the potentially negative impact on disabled people amongst others.¹⁶

¹⁴ http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf, p. 56 – 'Spending Review 2010'.

¹⁵ <http://www.official-documents.gov.uk/document/cm79/7967/7967.pdf>

¹⁶ Response of the Equality and Human Rights Commission to the Consultation on reform of legal aid in England and Wales, 15 November 2010.

The reforms were rolled out between October 2012 and April 2013. MoJ reported a range of activity to gauge impact of the reforms and are currently undertaking an extensive review of the mandatory telephone gateway for legal aid which was introduced on 1 April 2013 and is expected to report by March 2015. This will include the gathering of 12 months' data in April 2014 to understand how the process is working.

The department recognised concerns about accessibility of the mandatory telephone gateway that made monitoring and review of the service essential. Pending the findings of the review, and ongoing monitoring of the service, further adjustments may be introduced to the current array of adaptations already available to accommodate the needs of individual service users to ensure the service remains accessible.

Mitigations

Guidance on the exceptional funding mechanism was published before the changes were implemented on 1 April on how decisions should be taken. Factors identified in the guidance for granting funding do include any particular issues for people with different protected characteristics and issues of disadvantage.

Issues for consideration: Additional changes to legal aid

In June 2013 the MOJ made proposals to ensure public confidence in the criminal and civil legal aid system to deliver further savings. The Commission's response acknowledged that the MoJ recognised that the need to reduce costs, to produce greater value for money for the taxpayer and to increase public confidence in the judicial system must be balanced against the need to ensure the legal aid system is fair. However the Commission's analysis concluded that the proposed changes could have an adverse impact on access to justice which would be incompatible with equality law and may have an adverse impact on the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR), particularly for those accused of criminal offences but also for those seeking to pursue or defend civil cases. These impacts may be accentuated for more vulnerable or disadvantaged individuals.

The Commission recommended that further steps be taken whilst at the formative stages of policy development to better identify potential adverse impact on people who share protected characteristics. In addition, the Commission recommended that, when the proposals are fully implemented, mechanisms be put in place for monitoring and assessing the cumulative impact of legal aid reforms on these groups.

Department for Education (DfE): Pupil Premium

Policy intention

The 2010 Spending Review included 'a new £2.5 billion pupil premium to support the educational development of the most disadvantaged, and provide incentives for good schools to take on pupils from poorer backgrounds'.

Original impact evidence

HM Treasury officials identified that disabled pupils and ethnic minority pupils were likely to benefit from the measure. DfE also provided evidence of educational attainment in relation to ethnicity, disability and Free School Meals (FSM) as the indicator of economic disadvantage. Reference was made to the lower take-up of FSM by ethnic minorities (i.e. amongst those who would be eligible) but the measure was seen to positively impact on equalities overall compared to not introducing it. In reaching a decision Ministers stated that the measure would be focused on the bottom 20 per cent of pupils in terms of income and referred to the overlap between income, disability and ethnicity.

The original assessment identified this measure as an example of consideration being given to 'equality of opportunity', rather than just the identification of potential adverse impact, and it demonstrated how the public sector equality duties can work in a positive, proactive way to close current outcome gaps for people with different protected characteristics.

Specific recommendations from the original report

The Commission recommended monitoring the impact on attainment of pupils sharing protected characteristics in line with the need to advance equality of opportunity. As eligibility for Pupil Premium is directly linked to pupils taking up FSM, the Commission recommended that take-up of FSM was disaggregated by protected characteristic as part of the monitoring of achievement by pupils who have received support via Pupil Premium.

The assessment report notes that schools will be expected to report to parents annually about how they have used the Pupil Premium. The impact of Pupil Premium on the attainment of pupils with different protected characteristics may, however, be difficult to judge in the short term. Consistent and detailed monitoring of: which schools are receiving the additional funding; for which groups of pupils; and what short-term and long-term effects this is having on pupil attainment, will be needed in order to assess whether the policy is having the desired effect.

What has happened to monitor impact of this measure

Originally, the definition of disadvantage was whether a pupil was known to be eligible for FSM (1,218,000 or 18 per cent of state-school population in 2011-12) or looked after for six months or more (41,000). In April 2012, this was widened to FSM eligibility at any point in the last six years – called ‘Ever 6 FSM’ (1,831,000, 27 per cent) which increased in 2013 (1,917,000, 28 per cent) due to collecting periods of FSM eligibility for the first time in January 2013.

The eligibility criteria will be widened further in April 2014 to all children looked after for one day or more (52,000) and also those adopted from care on or after 30 December 2005, those who left care under a Special Guardianship Order on or after 30 December 2005, or a Residence Order on or after 14 October 1991, for which data was collected for the first time in January 2014.¹⁷

In July 2013 the DfE published a detailed evaluation report¹⁸ looking at how schools were spending Pupil Premium funds, the perceived impact of Pupil Premium funding so far and what schools planned to do with funding in future years. Most schools said that they were using the money not only for FSM pupils (the intended beneficiaries) but for pupils not making good progress and this included some pupils from ethnic minorities, SEN pupils and those with English as a second language.

The department has provided KS2 and KS4 data showing attainment by FSM status, gender and ethnicity, and FSM status, gender and SEN provision. The KS4 data presents a time series of results for pupils by different characteristics. The percentage of pupils eligible for FSM for each ethnic group/each SEN provision is also shown.¹⁹ KS2 and KS4 attainment tables for the pupil premium cohort and other characteristics were also provided.

A report for the department in 2012 on pupils not claiming FSM contained a section showing the impact of pupil characteristics, such as ethnicity, on FSM registration.²⁰ The department intends to update the FSM-registration-by-characteristics analysis as soon as the relevant data becomes available.²¹ To encourage FSM registration and

¹⁷ Data provided to the Equality and Human Rights Commission by DfE in December 2013.

¹⁸ Evaluation of Pupil Premium Research report looking at how schools spent Pupil Premium funds and what they plan to do with funding in future years. DfE July 2013.

¹⁹ The SFRs can be found here: [KS2](#) and [KS4](#).

²⁰ <https://www.gov.uk/government/publications/pupils-not-claiming-free-school-meals>

²¹ Based on the Longitudinal Study of Young People in England (an in-depth study of several thousand young people who were surveyed for several years from 2004 at age 13), since it requires in-depth information about family circumstances which is not routinely available to the department from the National Pupil Database. The department is currently carrying out a new LSYPE2.

Pupil Premium take-up, the department is encouraging local authorities to use the Eligibility Checking Service and is also publishing data on FSM registration by local authority.

Issues for consideration

The department has taken steps to extend the benefits of this policy more widely by extending eligibility and supporting schools to ensure that groups of pupils eligible but not claiming FSM are better targeted to receive Pupil Premium.

The department has put in place monitoring requirements within schools, by Ofsted, through a national evaluation and through continuing analysis of attainment data to understand the impact of Pupil Premium on interventions and attainment over time.

The evaluation has highlighted Pupil Premium use for pupils with different protected characteristics who are disadvantaged and/or in need of additional support. Evidence indicated that a majority of schools were targeting educational disadvantage rather than economic/poverty disadvantage per se. Evidence was also provided of schools where FSM pupils were achieving well but the school recognised that, despite this, Pupil Premium had to be used for these pupils. This points to the potential for using the sophisticated attainment data now available nationally and within schools for pupils sharing protected characteristics alongside FSM data to provide better targeted interventions and value for money from Pupil Premium.

Data monitoring achievement by FSM, Pupil Premium and different protected characteristics is welcome and provides a source of reporting impact on different groups and whether additional actions are needed in line with the ongoing due regard requirements as the Pupil Premium measure takes effect on attainment over time.

The Department for Education: The 16-19 Bursary Fund

Policy intention

The 16-19 Bursary Fund replaced the Education Maintenance Allowance (EMA). It supports the most disadvantaged children, enabling them to remain in full-time education up to the age of 19.

The Bursary Fund has 2 elements:

- The most vulnerable young people – young people in care, care leavers, those on Income Support or Universal Credit and disabled young people in receipt of both

Employment Support Allowance and Disability Living Allowance (or Personal Independence Payment) receive yearly bursaries of £1,200.

- The rest of the fund is awarded on a discretionary basis by institutions, who can decide how to use this funding.

Original impact evidence

The measure was described as ‘Replacing Education Maintenance Allowance (EMA) with local discretionary funds’ and was one of the three cases where the Commission’s detailed examination was unable to establish whether or not the decisions were in full accord with the requirements of the duty because of a lack of clarity on where decision-making lay. The report noted that there was no evidence of any reference to ethnicity, disability or gender in the information provided to HM Treasury Ministers.

Specific recommendations for measures from the original report

A full EIA for the 16-19 Bursary was published in March 2011, stating that certain groups (such as care leavers) would be guaranteed support greater than that available under EMA, and that disabled young people and ethnic minorities were over-represented within these groups.²²

The EIA made general reference to reform of the school system, ‘specifically to address the educational attainment gaps created by gender, disability, race, social class and any other factor unrelated to ability’.

Given the findings of the EIA, the assessment report indicated that it would be useful for the implementation of the measures to be closely monitored. It highlighted the risks of uncertainty in locally managed and discretionary funds with subsequent risk of a negative impact on participation rates for people with protected characteristics in post-16 education.

What has happened to monitor impact of this measure?

In its 2011 EIA²³ the DfE stated that it would ‘monitor the impact of new arrangements generally and with particular reference to young people who are disproportionately

²² <http://media.education.gov.uk/assets/files/pdf/1/ema%20replacement%20scheme%20%20%20equality%20impact%20assessment.pdf> – ‘Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements’.

²³ <http://media.education.gov.uk/assets/files/pdf/1/ema%20replacement%20scheme%20%20%20equality%20impact%20assessment.pdf> – ‘Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements’.

likely, currently, not to participate in post-16 education' and that 'In order to do this we will want to consider how to monitor the applications and approvals for financial support and evaluate the equality of opportunity between certain groups with characteristics protected by equality law.'

However, although the information that was to be reported back to the then Young People's Learning Agency (YPLA)²⁴ covered the defined vulnerable groups, such as a young person in care or in receipt of income support,²⁵ it did not ask for information to be disaggregated by equality group.

Voluntary year-end data collected in 2014, for the 2013 to 2014 academic year, will only include discretionary bursaries as, for the first time, detailed data on students receiving vulnerable bursaries will be available from the centralised Learner Support Service. This will be the last year a voluntary data collection will take place, as the Education Funding Agency has now requested and obtained changes in mandatory data collection by schools, colleges and providers. The result is that completion of the data fields in the Individualised Learner Record (used by colleges and training providers) and the School Census (performs the same function for schools) on bursary take-up will be mandatory starting in the 2014-15 academic year. This will enable more detailed analysis in future as the take-up data will be linked to the full set of data on student characteristics, including gender, ethnicity and disability.

The DfE has also commissioned NatCen Social Research to conduct a three year independent evaluation of the Bursary Fund to understand the characteristics of applicants and recipients of bursaries; the perceived impact of the bursaries; the decision-making processes related to awarding bursaries and to evaluate equality of opportunity between different groups of students. Two interim reports have been published in May 2013 and April 2014 which have illustrated that those applicants and recipients for bursaries across all characteristics were very similar, suggesting that no groups were more or less likely to be awarded bursaries if they applied. A final report will be published early 2015.

A further strand of evaluation, run by the Institute of Education (IoE) and the Institute for Fiscal Studies, will look specifically at the actual impact of the Bursary Fund on participation and academic attainment for learners with different socio-economic characteristics. This strand will be based entirely on a quantitative analysis of existing

²⁴ Young People's Learning Agency (YPLA) was closed as part of government's wider education reforms. As a result the responsibilities of the YPLA have transferred to the Education Funding Agency (EFA).

²⁵ For more information on the defined vulnerable groups and which groups will be awarded discretionary bursaries please see: http://readingroom.lsc.gov.uk/YPLA/nat-1619_Bursaries_ProviderQA-gn-17Jan12-_v2.pdf

data-sets provided by the DfE to IoE. It will enable the department to understand the impact of the policy on participation and academic attainment in Y12 and Y13 (lower 6th and upper 6th form) for the first two cohorts affected by the change and whether awarding bursaries to certain groups of 16-19-year-olds in comparison to other groups has a greater impact on participation, drop-out and attainment. Interim findings of the impact evaluation were also published in April 2014 with final publication in early 2015.

In addition to the evaluations, the DfE policy team hope to do some less formal research and evaluation with providers and stakeholders.

Issues for further consideration

In the 2013 to 2014 academic year, institutions will receive 16-19 Bursary Fund allocations for discretionary bursaries only. The funding for vulnerable student bursaries will be held centrally by the Learner Support Service and institutions will draw down funding on demand.

The direct funding is for institutions to manage at their own discretion, but in line with the information published on the www.gov.uk/df website. The Guide states: 'Institutions are free to determine the assessment criteria for eligibility for discretionary bursaries, and the frequency of and conditions for payments for all awards; subject to the requirements of the Equality Act 2010'.

The Commission suggests that information fed back regarding discretionary bursaries is disaggregated by the different protected characteristics. This will enable the DfE to see which young people are accessing the discretionary funding and to support further focusing of bursary arrangements.

The Department for Communities and Local Government (DCLG): Reducing spending on Council Tax Benefits by 10 per cent and localisation from April 2013

Policy intention

Council Tax Benefit was a benefit for people on a low income to help them pay their Council Tax. The Spending Review 2010 announced '...reducing spending on Council

Tax Benefits by 10 per cent and localising it, saving £490 million a year from 2013-14, while protecting the most vulnerable'.²⁶

Specific recommendations from the original report

The Commission recommended that DCLG should ensure that any risk was properly identified as the policy was developed and rolled out, and that they should monitor the impact of the measure on people with protected characteristics.

What has happened since to monitor impact of this measure

Detailed proposals were set out in the Local Government Finance Act 2012 and an EIA for localising support for Council Tax was published by DCLG on 10 January 2012 which stated that:

- As a vulnerable group, low income pensioners should be protected from any reduction in support as a result of this reform.
- There was a potential impact on disabled people but that it was not expected that the policy would disproportionately affect any particular gender or ethnicity.
- The impact on disabled people in terms of the awards reduction was dependant on how local authorities responded to the reduction in Council Tax Support (CTS).
- On follow-up and monitoring it would be for local authorities to review their own schemes.

On mitigating actions the EIA stated that the responsibility for vulnerable groups lies with local authorities (other than pensioners who have been exempted at national level). DCLG has indicated that this policy will be subject to an independent review within three years of its implementation and at present is considering what data will be needed and how best to collect it in order that an effective and thorough review can take place.

In May 2012 DCLG issued a guidance note to ensure local authorities took into account existing duties in relation to vulnerable groups: this included the requirements of the Public Sector Equality Duty (Equality Act 2010) in relation to people with protected characteristics.

In October 2012 government announced £100 million in transitional funding whereby the local authority schemes that matched the criteria could apply for this additional funding for 2013/14. This was designed to encourage local authorities to limit the

²⁶ http://cdn.hm-treasury.gov.uk/sr2010_complereport.pdf – 'Spending Review 2010'.

financial impact of the changes on the most vulnerable during the transition from Council Tax Benefit (CTB) to CTS.

The government made an additional £100 million transition grant available in 2013-14 to help councils develop well-designed council tax support schemes and maintain incentives to work. A key criteria which would have helped protect vulnerable groups was that those who would have paid nothing under Council Tax Benefit pay a maximum of 8.5%

Monitoring at local level

During the implementation process local authorities were required to consult on their proposed schemes. Some local authorities used the consultation process to confirm that the proposals they had in place to protect vulnerable groups were the right ones for their local area, and took the opportunity to tweak their schemes accordingly based on feedback received. For some authorities, this included introducing additional groups for protection, for instance carers, exempting more groups from making the minimum payment and opting to protect disabled people and carers in full.

Issues for further consideration

Local authorities made their decisions on CTS within an overarching framework established by central government. The PSED requirement to track the impact of decisions on people with different protected characteristics would include the impact of the changes to council tax funding and its devolution, including as preparation for the next spending round.

Departments play a key role in providing the necessary evidence and analytic work for Spending Review decisions. In relation to Council Tax support this would include knowing the overall impact on different groups at a national level to assess how any additional changes to the scheme might impact and compound already negative impacts, and what mitigations to introduce.

The Commission recognises that central government departments are not best placed to collect evidence to evaluate the impact of devolved policies on those with different protected characteristics. Efficiencies in data gathering point to the importance of setting requirements for impact evidence for different groups from local data sources, e.g. council tax support data collected by local authorities. This would ensure that the department is able to meet its continuing due regard duty and provide a source of impact evidence for HM Treasury, to inform the next round of Spending Review decisions on that policy area.

Department for Transport: Reduction by 20 per cent of the Bus Services Operators Grant (BSOG) from April 2012

Original impact evidence

BSOG refunds some of the fuel duty incurred by operators of registered local bus services in the UK. This allows operators to run more services with some lower fares than would otherwise be the case.

The Department for Transport (DfT) had provided HM Treasury with an equality data return that identified negative impacts on those in low income households, those with mobility issues, women and ethnic minorities (notably those in low income households). This data submission was highlighted in the assessment report as an example of good practice. The subsequent HM Treasury information to Ministers did not include reference to all the potential adverse impacts highlighted in the DfT analysis, specifically that people with disabilities would be potentially affected. The Commission was unclear on where decision-making lay and was therefore unable to establish whether or not this decision was in full accord with the requirements of the Disability Equality Duty.²⁷

Commission recommendations

We recommended that the DfT monitor the new arrangements in order to understand the actual impact on people with different protected characteristics. Particular consideration should be given to the impact on the ability of people with different protected characteristics to participate in public life, or to access employment.

What has happened since to monitor impact of the measure

Bus funding arrangements and services are a complex mix of private deregulated services²⁸ and statutory concessionary fares with a much larger overall budget, reimbursed to Local Transport Authorities (LTAs) and then on to bus operators. LTAs also provide additional 'tendered' services covered by local funding or voluntary activity. Concessionary fares beyond the statutory are offered and funded at the discretion of the local authority.

²⁷ The Assessment was carried out on the Public Sector Equality Duties in place at the time.

²⁸ Except in London which was regulated and run through Transport for London.

Some authorities have cut back provision to the statutory minimum but exact numbers are not known. Officials described this as a very rich system, but in terms of monitoring impact, it was difficult to know which lever was having an effect.

Monitoring challenges also included: other Spending Review 2010 measures impacting on local authorities at the same time; an overall 28 per cent reduction in local authority revenue expenditure from 2011-12; changes in the formula for concessionary travel reimbursement leaving some authorities with reduced pay-back; authorities prepared for BSOG reduction well in advance, and austerity impacting on travel journeys. DfT also identified the scale of activity and the size of the monitoring task: there are 12,000 bus services and around two-thirds of all journeys made using public transport in Great Britain are by bus, with approximately 4 million passengers.

DfT recognised the importance of statistics for pointing to trends. Data sources were identified as:

- Annual survey of bus operators – number of passengers (concessions/non-concessions), number of miles.
- National travel survey – household survey, disaggregated, mobility rather than disability, can monitor long-term trends.
- Accessibility statistics – access to key services.
- Concessionary travel studies.
- National Bus Model. Includes consideration of children/adults, metropolitan/non-met areas, rural/urban and models impact of policy changes.

These sources would identify changes in journeys by users over time, but not the effect of reduction in funding streams on services available and usage.

Government are not imposing data requirements on local authorities to monitor impact, but the department is in contact with local teams who hold more detailed information both on impacts and on measures being put in place which could reduce the risk of disproportionate negative impact on service users. This overview with access to detail at local level was felt to be the efficient way to monitor impact of spending.

Possible ways forward for equality monitoring and mitigations

The DfT were able to point to organisations and local transport authorities who were monitoring the impact of the reduction to BSOG on local services alongside other spending reductions. Their evidence had been used effectively to make the case for no further funding reductions, particularly focusing on potential negative social and

economic impacts. While some reports made reference to the usage and importance of buses by people with different protected characteristics, monitoring of the understanding of impact of the Spending Review 2010 changes on different groups was not the main objective.

The DfT, Passenger Focus and others indicated that there was potential for local authorities to reduce costs and address specific user needs through better partnership working, planning and delivery of different types of transport services, including public buses, community transport, education, social care and health.

Good practice case studies were provided, e.g. Norfolk County Council where the transport authority was keen to maintain provision after the Spending Review 2010 funding changes, worked with private providers and consulted with local people on their needs, to meet shortfalls.²⁹ The Commission is planning to bring together the department, LGA, key stakeholders and case study LTAs to share equality requirements and support monitoring activity and mitigations on the impact of bus funding reductions for the development of a good practice toolkit in 2014.

²⁹ Interview with Tracy Jessop transport coordinator Norfolk CC, October 2013.

Annex A:

PSED review recommendations

Recommendations

Based on the conclusions drawn by the Steering Group and suggestions for improvements raised by participants in the review (i.e. those with whom we engaged), the Steering Group has developed the following recommendations.

The recommendations for public bodies apply to those in England or those carrying out non-devolved functions:

For the Equality and Human Rights Commission:

- A. **Guidance must be clearer on the minimum requirements placed on public bodies.** Building on its technical guidance, the Commission should produce shorter, more bespoke guidance clearly setting out what is necessary for compliance.
- B. **Sector regulators have an important role in supporting implementation.** Regulators, inspectorates and relevant ombudsmen services should integrate the PSED in their core functions and collaborate closely with the Commission with respect to compliance action. In some cases there may be a case for co-production of tailored sector-specific guidance where required, although it is recognised that some functions are so broad as to make such guidance virtually impractical.
- C. **Public bodies should not collect diversity data unless it is necessary for them to do so.** The Commission and Information Commissioner should work together to provide greater clarity on the role of data and its collection, the use to which data is put, and what is necessary for compliance with the PSED. In respect of both data collection and procurement, public bodies should take a genuinely proportionate approach.

Continued...

For public bodies

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

For contractors

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

For government

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

could also be informed by the Commission's medium-term work on how the PSED and the more prescriptive specific duties operate in Scotland and Wales.

Fair Financial Decision-Making: 2014 Progress Report was published by the Equality and Human Rights Commission. This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com.

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