Awareness and understanding of EHRC guidance on the Public Sector Equality Duty

A qualitative study

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Independent Social Research
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List of acronyms

PSED - Public Sector Equality Duty
EHRC - Equality and Human Rights Commission
CAB – Citizens Advice Bureau
VCS - Voluntary and Community Sector
ISR – Independent Social Research
AOC – Association of Colleges
CPPs – Community Planning Partnerships
Executive summary

The Public Sector Equality Duty (PSED) created by the Equality Act 2010 is a legislative mechanism to ensure public authorities consider equality and good relations in their day-to-day activities. It is made up of a general duty covering public authorities and those delivering public functions across Great Britain, and specific duties designed to help public authorities improve their performance of the general duty which are different in England, Scotland and Wales.

The Equality and Human Rights Commission (EHRC) is the regulator of the PSED. As such it 'should ensure clear information, guidance and advice are available to help those they regulate meet their responsibilities to comply' with the PSED.

The EHRC commissioned this research to explore the effectiveness of some of the guidance it has produced on the PSED. The research focused on assessing the effectiveness of the following specific ‘test guidance’ documents:

- **Essential Guides to the PSED** from each country (England, Scotland and Wales), examples of ‘general guidance’.  
  
- ‘**Making Fair Financial Decisions**’, an example of ‘tailored guidance’.

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3 For England and Wales only. ‘Making Fair Financial Decisions: a guide for decision makers in Scotland’ was not tested in Scotland as it was being updated during the fieldwork period.
Although the research focused on particular test guidance documents, it also considered general awareness of the PSED, EHRC guidance and PSED case studies among stakeholders.

Qualitative in-depth interviews, including cognitive techniques, were conducted with stakeholders between September 2014 and February 2015 to:

- consider how they understand and interpret selected EHRC guidance on the PSED
- investigate whether selected guidance is comprehensive, appropriate and accessible to a range of audiences, including equality specialists and non-specialists
- assess and compare the effectiveness of tailored and general guidance in improving understanding
- identify whether there is a need to clarify existing guidance or to provide additional information
- examine contextual factors that may facilitate or impede awareness, understanding and use of the PSED guidance, and
- consider differences between England, Scotland and Wales, and between sectors and type of organisation in terms of how stakeholders interpret and use the guidance.

The findings presented in this report are from 65 respondents representing 46 organisations, including public authorities in four sectors (criminal justice, education, health and local government), spread across England, Scotland and Wales, and a small number public representative bodies including trade unions, Citizens Advice Bureau (CAB), and law centres and other voluntary or community sector (VCS) organisations. Public authority respondents were employees with a significant formal role in dealing with equality issues, including responsibilities relating to the PSED (equality specialists) and others who need to be aware of the PSED and act on it but don't have it as part of their job description (non-specialists).

Is EHRC guidance on PSED reaching its target audiences?

It found that public authority respondents generally were more aware of the PSED and EHRC guidance than public representatives; equality specialists in public authorities were more aware than non-specialists; and respondents from Wales and Scotland were more aware than those in England.

Across all of EHRC’s PSED guidance, respondents in public authorities had the most knowledge of the PSED Technical Guidance\(^4\) and the Essential Guides. Awareness in all three countries was lowest in relation to more tailored guidance, including ‘Making Fair Financial Decisions’, and the case studies. In Wales and Scotland, awareness of other more detailed EHRC supporting guidance to the Essential Guides also seemed to be higher than in England.

Although the Essential Guides were better known than ‘Making Fair Financial Decisions’ among public authorities, many had not seen the test guidance documents prior to interview. This might be because many public authorities saw the role of mastering the details of the legislation and guidance to be for one person or a small team who would channel understanding as required to others in the organisation.

The research also picked up evidence of significant changes in equality specialist roles within public authorities. Several respondents in the sample were newly appointed equality leads with no previous PSED expertise and little time to develop it, sometimes because they had other responsibilities to deal with.

Is EHRC guidance on PSED accessible and used?

Ease of location and readability

Those who explored the EHRC website for PSED guidance often encountered frustration, even when looking for specific named documents.\(^5\) This may be a contributing factor affecting the current level of reach of EHRC guidance.


\(^5\) Interviews were conducted between September 2014 and February 2015. The PSED webpage was restructured in January 2015.
Some equality leads in Wales and Scotland were happy with their Essential Guides, but other respondents, including newly-appointed equality leads with no previous PSED expertise, described the Essential Guides (particularly the one for England) as too long, wordy and abstract to be engaging and to meet their needs. In contrast, most respondents found ‘Making Fair Financial Decisions’ more useful, accessible and engaging because it is much shorter and more practical.

Illustrative examples and checklists were welcomed in all the documents but respondents wanted to see more that were pertinent to their sector or function without adding length to the guidance documents. The Essential Guide for England was also the only general guidance with a glossary, which was deemed to be helpful by respondents in other countries.

**Use**

Equalities specialists in all three countries were more likely to have used the test guidance – mainly the Essential Guides – than non-specialists. Some respondents thought they might refer to it in future, having become familiar with it through the research. Equality specialists used the test guidance to help with: understanding the requirements on their organisation – either at the time the PSED was enacted or when coming into their job; preparing briefing materials for other staff; ‘dipping in’ to check points of detail; preparing reports or publications; supplying authoritative back-up for messages to parts of the organisation; and checking compliance.

Public authorities do not rely solely on EHRC guidance to understand the law and what is required of them – they mentioned other sources of information and support in the interviews, including guidance from other Government departments or regulators, reports of case law, professional and sector-specific journals or inter-agency groups and networks. In Scotland and Wales there was particularly strong evidence of networking and of direct contact with EHRC representatives.

In some sectors, EHRC guidance may not be a primary resource or source of advice because there are other regimes of regulation and requirements that include equality and diversity. Respondents from public authorities in these sectors indicated these were more ‘front of mind’ than the PSED – for example, in England the NHS Equality and Diversity System 2 or the Ofsted inspection framework.

**Is EHRC guidance on the PSED comprehensive and understood?**

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**Structure and benefits of the PSED**
Most respondents understood from the tested EHRC guidance that the PSED consists of a general duty to have ‘due regard’ to three aims and specific duties setting out practical requirements. Most also understood that compliance with the specific duties did not guarantee compliance with the general duty, but this remained unclear for some even after reading the guidance.

The **purpose and benefits of the general duty**, as outline in the Essential Guides for England, Scotland and Wales and in ‘Making Fair Financial Decisions’, were well understood. Positive ‘business arguments’ for the general duty tended to resonate to a greater extent with public authority respondents. The risks of legal challenge and to organisational reputation were also thought to have a place in reinforcing messages about the importance of compliance. The research found interest from public authority respondents in the ‘right thing to do’ in terms of equality, but also in just managing risk around equalities issues. Alongside evidence of public authorities looking for the PSED’s ‘minimum requirements’, there were examples of stakeholders understanding that the law allows and encourages more than this, and that the legislative framework lends itself to raising standards and expectations around equality.

Public authority respondents in all three countries understood that the **general duty** applies to public authorities and others carrying out public functions. Less clarity existed on how this would play out in practice through the range of joint working arrangements between public authorities, private companies and third sector organisations. More generally, there were indications that small authorities and/or those with little direct contact with the public may have difficulty finding out and understanding what they need to do to comply with various aspects of the PSED.

The **three aims of the general duty**\(^6\) were also familiar and well understood, especially by equality specialists. However, the standard formulation was still described by some as dense and technical. Public authority respondents generally understood that the second and third aims require them to be proactive in dealing with equality issues, and that compliance with the second could involve treating some people more favourably than others to meet their needs or encourage participation.

Equality specialists in all three countries thought the case for positive action could sometimes be hard to make to non-specialists. Some public representatives appreciated the guidance going beyond just an emphasis on unlawful actions and process to cover positive actions as well.

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\(^6\) These are referred to as ‘needs’ in the Essential Guide for Scotland. They are: to eliminate unlawful discrimination and victimisation; advance equality of opportunity; and foster good relations between people.
The **specific duties** were often regarded as the main area where public authorities were likely to be monitored. They were often considered to be the responsibility of specific staff in the organisation. Respondents thought the Essential Guides succeeded in providing an overview and map of the specific duties, and did not expect those Guides to give more detail. Some public authority respondents in Wales and Scotland believed the greater spread and number of specific duties in their countries was helpful. However, they still reported difficulty making decisions on the interpretation of terms such as ‘reasonable steps’ or ‘substantial impact’. Public representatives appreciated that the specific duties provide ‘transparency’ as to what they can expect from public authorities.

**Key terms**

Generally the key terms in the guidance, such as ‘**protected characteristics**’, are already well understood, especially among equality specialists.⁷

‘**Due regard**’ is the key legal term underpinning compliance with the general duty. The term is open to interpretation and, since the law was enacted, its meaning has been clarified to some extent by case law. However, in general, most respondents still found it challenging to understand what ‘due regard’ requires in practical situations even after having read the test guidance.

All the Essential Guides include principles drawn from case law to clarify what ‘due regard’ means. Many respondents found these principles dry, legalistic and not very accessible, especially non-specialists and public representatives.

In England, where there are fewer specific duties for listed authorities to comply with, the twin concepts of **relevance and proportionality** are particularly important to an understanding of due regard. Some public authority respondents struggled to think of functions where the PSED was not ‘relevant’. They preferred to consider decisions or policies on a case-by-case basis and knowledgeable equality specialists were confident of their ability to do so, though they recognised this could be more difficult for others ‘who don’t know what they don’t know’. Proportionality was understood commonly by public authority respondents to mean resources should be concentrated on policies likely to have the most equality impact. This made sense to them, but decisions about proportionality can be hard to make and there was little in either the Essential Guide for England or ‘Making Fair Financial Decisions’ that was thought to be of practical help.

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⁷ Although not everyone could list all the protected characteristics, and some thought an overarching definition of ‘protected characteristics’ would be useful.
Across all three countries, public authorities are expected to publish information and objectives in ways that are accessible to the public. Accessible publishing is a specific duty in Wales and Scotland, and respondents in all three countries mentioned a preference for more guidance on what ‘accessible’ means in practice.

**Compliance and meeting the duty in practice**

Assessing equality impact is a specific duty in Wales and in Scotland but not in England. Although the case law principles make it clear that the equality impact of policies and decisions must be assessed, there is little detail in the Essential Guides about what this entails in practice. ‘Making Fair Financial Decisions’ focuses on assessing equality impact, but solely in the context of financial decision making. For equality specialists, both the Essential Guides and ‘Making Fair Financial Decisions’ made it easy to understand some important aspects of assessing equality impact, but neither document seemed to be able to help specific operational understanding for less knowledgeable respondents. This suggests that alternatives to guidance documents may need to be explored with these audiences. The particular success of ‘Making Fair Financial Decisions’, whether seen prior to the interview or not, seemed to be attributable to its explanation of the law in a more practical way. As such, it provides a potential model for future approaches, especially when communicating to equality specialists in public authorities and with public representatives what could be done to comply with the PSED in specific different circumstances.

Respondents in all three countries reported difficulties in judging what is required in practice for compliance in different situations. A larger number of specific duties did not automatically equate to more clarity. Where respondents felt they were left with a degree of autonomy on what is required because of the way the law has been framed, some were comfortable with this, but others wanted more guidance on how to achieve compliance. Some respondents indicated that there was little to distinguish between compliance and good practice. There was concern about minimum requirements alongside good practice; respondents were generally keen to achieve both. ‘Over-compliance’, in the sense of good practice beyond compliance, was not a concern, but ‘overdoing’ it to reduce the risk of challenge rather than to genuinely promote equality was a concern. Practical context-specific guidance such as ‘Making Fair Financial Decisions’ may prove helpful in avoiding this.

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8 In the specific duties for Wales this is worded as ‘information and objectives published in a format that is accessible to people from protected groups’.

9 Where relevant and proportionate.
Implications

This report provides insight into the current challenges faced by public authorities and public representatives in understanding the PSED and in accessing, understanding and using guidance. Respondents provided a number of suggestions of how these challenges might be addressed and where changes and new approaches to guidance on PSED may better meet their evolving needs:

- Producing guidance resources that are more interactive, visually appealing and engaging than the current written documents. Documents remain helpful, but where it was deemed necessary to produce further guidance respondents indicated a preference for short, tailored and practical publications related to broad functions or specific circumstances. Some suggested that ‘Making Fair Financial Decisions’ could be used as a model for this.

- Targeting any new guidance resources at specialists or non-specialists in different roles, or developing them specifically to help those with responsibility for equalities or the PSED to disseminate important messages within their organisations.

- Consulting and engaging in dialogue with relevant audiences through activities such as the co-production of guidance could offer an opportunity to properly reflect their evolving needs and to draw on their experience and expertise.

- Satisfying the demand for information about different authorities’ experience (good and bad) of trying to apply the law in different sectors and circumstances, including:
  - updates about case law relevant to the PSED, including information on the facts, context, legal arguments used and outcomes, and
  - raising awareness of the case study examples already published on the EHRC website[^10] and considering publishing new ones, again drawn from ‘real life’ and covering different sectors, functions and circumstances.

- Addressing gaps in understanding or areas of uncertainty by placing a greater emphasis on the positive arguments for the PSED, as well as reworking existing sections of the guidance that were found difficult to understand, and by further unpacking specific terms such as ‘due regard’, ‘relevance’, ‘proportionality’, ‘substantial’ or ‘reasonable’.

1. Introduction to the research

1.1. Purpose and aims of the research

The Equality and Human Rights Commission (EHRC) commissioned Independent Social Research (ISR) to test the effectiveness of guidance it has published to date on the Public Sector Equality Duty (PSED). This research covers public authorities and, to a lesser extent, organisations representing members of the public, service users and public sector employees. These are referred throughout as ‘public representative bodies’. The research was designed to:

- consider how stakeholders understand and interpret selected PSED guidance produced by the EHRC
- investigate whether the guidance is comprehensive, appropriate and accessible to a range of audiences (including equality specialists\(^{11}\) and non-specialists\(^{12}\))
- assess and compare the effectiveness of tailored guidance and general guidance in helping stakeholders understand the requirements of the PSED and meet these in practice, and
- identify whether there is a need to clarify existing guidance, or to provide additional information.

To the extent possible, the research also examined:

- contextual factors that may facilitate or impede awareness, understanding and use of the PSED guidance, and

\(^{11}\) Specialists are defined as public authority employees with a significant formal role in dealing with equality issues within the organisation, including responsibilities relating to the PSED.

\(^{12}\) Other staff members who need to be aware of the PSED and act on it, but who don’t have it as part of their job description (for example, those responsible for corporate policy or service planning and delivery, commissioning, procurement and human resources).
• differences between England, Scotland and Wales, and between sectors and types of organisation in terms of how stakeholders interpret and use the guidance.

The findings of the research offer a snapshot of how a variety of stakeholders, both equality specialist and non-specialist, interpret selected EHRC guidance on the PSED in order to understand what is required of them over three years after the law was introduced. They reflect understanding that has had time to develop and mature, and that has been influenced by other factors and sources of support, as well as by the specific guidance documents that are the focus of the research.

1.2. The test guidance

The Commission has published a range of products to enable all stakeholders in Great Britain understanding the requirements of the public sector equality duty, and when the research fieldwork took place these were:

- **Technical guidance** (3 documents in total) explains in detail the requirements of the general and specific duties.
- **General guidance** (20 documents in total) explains the requirements of the general and specific duties using accessible language so any interested party can understand and use it.
- **Tailored guidance** (9 documents in total) explains the requirements of the general and specific duties using accessible language but targeted at specific sectors, functions or circumstances (e.g. those working in schools; those involved in procurement, or elected members in public authorities; those working in the voluntary and community sector; people with learning disabilities).

In addition, the Commission has published **case studies**\(^{13}\) to illustrate how the PSED or former equality duties have been effective used by public authorities in different sectors to achieve tangible benefits for their staff and service users.

The research focused on the most recently available versions of the following documents, published by the EHRC, and referred to as the ‘test guidance’:

• ‘The Essential Guide to the Public Sector Equality Duty – England (and Non-
  Devolved Public Authorities in Scotland and Wales)’
• ‘The Essential Guide to the Public Sector Equality Duty – An overview for
  listed public authorities in Wales’
  Authorities, Scotland’, and
• ‘Making Fair Financial Decisions’ for England and Wales only.\textsuperscript{14}

The Essential Guides for each country are designed to explain the requirements of
the PSED using accessible language so that any interested reader can understand
and use them. In the context of this research, this means they are intended to be
relevant and useful to equality specialists and non-specialists within public
authorities, as well as those working in organisations representing the public such as
trade unions, and voluntary and community sector (VCS) organisations. Each
Essential Guide provides an overview of the PSED that is country specific. In each
country, the Guide is supported by additional documents that provide more detailed
advice on good practice in different areas. However, these supporting documents
were not covered by the research.

‘Making Fair Financial Decisions’ is an example of ‘tailored guidance’ published by
the EHRC, designed to explain the requirements of the duty targeted at specific
functions; in the case of ‘Making Fair Financial Decisions’, decision making involving
finance. While the Essential Guides are designed as informative overview
documents, ‘Making Fair Financial Decisions’ is designed to be practical and this is
reflected in its style, tone and presentation.

‘Making Fair Financial Decisions’ is mainly about presenting the business case for
using the PSED in the context of financial decision making, and how to comply with
the PSED in practice. Like the Essential Guides it is intended for equality specialists
and non-specialists within public authorities as well as for public representatives. The
primary audience is senior decision-makers and leaders in public authorities, but it is
also targeted at members of the public and their representatives for use in
challenging poor practice.

Further details of the content, structure and format of the test guidance are provided
in Annex 1.

\textsuperscript{14} It was decided not to test ‘Making Fair Financial Decisions: A guide for decision-makers in Scottish
public authorities’ with interviewees in Scotland, as this had not been available on the Commission
website in the period immediately prior to the project, so interviewees could not reasonably be
expected to be familiar with it. However, ‘Making Fair Financial Decisions’ was discussed alongside
the Essential Guide for Scotland in four interviews carried out early in the research.
Although one aim of the research was to assess and compare the effectiveness of the Essential Guides and ‘Making Fair Financial Decisions’, the documents are not directly comparable. They are intended to serve different purposes and there are important differences in coverage and content. However, lessons about the relative success of one type of guidance that could be transferable to the other are highlighted; for example in style of presentation, clarity or usability of content, or examples provided within the text.

1.3. Method

Between September 2014 and February 2015, 65 respondents\textsuperscript{15} from 46 organisations took part in qualitative in-depth interviews carried out mainly face-to-face, but by phone in a few instances. Selected organisations were primarily public authorities, given that they are required to comply with the PSED general and specific duties. The sample also included a small number of public representative bodies because the PSED can also be used to negotiate with or challenge public authorities to encourage better compliance. Public authorities were drawn from four key sectors (health, education, local government and criminal justice) across England, Scotland and Wales. Public representative organisations included trade unions, Citizen’s Advice Bureaux (CAB) and law centres, and other VCS organisations. Table 1.1 below provides an overview of the sample organisations:

<table>
<thead>
<tr>
<th>Table 1.1 Overview of respondent organisations\textsuperscript{16}</th>
<th>Health</th>
<th>Education</th>
<th>Local government</th>
<th>Criminal justice</th>
<th>Trade union</th>
<th>CAB/law centres</th>
<th>Other VCS</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>5</td>
<td>3</td>
<td>7</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>24</td>
</tr>
<tr>
<td>Scotland</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Wales</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>-</td>
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<td>8</td>
<td>12</td>
<td>8</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>46</td>
</tr>
</tbody>
</table>

\textsuperscript{15} Plus an additional three respondents who participated in pre-pilot discussions.

\textsuperscript{16} Public authorities in the education sector included colleges of further and higher education and two schools in England and Wales, and education authorities in Scotland. Health organisations included hospital trusts, health boards, a mental health partnership trust and a clinical commissioning group in England and Wales, and regional health boards in Scotland. Criminal justice sample organisations included police forces, probation trusts, and community justice authorities in Scotland. Local government included unitary authorities in Wales and Scotland and both tiers of local government in England, with a broad mix of urban and more rural local authority areas covered.
To ensure that conversations were held with a wide range of stakeholders operating in different settings and at different scales in all three countries, organisations were selected purposively to provide:

- a mix of urban, suburban and rural locations, and
- different sizes of public authority.

More than one person was interviewed in some organisations; generally separately, but occasionally together. Within public authorities, respondents were senior and mid-level managers and decision-makers\(^\text{17}\) including:

- employees with a significant formal role in dealing with equality issues within the organisation, including responsibilities relating to the PSED - ‘specialists’, and
- other staff members who need to be aware of the PSED and act on it but who don’t have it as part of their job description – ‘non-specialists’ (for example, those responsible for corporate policy or service planning and delivery, commissioning, procurement and human resources).\(^\text{18}\)

Public representative respondents included chief executives or others nominated as the most relevant person to offer an organisational response. More detailed information about the organisations and the individuals who took part in interviews is given in Annex 2.

Sixty-five individual respondents participated. The number in each subgroup was nevertheless small and often diverse.\(^\text{19}\) Findings are indicative, as the samples of organisations and of individual respondents are not representative. The evidence collected in this study is qualitative in nature; it is rich in detail and texture, providing illustrative examples, quotations and insights. It picks up themes and issues that help

\(^{17}\) Job titles included, for example, Head of Equalities and Community Engagement, Director of Organisational Development, Head of Strategy and Equality, Head of Service (HR), Assistant Principal (HR), Superintendent – Support and Service Delivery, Strategic Director of Commissioning, Assistant Director of Organisation and Governance, Assistant Director of Nursing, Director of Quality and Learner Experience, Acting Head of Crime and Justice Command, Senior HR Business Partner, and Equalities Lead. These were a mix of seniority including elected members and directors involved in key decision making, including in relation to finance.

\(^{18}\) Respondents were recruited in a staged process involving preliminary contact with chief executives to explain the purpose of the project, obtain permission to interview staff and identify the most appropriate individuals to interview. This was followed by contact with named individuals to set appointments. All respondents were encouraged to prepare for their interview; they were told what the interview would cover and were sent copies in advance of the guidance to be discussed.

\(^{19}\) This was especially the case for public representatives.
to address the key research questions but it is not possible to generalise to the wider population of organisations and public authority employees. Throughout this report quotations are included liberally in the discussion of findings and give insight into the way respondents think, talk and feel. However, they are only for illustration and should be understood in context. Presence or absence of verbatim does not denote importance. See Annex 2 for an explanation of how verbatim has been attributed throughout the report.

The report unpacks the evidence with reference to country, sector, role and document tested. While differences (or similarities) between groups of respondents on some subjects and for some documents are valid, we have been cautious in making comparisons where there were few respondents.

Interviews were wide-ranging in order to address the broad aims of the study. They focused on the test guidance and in particular on the substantive content of the documents. Standard qualitative interviewing techniques were used alongside cognitive interviewing methods; the former explored more general questions on awareness, accessibility and use of the guidance, and factors influencing this, and the latter probed respondent understanding and interpretation of particular parts of the test documents of interest to the EHRC. These included key terms and concepts central to the PSED and sections about putting the PSED into practice (especially in the Essential Guide for England and ‘Making Fair Financial Decisions’). The aim was to explore how far these elements ‘work’ in multiple contexts and learn more about their application and use. Typically, respondents were asked whether and how easy they found it to understand the selected text and to explain it in their own words. Further clarification and applied examples were sought as relevant.

A topic guide (see Annex 2 for a summary of this) was developed that provided a template for the interviews, but which was used flexibly to take account of individual respondents and their circumstances. For example, their role within the organisation, their familiarity with equalities legislation and with using guidance, other relevant background experience and knowledge, the sector in which they worked, the type of organisation and local factors. Not everyone who took part was asked about every subject on the topic guide and not all the subjects were covered in the same depth in each interview. Consistency of coverage was balanced with ensuring that interviews captured what was most relevant and important to each respondent. In general, respondents were questioned in depth only about one piece of guidance: an Essential Guide or ‘Making Fair Financial Decisions’. In interviews in which both were covered, the second was in less detail. A copy of the test guidance was sent to respondents in advance of the interview and most respondents made time to look at
it beforehand. Working through a document in detail before their interview was a sizeable requirement for respondents and time had to be allowed in the interview for respondents to remind themselves of what the guidance said. Interviews were scheduled to take an hour but many lasted longer. We are extremely grateful for the considerable time and effort that respondents put into this research and for the valuable insight they provided.

1.4. Structure of the report

The report is structured as follows:

Chapter 2 completes the background section of the report (SECTION 1). It provides a brief overview of the PSED. It explains the law, differences between England, Scotland and Wales, and, importantly, what this means for the guidance that the EHRC publishes.

The key findings from the research are set out in SECTION 2 as follows:

Chapter 3 covers two contextual themes that are important to an understanding of the findings reported in later chapters. It includes findings from the research on the understanding and awareness that different internal audiences within public authorities have of the EHRC guidance, and the range of other sources of support on the PSED that public authorities use to understand it.

Chapter 4 explores respondents’ awareness of the PSED and of the guidance produced by the EHRC, their experience of accessing it and how (if at all) they have made use of it. It also describes what respondents thought of the structure and presentation of the documents themselves (but not the substantive content).

Chapter 5 deals with respondents’ understanding of the content of the PSED and examines how far the test guidance is successful in helping stakeholders to build a clear picture of the PSED, its purpose and benefits, what the legal requirements are, what compliance looks like, and what represents good practice (beyond compliance).

The final section of the report (SECTION 3) presents key findings and conclusions.
2. The Public Sector Equality Duty (PSED)

2.1. Introduction

The PSED was created by the Equality Act 2010. It is an important mechanism for fulfilling the policy intentions of the Equality Act 2010, by building consideration of equality into the day-to-day business of public authorities and helping them avoid discrimination.

2.2. Origins

The PSED replaced the three previous equality duties for race, disability and gender, integrating other characteristics protected by the Equality Act 2010. The development of the PSED was influenced by the recommendations from two major reviews that took place between 2005 and 2007:

- the independent ‘Equalities Review’, one aim of which was to inform the development of the proposed Single Equality Bill including an integrated equality duty, and

- the ‘Discrimination Law Review’ led by the Government Equalities Office to develop the new legislation.

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20 The race equality duty came into force in 2001, followed by the disability equality duty in 2006 and the gender equality duty in 2007.

21 The PSED applies to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In relation to marriage and civil partnership, a body subject to the duty only needs to comply with the first aim of the duty (eliminating unlawful discrimination), and only in relation to work.

The PSED consists of a general duty set out in primary legislation and is supported by specific duties contained in regulations (secondary legislation). While both Reviews mentioned above agreed that the general duty should be framed to focus on the achievement of outcomes, they disagreed on what requirements should be included in the specific duties. The ‘Discrimination Law Review’ recommended limiting the number of specific duties to a minimum, leaving public authorities more autonomy on how to go about delivering the aims of the general duty. In contrast, the ‘Equalities Review’ suggested that more prescriptive requirements were necessary to enable tangible progress.

Following the ‘Discrimination Law Review’ consultation, the Government confirmed that its single equality bill would include an integrated public sector equality duty made up of:

- a general duty covering public authorities and those delivering public function in Great Britain, and
- separate specific duties for England, Scotland and Wales, set out in regulations.

2.3. Structure and content of the PSED legislation

The general duty, set out in Section 149 of the Equality Act 2010, is the same across Great Britain and came into force in April 2011. It applies to all public authorities as well as private and voluntary sector organisations when they are carrying out public functions. The policy intention behind the general duty is to provide overarching aspirational aims rather than prescriptive rules for organisations to comply with. The courts have provided clarification of the meaning of ‘due regard’ and what represents compliance, but to some degree the concept remains open to interpretation.

In summary, those subject to the general equality duty must have ‘due regard’ to the need to:

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24 As with the previous duties.

25 As with the previous race, disability and gender duties, the new general duty relies on the concept of ‘due regard.’ This means that public bodies must consciously think about the three aims of the general duty when making decisions and when carrying out their other day-to-day activities.
• eliminate unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act
• advance equality of opportunity between people who share a protected characteristic and those who do not, and
• foster good relations between people who share a protected characteristic and those who do not.

The Act explains that fostering good relations encompasses promoting understanding and tackling prejudice. It also states that having due regard to advancing equality of opportunity involves:

1. Removing or minimising disadvantages suffered by people due to their protected characteristics.
2. Taking steps to meet the needs of people sharing particular protected characteristics where these are different from the needs of other people.
3. Encouraging people who share a relevant protected characteristic to participate in public life or in other activities where their participation is disproportionately low.

The Equality Act 2010 enables employers and service providers in any sector to take voluntary positive action measures when proportionate. The three elements listed above correspond exactly to the circumstances where positive action is permitted. This emphasises the potential value of positive action as a tool in advancing equality of opportunity between people with different protected characteristics.

As noted in 2.2 above, the specific duties are set out in regulations and are different in England, Scotland and Wales. Some of the specific duties are similar across Great Britain but there are also notable differences. Table 2.1 below provides information on the broad themes covered by the specific duties for each country, showing the similarities and differences in the requirements for listed public authorities across Great Britain.

As Table 2.1 shows, key differences between the three nations relate to the number and prescriptiveness of the specific duties. Specific duties in Scotland and Wales set out more explicit requirements for public authorities than in England.

In addition, it is important to note that some of the specific duties have been framed to fit in with the devolved policy context. For example, in Scotland public authorities

are required to publish a set of equality outcomes rather than objectives. This is congruent with the Scottish National Outcomes and Single Outcome Agreements.\textsuperscript{27}

\footnotesize{\textsuperscript{27} See \url{http://www.gov.scot/About/Performance/scotPerforms/outcome} [accessed: 2 March 2016] and \url{http://www.gov.scot/Topics/Government/PublicServiceReform/CP/SOA2012} [accessed: 2 March 2016]}
Table 2.1  The specific duties for public authorities in England, Scotland and Wales

<table>
<thead>
<tr>
<th>Information relating to employees who share protected characteristics</th>
<th>England</th>
<th>Scotland</th>
<th>Wales</th>
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<tr>
<td>√ - For public authorities with 150 or more employees.</td>
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<tr>
<td>Information relating to people who are affected by the public authority’s policies and practices who share protected characteristics (for example, service users)</td>
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<tr>
<td>Information on pay differences</td>
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<td>√ - Gender pay gap.</td>
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<tr>
<td>Statements on equal pay (gender, race, disability)</td>
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<tr>
<td>√ - At least one objective is required.</td>
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<tr>
<td>Equality objectives/equality outcomes</td>
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<td></td>
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<tr>
<td>√ - Consider all relevant protected characteristics within a set of outcomes or explain why not.</td>
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<tr>
<td>√ - Consider having at least one objective for each protected characteristic or explain why not. Must consider objectives to address pay differences/gender pay gaps or explain why not.</td>
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<tr>
<td>Strategic Equality Plan</td>
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<tr>
<td>Report progress on mainstreaming the equality duty</td>
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<td>Progress reports</td>
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<td>Review/revision of objectives</td>
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<tr>
<td>Documents relevant to PSED are accessible to the general public</td>
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<td>Impact assessment of policies and practices</td>
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<tr>
<td>Engagement/Involvement</td>
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<td>√ - In preparing a set of equality outcomes.</td>
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<td>Public procurement</td>
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<td>Staff training</td>
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<td></td>
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<tr>
<td>Ministers’ duty</td>
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<tr>
<td>√ - Ministers report on activity to assist bodies to meet their duties.</td>
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<tr>
<td>√ - Report on progress and proposal for further areas public authorities should focus on.</td>
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</tbody>
</table>
2.4. PSED guidance and the role of the EHRC

The EHRC is a statutory body, established under the Equality Act 2006. Its statutory duties include promoting equality of opportunity, working towards the elimination of unlawful discrimination, and promoting awareness and understanding of requirements of the Equality Act 2010. Under Section 13 of the 2006 Act, the Commission has a specific power to publish information and give guidance on the Equality Act 2010; this includes guidance on the PSED.

Guidance on the PSED for England, Scotland and Wales provides similar messages about the three aims of the general duty, the protected characteristics covered by the PSED, the purpose and benefits of the general and specific duties, and the principles drawn from case law that throw light on the meaning of ‘due regard’.

As noted earlier, the policy intention behind the PSED was to provide overarching aspirational aims rather than prescriptive rules. Thus, the general duty is a ‘duty to consider’, rather than a duty to achieve any particular result. The meaning of ‘due regard’ and what represents compliance is open to interpretation, and in some cases the court has acted as the final arbiter. Court decisions have had a direct impact on the guidance produced by the Commission. For instance, in 2014 the EHRC updated all of its guidance on the PSED to clarify the meaning of ‘due regard’ taking into account recent English case law.\(^{28}\) The key differences between guidance produced for England, Scotland and Wales relate to the way the specific duties are framed. The Essential Guides for Scotland and Wales link performance of the general duty with a range of express specific duties public authorities must comply with.

In contrast, the Essential Guide for England links performance of the general duty not only with the express English specific duties, but also with implicit requirements for fulfilling the ‘due regard’ duty that have been confirmed by court decisions (for example, assessing equality impact or considering whether there is a need for public engagement). As explained in this Essential Guide, public authorities should meet these implicit requirements where relevant and in a proportionate manner. Most of the implicit requirements identified in the Essential Guide for England appear as express specific duties in Scotland and Wales.

\(^{28}\) See principles of case law at section 0.
SECTION 2 | RESEARCH FINDINGS
3. Context

3.1. Introduction

This chapter focuses on two contextual factors that have emerged from the research and that are important in understanding the findings outlined in Chapters 4 and 5. These factors are: the different audiences for the PSED guidance within public authorities and other sources of information and assistance used by public authorities to understand the PSED.

Mastering the meaning of the PSED, and what it entails for service delivery was reported by many public authority respondents as a role usually assigned to one person or a small team. As such, respondents indicated that using the EHRC’s guidance on PSED could likely be seen as only the responsibility of that individual or team. This would mean that they would also be responsible for channelling their knowledge by various means to others in the organisation. This raised an issue of time and efficiency:

‘He [board member] would expect me to read it, interpret it for him and say – right, these are the options for our organisation…. He would fully understand it and get it, but I think it’s purely the time side of things. I think he’d look at that and be like – “I have other stuff, along with everything else I’ve got to do.”’ (England, public authority, local government, equalities specialist, on the Essential Guide for England)

Some users of the guidance rely heavily on specialists and those with equalities responsibilities in their organisation to tell them what the PSED means for them, their role or function. They include people across the spectrum within public authorities, from those in junior, routine occupations to the most senior levels of management and governance. Non-specialists often did not think that it was their job to read EHRC guidance on the PSED, but this did not imply a lack of commitment to the law or a lack of understanding of the principles of the PSED.
3.2. Audiences within public representative bodies

It is difficult to create simple categories of the potential and actual audiences for EHRC guidance on the PSED within public representative bodies on the basis of this research. The range of public representative bodies in the sample was diverse, and so was their perceived relationship with public authorities and the PSED and, consequently, with the EHRC guidance.

Some public representative bodies saw themselves as allies or partners of public authorities, working together with shared aims to understand and meet the needs of service users sharing protected characteristics. Others saw themselves as challengers of public authorities, though not necessarily or always in matters relevant to the PSED. Some understood the PSED as applying to their organisation because they had been contracted by a public authority to delivery one of its functions, to carry out projects or were in receipt of grant funding from such an authority.

3.3. Other means of understanding the PSED outside of the EHRC guidance

Public authorities do not necessarily rely solely on EHRC guidance to understand the law and what is required of them. Respondents mentioned the following main alternative sources and mechanisms of support used in conjunction or sometimes in place of the tested guidance documents.

- **Professional and sector-specific journals and networks**

  Respondents in all countries used sector and professional networks to find out what similar organisations were doing and to keep abreast of developments. They might report new case law and (importantly) explain the implications of the latest judgments for authorities’ practice. Examples included an education sector equality specialist in England engaging with the Association of Colleges (AOC) and a local government equalities specialist in Wales using the national HR network, who provide a bulletin of changes in employment law including the Equality Act 2010.

- **Local inter-agency groups and networks**

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29 There is insufficient evidence from public representative respondents.
Local networks were also reported as useful for sharing and developing understanding, such as engaging with other further education colleges in England and other local authorities in Wales.

Inter-agency bodies, such as Community Planning Partnerships (CPPs) in Scotland, were also sometimes seen as a way of helping compliance with the PSED along the way. In Scotland and Wales, there was particularly strong evidence of local inter-agency groups and networks providing mutual support on the PSED. These were found to be especially helpful:

‘We are very fortunate in Wales because we have the Centre of Equality and Human Rights in NHS Wales… so they have developed an equality leadership group so all the leads like myself from health meet up regularly, and as well as that we have our North Wales Equality Networks, that is our public sector networks so my equivalent in the police and the local authorities we meet every month and we have a joint action plan and we have joint initiatives to take forward so they are another source of support in terms of operationalising something.’ (Wales, public authority, health, equalities specialist, ‘Making Fair Financial Decisions’)

‘There is the Wales Local Government Association Equality Officers Network that covers Wales, and they meet quarterly… they are very supportive in terms of equalities and how we implement it… What they have done to date is help us put it into practice… they provide equality officers across Wales the opportunity to discuss guidance, what it means in practice, any new ideas, any problems.’ (Wales, public authority, local government, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

- Other EHRC resources and contacts

Public authority participants in Scotland and Wales were more likely than their English counterparts to report direct contact with EHRC representatives, who were able to answer queries or provide advice. This was also appreciated as supplying a form of assurance through EHRC advice and views, and hosting events such as EHRC equality exchange in Wales.
There is less personal contact between EHRC staff and any individual authority in England. This was perceived as a gap by several respondents. However, one respondent in England also mentioned receiving EHRC newsletters, which were used alongside other general sources to help keep up to date with case law on the PSED.

- **Other authoritative guidance on the PSED**

Other organisations have produced PSED-related guidance, in some cases focusing on particular areas like equality impact assessments or engagement. Some respondents have relied heavily on such guidance:

> ‘We have signed up to the National Standards of Community Engagement, and there’s a web-based tool that you use to plan and record your engagement, and the National Standards have got the equality concepts right throughout all of their work, and so I think by using the National Standards material I know that it’s compliant and it takes into account [the PSED].’ (Scotland, public authority, local government, equalities specialist, Essential Guide for Scotland)

> ‘ACAS now have actually developed a really good guide around equality impact assessments which has been really, really useful.’ (Wales, public authority, local government, equalities specialist, ‘Making Fair Financial Decisions’)

In other cases public authority respondents, both PSED leads and others, had referred to policies and procedures developed for their sector as a whole, which may cover the PSED combined with other regulatory requirements.

> ‘We also have standard operating procedures in the police which are “guidance”, but you really need to have a good reason to deviate from the standard operating procedures … We will have standard procedures for practically everything including equality and diversity … People are more likely to read a standard operating procedure than they are an overall guidance document … not that they’re not interested – but they don’t think they’ve a need for such a greater understanding.’ (Scotland, public authority, criminal justice, non-specialist, Essential Guide for
In some sectors weighty regimes of regulation and requirements that include equality and diversity are more ‘front of mind’ than the PSED. For example, guidance on the NHS Equality and Diversity System 2 or on the Ofsted inspection framework for education settings seems more important and relevant to staff than the PSED guidance produced by the EHRC.

Outside of these sources of advice and guidance, some respondents in interviews across all three countries also mentioned that they conducted internet searches both to get answers about the PSED and to link to others dealing with similar issues.
4. Is EHRC guidance on PSED accessible and used?

This chapter explores respondents’ awareness of the PSED and of the guidance produced by the EHRC, their experience of accessing it, and how (if at all) they have made use of it. It also describes what respondents thought of the structure and presentation of the documents themselves (but not the substantive content). Some findings in this chapter are about the EHRC guidance in general, others are specifically about the guidance that was tested. We have tried to make the distinctions clear throughout.

4.1. Awareness

4.1.1. General awareness of the PSED

Public authority respondents in England, Scotland and Wales were generally aware of the PSED prior to taking part in the research, although some were relatively new to it. Some respondents from public representative bodies were familiar with the outline and scope of the PSED and clearly recognised the acronym, but others were not. These respondents had an awareness of ‘equalities legislation’ (for example, that it included prohibitions on discrimination and protection for disabled employees) but little more than that. Some public representative respondents indicated that they were aware that ‘equality impact assessments’ were required for all sorts of decisions, but that these were not necessarily tied in with the PSED in their minds.30

Without being a specific focus of the research, there was enough evidence to suggest some variation among public authority respondents and public representatives in terms of their awareness and knowledge of the EHRC and its role in regulating the PSED and publishing guidance.

30 In England, ‘equality impact assessments’, as specified by previous equality duties, are no longer a legal requirement of the PSED. However, case law has made clear that assessing the impact of proposed changes to policies or practices prior to making decisions is a key way to show due regard to the general duty.
4.1.2. General awareness of EHRC role and guidance

A basic level of awareness among public authority respondents of the existence of EHRC guidance on the PSED was evident prior to taking part in the research, and some respondents recognised the guidance tested once they were re-familiarised through the research process. There was also weaker awareness demonstrated among certain respondents. For example, one NHS respondent with a recently acquired equalities role was more aware of sector specific requirements and associated guidance than of guidance from the EHRC. While there was awareness of the guidance among some of the respondents, not all were aware of having been directed to guidance by the EHRC, or alerted to updates and revisions, by means of systematic dissemination of this information to stakeholders (especially the case among respondents in England). One example indicated the importance of managing expectations on when guidance is delivered and making it easy to find when it is. The respondents’ initial issues from 2009 had meant they had not actively sought the guidance since:

‘I didn’t even know it (Essential Guide for England) had been published until you got in contact with us…I wouldn’t have been aware there had been more recent guidance – you see we were told everything was going to be in 2009… I think I totally gave up on the website … (I was) passionate about (the legislation) and (had) been doing it for a long time, but … I’d be scrabbling around using a mixture of ACAS guidance and … stopped going to the EHRC’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Overall, knowledge of the range of EHRC guidance on the PSED was often patchy and incomplete among public authority participants. Respondents had the most knowledge of the PSED Technical Guidance and the Essential Guides, with less recognition of the detailed supporting guidance on elements of the PSED. This was true for equalities/PSED leads and even more so for respondents whose role did not include any formal responsibilities in this area, especially in England.

In Wales and Scotland, awareness of the more detailed supporting guidance seemed to be higher than it was in England, probably because it sets out in detail what public

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authorities have to do to comply with the more explicit specific duties in these countries. Also, respondents in public authorities in Wales and Scotland often said they found out about guidance directly via communications from the EHRC, but this did not seem to be so much the case in England.

Awareness in all three countries was lowest in relation to the tailored guidance, including ‘Making Fair Financial Decisions’, and the case studies33. Respondents from public representative organisations were, with a few exceptions, less aware of the EHRC’s guidance on the PSED than their counterparts in public authorities.

‘Possibly if I had somebody come to me with a specific question I would’ve looked and I might have found it, but it wasn’t something that I was aware of.’ (England, public representative, union, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

‘We haven’t had [the guidance document] there; we haven’t had for example an invitation to go to training or if you’re promoting – we don’t seem to get any of that information. We do get some information from Citizens Advice but not from [EHRC] directly.’ (England, public representative, advice, non-specialist, Essential Guide for England)

This was the case even with some public representative respondents whose background meant they had some knowledge about the PSED itself. They had not sought out the guidance, partly because they already felt they knew the principles well enough, partly because the guidance and the PSED apply more directly to public authorities.

‘I’m aware of the requirements for local authorities to fulfill their public sector equality duty but I haven’t looked at these documents before personally… I’m not sure I learnt anything in particular [from the Essential Guide for England] that I didn’t assume was the case in terms of the protected groups.’ (England, public representative, advice, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

4.1.3. Familiarity with the test guidance

Many participants in the research said they had not actually seen the test guidance before receiving it in advance of their interview. This was particularly true for those in public authorities who did not have a formal equalities role, and among public representative participants.

Public authority respondents with an equalities role varied in how familiar they were on a day-to-day basis with the tested guidance. Some were very familiar, particularly with the Essential Guides, which they had used regularly. Some were unsure as they went through it if they had actually seen the particular document, or the current ‘version’ of it, before. They had used the guidance and website when the legislation first came in, but had referred to it less over time as they ‘learned by doing’.

4.2. Accessibility of the guidance

4.2.1. Locating guidance on the EHRC website

Those who explored the EHRC website for PSED guidance often encountered frustration. This was the case even when looking for specific named documents.

‘One thing I would ask of the EHRC is to make their website a lot clearer as to where to find documents... (R2) Yeah, that Essential Guide, that we couldn’t find today.’ (Wales, public authority, local government, equalities specialist and non-specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

Common problems mentioned by respondents included:

- search results are inconsistent – sometimes site users can find what they are looking for and sometimes not
- it is not clear whether all relevant guidance on the PSED that is available has been identified
- there is a great deal of guidance on the PSED to be sifted
- different documents are listed, but it is not clear how they relate to one another, whether they overlap, or if the list is complete

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34 Interviews were conducted between September 2014 and February 2015. The PSED webpage was restructured in January 2015, which meant we were not able to test reactions to these changes.
there is no indication of what the ‘minimum set’ might be, which covers the basics on the PSED

it is not readily clear on the website which guidance is suitable for which audience or circumstance, and sometime guidance titles appear relevant to a narrow audience but their content has a wider value, and

document titles do not always clearly signpost content and there can be confusion with documents on other subjects produced by the EHRC, for example ‘Making Fair Financial Decisions’ shares its title with another report on the EHRC website.

4.2.2. How easy was the test guidance to read and understand?

Respondents were asked whether they found the test guidance easy to read and understand, and to comment on aspects that they thought helped or hindered with readability and comprehension. (See Annex 1 summarising key features of the structure, content and format of the test guidance).

PSED leads often assessed the documents not just in terms of how accessible they personally found them, but also how accessible or useful they thought they were for other audiences in the organisation. Aspects such as document length, clarity of language, structure, use of examples and checklists were thought to be important in most cases. However, there was limited scope within the interviews to explore these systematically and in depth, or to tease out the reactions of different groups of respondents. This section therefore covers main overarching themes for different test documents and includes occasional points made that are relevant to particular audiences where they emerged strongly.

Some equalities leads in Wales and Scotland were happy with their respective Essential Guides; they thought they were the right length for someone needing an overview:

‘I find it quite helpful. It is quite brief. It’s good for me that it’s brief because I can remember the sections I need to go to, to make sure I’ve got the right bits. I think it probably helps that I’ve got some knowledge of some of the case law around this.’ (Wales, public authority, health, equalities specialist, Essential Guide for Wales)

‘I think the document itself is excellent. It’s very well written; it sticks to the basics and it’s not 600 pages long.’ (Scotland, public authorities,
Others thought they were overly long, but this criticism was volunteered more commonly in relation to the Essential Guide for England, which is twice the length of the other Essential Guides. Complaints about document length are not surprising; there is a preference in most organisational settings for short and succinct documents that can be read in one go. As justification, respondents often drew attention to the general volume of material they are required to read in their jobs and the other calls on their time. All three documents were thought to be probably too long for most non-specialist audiences. Respondents commonly asked for executive summaries to be included.

Few passed unfavourable comment on the length of ‘Making Fair Financial Decisions’, though some thought it could be even shorter especially for senior non-specialist audiences.

Comments on document length were sometimes linked or related to views about the ‘wordiness’ of the documents – especially the Essential Guides, and especially the Essential Guide for England. Dense, text-heavy pages were generally not welcome and felt burdensome. Some thought greater use could be made of alternative ways of presenting material – more bullet points, flow charts and diagrams, for example. The Essential Guides, and especially the Essential Guide for England, drew remarks of this kind but so too did ‘Making Fair Financial Decisions’, albeit to a lesser extent. In ‘Making Fair Financial Decisions’, the larger font size and more generous use of white space was thought to give a more ‘friendly look’ to the page.

Comments on length were also sometimes linked to views about document structure, its logic and, particularly, clarity on what each section contains. This was very important to readers; helping them to follow the narrative if looking at the document for the first time, to identify parts of most relevance to them and to find sections quickly if using the documents for reference. Positive comments about logical structure were sometimes volunteered in relation to the Essential Guides for Wales and Scotland, and also ‘Making Fair Financial Decisions’. Some respondents looking at the Essential Guide for Scotland, for example, said that there was an intuitive feel to its ‘signposting’, both in the contents and introduction, and at intervals throughout. Some thought the section headings framed as questions in ‘Making Fair Financial Decisions’ (for example ‘What should I be looking for in my assessments?’) aided navigation through the text.

The Essential Guides for Wales and Scotland provide more information about document structure in their contents pages than the Essential Guide for England,
Despite it being a much longer and more complex document. ‘Making Fair Financial Decisions’ has no contents page.

In all three countries, equality specialist respondents with significant background on equality/PSED generally found the Essential Guides to be clear and well-written, even if they thought that non-specialists might struggle to understand them. Equality specialist respondents who were new to the PSED and those with no direct responsibility for equality were more likely to say the guidance was too wordy, legalistic and abstract. Terms contained in much of these documents could be difficult for these readers to make sense of, no matter how ‘plain’ the English.

Some non-specialist respondents reading the Essential Guide for England found it especially difficult. They were familiar with key principles and found the document interesting in parts. However, the way it expanded on the principles and elements of the duty did not leave them feeling confident that they understood the overall structure of requirements.

‘The legislation is obviously very well-meaning but when I finished reading this document I was like – there’s an awful lot within that that actually organisations are required to do – and it just felt a very big job and I don’t think that’s what the legislation is aimed at doing.’ (England, public authority, education, non-specialist, Essential Guide for England)

The Essential Guide for England is the only test guidance that has a glossary, potentially helpful in elaborating technical terms; some respondents in other countries thought that a glossary would be a good addition to the Essential Guides in general.

Respondents were often positive about the direct style in which ‘Making Fair Financial Decisions’ is written and they didn’t find it to be too technical. Those who saw both an Essential Guide and ‘Making Fair Financial Decisions’ particularly noted the contrast in style. ‘Making Fair Financial Decisions’ is intended as a practical document and was generally perceived as such. Some thought the use of active verbs in ‘Making Fair Financial Decisions’, and the words ‘you’ and ‘your’ (as in ‘If you choose not to develop a document of this type…’), contributed to this.

The use of illustrative examples was always commented on favourably by respondents where they appeared in either the Essential Guides or ‘Making Fair Financial Decisions’. Public authority and public representative respondents, equality specialists and non-specialists all welcomed examples as an effective way of clarifying meaning and bringing the text to life. Commonly, respondents would have liked to see more examples in the Essential Guides, though some recognised that
this would increase the length of the documents. Not all the examples provided were thought to be particularly well-chosen or to illustrate the point being made (see further discussion of this in Chapter 5). In general, respondents wanted to see more examples that were pertinent to their sector or function, or that they could use to explain the duty or particular points to others in their organisation.

‘Remember’ checklists included at the end of sections in the Essential Guide for England that summarise key points on what public authorities should consider doing to comply with the PSED were generally welcomed. This was in line with a preference for any formatting that breaks up long blocks of text, highlights the key messages and makes the structure easier to follow. Some would have liked to see a much stronger checklist approach:

‘I think checklists are always good and sometimes if you just put the checklist in the main body of the document and the explanation into an appendix, you know people have read what you need them to read.’


However, respondents did not think that all of the checklists in the Essential Guide for England worked well. They thought that some were an unclear mix of summary points and new points, and some left readers unclear about what they had to do and what was beyond compliance.

Some participants also thought the tone of the checklists was patronising. For example, one respondent commented on a point in the checklist at the end of the section entitled ‘Meeting the equality duty in policy and decision making’ in Chapter 4 of the Essential Guide for England (on ‘Putting the general equality duty into practice’):

**Checklist point:** Assessing impact on equality early on avoids wasting resources if a policy needs to be changed because it discriminates against certain groups or misses obvious opportunities to advance equality of opportunity or to foster good relations:

‘It is condescending… It seems to miss the point that we are trying to deliver services that our customers want, so consultation is built in to everything that local authorities do; we try to make sure that what we do meets their needs and we talk to them about that. So we know we don’t
want to get something wrong because it is more hassle to put it right and it’s always very damaging to your reputation if you do something as an authority that is particularly stupid or doesn’t take into account the impact on an individual regardless of if they have protected characteristics or not.’ (England, public authority, local government, non-specialist, Essential Guide for England)

4.3. Perceived audience for and purpose of the guidance

Comments on the overall perceived purpose of the guidance and its suitability for different audiences are described below.

Unlike the Essential Guides for Wales and Scotland, much of the Essential Guide for England appeared to respondents to be directed at those actually responsible for implementing the duty (as evident in: ‘If you do not have sufficient evidence to enable you to determine relevance…’). It has more detailed, ‘manual-like’ content about putting the general and specific duties into practice and embedding the equality duty into the organisation than either of the other guides. Although the Essential Guides for Scotland and Wales outline the specific duties and what listed authorities must do to comply, this is expressed in general terms that could be directed equally to anyone within or outside a public authority. This aligns with the intention of the guidance to assist those implementing the PSED in public authorities and those who have an interest in the work of public authorities. Both the Essential Guides for Scotland and Essential Wales focus more closely on what is explicit in the legislation for their respective countries and in that sense are seen more as overviews of the PSED:

‘It’s quite a useful reference document for me for – this is what I need to do, this is what we need to do as an organisation with regards to equality, here in Wales.’ (Wales, public authority, education, non-specialist, Essential Guide for Wales)

‘I think it’s that reassurance that it’s just like a kind of checklist of the things that are covered, and it’s quite handy to have the actual extracts of the legislation at the back so it’s a handy reference for me. I certainly wouldn’t use it as the only source of what we need to do and exactly why we are doing things, but it’s a handy thing to have.’ (Scotland, public
As explained in section 4.2.2, a common view was that the Essential Guide for England was a ‘demanding read’, particularly for non-specialists. This point was also evident for the Essential Guides for Scotland and Wales.

‘I think some of it is quite technical, and it was like “I need to go and sit in a dark room and read this to try and get my head round what this really means”... And the reality is most of our people in operational roles aren’t going to do that...’ (Wales, public authority, health, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

‘I don’t think that the majority of individuals involved in business planning, procurement, performance management, grant-making and government and scrutiny would necessarily be prepared to spend the time to read a 28-page document about the PSED’. (Scotland, public authority, health, equalities specialist, Essential Guide for Scotland)

‘Making Fair Financial Decisions’ is explicitly targeted at senior decision-makers/leaders, but some public authority respondents thought that it succeeded in its aim to use accessible language so any interested party (in a public authority) can understand and use it:

‘I think it’s written in a way that people can actually understand the links to practice because there are some examples in it that make it very helpful...’ (Wales, public authority, health, equalities specialist, ‘Making Fair Financial Decisions’)

‘I would give this to Heads of Finance, and I would give it to Service Managers because... they... have to work with communities and relevant politicians to come up with proposals for taking money out of the system. So they’re the ones that co-ordinate and co-produce what comes out so they are the ones that need to understand how they need to embed. I
Though it does not cover the duty itself in much detail compared with the Essential Guides, nevertheless ‘Making Fair Financial Decisions’ was sometimes seen as a useful introduction to the overall shape and key concepts of the PSED.

Several respondents, including those who had come across ‘Making Fair Financial Decisions’ before and those seeing it for the first time, commented that its usefulness was not restricted to financial decisions. The principles that ‘Making Fair Financial Decisions’ sets out, and also the more detailed treatment of the process and content of impact assessments, are equally applicable to all decisions (and decision-makers):

‘The issue around Fair Financial Decisions is actually having ‘financial’ in there means, I think, that it misses a trick. Because it’s actually about fair decisions, and the fact that it says financial means that if there isn’t an obvious overt finance bit to a decision people don’t think it applies, so it’s almost working against those of us who are trying to make sure that the equality considerations are taken into account in everything we do.’
(Wales, public authority, health, equality specialist, Essential Guide for Wales and ‘Makin Fair Financial Decisions’)

Some public representative respondents thought a version of the Essential Guide for England tailored for their role as representatives would be better:

‘This one gives an overview for us of what public bodies are being informed [of], but I do think one a little bit more tailored to us would be (better)...’

‘These requirements are not requirements for us so therefore they need to be more detailed for the person or for the organisation that is required to implement. I think for those people [like us] who [just] ought to be aware or need to be aware of what those requirements are, it could be done much more succinctly.’
(England, public representative, advice,
Coverage of the specific duties in the Essential Guides was thought by some public representative respondents to be potentially useful to them in challenging public authorities on their compliance with the duty, ensuring those bodies are gathering the specified information, or reading and using it themselves:

‘I did ask them [other union officers, when she had read the guidance in advance of the interview] “have you had access to any information that’s been published?” And the officers have said no. I said “have you asked them?” And they said, well yes and we’ve been told it’s not available… I said “this is one that we do need to be going in and saying – where’s your latest information?”’ (England, public representative, union, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

For various public representative respondents there was also particular interest in: content relating to responsibility for the PSED when services were contracted out; information on cumulative impacts; references to the requirement to mainstream the duty; and reference to the need for the PSED to be ‘embedded’, including the text in the Essential Guide for England about the importance of training for public authority employees.

Some public representative respondents noted that the general tone of the guidance went beyond an emphasis on prohibited (unlawful) actions and processes. A few comments showed this was a key positive impression they drew from the documents and that it made them think afresh about the PSED:

‘I think we ought to be more aware of, of that requirement to take positive action rather than just to avoid things, you know unlawful action. This seems a much more positive approach.’ (England, public representative, advice, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)


(www.equalityhumanrights.com)
4.4. General use of the test guidance

PSED leads were more likely than other categories of stakeholder to have seen and used the guidance in the past, especially the Essential Guides but also ‘Making Fair Financial Decisions’ in England and Wales. Thus, many of the findings reported in this section are based on interviews conducted with this category of stakeholder.

A few stakeholders in other categories said that, having seen the guidance because of this research, they might use it in future. These included senior managers responsible for complex service delivery and some public representative respondents, particularly from trade unions.

PSED leads used the Essential Guides in a number of ways, for example:

- To understand the legislation and what it requires of their organisation, especially when the PSED was first enacted but also when coming into their job.

‘They’re overarching guides. The Essential Guide when it came out was like a godsend in a sense, because it gave more information rather than just the legislation that came through, and you could say – that’s what that means.’ (Wales, public authority, local government, equalities specialist and non-specialist, Essential Guide for Wales and Making Fair Financial Decisions)

‘I did use the EHRC website pretty much straightaway, went through this and the other accompanying information, the engagement, the other ones that went into a bit more detail around those specific strands, and first of all just tried to summarise them, took them to our CMT and said this is the kind of information and started from there… It was the Essential Guide to begin with, but the ones I probably found more useful were the ones that sit underneath it around information gathering and engagement.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

‘(The single equality act)...was a coming together of some things that were already being done but ... there were many changes and I think the
Awareness and understanding of EHRC guidance on the PSED

Is EHRC guidance on PSED accessible and used?

guidance was important because where else do you go? You can read the Act but it’s pretty dry stuff some of it, whereas this [the guidance] is where we’re being told what we need to be working towards’. (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

- To prepare briefings or training materials for other staff at all levels, including board members.

‘My experience was in terms of taking it and condensing it and talking to people saying, “we’re working on making sure we’ve got equality in the organisation”. When you took bits out of it they would say, ”we’re doing that anyway, that’s what we do every day”, so you’re kind of working with that.’ (England, public authority, criminal justice, specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

- To check up on specific queries, points of detail or technical matters (sometimes answers or suggestions were sought in resources other than EHRC guidance).
- When preparing reports or publications – for example to ‘lift’ wording from the legislation.
- As authoritative back-up for reinforcing messages to parts of the organisation, for example about the need for a proper equality impact assessment.

’We definitely have used it unashamedly to shame people into doing things. With [name of programme removed] we went to the CEO’s group and said, “You will not get this successfully agreed unless you’ve got a proper equality impact assessment” because it’s so controversial that everyone will be trying to derail it on something, and if you haven’t gone through due process and probably beyond due process then you won’t stand an earthly. So we very clearly have done that.’ (Wales, public authority, health, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

- As a basis for checking that the organisation’s practice in relation to different functions meets the duty.
‘How we do it here, and I suspect other organisations do as well, is that they have their approach to engagement, procurement, whatever it is and I read the PSED guidance to make sure that our practice reflects the minimum standards… We had our function and then it was… this is what we want to do, this is how we will do it, this is how we will assure it (through the templates and processes) and this is how we will risk assure it.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

‘The last time our procurement strategy was revised we used [the procurement section of the Essential Guide for England] to look at that and made a few changes to the procurement strategy off the back of that.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Some PSED leads, such as the one just cited, were very familiar with the guidance and used it on a regular basis. They considered EHRC guidance as an important primary source of advice and information on all elements of the PSED. Others, however, were not as familiar with it, referring to it less frequently. Often those respondents felt that they had absorbed all the information and digested the key messages in the guidance and thus did not need to refer to it regularly in their day-to-day work.

‘If you brought someone along now and created a new organisation then and said – here’s the guidance, have a look at it and you now have to apply this to your organisation – I daresay that they’d probably feel similar [to the way we used to]. But we’ve worked with it now for so long that, obviously …it is something that we’ve absorbed and picked up’. (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

As with the interviews generally, a number in this group (with equalities responsibilities) said that over time they had referred to the Essential Guides less and had developed other resources to build up ‘policies and procedures’. For example, one PSED lead in Scotland said that the Essential Guide for Scotland was now too basic for their purposes. They had many years’ expertise putting the duties into practice, which in their view often took the spirit of the legislation further than
required, for example by dealing with difficult issues in some marginalised communities.

‘The depth of this document doesn’t go nearly deep enough to that kind of level that we’re working at now with those sorts of groups.’ (Scotland, public authority, health, equalities specialist, Essential Scotland)

They also used other resources to find specific answers to questions, as discussed in Chapter 3.

‘Making Fair Financial Decisions’ was regarded as a helpful document by PSED lead respondents, whether they had or had not seen it before, particularly in their work with (senior) financial decision makers (either passing it on directly, or using it in training or briefing). ‘Making Fair Financial Decisions’ was also found (as intended) to be more geared towards the practical issues of how to implement the PSED. Respondents found it useful given its focus on impact assessments, shorter length, greater use of examples and the relevance of the title in a time of budget cutbacks. Some examples of its use include:

‘I used it [‘Making Fair Financial Decisions] to actually develop our equality impact assessment process for our budget reductions and through our annual budget setting process and …. I liked it. Because it was short, it was to the point, it was accessible and I shared it with our elected members, I shared it with our managers and I still use it in some training that I do around equality impact assessments because it is succinct, it’s six pages or something like that as opposed to the document of 50 which we’ve just been looking at. So I think it’s really specific; it’s got a couple of good examples in there and it gets to the point of what you need to do, and what’s OK.’ (England, public authority, local government, specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

The public representative participants interviewed for this research (with few exceptions) had little prior knowledge of the guidance and therefore little to report in terms of using the PSED, for example to challenge public authorities. They reported little pressure from the public for them to do so.

‘Holding a public body to account might sound simple but it’s not. …The
community hasn’t got the capacity to ask the right questions to pressure in the right way, and because that isn’t happening public bodies are trying to do their best and it just kind of rumbles on really.’ (England, public representative, umbrella body, equalities specialist, ‘Making Fair Financial Decisions’)

Some public representative respondents who read ‘Making Fair Financial Decisions’ as part of this research said that document was 'more likely to be used both by us and hopefully the public bodies...'. It might therefore have potential as a practical negotiation tool that could enable stakeholders to ensure the PSED is appropriately considered in public authorities’ decision making.
5. Is EHRC guidance on PSED comprehensive and understood?

This chapter examines how far the test guidance is successful in helping stakeholders\textsuperscript{35} to understand the PSED and its purpose and benefits, what the legal requirements are, what compliance looks like, and what represents good practice (beyond compliance). Comparisons are drawn between the test guidance where possible and relevant.

The main evidence for this chapter was gathered using a cognitive interviewing approach to investigate the level of understanding and elicit responses on specific sections of the test guidance (see section 1.3 for more detail on the method). However, it was difficult for some public authority respondents, even those with good background knowledge of equalities issues or legislation, to ‘stand back’ from the guidance sufficiently to offer an objective view of the content and how it is communicated:

‘I’ll tell you what’s weird for me, because I’ve been reading all this stuff since about 2002, it’s hard for me to know how much is in my brain and how much I just read, because I might just be making loads of assumptions that I don’t even know about. I see the duty as something that I’ve been aware of and had to comply with in some form since the Race Equality duty which was way back when. So I don’t even know what I see [the guidance] as, because it’s been so much of my job for so long.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Some aspects of the PSED examined here are covered in all the Essential Guides and in ‘Making Fair Financial Decisions’ (for example, its purpose and benefits); others are covered in the Essential Guides only (for example, the specific duties) but

\textsuperscript{35} Findings in this chapter relate mainly to public authorities’ understanding of the guidance. There is much less detailed evidence on public representative respondents because the sample was relatively small and diverse and they had a different relationship with the guidance.
not necessarily all of them (for example, only the Essential Guide for England contains a section on establishing relevance). In reporting the findings of this research, we have indicated which test guidance the evidence relates to.

5.1 General understanding of the PSED\(^{36}\) (explored through the Essential Guides only)

The research suggested widespread interest among and within public authorities about what is the ‘right thing to do’ in terms of equality, seen by many as the true spirit of the PSED. However, in some public authorities and among some individual respondents (including both specialists and non-specialists) there was also interest in managing risk around equalities issues, especially limiting reputational damage. In terms of the legislation, while there is some evidence of contemplating a ‘minimum requirement’ for their organisation, those working in public authorities also understand that the law allows and encourages more than this by providing a legislative framework that lends itself to raising existing standards and expectations around equality.

Understanding of what the PSED is all about and where it came from was not necessarily derived solely from the guidance but also other sources of information and support. Public authority and public representative respondents were often aware of the previous equality duties, especially those with years of experience in the field. Some in Scotland for example welcomed the section explaining the development of the general duty out of earlier equality duties, whereas other respondents found this off-putting and irrelevant, especially those new to equality.

The structure of the PSED, with its general ‘duty to consider’ equality and good relations and specific duties setting out practical requirements for listed public authorities, was widely understood by public authority respondents and some public representatives. Understanding of the relationship between the general and specific duties was widespread. Respondents mostly understood that complying with the specific duties ‘doesn’t necessarily mean we are meeting what it says in the general duty’, especially in England where there are only two specific duties:

\[\text{‘Having those specific duties helps you to communicate and think about how the duty applies and what that means for an organisation, but doesn’t necessarily mean you are complying… It doesn’t mean that} \]

\(^{36}\) The three Essential Guides present the PSED in slightly different ways (see Annex 3A for details).
However, this was still unclear for some, even after reading the guidance. Few public authority respondents in England were able to offer a confident and articulate account of the implicit requirements associated with the concept of ‘due regard’ in the statement of the general equality duty, and these were more likely to be knowledgeable equality specialists:

‘It’s about knowing who are your service users; it’s about anticipating the impact on them; it’s about looking in detail at the proposals; it’s about mitigating across the board but particularly where you know there is a negative impact; and then – importantly – it’s about checking that you have done everything that you’ve said and that it had the effect you expected it to have.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Nonetheless, reasonable or even good levels of understanding of the implicit requirements, or some of these, could be discerned through the general discussion across the course of interviews. For example, many respondents were aware of the need to assess impact on equality and to engage and consult with service users.

In one interview it was suggested that unlike the legislative requirements of the specific duties, the implicit requirements of due regard involved an element of choice:

‘The general duty for me is, yes you have got to comply but you might not have to do some of the things that as an organisation you choose to do to meet the general duty… The specific duties are around complying with the legislation. The general one is more …around actually being proactive and promoting things.’ (England, public authority, local government, non-specialist, Essential Guide for England)

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37 For example: building understanding of the needs of people sharing relevant protected characteristics in relation to particular issues or policies (through engagement, consultation and research); assessing the likely impact on equality of different decisions; considering mitigating actions; monitoring and reporting progress; and doing all of the above for each of the aims of the general duty.
5.2 Understanding of the general duty

This section explores respondents’ understanding of different aspects of the general duty as set out in the test guidance. This includes who the duty covers, the protected characteristics, its three aims and the meaning of ‘due regard’.

5.2.1 Purpose and benefits of the general duty (all test guidance)

Public authority respondents understanding of the purpose and benefits of the general duty as set out and explained in particular sections of the test guidance (see Annex 3 B) is explored below. The importance respondents place on presenting a balanced case (positive and negative arguments) for the PSED is also discussed.

Public authority respondents in England, Scotland and Wales generally understood the purpose and benefits of the PSED presented in the Essential Guides and in ‘Making Fair Financial Decisions’. Most welcomed having the case for the PSED made very clear.

Nonetheless, in all three countries some public authority respondents, especially those with less specialist knowledge and experience, thought the general case for the PSED could be written more plainly or explicitly in the Essential Guides.

‘In terms of the first sentence, I don’t find that to be plain English: “integrate consideration of equality and good relations” – I thought that language wasn’t very accessible. I’d have to try and understand what it means. I think what it is telling me is, on a day-to-day basis I need to make sure I comply. And the same with the second sentence “integral part of the mechanisms for fulfilling the requirements of the Act”. They were the bits that you read and go “I don’t know what that means” or “I think I know what it means but I could be wrong”. (England, public authority, criminal justice, equalities specialist, Essential Guide for England)

Some respondents saw a place for arguments stressing the potential negative consequences of non-compliance, such as are outlined clearly in the final section of ‘Making Fair Financial Decisions’ (possible legal challenges, authorities appearing high-handed and detached, authorities making unfair decisions that worsen inequality), but respondents thought it also important to give prominence to positive reasons for compliance.

38 There is insufficient evidence here from public representative respondents.
‘That’s the reality of not having conducted a proper equality impact assessment. I come back to what I said before: it’s having that gun to your head that you’re going to end up in court or whatever, and that sometimes gets managers’ backs up. Yes, they need to understand what the outcome’s going to be but actually I think it’s more useful to understand what they can get out of it.’ (Wales, public authority, local government, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

‘You do need to have that positivity to balance against what legally you’re required to do, and I think within the area of equality it’s important to have that positivity because otherwise it just feels burdensome and that’s not right because you are trying to create a good environment for all.’ (Wales, public authority, education, equalities specialist, ‘Making Fair Financial Decisions’)

In particular, respondents thought there was a place for positive arguments in the guidance spelling out how compliance helped public authorities execute their functions more efficiently and effectively (the ‘business case’).

‘I know why I’m doing it, but reading this yes it’s helpful. If someone was coming to this first time I’d think yes, it’s helpful. This is about better development of policies, practices, evidence, etc., delivered and proved outcomes, more transparent, accessible and accountable.’ (Scotland, public authority, education, equalities specialist, Essential Guide for Scotland)

‘My understanding of … the work of our equality and diversity is that … there’s a legislative stick that you can use with people and then there’s the … argument around … equality and diversity practice which enhances performance and gets the best out of your organisation anyway… [The introduction to ‘Making Fair Financial Decisions’] … is basically framing [PSED] as more of a carrot … I think it’s really useful that it’s upfront about the fact that … we know that you’re in a difficult place and [the legislation] is not going to restrain you, it’s going to help you do your job.’ (England, public authority, local government, non-
Some respondents who lead on PSED said that it reinforced messages they were disseminating within their organisation.

‘I can understand the importance of doing this and not just because it’s an obligation but actually it’ll improve service delivery and it’ll improve the way the workforce operates… and it is [also] helpful to me to be able to articulate to other people: this will make life better and it’s not just because I’m telling you to.’ (England, public authority, criminal justice, equalities specialist, Essential Guide for England)

‘[The business case is important because] the majority of organisations are not finding the financial side of things easy and the business case adds an imperative…People are constantly being directed to what is the best value we can get out of doing what we are doing, so I think it almost slots in with the way we are all being encouraged to make decisions.’ (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

Respondents, especially PSED leads, commonly argued for more and stronger positive business arguments for the PSED in all test guidance. One view was that there is a greater need for such arguments now than when the legislation was first enacted.

‘I don’t think they give nearly enough strength and weight to the positive arguments that there are for equality and diversity practice and principles embedded within the values of organisations – there’s a much stronger sell now in organisations than there was. We’re three years further on from where we were when this was written.’ (Scotland, public authority, health, equalities specialist, Essential Guide for Scotland)

‘We rely less on moral arguments today than we do the business arguments because history has told us that the success of moral arguments has been rather weak, but it seems to be stronger and...”
5.2.2 Understanding of who is covered by the general duty (Essential Guides only)

All three Essential Guides reproduce the text of the Equality Act 2010 stating that public authorities as well as those carrying out ‘public functions’ are covered by the general duty. Paragraphs in all three guides expand on this in similar, but not identical, ways and provide examples including private, voluntary and community organisations carrying out public functions on behalf of a public authority. Some of the principles drawn from case law that are included in all the Essential Guides to illuminate understanding of ‘due regard’ also relate to who is covered by the general duty (see section 5.2.5).

Public authority respondents in all three countries understood that the general duty applies to bodies ‘carrying out public functions’, as explained in the guides. They were aware of the importance of this in the current climate of increased outsourcing of functions:

‘So much of what councils do now is commissioning, commissioning, commissioning. They have got rid of so much that they actually do and they just commission services. We commission practically everything, so this is really helpful.’ (England, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

There was a certain level of understanding about the need to consider contracting conditions and criteria in relation to the PSED when outsourcing certain functions. This is one of the specific duties in both Scotland and Wales and is elaborated in Chapter 4 of the Essential Guide for England (‘Putting the general duty into practice’):

‘Where for example we’ve contracted other hospitals to undertake work for us or other care providers… we’ve been keen to ensure that they are both compliant and achieving in a way that we find appropriate…. Maybe independent care homes that we deal with very closely, we’ve got increasingly close contractual ties again we would anticipate, expect and require them to demonstrate best behaviour/practice in this.’ (Scotland,
‘I understood what [the section on procurement in Chapter 4 of the Essential Guide for England] was saying and it was outlining my obligations there to make sure that … I am not contracting with others who don’t take the duty as seriously as I do and that I have the right to say that I am excluding people who have been proven in law not to be compliant.’ (England, public authority, criminal justice, equalities specialist, Essential Guide for England)

However, respondents were vague about how this should be played out in practice in the current range of contractual and other joint working arrangements between public authorities, private companies and third sector organisations. Some respondents expressed doubts about whether the PSED became a shared statutory duty (whereby different kinds of organisations must pay ‘due regard’ in respect of the same decisions and actions) or assumed wrongly that the PSED was simply something that must be passed on through the contract.

'Women’s Aid, Rape Crisis would be good topical examples…. I’m not quite sure [if they carry out public functions in the same sense]. In the police quite obviously it’s a public function. Some of the third sector organisations who work very closely with the police … I’m not really sure how that would be defined to be honest.’ (Scotland, public authority, criminal justice, non-specialist, Essential Guide for Scotland)

It seemed from the interviews, where this was discussed briefly, that the guidance on its own did not supply completely clear answers on this issue. In interviews, public authority respondents often took a cautious approach, with some saying that colleagues in procurement might know more. Procurement was seen as a specialist area within many authorities and few respondents were themselves actively engaged in it, though they might be advising those who were or managing them.

Respondents encountered particular difficulties with understanding the law and how it applies in relation to contracting out the procurement function or where a number of authorities share a procurement function that is contracted out:

‘I think we would say that if we have done everything we can and there is
a failure, then it would be a failure [by the contractor] to follow procedure or analyse properly. But because [the contractor] can’t do anything on their own, if they are doing it for us then it’s still got to [go] back through [our] decision making.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

There was also an issue specific to responding authorities with small staff numbers and no direct contact with the public, such as liaison and grant-channeling organisations. For these authorities it is difficult at times, to understand how the duty applies to them, and this issue extends to the way in which the guidance is worded:

‘There are two and a half members of staff of the Authority… We don’t have any clients or service users; we just link in with other public sector bodies mainly who also have to comply with this legislation, which I’ve always found a bit [hard] to get my head round… And we outsource a number of things; there’s a small budget that pays for us like an admin budget as well… There are two and a half of us so it does have to be in proportion and we do have to comply…. At the start of every meeting the members consider [equality]… and on the agenda there’s a sheet that reminds them of their duties with regards to equality… As well as considering the legal implications, the staffing implications, the financial implications, the equalities considerations are also in every single report so it is considered… I mean as soon as you start collecting employee information from two and a half people that presents challenges…. and there’s no anonymity.’ (Scotland, public authority, criminal justice, non-specialist, Essential Guide for Scotland)

5.2.3 Understanding of protected characteristics (Essential Guides and ‘Making Fair Financial Decisions’)

Understanding of the protected characteristics was not a main focus of the research, but some discussion of this arose naturally during interviews.

The test guidance briefly mentions the protected characteristics covered by the general duty. All documents give a list of the characteristics and there is some text in

39 This respondent appeared to be unclear whether their organisation was covered by the specific equality duties (regulation 6 – duty to gather and use employee information).
the Essential Guides about exceptions that apply in relation to marriage and civil partnerships and age. There are slight differences between the Essential Guides in how the protected characteristics are presented, for example the Essential Guide for Wales explicitly states that race includes ethnic or national origin, colour or nationality, but the Essential Guide for England refers to the glossary for more detail. Familiarity with the term ‘protected characteristics’, what it means and what they are was reasonably well-established in public authorities, although there were exceptions among less knowledgeable and experienced respondents. Not everyone could list all the protected characteristics; those covered by the public sector equality duty only since 2010 were less well-known.

‘I would be honest and say no [I wasn’t aware of them]. The list in the Essential Guide [seen for the first time preparing for the interview] didn’t make sense to me; everyone is protected, because everyone has an age. I am not sure enough thought was put into it.... If you had asked me a month ago what the protected characteristics are, I would have had a guess, but I wouldn’t have put marriage in there.’ (England, public authority, health, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’).

Some respondents said that they had less information about the ‘newer’ characteristics (such as marriage and civil partnership) and fewer effective means of collecting data about them, which made it harder to set objectives relating to these groups.

Respondents in some interviews thought a clear overarching definition of ‘protected characteristics’ could help non-specialists at all levels understand that the PSED is relevant to everyone and has the potential to deliver benefits to all, not just people who might traditionally be seen as ‘disadvantaged’ (for example, women and gay, lesbian, bisexual and transsexual people).

5.2.4 Understanding of the three aims of the general duty (Essential Guides only)

The three Essential Guides present the aims of the general duty in the same way, using broadly the same wording as in the Equality Act 2010 (see Annex 3C). They all supplement this with: ‘to comply with the general equality duty, a public authority needs to have due regard to all three of its aims/needs’.

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40 Referred to as ‘needs’ in the Essential Guide for Scotland.
Public authority respondents, especially equality specialists, were usually familiar with the three aims of the general duty and were used to seeing this formulation, although there were some exceptions. Public authorities made use of the formulation internally to frame discussions, training, communications, processes and documents relating to equality considerations and the law. They also made use of it externally, for example on their website in communicating their activities in relation to equality and in relevant communications with other organisations and stakeholders:

‘They’re very familiar. What we have in our cover sheet for our governing body and main committee meetings is these [aims] laid out. Those people submit papers and reports and they should be including how those aims are assessed.’ (England, public authority, health, equalities specialist, Essential Guide for England)

Respondents generally felt comfortable with the expression of the three aims, but they were also sometimes described as dense and technical. Equalities specialists approached them more confidently than those with less relevant experience and knowledge:

‘Fostering good relations between people who share a protected characteristic is always a very woolly one for me… I understand what it’s saying but I am not necessarily clear on what my obligations are.’ (England, public authority, criminal justice, non-specialist, ‘Making Fair Financial Decisions’)

Some public authority respondents with more experience of PSED or of the law noted that key terms used in the first aim have a legal definition and are not employed in their ‘everyday’ sense:

‘If I was looking at this document as somebody who was unfamiliar with it, I would immediately have to go and understand these things have definition in law and they’re not necessarily common sense definitions … so victimisation is actually quite narrow in law, so the first thing I would be doing is going and looking at – what does that mean … if I’ve got to eliminate unlawful discrimination, what is unlawful discrimination, is there such a thing as lawful discrimination and what are the definitions of harassment, victimisation or other conduct? (England, public authority,
In my experience most people have a common parlance understanding of the word harassment and most people have a common parlance understanding of the word victimisation; they don’t know that those mean something under the discrimination legislation that they don’t mean in day-to-day usage. When I’ve done training on this I have to actually explain what harassment is, and that it isn’t “oh I’m just feeling harassed”; it actually means something.’ (England, public authority, local government, equalities specialist, ‘Making Fair Financial Decisions’)

The second and third aims elicited more discussion among respondents. Some thought it was hard to distinguish between them and described them as overlapping or the ‘two sides of the same coin’. Both of the aims require public authorities to be proactive in dealing with equality issues as opposed to simply ensuring certain language and behaviour are prohibited.

‘Advancing equality of opportunity and foster good relations – we quite often treat them together because there’s certain things that we do about how our policies are developed, about how we treat customers and about how we engage with representative groups. I don’t think anything that we do tackles one of these but not the other.’ (Scotland, public authority, local government, equalities specialist, Essential Guide for Scotland)

Public authority respondents generally understood that compliance with the second aim of the general equality duty (advancing equality of opportunity) could involve treating some people more favourably than others, including by considering taking steps to remove or minimise disadvantages they suffer, to meet their needs or to encourage their participation.

Few public authority respondents linked the second aim of the PSED (to advance equality of opportunity) with the need to consider taking proportionate ‘positive actions’. However, in all three countries PSED leads in particular did speak about or

41 The PSED technical guidance makes this link explicit but none of the Essential Guides go beyond reproducing the wording from the Equality Act 2010 about the need to ‘remove disadvantages… take steps to meet needs…encourage people to participate’. Scotland and Wales have specific duties that relate to taking effective action (for example, drawing an action plan) whereas in England, no specific duty of this sort exists.
imply the need to be proactive in taking action to progress equality of opportunities and foster good relations (the third aim):

‘That (advance equality of opportunity...) would be about making sure that what we’re always seeking and striving to ensure that people with protected characteristics do have equality of opportunity, that we’re looking to make sure that any barriers are overcome, thinking about this in an employment field perhaps so making sure there’s nothing in a recruitment exercise that prevents certain groups from taking part in the recruitment exercise, that adjustments are made to help people go through the recruitment exercise and so on.’ (Wales, public authority, health, equalities specialist, Essential Guide for Wales)

‘That (foster good relations...) to me is getting out there and talking about the shared characteristics [sic] … if other people understand about the characteristics and way of life, take transgender for example, somebody going through the first two years of their living life as the opposite sex, how do we support them through that and encourage other people to understand that this person, yes you did know this person as a man but now is living life as a woman and would like to use the female toilets and things like that.’ (England, public authority, health, equalities specialist, Essential Guide for England)

The need to consider positive actions was seen as essential by some PSED leads:

‘I think we are duty bound to … review if necessary [a] decision that’s made, or seek to find actions that can help address [any new] issues that have been raised. … So that would be part of it for me. It’s not just to shut down the process, that you go through this process and think that’s all fine and dandy, now we’ve done that, tick that off and move on.’ (Wales, public authority health, equalities specialist, Essential Guide for Wales)

However, in all three countries the case for positive actions could be hard to make to non-specialists:
5.2.5 Understanding of ‘due regard’ (all test guidance)

Understanding of what it means to have ‘due regard’ in the context of the PSED is key to compliance with the general duty, but also with the specific duties. For example, one of the specific duties in England is to publish information annually that demonstrates compliance with the general duty, which means having due regard to the three aims of the PSED. This section describes how respondents explained and talked about the term ‘due regard’ where it appears early on in the test guidance, in the statement of the general duty.

Public authority respondents generally recognised ‘due regard’ as a legal term. Equality specialists and respondents with some knowledge of the law also recognised due regard as the key concept underpinning the meaning of the general duty, but this was not necessarily clear to all public authority respondents.

Some respondents thought that the importance of ‘due regard’ should be made clear earlier on in the guidance. They thought that the following formulation of the general equality duty did not emphasise its significance strongly enough, especially for less knowledgeable readers:
‘A public authority must, in the exercise of its functions, have due regard to the need to…’

It [doesn’t feel] strong enough… I might have to have due regard to the weather, is it going to [affect] how I’m going to drive… It felt like it could be too easily dismissed.’ (England, public authority, criminal justice, equalities specialist, Essential Guide for England)

Equalities specialists and some non-specialists in public authorities were aware that ‘due regard’ in the context of the PSED is open to interpretation:

‘With something like a tax disc – you have it or you don’t. You have to have insurance, it’s very clear. Whereas this is open to other people’s interpretations … so that can be a challenge perhaps.’ (Scotland, public authority, education, non-specialist, Essential Guide for Scotland)

Public authority respondents were more certain about its meaning at the time of the interview than when the law was enacted, but lack of clarity remained even for some equality specialists:

‘When the legislation came out, it was not clear what [due regard] really meant because there wasn’t anything that tested what it was and what it wasn’t. I’m clearer now about what it might be … because of case law and feedback. Even in cases where [the organisation concerned was not found to be breaking the law], in most cases quite detailed comments [are also provided] about [what] could be [done] better. So I think I’m clearer now, though I don’t think I could stand up and say, “Due regard is that, that and the other”.’ (England, public authority, local government, equalities specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

It was seen by some public representative respondents as adding uncertainty and an element of subjectivity into the law, which could be frustrating when the public or members of a union wanted clear information about their rights and redress.

‘There’s always that phrase – “due attention”, “due regard”. For me as an
individual it doesn’t really have a meaning other than you have to take notice of it or be aware of it. It’s a bit like due care and attention when you’re driving…. You’re supposed to be driving with due care and attention all the time, but how many times do people not. I think it’s a misunderstood term.’ (Scotland, public representative, advice, non-specialist, Essential Guide for Scotland)

‘Due regard’ was paraphrased in various ways by respondents. In attempting a definition most public authority respondents used simple phrases such as ‘thinking about it’, ‘bearing in mind’ or ‘considering it’:

‘For me it’s about taking cognisance of your actions and what you’re doing; you just have to bear it in mind I suppose is the terminology I would use rather than due regard.’ (Scotland, public authority, education, equalities specialist, Essential Guide for Scotland)

The most detailed elaborations were offered more commonly and confidently by experienced equalities specialists, but other public authority respondents also had contributions to make.

Themes that emerged across all three countries from interviews based both on the Essential Guides and ‘Making Fair Financial Decisions’ included:

- The need to be proactive in thinking about and dealing with equality issues, including by considering steps/actions to progress the three aims of the general duty.

‘To me it’s a duty to proactively think about and consider. When you’re making a decision around a service [or other issue], actually thinking about “does it do this/can it do this”, as opposed to being a “it’s good if it does”. It means actually thinking about “how can we”. (England, public authority, local government, equalities specialist, Essential Guide for England)

‘To me the due regard is … showing that you’ve identified it and you’ve considered it and if appropriate [that] you’ve done something about it, but it’s about not ignoring it.’ (Wales, public authority, local government, non-
The importance of information and evidence used as a foundation for ‘thinking’ or ‘consideration’. This could include quantitative information, for example to assess scale, and qualitative information, for example to provide evidence and increase depth of understanding. Information obtained from consultation with relevant groups was sometimes underlined.

‘Do we have enough information to know that you’ve given due regard… Have we [collected] this [information] thoroughly and properly… Have we asked people their views about this [decision]… Have we given [the information] proper consideration…Have we weighed it up properly in the whole scheme of things in going forward. And if there are adverse impacts have we sought to see if there’s anything we can do, a way of mitigating actions to tackle it. So that whole sort of thorough process for me is due regard. (Wales, public authority, health, equalities specialist, Essential Guide for Wales)

The need for the ‘thinking’ or ‘consideration’ to be evidenced and recorded.

Public authority respondents often emphasised the importance of establishing an ‘audit trail’ to demonstrate due regard. They were accustomed to a culture in which ‘unless you have written down what you have done and why, you may as well not have done it’.

‘Whatever decisions you make you’ve got to be able to provide evidence of your thinking and looking at all the reasonably practicable things that you considered before you chose the course of action.’ (Scotland, public authority, health, equalities specialist, Essential Guide for Scotland)

'I’d say … due regard is consciously thinking and having evidence of that thought process at the point where you’re both taking the decision or introducing a new policy, and at the point when that’s implemented. So you need to be able to demonstrate evidence that you’ve thought about those three things in the public sector duty about people with different

- The interpretation of ‘due regard’ (as set out in the guidance) as a systematic, conscious and continuing cyclical process:

  ‘It’s about knowing who are the service users, it’s about anticipating the impact on them, it’s about looking in detail at the proposals, it’s about mitigating across the board but particularly where you know there’s a negative impact, and then as importantly it’s about checking that you’ve done everything you’ve said and that it’s had the effect that you expected it to have.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

- An explanation of ‘due regard’ by public authority respondents in terms of what it was not:

  ‘Due regard is not something you’re just doing; it’s not an abstract thing you’re doing in isolation. …It’s not something you think, shall we have some due regard on a Monday morning.’ (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

- An explanation of how it was different to ‘general regard’:

  ‘General regard is just having a little bit of a think about it, and I suppose due regard is the kind of details of all the things you need to be thinking about and demonstrating evidence, and it’s about making it a conscious part of the process.’ (England, public authority, local government, equalities specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

  ‘Due regard is more specific [than general regard]. …You’ve actually consciously thought about it rather than just being generally aware.’ (England, public authority, criminal justice, equalities specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

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- **Something that public authorities need to do in order to avoid legal challenge:**

  ‘Due regard is your first line of defence, so if you’re challenged you’ve demonstrated due regard; you’ve applied due process and you’ve properly considered the decision in relation to the general duty….’
  (Wales, public authority, health, equalities specialist, ‘Making Fair Financial Decisions’)

  'I think a lot of decision makers will see “due regard” as a legal term that they have to adhere to avoid being taken to court. …[to] be better protected against litigation. That’s the way it’s going to be read.'
  (England, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

- **What public authorities need to do to meet their aspirations for a fairer society and a more efficient and effective organisation:**

  ‘…It’s getting a balance between equalities being seen as a negative punitive thing, that this is what can happen. And instead thinking, well this is what we want to be doing.’
  (Scotland, public authority, local government, equalities specialist, Essential Guide for Scotland)

  ‘…I think it safeguards the organisation…but there is also the fact that in doing that you might make a better decision in the end because it might throw up something that you hadn’t thought about.’
  (England, public authority, education, equalities specialist, ‘Making Fair Financial Decisions’)

5.2.6 Understanding of principles drawn from case law (Essential Guides only)
Each of the Essential Guides includes a section setting out principles drawn from case law that public authorities ‘should keep in mind’ ‘in order to have ‘due regard to the general equality duty aims…’ (See Annex 3D). Respondents’ understanding of these principles is explored below.

Public authority responses were broadly similar across all three countries. Participants did not necessarily see this section of the guidance as definitive in terms of what it means to have due regard:

‘To me this is more around making sure that … your legislative bits … are right as opposed to due regard … This is more around have you got everything right, well make sure you can demonstrate you’ve got everything right as opposed to promoting the general equality duty.’
(England, public authority, local government, non-specialist, Essential Guide for England)

Some public authority respondents thought this section of the guidance was clear and well expressed. Others, however, thought it wasn’t very accessible and it was described by some as overly formal, legalistic, wordy, dry and repetitive.

‘I didn’t think the language was very accessible. I understand what it is saying, but I am not sure it is very clear.’ (England, public authority, criminal justice, non-specialist, Essential Guide for England)

'It’s very legalised and it doesn’t read comfortably like the rest of the document… It was extremely repetitive and so I skipped it… The use of language where they keep on repeating the general equality duty rather than the duty … makes it rather boring’ (Scotland, public authority, health, non-specialist, Essential Guide for Scotland)

Some public authority respondents thought this section of the Essential Guides would be off-putting for a wide array of potential audiences and ‘interested parties’ – a potential deterrent to engaging with the guidance more generally:

‘This is where I’d like to use that word ‘wordy’, and as it went on it became wordier. We’re in education and expected to be reasonably well-educated in terms of understanding something, but if this was a
Some of the principles listed in Annex 3D were better or more consistently understood than others, for example principles 2, 4, 5, 6, 9, 10 and 11. The remainder of this section focuses on those principles that the evidence suggests need to be revised or clarified.

**Principle 1. Those who exercise (a public authority’s) functions must be aware of the general equality duty’s requirements.** Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply.

Some participants thought that ‘those who exercise the public authority’s functions’ meant mainly senior decision-makers and board members within their organisations. However, the principle actually refers to all staff within public authorities, as well as organisations in the private or voluntary sectors exercising a public function (as does the PSED):

> ‘Obviously the person who is leading on it [and] the execs and non-execs on the board’. (England, public authority, health, non-specialist, Essential Guide for England)


The reference here to ‘general regard’ was thought to be confusing:

> ‘…We’ve got the term “general regard” here, which is a new term [first time it is mentioned in the document]. Is general regard the same as due regard? I don’t know’. (England, public authority, criminal justice, non-specialist, Essential Guide for England)
Principle 3. The duty is on the decision-maker personally in terms of what he or she knew and took into account. A decision-maker cannot be assumed to know what was in the minds of his or her officials giving advice on the decision.

Some respondents understood this principle as intended in the Essential Guides:

'1 take that as – don’t take a decision unless you understand what the impact of that decision [is likely to be], or all the people affected by it. The duty is actually on the person who takes the decision, and actually we take that one step further and basically say if it’s not written down how can you prove that they actually knew that.’ (England, public authority, local government, non-specialist, Essential Guide for England)

"A decision-maker cannot be assumed to know what was in the minds of his/her officials giving advice on the decision.” So ... that means it’s incumbent on the decision-maker to question whoever is giving them the advice.’ (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)"

However, both equality specialists and non-specialists struggled with the wording of this principle, which was thought to be poorly expressed and difficult to understand. Some thought it was mainly making a point about decision-makers ensuring their decisions were evidence-based (which is actually part of principle 10):

‘I think that it [says] – don’t assume that you know – you need to do that consultation. That is what the third bullet suggests to me, but it might not be what it’s about.’ (England, public authority, health, equalities specialist, Essential Guide for England)

'I think that’s about the need to have evidence about what they’ve used to inform their decision, because if you haven’t got any evidence how do you know?’ (Scotland, public authority, local government, equalities specialist, Essential Guide for Scotland)

Others thought it meant that the general duty mainly applies to organisations with board members and non-executive decision-makers who receive advice from public authority officials. The Essential Guides actually try to convey that the general duty
applies to any kind of decision-makers working at any levels within public authorities, but also within any other organisations in the private or voluntary sectors exercising a public function.

'I would see that applying to members of our governing bodies, our board members, to be challenging the management and officials who are making proposals: “Tell us about how you’ve considered equality in coming to this recommendation.”' (England, public authority, health, equalities specialist, Essential Guide for England)

'[The principle means] that it’s the decision-maker, most often or not in our case the councillor, they can’t just say it wasn’t brought to my attention; they can’t sort of plead ignorance around that.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Principle 7. A public authority must have sufficient evidence on which to base consideration of the impact of a policy or decision. It will need to consider whether it has sufficient information about the effects of the policy, or the way a function is being carried out, on the needs set out in the general equality duty.

The most difficult element for respondents to understand in this principle was what constitutes ‘sufficient evidence’:

‘What does sufficient mean and what sort of evidence? I think most people have interpreted that to mean it can be a mix of quantitative and qualitative evidence, but what is sufficient? Again, are you thinking about the priority of the decision or the policy, and if it’s something very important affecting most of the staff or most of the students, then you would want more evidence. But what is sufficient? And also it’s to consider whether it has sufficient information about the effects of the policy, or the way a function is being carried out – it depends if it’s a new or modified policy because until you’ve implemented some things, I mean you can assess impact obviously but what would be sufficient in some situations? Then the next thing is, on which to base consideration. And
so base is kind of a little bit, it’s not exactly the whole decision, it’s what we’re basing it on, and then consideration.’ (Wales, public authority, education, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

Principle 8. A public authority must take responsibility for complying with the general equality duty in relation to all functions to which the general equality duty applies. Responsibility for the general equality duty cannot be delegated to external organisations that are carrying out functions on its behalf.

The practical implementation of this principle was often highlighted as challenging, especially in organisations with complex arrangements for outsourcing functions, including core back-office functions such as compliance.

‘I was asking the question “well what does this mean in relation to [the company to which all back-office functions have been outsourced]?” I understand that ultimately we are accountable, but when the HR and procurement functions are outsourced, they have responsibility for ensuring compliance and ensuring it is written into all of their internal processes. So I had questions there about what does it mean in reality?’ (England, public authority, criminal justice, non-specialist, Essential Guide for England)

‘Whatever the [public authority] is required to do [the company] must do and demonstrate that they have done in order to satisfy legal requirements including 2011 Equality Act [sic] and PSED, so we’ve done a lot of work with [them] to explain to them our processes; we expect them to follow our processes and we monitor to check that they do. So that can’t be delegated…. [We monitor the contract and] as soon as we draw attention to the contract clause, they say “yes, yes of course” and they do follow all of our processes. We have done what we can to reduce the risk but it’s an area of ambiguity basically.’ (England, public authority, local government, equalities specialist, Essential Guide for England)
5.2.7 Understanding of relevance and proportionality

‘Relevance’ and ‘proportionality’ are concepts used especially in the Essential Guide for England and ‘Making Fair Financial Decisions’ to underpin the meaning of ‘due regard’. This section explores public authority respondents’ understanding of the terms in this context.42

- Understanding of relevance

Public authority respondents interviewed about the Essential Guide for England and ‘Making Fair Financial Decisions’ were generally able to attempt an explanation of relevance, although some struggled to find other words of their own to express themselves. Broadly speaking, respondents understood the term to mean ‘consider where to put your efforts’ and acknowledged the importance of checking assumptions about non-relevance.

‘Consider where to put your efforts basically. If you’re going to promote the duty there’s some places where it’s far more applicable to do so like recruitment, like service delivery, than some others.’ (England, public authority, local government, non-specialist, Essential Guide for England)

‘If you really don’t think there’s any equality impact then you need to say why, and then you need to show that to the policymaker so that you can be challenged on it. … double, double check… I think it’s the element of assurance that we’ve got missing there. An individual might not know stuff and therefore consider it’s not relevant but they need to check so that at some level there needs to be a check.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

Public authority respondents were often predisposed to assume that the PSED would be relevant unless proven otherwise, but this wasn’t necessarily linked to anything specifically mentioned in the test guidance. When prompted, they found it difficult to think of examples where the PSED or any aim was irrelevant (especially, but not only, equalities specialists):

42 There was insufficient evidence to report on common understanding among public representatives.

43 The Essential Guides for Wales and Scotland tend not to use terms such as ‘proportionate’, preferring instead to use the idea of ‘reasonable steps’ or ‘reasonable time’ in line with the specific duties in these countries.
‘I am struggling with the thought that it is not relevant in some areas because I can’t think of an area of the Council that doesn’t deal with people.’ (England, public authority, local government, non-specialist, Essential Guide for England)

Two specific instances provided by respondents where the PSED was considered to be irrelevant included:

‘If we were looking at using part of our reserves to pay off some of the financial debt that we’ve got, is there any point in doing an equality impact assessment there? It has no direct impact on any members of staff or any service user. So that particular proposal has no impact on people with protected characteristics or otherwise.’ (Wales, public authority, local government, equalities specialist, ‘Making Fair Financial Decisions’)

‘There are some services which don’t necessarily [seem to be so important] because of the nature of what they do. For example there may be a specific function that has been outsourced around filling in potholes.’ (England, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

However, respondents were reluctant to generalise about whole functions where the PSED would not be relevant; they preferred to consider decisions or policies on a case-by-case basis.

‘I don’t think it’s necessarily a case of going through a list and saying these have an impact and those don’t so you don’t need to consider it for these. I think it’s something that whatever it is you are doing you need at least to be asking the question.’ (Wales, public authority, local government, equalities specialist, ‘Making Fair Financial Decisions’)

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Some thought it unhelpful for the guidance to imply that the PSED might not be relevant to some functions, and one person commented that it offered a potential loophole to ignore the PSED in these areas.

‘I think this should be [written] so there is no way a lazy manager can get out of it.’ (England, public authority, health, equalities specialist, Essential Guide for England)

An example provided in the Essential Guide England of a function (IT policies and practices) where one aim of the PSED (fostering good relations) might not be relevant was rejected by a number of participants.

‘I think I’d argue with it. OK fair enough that’s trying to help, but who’s to say that fostering good relations is unlikely to be part of IT policies and practices? I don’t understand why that wouldn’t be … relevant.’ (England, public authority, education, non-specialist, Essential Guide for England)

‘For me, IT is one of the big changes that is happening which most local authorities are looking at: less face-to-face contact and more e-contact. But actually if you e-contact, it doesn’t foster good relationships. Your front door to the Council isn’t open – so …it is a bad example.’ (England, public authority, local government, non-specialist, Essential Guide for England)

More knowledgeable and experienced public authority participants were generally confident about establishing relevance, but recognised that it could be difficult for others because ‘…they don’t know what they don’t know.’ However, parts of the guidance where this issue is tackled, such as Chapter 4a in the Essential Guide for England, were not necessarily found to be helpful. One non-specialist felt it did not clearly explain how to establish relevance in practice and another indicated that specific examples of good practice might help.

‘To me this document is screaming out for – tell me what it looks like, tell me what good looks like, because at the end of this document I still don’t know what good looks like, and I like somebody to show me. If you’re

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44 For example, the Essential Guide for England’s Chapter 4a on establishing relevance.
• **Understanding of ‘proportionality’**

In the context of having due regard, the concept of proportionality was seen by public authority respondents as closely linked to that of relevance, but more difficult to interpret in practice. This may be because of the common assumption that most public authority functions, policies and decisions are relevant to the PSED.

‘I read the piece [in ‘Making Fair Financial Decisions’] around whether it is proportionate to conduct an assessment as particularly around what level of detail you are going to go into, rather than saying don’t do it at all.’ (England, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

Both the Essential Guide for England and ‘Making Fair Financial Decisions’ try to convey the idea that taking a proportionate approach to due regard means striking a balance between underdoing and overdoing; between not going far enough in the application of the general duty, for example, while avoiding ‘taking a sledgehammer to crack a nut’.

The concept is important in relation to various aspects of showing due regard. This includes: assessing impact on equality; engaging with stakeholders; publishing equality information and equality objectives; the methods used to publish equality information; taking action to mitigate equality impacts; and in relation to procurement.

In the context of taking a proportionate approach to assessing equality impacts, public authority respondents interviewed about both the Essential Guide for England and ‘Making Fair Financial Decisions’ commonly understood the term to mean concentrating resource on policies likely to have the most impact or where the risks to the organisation are perceived to be greatest. One non-specialist in England expressed this in terms of prioritisation, working down from bigger to smaller items, whereas another framed it in terms of resulting risk:
‘A proportionate approach means to me that whatever you do is in proportionate [sic] to the risks that could come out of it and to the impact of actually doing the work. So if it would take me two hours to do something but the risk of not doing it could be very detrimental to the organisation that would be proportionate. If it would take me two weeks to do something and there’s a very slight risk that it might impact on one person – that probably wouldn’t be proportionate.’ (England, public authority, criminal justice, non-specialist, Essential Guide for England)

Some PSED leads in England said that proportionality in their organisation was determined more or less on a case-by-case basis, but without necessarily any particular set methodology for arriving at a decision:

‘So I might say that I want our housing service to get all of this information about their clients so that we can see who is most likely to be put in temporary accommodation or a B&B and see if there’s any inequalities there, but then the challenge will always be the workload that you’re building up in asking for that information and then analysing it. So they’re the kind of discussions we have around what’s appropriate and proportionate. But we haven’t got a set way of making that decision.’ (England, public authority, local government, equalities specialist, Essential Guide for England)

‘[In deciding whether and what kind of assessment of impact was needed] I would be looking at how many people is it going to impact on. Are there particular groups that leap out straightaway where it is going to have an adverse impact? Is it going to affect the whole college or one department? It would be to do with volume [of people affected] certainly and … also the likely cost [of doing it].’ (England, public authority, education, equalities specialist, ‘Making Fair Financial Decisions’)

To explain what ‘proportionality’ means, a section in ‘Making Fair Financial Decisions’ uses an example of a major financial proposal compared to changing staff travel arrangements. A number of respondents criticised this example, as changing travel arrangements could result in a significant impact on a disabled person, and thought that a case study including more details would be better.
References to proportionality in the Essential Guide for England and ‘Making Fair Financial Decisions’ were often welcomed by public authority respondents in England because of the implied recognition that public authorities are not expected to undertake unduly burdensome steps to show due regard. However, some respondents thought there was little practical guidance in either the Essential Guide for England or ‘Making Fair Financial Decisions’ to aid decisions about proportionality. Some thought it could be quite difficult to draw the line between what would and would not be proportionate.

### 5.3 Understanding of the specific duties (Essential Guides only)

The specific duties tended to be seen as the main area in which public authorities were likely to be monitored (by the EHRC) and were more likely than the general duty to be viewed by respondents as the responsibility of particular staff or departments in the organisation. In contrast, the general duty was more likely to be described as ‘everybody’s business’.

> ‘In the specific duties there are particular areas that would be part of somebody’s specific responsibility and I know [they] would be much more focused on that as part of their role, whereas the general duty becomes everybody’s.’ (Wales, public authority, health, non-specialist, Essential Guide for Wales)

In respect of all three Essential Guides, respondents were aware of more detailed guidance available from the EHRC on each specific duty, but perhaps especially so in Wales and Scotland because of the large number of specific duties and their perceived significance in delivering the PSED. The Essential Guides therefore tended to be seen as providing a useful overview and ‘map’ of the specific duties and their place in the PSED, rather than practical guidance per se.

Section 5.3.1 examines respondent understanding of the purpose and benefits of the specific duties. The scope of this research did not include understanding of each specific duty in England, Scotland and Wales. It did, however, explore respondent understanding of the purpose and benefits of the specific duties in England, Scotland and Wales. It did, however, explore respondent understanding of the purpose and benefits of the specific duties in England, Scotland and Wales.

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45 ‘Making Fair Financial Decisions’ does not cover the specific duties, therefore this section relates to evidence collected with respondents looking at the Essential Guides only.
understanding of the requirement in all three countries to publish information in an accessible way, and the findings on this are covered later in section 5.3.2.

5.3.1 Purpose and benefits of the specific duties (Essential Guides only)

There are few differences between the Essential Guides in terms of how they set out the broad purpose of the specific duties. All three state that the specific duties are designed to help public authorities improve their performance of the general duty. In addition, the Essential Guides for England and Wales note that that they will improve focus and transparency.

In England, public authorities generally understood that the purpose of the specific duties, which are primarily about publishing information and objectives in an accessible manner, was to ‘improve what people can see about you’ (in other words, improve transparency). The point about transparency made in this section did not otherwise attract much comment or discussion.

There was a general understanding that the specific duties set out what the law requires of organisations:

‘I took the specific duty as, that is our responsibility... that is how I kind of interpreted it, the specific is exactly telling you what needs to be done to be compliant’ (England, public authority, education, non-specialist, Essential Guide for England)

However, it was also noted that ‘it doesn’t necessarily mean that we are meeting what it says in the general duty’. As presented in Chapter 2, in Scotland and in Wales the specific duties that support the performance of the general duty are more numerous and explicit than in England. Again, one view was that the specific duties represent a detailed action plan for meeting the general duty:

‘The general duty to me is the overall strategic aims that we want; the specific duties are more getting into the detail of it. …You have got to have a map more or less – these are the general duties and you can more or less say these are the specific duties.’ (Wales, public authority, education, non-specialist, Essential Guide for Wales)

Another view was that the specific duties set out particular actions s in addition to what public authorities need to do to comply with the general duty:
‘The specific duties for me set out areas in more detail... where the specific emphasis is on actions we need to take that will help contribute to the general duty. The way I see it is that the general duty covers pretty much everything and the specific duties say these are additional approaches and actions that we must take.’ (Wales, public authority, health, non-specialist, Essential Guide for Wales)

Public authority respondents in Wales and Scotland were aware that their organisation has to comply with a larger number of specific duties compared to in England. This was seen by some respondents as a benefit in terms of highlighting what had to be done to ensure compliance and building ‘conscious competence around equality’. However, there were still apparent difficulties in understanding what terms such as ‘reasonable steps’ or ‘time’ meant in practice (see sections 0 and 0).

‘The benefits of having [the specific duties] in some cases far outweigh not having them... For example, with the assessing of impact we have to do it and we have to show due regard and we have to show consideration and conscious decision making and things like that, and our decisions are evidenced and our policies are evidenced, whereas England doesn’t have to do that and they seem to be falling foul more often.’ (Wales, public authority, local government, equalities specialist, Essential Guide for Wales and ‘Making Fair Financial Decisions’)

Some public representative respondents thought the specific duties offered potential benefits to them, in the form of information that public authorities were required to gather and publish. Unions in particular mentioned they could locate this information, or ask public authorities for it, to help with negotiations. This suggests that the benefits of ‘transparency’ requirements are implicit and appreciated by individuals and organisations who need to deal with public authorities. It also suggests that what the PSED has to offer them in relation to this is potentially valuable:

‘The PSED regulations, the Scottish ones are a little bit tighter, special regulations... Things like regular key audits and the like, gender gap statistics and stuff like that they have to produce, which is great for us...At some stage every one of those is something I could rely on for a different argument. ... I mean I haven’t had to say very much, I just have to use the phrase ‘Special Equality Duty’/’Special Regulations for
Scotland' and most of them are off doing their job. They know what I mean as soon as I say that.’ (Scotland, public representative, union, non-specialist, Essential Guide for Scotland)

‘I certainly feel having read this [Essential Guide for England] that I would like staff to remind themselves of what these requirements are and for those areas like the need to publish… whether there is any information that we may choose to access that a local authority isn’t sharing with us anyway.’ (England, public representative, advice, non-specialist, Essential Guide for England and ‘Making Fair Financial Decisions’)

5.3.2 Accessibility

A specific duty in Scotland is that the information that listed authorities are required to publish should be ‘accessible to the public’. In Wales, there is a similar specific duty that listed bodies take all ‘reasonable steps to ensure that any document or information it is required to publish to meet its general or specific equality duties is published in a form that is accessible to people from protected groups’. In England, accessibility is not one of the specific duties but information and objectives are required to be published in a way that is ‘accessible to the public’. Neither the Essential Guide for Scotland nor Essential Guide for Wales elaborate, respectively, on what it means to be accessible to the public or to people from protected groups. The Essential Guide for England includes some recommendations about making equality objectives or equality information accessible to the public, but across a number of separate references in a number of different sections of the guidance. As these were not within a specific headed section that explains what is meant by ‘accessible to the public’, they could be difficult to find. For example, there is text in Chapter 5 under the heading ‘Putting the specific duties into practice’ outlining that:

- if equality information is published as part of a larger document this should be clearly signposted in the document and on the organisation’s website
- equality information and objectives should be clearly labelled, easy to find and in one place on the website, and
- consideration should be given to making equality information and objectives available in accessible formats or different languages.

In addition, the Essential Guide for England provides signposting to an online Website Accessibility Initiative.
A common interpretation of ‘accessible’ in all three countries was that it meant ‘publicly available’, generally on the internet:

‘For us we publish them on our website because that’s the main forum where the public can go and access particular information, and that’s where we publish other things that we’re required to publish under the Freedom of Information, so that’s where we’ve put the information. So basically if people want to know what they are they can find them.’ (England, public authority, education, non-specialist, Essential Guide for England)

‘A document on the website, yeah I would interpret that as being... There’s no guidance on it – that’s the way the group has actually been doing it before, it’s really putting it up on the website.’ (Wales, public authority, education, non-specialist, Essential Guide for Wales)

‘Well we have a website and so we publish on our website, which has a separate section on equality which can be reached from the homepage’. (Scotland, public authority, criminal justice, non-specialist, Essential Guide for Scotland)

Some respondents in all three countries understood ‘accessible to the public’ more broadly, including different impairment groups and, for example, people who do not have access to the internet or who do not have English as their first language:

‘We certainly publish the reports themselves and when we were writing them we were making sure that the language was clear and straightforward, that we had posters that we’ve distributed around the partners as well as all council offices, and we also did a presentation around any of the representative groups or indeed anybody that wanted us to come and tell them about the kind of headline results of that.’ (Scotland, public authority, local government, equalities specialist, Essential Guide for Scotland)
Respondents in all three countries talked about the practical implications of being aware of what is helpful to different groups, while maintaining a proportionate response in this respect.

Some public authority respondents in all three countries thought their organisation was currently falling short of the accessibility requirement:

‘It’s being aware of all the different forms that are helpful to people. We talked a little bit about that, about different hard copy versions …. And we’ve learned an awful lot around some of that in small ways from working with different groups… we’ve learned quite a lot around making information documents available in more accessible forms but I think we’ve got a long way to go still.’ (Wales, public authority, health, equalities specialist, Essential Guide for Wales)

‘That’s an interesting one. We do tend to rely on our board papers and committee papers moving onto the website; we can make copies of those available in for example large print; we can offer to translate those. But I think that’s an interesting challenge about just how accessible our data really is across the characteristics covered by the Act. That’s an interesting challenge and I’m probably less confident about our exemplar status in that one than in some of the others.’ (Scotland, public authority, health, non-specialist, Essential Guide for Scotland)

Some respondents in all three countries thought it would be helpful to have more guidance on what is expected. One person thought it could help reduce duplication of effort across the public sector as a whole:

‘I would’ve liked to have seen here examples of what ‘accessible to the public’ means, or more along the lines of ‘remember or don’t forget different languages, Braille, different media, are you going to publish it on your website, are you going to put leaflets through doors’, that type of thing.’ (England, public authority, criminal justice, non-specialist, Essential Guide for England)

‘What I am trying to get at [is] instead of having every organisation reinventing the wheel and putting resource and people’s time, to try and
5.4 Understanding of compliance and meeting the duty in practice – assessment of impact on equality

This section looks at key differences between the four pieces of test guidance and the possible impact of these in terms of helping public authority respondents\(^{46}\) to understand the requirements of the PSED and how to meet them in practice. It focuses on the assessment of impact on equality, an activity or process that is central to the PSED and covered by all four pieces of test guidance. As previously mentioned, findings reported are indicative only of what stakeholders find helpful, although they remain valid and relevant.

5.4.1 Comparison between the Essential Guides for England, Scotland and Wales

In Wales and Scotland, public authorities must assess the equality impact of their policies and decisions in order to comply with one of their specific duties. Although the requirements are more prescriptive in Wales than in Scotland, both are quite detailed on what public authorities need to do to comply. Thus, the Essential Guides for Wales and Scotland use terminologies such as ‘must’ and ‘require’ throughout.

In England, there is no such specific duty. Since the PSED was introduced, case law has however made clear that to comply with the general duty, public authorities have to assess the equality impact of policies and decisions when relevant and proportionate. The Essential Guides have all been updated by the Commission in 2014 to list the principles drawn from recent case law, but they do not provide details of what public authorities in England are required to do in practice. As such, the Essential Guide for England uses a mix of assertive and suggestive terminologies to advise public authorities what they should and may do.\(^{47}\)

\(^{46}\) There was insufficient evidence from public representative respondents to include them in this section.

\(^{47}\) See section C in Chapter 4 of the Essential Guide for England (‘Meeting the equality duty in policy and decision making’).
In this context, one would expect respondents in Scotland and Wales to be clearer on what compliance looks like compared to respondents in England. The evidence however does not confirm that this is the case. In fact, it indicates that in all three countries, respondents had similar difficulties in judging what is required for compliance in different situations in practice.

‘I think we could do with some more guidance around impact assessment side of things and exactly what would be – even if it’s just examples of what would be seen as reasonable evidence, because at the moment I think it’s kind of grey, it’s blurred a bit now in terms of what we actually need.’ (Scotland, public authority, education, equalities specialist, Essential Guide for Scotland)

‘There’s no definition specifically of “substantial [impact]”, “significant”, “sufficient matter”, “sufficient relevance”.’ (Wales, public authority, health, non-specialist, Essential Guide for Wales)

‘I think some of the openness gives quite a lot of scope for debate without actually coming to an answer because it’s down to different interpretation – how much detail could be gone into practically as to the impact of our budget reporting on equalities.’ (England, public authority, health, non-specialist, Essential Guide for England)

This tended to be framed as anxiety about compliance, or compliance and good practice combined (respondents were generally keen to achieve both). There were fewer voiced concerns about the risk of ‘over-compliance’ and these did not relate to striving for good practice that was beyond compliance. Those who were concerned about ‘over-compliance’ referred to a time-wasting ‘belt and braces’ approach designed to reduce the risk of challenge, rather than genuinely promote equality.

‘I was working with another team and I just thought you’re drilling down into too much detail, but then again that’s where the decision-maker has got to make a call of judgement and say I’m quite happy with this particular decision’ (Wales, public authority, education, non-specialist, Essential Guide for Wales (new to equalities role))
‘Don’t go overboard, so if we are going to (for example) stop Asian women sessions for a particular service, obviously consult with the relevant population and make sure you know why you are doing it. If on the other hand you are going to introduce a new council procurement strategy you probably don’t need to consult but just make sure it isn’t going to impact adversely anywhere. So be sensible.’ (England, public authority, local government, non-specialist, Essential Guide for England)

In England, discussions were similar to those in Scotland and Wales, as regards both the centrality of impact assessment to the PSED and the difficulty of judging what is needed for compliance. Cumulative impacts sometimes came up in discussions as presenting difficulties in knowing what to assess and how to do it, but this cannot be said to apply more to one country than another.

Where the countries did differ however was in terms of access to EHRC staff at meetings and networking associations. Respondents in Scotland and Wales were more likely to mention having had the opportunity to consult with EHRC staff and others in order to resolve questions.

‘You can read everything you like, but there is nothing that beats speaking to a person, and I think when you are in a group and someone is there who has got the specialist knowledge, different questions come up and you can throw scenarios at them – what about this, we’ve had this situation – and then you find several people have had it and you can get a response and I find that is really helpful.’ (Scotland, public authority, Education, specialist, Essential Guide for Scotland)

5.4.2 Comparison between the Essential Guide for England and ‘Making Fair Financial Decisions’

Like the Essential Guide for England, ‘Making Fair Financial Decisions’ also uses a mixture of what the legislation actually says and elaboration of this based on case law. A key difference is that ‘Making Fair Financial Decisions’ is mainly about assessment of impact, whereas the Essential Guide for England has a wider scope. ‘Making Fair Financial Decisions’ is also tailored to a particular circumstance (financial decision making) and, as already mentioned, is written in a practical style.
Findings below are based on evidence provided by respondents on the following sections of the test guidance:

- ‘Meeting the equality duty in policy and decision making' in the Essential Guide for England, and

Both guides use a mix of assertive and suggestive terminologies to describe what authorities must or can do to assess equality impact, for the same reasons explained above (see 5.4.1). ‘Making Fair Financial Decisions’ includes advice set out in an ordered way through the practical steps in the process of assessing impact, and uses a more direct and active tone than the Essential Guide for England.

Broadly speaking, most respondents said they understood the meaning of key sections on assessing impact in both ‘Making Fair Financial Decisions’ and in the Essential Guide for England.

> ‘If you’re putting in place new policies, procedures and practices that it should be underpinned by an equality impact assessment as a way of being able to bring together the information to show that you’ve had due regard for the implications.’ (England, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

However, (especially) those with no responsibility for equality or with little knowledge of equality or the PSED appeared to relate better to the tested extracts in ‘Making Fair Financial Decisions’. They recognised the steps in the process that were under clear direct headings. This made the document feel more immediately ‘useful’ or ‘relevant’ – a document that they might refer to again or show to others. Nonetheless, their understanding of what is involved in compliance and good practice when it comes to specific operational decisions was not particularly helped by ‘Making Fair Financial Decisions’.

Whichever guide they were considering, respondents understood that they should ensure that impact assessments were more than just cosmetic exercises. They realised that they needed to be carried out at an early stage so they could feed into the decision-making process.
‘What that is saying to me is, that document should start at the same time when you start your review of the policy and it basically builds a story then in terms of equality, what have we done, etc. It’s your storyboard effectively instead of just an end assessment that you do.’ (Wales, public authority, local government, non-specialist, ‘Making Fair Financial Decisions’)

They also understood ‘taking a proportionate approach to assessing equality impact’ to mean concentrating resource on policies likely to have the most impact. Respondents generally understood the point made in both the Essential Guide for England and in ‘Making Fair Financial Decisions’ that there is no need to produce a document called an equality impact assessment, but that it is advisable to keep a record of what they have done.

‘We’ve taken the template away because that’s what the focus was, a tick-box exercise. … we’ve given them guidance, and the guidance says – this step, that step, this step, that step, and don’t forget to keep your evidence.’ (England, public authority, criminal justice, equalities expert, Essential Guide for England)

It was difficult for some participants, particularly those with less knowledge or no direct responsibility for equality, to envisage how assessment might be evidenced other than through a template-style document and what other alternatives they could use:

‘In an organisation this size how do you consistently evidence that you have done what you mean to do. And actually how do you make sure that your staff do what they are meant to do unless there is a document, so it may as well be an impact assessment… I know they’re trying to say it’s not red tape, it’s not bureaucratic …but …’ (England, public authority, local government, non-specialist, Essential Guide for England)

‘I read that again, and “well, what’s the alternative then?” I suppose was my question. It’s where do you – and I’m going to say “document” – where do you record that?’ (England, public authority, criminal justice, non-specialist, ‘Making Fair Financial Decisions’)

The use of negative language in both the Essential Guide for England and in ‘Making Fair Financial Decisions’ to express what is not actually required was more confusing than helpful in enabling stakeholders’ understanding of compliance.

‘I would like to see more positive than negative language. So “to do this will be helpful”, “to do this will assist you to comply with or assist you to evidence what you are doing”. Because I think you read through and you say “Well, I don’t need to do that”. And it leaves you feeling vague at the end rather than comforted that you are going in the right direction.’ (England, public authority, criminal justice, non-specialist, Essential Guide for England)

‘On the one hand the language is quite prescriptive but on the other then it sounds as if you don’t have to do an equality impact assessment but you have to do something else.’ (Wales, public authority, education, non-specialist, ‘Making Fair Financial Decisions’)

‘Making Fair Financial Decisions’, like the Essential Guide for England, stops short of giving operational advice such as what ‘sufficient information’ means, how to go about engaging with those likely to be affected by policies and decisions, and how to balance all elements into a final decision about whether to proceed or not with a policy. This did not seem to be a problem for respondents with equalities expertise; they accepted the need to exercise judgement in these respects. Those with less expertise or with no direct responsibility for equality did, however, express difficulties in understanding what needs to be done to ensure compliance in these areas and what is beyond that minimum (though it may or may not be justified as good practice).

‘I think my immediate thought was on reading that first one – “contain enough information to enable…” - was you need to know what information you’ve got to provide first of all; I think that would be my [question] on that one… And I think it’s always useful to have examples.’ (Wales, public authority, education, non-specialist, ‘Making Fair Financial Decisions’)
‘Do you consult with all the groups or do you just consult with the groups that you think, like if you think intuitively this is going to have an impact on disabled people do you just consult them or should you consult against the wider nine characteristics?’ (England, public authority, education, equalities specialist, ‘Making Fair Financial Decisions’)

Respondents looking at the Essential Guide for England felt that the section covering assessment of impact was too long as well as too abstract, resulting in some key messages being lost. For example, one respondent said a point about potentially serious impacts albeit on a small number of people was important guidance but risked being ‘swallowed up’ in all the other text in the section. Other respondents thought a more developed checklist at the end of the section could replace much of the content.

The section entitled ‘What should I be looking for in my assessments?’ in ‘Making Fair Financial Decisions’ does provide what may be described as a developed checklist, and this produced the most interest among respondents. Generally, respondents welcomed this section as a practical tool to assure the quality of their own assessment processes, providing them with the questions they should raise about an assessment, followed by more details on what to look for in each case.

‘I thought the outcomes were quite helpful and do highlight the point that there’s no point in doing the assessments if you’re not ready to take some action as a result of it, and that it isn’t just a paper exercise.’ (England, public authority, education, equalities specialist, ‘Making Fair Financial Decisions’)

They also welcomed illustrative examples in this section on cumulative impact and on mitigation action. The reminder that cumulative impacts, as well as the impacts of individual decisions, need to be assessed was recognised and seen as important. However, some pointed out that the example here only serves to illustrate what ‘cumulative impact’ means; it does not provide much help with how to work jointly with other bodies, assess impact or make a decision on what to do if there are cumulative impacts from different policies and decisions.

‘The joint working with public authorities picks up the working with others but again I just wonder about the practicality of that, how easy that is.’
Respondents particularly appreciated the subsection on the four outcomes an assessment can lead to. They found this clear and helpful.

‘So this to me was – we do our assessment and we want to make a decision and there was four outcomes, so essentially no change, change with adaptations or adjustments, continue anyway but there’s going to be some adverse impacts I guess, or stop and then think about how we’re going to do some mitigation and then perhaps go through the cycle again. But I suppose you would stop and think, try and make some adjustments and then start it again, was to me what this section was saying. And I was quite comfortable with this one and I thought I get that, it’s pretty straightforward.’ (England, public authority, criminal justice, non-specialist, ‘Making Fair Financial Decisions’)

In summary, the style of ‘Making Fair Financial Decisions’, its focus on financial decisions and on the key processes around impact assessment, made it a document that was accessible and that provided more help with understanding compliance. However, many respondents still refer to difficulties that remain in both assessing what is needed for compliance and carrying it out – in putting theory into practice – in ways that echo those reading about impact assessment in the Essential Guide for England.
SECTION 3 | CONCLUSIONS
6. Conclusions

This chapter summarises key findings on: stakeholders’ awareness of the guidance; how they access and currently use it; how they understand the PSED, how to apply it and what works and does not work to help them to do this. Finally, it draws on the research findings to indicate possible steps forward. This report is based on qualitative research, well-suited to exploring issues in depth and identifying the range of views and experiences of the PSED and the test guidance, but not their prevalence.

Awareness

Public authority respondents generally knew about the existence of EHRC guidance on the PSED prior to the research. Awareness of the full range of guidance that is available in England, Scotland and Wales was patchy, among both equality specialists and non-specialists. Respondents were less likely to be aware of ‘Making Fair Financial Decisions’ than of the Essential Guides. Non-specialists in public authorities and public representative participants were less likely than equality specialists to have seen the test guidance prior to the research. Public representatives were also less aware of the PSED and test guidance than respondents in public authorities.\(^{48}\)

Some of the factors that hinder awareness and use of the guidance, especially among equality non-specialist respondents, are the pressures on time and personnel in public bodies. Commonly in public authorities, one member of staff or a small team was responsible for mastering the guidance and legislation and interpreting it for others in different roles. Some PSED lead respondents who took part in the research had other areas of responsibility, and some were relatively new to this area of work. Alongside the increasing pressure on public authorities to do ‘more for less’, this may represent a loss of expertise, legacy knowledge, and less time available for equality work.

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\(^{48}\) They were not necessarily clear how far the test guidance was aimed at or relevant to them, although they found it interesting.
Some respondents expressed frustration when using the EHRC website to look for guidance on the PSED.\textsuperscript{49} The signposting on the website was thought to be weak and there was inadequate description about how the available guidance fits together. This may also be a contributing factor affecting levels of awareness.

Most public authority respondents considered guidance produced by the EHRC to be important, but it was not the only source of support on the PSED that they turned to. Guidance from other government departments or regulators, reports of case law or inter-agency groups and networks (geographically and or sector-based, mentioned quite prominently in Wales for example) also played a key part in enabling them to develop their understanding of the PSED. In addition, some PSED lead respondents in Scotland and Wales reported having discussed guidance and getting more practical advice on how to implement it directly through contact with EHRC staff. This was less likely to be the case in England.

\textbf{Suitability for and use among different audiences}

PSED lead respondents in all three countries had used – and continued to use – EHRC guidance as authoritative reference on the PSED. They use it to: understand the legislation; prepare briefings and training materials for others in their organisation and help embed the PSED; and add material to reports or publications. Equality specialists also used them as a reference document they could ‘dip’ into as and when required. Of the guidance that was tested, equality specialists newer to their role were more dependent on the Essential Guides for understanding the PSED than experienced equality specialists. Several PSED lead respondents had used ‘Making Fair Financial Decisions’, referring senior colleagues to it and using it to develop or check their own equality impact assessment process.

Some equality specialists and non-specialists thought that the Essential Guides\textsuperscript{50} would not appeal or respond to the needs of their colleagues with no direct responsibility for the PSED because of their ‘generic’ nature, length and wordiness. Evidence from interviews with equality non-specialists confirmed that this is likely to be the case. In addition, there is some evidence that the Essential Guides do not respond to the needs of equality leads with no previous PSED expertise and little time to develop it.

\textsuperscript{49} Since this research has been undertaken, the EHRC has begun work on improving the presentation and navigability of guidance on the website.

\textsuperscript{50} Particularly the Essential Guide for England.
In contrast, the evidence suggests that ‘Making Fair Financial Decisions’ is better adapted to appeal to ‘any interested readers’ who need to know about the PSED, at least in the context of financial decision making because it is much shorter, more practical and accessible (with a larger font, clearer layout and more readable style). There were examples of broader use of ‘Making Fair Financial Decisions’ too. Some respondents thought its content was relevant to all decisions made by public authorities, not just financial decisions. In addition, some public representatives thought it could be useful to them when checking PSED is being considered appropriately in public authorities’ decisions and to empower them to challenge decisions otherwise.

The broad structure of the PSED, in terms of the general and specific duties, is widely understood by public authority respondents and some public representatives. In all three countries, public authority respondents commonly understood that the requirement to comply with the general duty is not satisfied solely by complying with the specific duties, although there were some possible exceptions among respondents new to the PSED. There was limited opportunity to explore public authority respondents’ understanding of requirements that are ‘implicit’ in the law in England in detail. However, demonstration of this, especially among equality specialists, often emerged as respondents discussed the sections of the Essential Guide specifically covering these requirements.

Sections in the test guidance dealing with the purpose and benefits of the general duty, in the Essential Guides for England, Scotland and Wales and in ‘Making Fair Financial Decisions’, were well understood. Positive ‘business arguments’ for the general duty tended to resonate more with public authority respondents, though negative arguments about the risks of legal challenge and to organisational reputation were also thought to have a place in reinforcing messages about the importance of compliance.

Public authority respondents in all countries understood that the general duty applies both to public authorities and also to private and voluntary sector organisations who deliver public functions (in respect of those functions). However, in sections of the test guidance dealing with coverage and procurement, some uncertainty was evident about whether and how responsibility for compliance with the PSED is shared, in law, between public authorities and those they contract with to deliver public functions.

Public authority respondents were largely familiar with the term ‘protected characteristics’. Some wanted a clear overarching definition to help non-specialists and those new to the PSED understand that the legislation is relevant to everyone.
In setting out the three aims of the general duty, the Essential Guides reproduce the text of the Equality Act 2010. This formulation was familiar to public authority respondents but some still described it as dense and technical. Some non-specialists struggled to disentangle the three aims and to express them in their own words. Core concepts in the first aim especially (such as victimisation, harassment) have legal as well as everyday meaning, which may be difficult to grasp. The second and third aims were seen as overlapping.

The need to treat some people more favourably in order to advance equality was widely understood by public authority respondents, but thought sometimes be hard to explain, for example to board members. Few public authority respondents used the technical terminology linking the second aim of the PSED (to advance equality of opportunity) with the need to consider taking proportionate 'positive actions'.

Some public authority respondents thought that the significance of ‘due regard’ could be made clearer earlier on in the guidance. They thought their understanding of the concept had developed since the law was enacted, but even some equality specialists still saw ‘due regard’ as evolving. In explaining their understanding, respondents mentioned: proactive consideration of how to take forward the three aims; collecting and using relevant information; maintaining evidence of due regard processes; and adopting a systematic, continuous approach to keeping decisions and policies under review. Sections in the Essential Guides setting out principles from case law relating to ‘due regard’ were helpful to some, but they were often found to be overly formal, legalistic and off-putting. Respondents had particular difficulty understanding principles 1, 3, 7 and 8 as they are currently worded.

The Essential Guide for England includes sections on relevance and proportionality, and these terms also appear in other test guidance. Both concepts were generally welcomed by public authority respondents as recognition that steps to ensure compliance should not or need not be unduly burdensome. Many public authority respondents viewed the PSED as relevant to almost every function they carry out. ‘Proportionality’ was therefore sometimes seen as the more pivotal concept, described as being about what is ‘reasonable’ or ‘realistic’. However, deciding what is proportionate across diverse functions and situations was still thought to be difficult in practice.

The section in the Essential Guide for England on how to put the specific duties into practice was thought by public authority respondents to be comprehensible and applicable, although not always accessible to those without specialist knowledge. In particular by respondents looking at the Essential Guides produced for Wales and Scotland, as well as ‘Making Fair Financial Decisions.’
all three countries certain parts of the guidance on the specific duties were of particular interest to public representative respondents. An example of these is what categories of information should be gathered and published. They were able to see how such information could be useful to them, for example in negotiations if they represent employees of a public authority, and also how they could contribute.

The specific duties require that publication (of, for example, objectives or outcomes in Scotland) should be ‘accessible’ to the general public. Although some public authority respondents had a wider ‘take’ on what this means (such as clear language, different formats), it was commonly interpreted to mean ‘publicly available on the internet’.

Barriers to understanding what is required for compliance (or for minimum compliance as opposed to going beyond the minimum) were evident in all three countries. The more numerous and explicit specific duties in Wales and Scotland are welcomed by some public authority respondents in those countries as providing a clearer map of what compliance looks like. However, in terms of knowing what is required for compliance in different situations in practice, for example in relation to assessment of impact, stakeholders in all countries often described similar difficulties. The more numerous specific duties in Wales and Scotland – while helpful in some respects – did not remove the need for stakeholders to make judgements, for example about what is ‘reasonable’ in terms of information gathering, or what represents a ‘substantial impact’. Some public authority respondents remained uncertain about what to do to ensure compliance or, compliance and good practice combined; they were generally keen to achieve both and did not necessarily expect a clear distinction between them. One useful and potentially practical tool for public authority respondents in England, including both specialists and non-specialists, was the detailed checklist in ‘Making Fair Financial Decisions’ entitled ‘What should I be looking for in my assessments?’
7. Implications

When producing and disseminating new guidance for public authorities and public representatives on the PSED, or improving the awareness and use of existing and potential new guidance on the PSED, consider the following on dissemination, publicity and presentation:

- Take account of the pressures on time and personnel dealing with equality and the PSED. It should also consider the particular information needs of bodies representing the public and smaller organisations with no dedicated PSED resource, such as schools and specialist bodies.
- Consider using the presentational devices that respondents thought were helpful in the test guidance, such as:
  - a detailed contents page to aid navigation (as in the Essential Guides for Scotland and Wales)
  - clear section headings and titles that summarise the sections’ content, including those framed as questions (as in ‘Making Fair Financial Decisions’)
  - concise, visually varied content (using bullet points, diagrams and boxed examples rather than solid text) and written in plain English
  - checklists, especially at the end of key sections, as long as they don’t introduce new points, and
  - a glossary to help with comprehension of key terms (as in the Essential Guide for England).
- Consider formats other than written documents – those that would be more interactive, visual and engaging.
- Present publications on the website in a logical order and use a consistent format and style.
- Make sure that all target audiences are provided with information on the range of resources available on the EHRC website, their location and content and how they fit together.  

- Include more case studies drawn from ‘real life’, which cover different sectors and functions without impacting on the length of guidance documents. It will be useful to raise awareness of the examples already published on the EHRC website and to consider publishing new ones.

- Offer updates about case law relevant to the PSED, which may satisfy the demand for information about different authorities’ experience (good and bad), of trying to apply the law in different sectors and circumstances. This should include information on the facts, context, legal arguments used and outcomes.

- Address areas of uncertain understanding by:
  - placing a greater emphasis on the positive arguments for the PSED
  - offering clearer explanations of terms such as ‘protected characteristics’, ‘relevance’ and ‘proportionate’, and
  - re-working sections of the guidance found to be opaque and off-putting (for example, the meaning of ‘due regard’) to make them easier to read and understand.

- Take on board the different roles, functions and experience in organisations. ‘Making Fair Financial Decisions’ offers a possible useful model for further short, tailored guidance related to broad functions or issues. It uses terms that resonate with the target audience and includes practical steps on how to ensure compliance or demonstrate good practice in exercising a particular function in a particular circumstance.

- Consult and engage in dialogue with relevant audiences through activities such as the co-production of guidance. This could offer an opportunity to properly reflect the evolving needs of stakeholders and to draw on their experience and expertise. The EHRC in Wales and Scotland possibly have valuable experience of working with their public authorities to contribute.

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52 The EHRC has already begun work to present its guidance on the PSED in a revised structure. The effectiveness of this was not tested as part of this research.

Annex 1: Content, structure and format of the test guidance
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>LENGTH</strong></td>
<td>46 pages including 11 pages of appendices</td>
<td>24 pages, no appendix</td>
<td>28 pages including 10 pages of appendices</td>
<td>7 pages, no appendix</td>
</tr>
<tr>
<td><strong>LANGUAGE</strong></td>
<td>Mix of direct address and second/third person (use of ‘you/your’ as well as ‘public authorities’, ‘listed authorities’). Reproduces the text as in the Equality Act 2010 in several instances (e.g. in presenting the aims of the general duty). Reference to specific sections of the Equality Act 2010 and Regulations. Language is quite theoretical.</td>
<td>Second/third person throughout. Reproduces the text as in the Equality Act 2010 in several instances (e.g. in presenting the aims of the general duty). Reference to specific sections of the Equality Act 2010 and Regulations. Language is quite theoretical.</td>
<td>Second/third throughout. Reproduces the text as in the Equality Act 2010 in several instances (e.g. in presenting the aims of the general duty). Reference to specific sections of the Equality Act 2010 and Regulations. Language is quite theoretical.</td>
<td>Uses direct address throughout. Refers to the law in very brief terms and does not reproduce the text of the Equality Act 2010. Language is less theoretical.</td>
</tr>
<tr>
<td><strong>EXAMPLES</strong></td>
<td>Examples are in-line and in the same format as the main body text. Examples are succinct and abstract as opposed to potential or real scenarios.</td>
<td>Fewer examples than in the Essential Guide for England. All relate to the general duty. Examples are in-line and in the same format as the main body text. Examples are succinct and abstract as opposed to potential or real scenarios.</td>
<td>Fewer examples than in the Essential Guide for England. All relate to the general duty and thus are the same as those in the Essential Guide for England. Examples are in-line and in the same format as the main body text. Examples are succinct and abstract as opposed to potential or real scenarios.</td>
<td>A few examples are separated from the text and introduced as ‘Example’ in bold. Examples are quite detailed potential scenarios. One relates to a real example of a court case relevant to the PSED.</td>
</tr>
<tr>
<td><strong>FORMAT AND LAYOUT</strong></td>
<td>Contents page, page numbers and headings. The contents page gives page references for chapter titles only. The main body of the text looks quite dense with little ‘white space’. Font size 12. Non-systematic use of bold to highlight important points in the main body text or demarcate subsections.</td>
<td>Contents page, page numbers and headings. The contents page gives page references for both chapter titles and sub-headings. Font size 12. Non-systematic use of bold in the main body to highlight important points or to demarcate subsections on the</td>
<td>Contents page, page numbers and headings. The contents page gives page references for both chapter titles and sub-headings. Font size 12. One coloured box used to list the Scottish specific duties. Non-systematic use of bold to highlight important points</td>
<td>Headsings but no contents page. Font size 14. Extensive use of bold throughout to highlight important points (e.g. questions to quality assure equality impact assessment; the 4 outcomes an assessment can lead to).</td>
</tr>
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</table>
**STRUCTURE**

**MAIN BODY:**
- Introduction to the guide itself, including how it fits with other guidance published by the EHRC, the legal status of the guide, its intended audience and its content.
- Introduction to the PSED, the general duty, who is subject to it, exceptions, protected characteristics, its purpose and benefits, the specific duties, the purpose of the specific duties and who is subject to them.
- A shorter chapter entitled ‘What the law requires’, which mostly consists of principles drawn from case law that relate to the general duty (the ‘due regard’ duty).
- A chapter entitled ‘Putting the general equality duty into practice’, which covers some of the areas that in Scotland and Wales are dealt with in separate specific duties, such as: establishing relevance of the duty to ‘your functions’; collecting and using equality information; meeting the duty in policy and decision making; engagement and procurement.
- A chapter entitled ‘Putting the specific duties into practice’, which covers publishing equality information and publishing equality objectives.
- A chapter entitled ‘Embedding the equality duty into your organisation’, which includes specific duties.

**MAIN BODY:**
- Context: What is a listed authority in Wales; the Equality Act 2010; who is the non-statutory guidance aimed at.
- The general duty: who is covered by the general duty; what is the general duty; implementing the general duty; who needs to be aware of the general and specific duties.
- About the specific duties in Wales: who is covered by the specific duties; what are the specific duties; guides on the specific duties.
- Legal status of non-statutory guidance.
- Exceptions.
- The specific duties (and page references for the specific duties in Wales).

**MAIN BODY:**
- An introduction to the legal context and status, the intended audience, content, key dates and terminology used.
- The PSED itself, its purpose, the terms of the general duty, who it applies to, exceptions, principles to be followed in implementing it and who needs to be aware of it.
- The specific duties, their purpose, who they apply to, what they require and the contents of each explained in summary.

**APPENDICES:**
- Relevant legislation setting out the general and specific duties for Scotland.

Quite a lot of blank space throughout.

Extensive use of coloured boxes to bring attention to key points such as the definition of 'public authorities', what the law requires, advice on what compliance means, and advice on good practice.

‘Remember’ checklists at the end of sections in chapters 4 and 5, summarising key points on what public authorities should consider doing to comply with the PSED.

No use of coloured boxes. The final chapter on the specific duties covers roughly the second half of the document. In addition, the text in some of the earlier sections is relatively brief, allowing for some blank space.

The benefits of assessing equality impact, including reiterating what the law requires but also expanding on the business case and benefits of for using the PSED in the context of financial decision making.

When impact assessments should be conducted.

Quality assurance checklist: to ensure robust assessments are conducted.

The final chapter on the specific duties covers roughly the second half of the document. In addition, the text in some of the earlier sections is relatively brief, allowing for some blank space.

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The benefits of assessing equality impact, including reiterating what the law requires but also expanding on the business case and benefits of for using the PSED in the context of financial decision making.

When impact assessments should be conducted.

Quality assurance checklist: to ensure robust assessments are conducted.
sections on internal governance and training.
- A final chapter on the regulatory framework discussing the various roles of the EHRC in relation to the PSED.

**APPENDICES:**
- Legal text relevant to the general and specific duties for England.
- Extensive glossary.

| conducted and to provide pointers on how the assessment should feed in to the decision-making process (4 outcomes and suggested next steps).
| Some possible consequences of not properly assessing impact. |
Annex 2: Method

Note on the achieved public authority sample

Included in the achieved sample for this project were public authorities in England, Wales and Scotland across four sectors (criminal justice, education, health and local government) and a small number of public representatives (trade unions, CABs and law centres, other VCS organisations). The sample covered public authorities serving areas that were predominantly inner city, urban or rural and both larger and smaller organisations. Within public authorities, efforts were made to talk not just to equality specialists but also to others who did not necessarily have a formal equalities role. Generally, we found some resistance to recruitment among people who felt they knew nothing at all about equalities or the guidance; the findings in this report therefore probably represent a ‘better case scenario’. We made reasonable efforts to include different types of organisations within the sectors we covered and we tried to make sure that the Essential Guides and ‘Making Fair Financial Decisions’ were discussed with respondents of all types.

In constructing the sample for this project we were concerned to ensure that evidence was sought from a wide range of potential users of the EHRC guidance reflective of the audiences in England, Scotland and Wales. While it was of interest to compare and contrast, where possible, the views on each piece of test guidance offered by equality specialists and non-specialists, by public authority and public representative respondents and by those working in Wales, Scotland and England, the overall sample sizes (individuals interviewed and organisations represented) limited the scope for this. Nonetheless, some reasonably reliable nuancing of the broad picture has been possible.

Attribution of verbatim material

Verbatim material in this report is included for illustrative purposes and to capture the feeling and tone of conversations with respondents. Quotations are attributed as follows:

- Country: England, Wales, Scotland
- Public authority or public representative
• Sector: criminal justice, education, health, local government or trade union, CAB/law centre, other VCS
• Equality specialist or non-specialist (public authorities only)

Outline topic guides

PUBLIC AUTHORITIES

A. Background (5 minutes max.)

IN BRIEF...
• Organisation:
• Job title?
  o Main areas of responsibility;
    ▪ What they actually do at work;
    • How long they have been in the job.
• Role in relation to PSED (in brief).

B. Test guidance (40 minutes)

SHOW TEST GUIDANCE, AND ASK:
• Had you seen this before we sent it to you?
  o Probe/recap any information about if, how, in what way and when they had looked at it/made any use of it;
  o If not, have the contents been made known to them in other ways (e.g. perhaps by someone else in the organisation, what, how and why).
• Before we start to go through the document in a more detailed way, can I ask what your overall thoughts are about the document
  o Probe format and layout
    ▪ Length
    ▪ Structure and content
    ▪ Language and ease of understanding
• Are there any sections of the guidance that you particularly want to comment on, either because you think they are especially good or especially bad?

FOR EACH HIGHLIGHTED SECTION IN THE TEST GUIDANCE ASK:
• Was this section clear to you or not? If not, probe response.
• Working through this section (paragraph by paragraph) your own words what do you take to be the main message(s)? Probe anything that is not clear. Ask for examples if it will help illuminate their answer, but don’t get side-tracked.
• WHERE RELEVANT AND IN RELATION TO THE GENERAL AND SPECIFIC DUTIES, AND ALL KEY TERMS AND CONCEPTS ASK: What are the things that you think your organisation must do, and what are the things that it would be ‘nice’ or good practice to do?
FOR KEY PARAGRAPHS OR SENTENCES ASK:
- Can I ask you in particular to describe your understanding of the sentence/paragraph beginning...?
- Is there any doubt in your mind about what this means or could mean? Probe in full.

FOR TERMS AND CONCEPTS UNDERLINED IN EACH SECTION, ASK:
- Did you notice the term XXXXX?
- Taken in context how do you interpret it? Can you explain in your own words what you understand it to mean? Probe in full.
- Is there any doubt in your mind about what this means or could mean? Probe in full. Ask for illustrations and examples if this seems likely to help.

KEY TERMS AND CONCEPTS, SUMMARY UNDERSTANDING. EXPLORE RESPONDENT OVERALL UNDERSTANDING OF THE FOLLOWING GLEANED FROM THE TEST GUIDANCE AS A WHOLE (THERE SHOULD ALREADY HAVE BEEN CONSIDERABLE DISCUSSION OF THESE – THIS IS TO BRING IT TOGETHER):
- **Due regard** – What is the meaning of due regard that is conveyed to you by this document? What would distinguish a person/organisation that is paying due regard from one that is not? PROBE IN FULL.
- **Relevance** – The term relevance crops up a lot in the guidance – for example in the context of establishing the extent to which the duty is relevant to the functions carried or contracted out by the public authority. What is the meaning of ‘relevance’ that is conveyed to you by this document? Can you put it in your own words? Is there another way of saying it? What does the document say to you about establishing relevance?
- **Proportionality** – This is another term that crops up a lot in the guidance – for example in the context of taking a proportionate approach. What is the meaning of proportionality that is conveyed to you by this document? Can you put it in your own words? Is there another way of saying it? What have you understood the document to mean when it talks about proportionality in the context of:
  - Assessing impact on equality;
  - Engaging with stakeholders;
  - Publishing equality information;
  - Publishing equality objectives;
  - Procurement.
- **Purpose and benefits of the PSED general and specific duties**

IF TIME – SHOW GUIDANCE THAT IS NOT THE MAIN FOCUS OF THE SESSION (ESSENTIAL OR MFFD AS RELEVANT) AND CAPTURE ANY TOP-OF-HEAD THOUGHTS ABOUT THE PERCEIVED RELATIVE VALUE (IF ANY) OF THE DOCUMENT COMPARED WITH THAT TESTED.

C. The PSED Guidance more generally (10 minutes max.)

SHOW THE EHRC GUIDANCE ‘MAP’, AND ASK:
- Before we bring this session to a close, can I just ask you to take a look at this ‘map’ of guidance on the PSED that the EHRC published and ask you
which, if any, of the documents on it you personally have looked at any time in the last few years

OF THE EHRC GUIDANCE ON THE PSED THAT THEY SAY THEY HAVE SEEN/USED (IF ANY), ASK:
- When and why they looked at it. Probe for details.
- If they found it useful or not. Probe for details.

OVERALL:
- Do you have an overall view of the EHRC’s PSED guidance?
  - Probe any views offered about the guidance, positive or negative;
  - Ask about dissemination/availability/accessibility:
- In general, how important a part does the EHRC guidance on the PSED play in the ‘system’ of resources that you/your organisation use in your activities in relation to the PSED?
  - Probe for other resources they use/rely on (and their relative importance).

D. Final section (5 minutes)
- In a nutshell, what in your view could the EHRC do to improve the guidance we have been talking about?
- What could or should the EHRC be doing to improve or support use of the currently available guidance?
- What, apart from issuing guidance, could the EHRC consider that would support organisations in implementing the PSED?
- What is it most urgent for the Commission to sort out?

THANK RESPONDENT FOR THEIR TIME. ASK IF THEY HAVE ANYTHING THEY WOULD LIKE TO ADD OR ANY QUESTIONS. STOP RECORDER

PUBLIC REPRESENTATIVES

A. Background
“\( I \) would like to start by recapping a bit what I understand so far about the organisation you work for and your role within it.......”

QUICKLY SUMMARISE ISR’S CURRENT UNDERSTANDING OF THE ABOVE, FOR EXAMPLE.....:
- Organisation:
  - Main functions/services/powers;
    - Population served (geography, size, characteristics);
      - Employees (number, any special characteristics).
- Job title?
  - Main areas of responsibility;
    - What they actually do at work;
      - How long they have been in the job.

B. Test guidance
“The main part of the interview focuses on the document(s) sent to you when we confirmed our interview appointment...
SHOW (FIRST PIECE OF) RELEVANT GUIDANCE, AND SAY:

- Had you seen this before we sent it to you?
  - If yes, ask how they found out about it, how they accessed it, etc.;
    - Probe/recap any information about if, how, in what way and when they had looked at it/made any use of it.

- Based either on previous sight/use made of this piece of guidance or on your preparation for this interview:
  - What are your overall thoughts about the test guidance
    - Probe format and layout
      - Length
      - Structure and content
      - Language and ease of understanding
    - Probe usefulness in terms of:
      - Explaining/clarifying what public authorities need to do to meet the general/specific duty

- Are there any sections of the guidance that you particularly want to comment on, either because you think they are especially good or especially bad?

**Insert prepared question module for relevant test guidance.**

- How could this piece of guidance be improved so that it is more useful to you/your organisation?
- Probe what else, if anything, would enhance the usefulness of the guidance.

REPEAT THIS PROCES FOR ANY OTHER GUIDANCE BEING TESTED IN THE INTERVIEW.

C. The PSED

“I want to spend a little bit of time talking about the Public Sector Equality Duty....” FOR EXAMPLE....

- Before we approached you about this interview, did you know about the guidance on the PSED that is published by the EHRC?
  - Probe if they had ever actually seen any of the guidance before;
    - What, when and under which circumstances;
  - Would they say they personally had actually used any of the guidance;
    - Or knew of use that had been made of any part of the guidance within the organisation?
    - What, when and under which circumstances;

- In general, how important a part does the EHRC guidance on the PSED play in the ‘system’ of resources that you/your organisation use in your activities in relation to the PSED?
  - Probe for other resources they use/rely on (and their relative importance), for example:
    - Other publications (internal/external), which?
    - Formal organisation or professional networks (local, national)
      - Informal networks
        - Conferences and courses
D. Final section

“We have been talking about the EHRC’s guidance on the PSED, especially focusing on the content of (GUIDANCE USED)...

• Before we end the interview, is there anything further you would like to add about any aspect of the EHRC’s guidance?

THANK RESPONDENT FOR THEIR TIME. ASK IF THEY HAVE ANYTHING THEY WOULD LIKE TO ADD OR ANY QUESTIONS. STOP RECORDER
Annex 3: Key sections of the test guidance

A. How the Essential Guides for England, Scotland and Wales present the PSED – commonalities and differences

All the Essential Guides state that the PSED:

- is part of the Equality Act 2010
- replaced the former separate duties relating to race, disability and gender equality, and
- is made of a general duty set out in section 149 of the Equality Act 2010 supported by specific duties set out in secondary legislation (the Equality Act 2010 (Specific Duties) Regulations).

Only the Essential Guide for England states that the general duty is the same across Great Britain and that the specific duties are different in England, Scotland and Wales. It is also the only guide that states that ‘complying with the specific duties does not necessarily ensure that an authority is having due regard to the aims of the general equality duty across all of its functions’.

In terms of dates, all Essential Guides state that the general duty came into force on 5 April 2011.

The Essential Guide for Wales provides information on when the specific duties came into force and dates for listed public authorities to comply with different legal requirements throughout the guidance.

Where the Essential Guide for Scotland provides key dates relevant to the PSED in a separate section upfront (page 6), the Essential Guide for England provides a ‘summary of key dates’ as part of its ‘who is subject to the duties’ section on page 10.
## B. Purpose and benefits of the general duty as set out in the test guidance

| Essential Guide for England (p. 8) under ‘Purpose and benefits of the general equality duty’ | The broad purpose of the general equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. It is an integral part of the mechanisms for fulfilling the requirements of the Equality Act 2010. If a public authority does not consider how a function can affect different groups in different ways, the function may not meet its own objectives. For example, a smoking cessation programme may not be fully effective if it does not take into account the different marketing tools that have the most impact on people of different ages. This can contribute to greater inequality and poor outcomes. The general equality duty therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality to be considered in decision making, in the design of policies and in the delivery of services, including internal policies, and for these issues to be kept under review. Compliance with the general equality duty is a legal obligation, but it also makes good business sense. An organisation that is able to provide services to meet the diverse needs of its users should find that it carries out its core business more efficiently. A workforce that has a supportive working environment is more productive. Many organisations have also found it beneficial to draw on a broader range of talent and to better represent the community that they serve. Compliance with the general equality duty should also result in better informed decision making and policy development, and better policy outcomes. Overall, compliance can lead to services that are more appropriate for users and more cost-effective. This can improve satisfaction with public services. |
| Essential Guide for Wales (p. 5) under ‘What is the general duty’ | The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. It is an integral and important part of the mechanisms for ensuring the fulfilment of the aims of the Equality Act 2010. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all. |
| Essential Guide for Scotland (p. 7) | The purpose of the public sector equality duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing |
The public sector equality duty requires equality to be considered in all the functions of public authorities, including decision making, in the design of internal and external policies and in the delivery of services, and for these issues to be kept under review.

The previous public sector equality duties shifted the onus away from an individual having to seek redress after suffering discrimination, and onto public authorities being required to take a proactive and organised approach to tackling ‘institutional discrimination’ and focusing on organisational change. These duties aimed to mainstream equality into public sector culture in practical and demonstrable ways.

These principles continue to apply to the public sector equality duty.

The public sector equality duty (the equality duty) does not prevent you from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop you from making decisions which may affect one group more than another group.

The equality duty enables you to demonstrate that you are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of your community. This is achieved through assessing the impact that changes to policies, procedures and practices could have on different protected groups (or protected characteristics under the Equality Act 2010).

Assessing the impact on equality of proposed changes to policies, procedures and practices is not just something that the law requires, it is a positive opportunity for you as a public authority leader to ensure you make better decisions based on robust evidence.

If you have not carried out an assessment of impact on equality of the proposal, or have not done so thoroughly, you risk leaving yourself open to legal challenges, which are both costly and time-consuming.

Legal cases have shown what can happen when authorities do not consider their equality duties when making decisions.
**Example:** A court overturned a decision by Haringey Council to consent to a large-scale building redevelopment in Wards Corner in Tottenham, on the basis that the council had not considered the impact of the proposal on different racial groups before granting planning permission.

However, the result can often be far more fundamental than a legal challenge. If people feel that an authority is acting high-handedly or without properly involving its service users or employees, or listening to their concerns, they are likely to become disillusioned with you.

Above all, authorities which fail to carry out robust assessments of the impact on equality risk making poor and unfair decisions that could discriminate against people with particular protected characteristics and perpetuate or worsen inequality.
C. The three aims of the general duty as set out in the Essential Guides

In summary, those subject to the general equality duty must, in the exercise of their functions, have **due regard** to the need to:

1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These are often referred to as the three aims of the general equality duty (or 'needs' in Scotland).

The Equality Act 2010 explains that the second aim/need (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics
- take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people, and
- encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

It states that meeting different needs includes (among other things) taking steps to take account of disabled people’s disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It explains that compliance with the general equality duty may involve treating some people more favourably than others.

To comply with the general equality duty, a public authority needs to have due regard to all three of its aims/needs.
D. The ‘due regard’ principles as set out in the Essential Guides

1. Those who exercise its functions must be aware of the general equality duty’s requirements. Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply.

2. The duty places equality considerations, where they arise, at the centre of policy formulation, side by side with all other pressing circumstances, however important these might be.

3. The duty is on the decision-maker personally in terms of what he or she knew and took into account. A decision-maker cannot be assumed to know what was in the minds of his or her officials giving advice on the decision.

4. Each aim of the duty must be considered. The requirement to have due regard to the need to advance equality of opportunity is a separate obligation, in addition to the need to avoid unlawful discrimination.

5. The general equality duty must be complied with before and at the time a particular policy is under consideration, as well as at the time a decision is taken. A public authority subject to the general equality duty cannot satisfy the general equality duty by justifying a decision after it has been taken.

6. A public authority must consciously think about the need to do the things set out in the general equality duty as an integral part of the decision-making process. Having due regard is not a matter of box-ticking. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. There should be evidence of a structured attempt to focus on the details of equality issues.

7. A public authority must have sufficient evidence on which to base consideration of the impact of a policy or decision. It will need to consider whether it has sufficient information about the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.

8. A public authority must take responsibility for complying with the general equality duty in relation to all functions to which the general equality duty applies. Responsibility for the general equality duty cannot be delegated to external organisations that are carrying out functions on its behalf.

9. A public authority must consciously consider the need to comply with the general equality duty, not only when a policy is developed and decided upon, but also when it is being implemented. The general equality duty is a continuing one, so public authorities may need to review policies or decisions in light of the general equality duty, for example if the make-up of service users changes.
10. Although a public authority is not legally required to keep records of its consideration of the aims of the general equality duty in making decisions, it is good practice to do so and it encourages transparency. If it is challenged it will be difficult to demonstrate that it has had due regard to the aims of the general equality duty if records are not kept.

11. The general equality duty applies to the exercise of all public functions. The duty applies to all of the decisions made in the course of exercising public functions, not just to policy development and high-level decision making. To ensure compliance with the duty at all levels of decision making, including in an individual case, there must be arrangements to integrate it properly into the day-to-day activities of those bodies to which it applies.
Contacts

This publication and related equality and human rights resources are available from the Commission’s website at www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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