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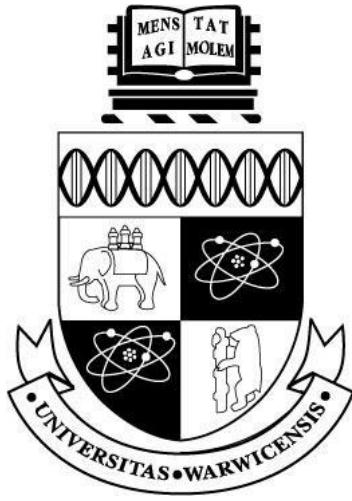
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**Mainstreaming equality in an age of austerity: What impact has
the Public Sector Equality Duty had on work to promote gender
equality by English local authorities?**

Mary-Ann Stephenson

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School of Law, Faculty of Social Sciences

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Declaration

This thesis is submitted to the University of Warwick in support of my application for the degree of Doctor of Philosophy. It has been composed by myself and has not been submitted in any previous application for any degree.

Abstract

This thesis examines the impact of the Public Sector Equality Duty (PSED) on work to promote gender equality through case studies of three local authorities. It aims to both provide new empirical evidence on the impact of the PSED on the behaviour of public bodies and to analyse for the first time the relationship between mainstreaming (the approach to equality within the PSED) and reflexive/responsive regulation (the regulatory mechanism used to enforce mainstreaming).

I show that the PSED has not led to the ‘transformational’ approach to equality which some hoped it would represent. Practice varies significantly within and between local authorities; while there were examples of changes as the result of the PSED, the duty was often implemented in a minimalist or bureaucratic manner. These findings support the conclusions of earlier studies of mainstreaming which identify the variety of practices described as mainstreaming and highlight the importance of participation by civil society organisations if mainstreaming is to be transformative. I find that in two of the case studies there was little recognition of or action to promote gender equality, contributing to the debate about the practical implications of replacing a focus on gender with a broader focus on equality and diversity.

My analysis draws on feminist literature on mainstreaming and legal literature on reflexive and responsive regulation, which are not usually combined. I identify an important relationship between the regulatory means by which mainstreaming is enforced and the forms of mainstreaming that result. I show that although the terms reflexive and responsive regulation are often used interchangeably in analysis of the PSED there are significant differences between the two. I conclude that changes introduced by the Coalition Government reduced responsive elements in the PSED, while making it more reflexive. This increased the likelihood that public bodies would develop a bureaucratic rather than participatory form of mainstreaming in response to the PSED. I call for the introduction of a duty to consult and engage with civil society as part of the PSED. This would make the duty less reflexive, but more responsive and be more compatible with a participatory approach to mainstreaming.

List of acronyms and abbreviations

BME	Black and Minority Ethnic
CRE	Commission for Racial Equality
DED	Disability Equality Duty
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DRC	Disability Rights Commission
EA	Equality Act 2010
EDF	Equality and Diversity Forum
EHRC	Equality and Human Rights Commission
EHRIA	Equality and Human Rights Impact Assessment
EIA/EqIA	Equality Impact Assessment
EOC	Equal Opportunities Commission
GED	Gender Equality Duty
GEO	Government Equalities Office
HRA	Human Rights Act 1998
LGA	Local Government Association
LGBT	Lesbian, Gay, Bisexual and Transgender
RED	Race Equality Duty
PSED	Public Sector Equality Duty
WNC	Women's National Commission
WRC	Women's Resource Centre

Chapter 1: Introduction

1.1 Introduction

Starting in the late 1990s the UK developed a new approach to equality legislation. Alongside older anti-discrimination laws new public duties to promote equality were introduced. These specifically aimed to tackle structural disadvantage as well as individual acts of discrimination. They placed the burden for action on the public authority, rather than on the individual who might have suffered discrimination and were proactive rather than retrospective, building consideration of equality into the design and implementation of policy from the beginning, a process known as ‘mainstreaming’. The most recent and comprehensive of these duties is the Public Sector Equality Duty (PSED), contained in the Equality Act 2010.

This thesis will examine the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, as an example of a ‘mainstreaming’ approach to gender equality. It will do this through a study of the influence of the PSED on work to promote gender equality in three English local authorities. This introductory chapter starts with a brief explanation of the PSED and the two theoretical frameworks that informed its development and have subsequently been used to analyse it. These are mainstreaming, which is a mechanism for achieving equality in practice, and reflexive/responsive regulation, which describes the regulatory model used to enforce mainstreaming. This chapter introduces both concepts, the relationship between the two and the implications of this relationship for the implementation of the PSED. The second section gives the background to my interest in the subject. The final section details the structure of the rest of the thesis.

1.2 The Public Sector Equality Duty

The Public Sector Equality Duty is contained in part 11, chapter 1 of the Equality Act 2010 and came into force in April 2011, replacing previous equality duties covering race, sex and disability. Under the duty:

A public authority, must, in the exercise of its functions, have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by, or under this act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
- c. foster good relations between persons who share a relevant characteristic and persons who do not share it (Equality Act 2010 section 149.1)

The ‘protected characteristics’ covered by the duty are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The ‘positive duty’ model to promote equality contained in the PSED and previous duties on race, disability and gender represented a change in approach for equality legislation. Previous equality legislation which outlawed individual acts of discrimination had been widely criticised for placing the burden of enforcement on individuals who had experienced discrimination, working retrospectively and for failing to address the structural causes of inequality (see for example Charles 2000, Hepple et al 2000, Fraser and Spencer 2006, Dickens 2007). Concerns about institutional sectarian discrimination in Northern Ireland led to the first public sector equality duty in section 75 of the Northern Ireland Act 1998. This was followed by the Race Equality Duty in the rest of the UK, in 2000, again in response to concerns about institutional discrimination (in this case racism) and then duties covering disability in 2005 and gender in 2006. The PSED, in common with earlier equalities duties, extended the scope of equalities legislation beyond providing protection for individuals against discrimination to place a proactive duty on public bodies to advance equality and eliminate discrimination. The aim of the duty was to ‘integrate consideration of the advancement of equality into the day to day business’ of public bodies (EHRC 2012 p17). This approach is often referred to as ‘mainstreaming’ equality; both this duty and the previous duties on race gender and disability have been considered examples of mainstreaming (see for example Hepple et al 2000, EOC 2006, Veitch 2005, Burgess 2008, Fredman 2012). On its introduction the PSED was hailed as representing a ‘vision of comprehensive and transformative equality’ (Hepple 2010 p18). Mainstreaming equality has been seen as

‘transformatory’ because it aims to address inequality at a structural rather than a simply individual level (Rees, 1998, 2002, 2005, Squires 2005, Benschop and Verloo 2011). However in practice approaches to mainstreaming vary; mainstreaming can become technocratic, exclude marginalised groups and become a way of achieving the goals of the ‘mainstream’ rather than providing a feminist challenge to those goals (Squires 2005, Verloo 2005, Walby 2011).

The PSED is a relatively new piece of legislation and there is still a shortage of empirical evidence about how it is being implemented. One of the aims of this thesis is therefore to contribute to the research base on how the PSED is influencing equality practice within public bodies and whether it is leading to a focus on structural inequalities. The Government’s announcement that it will review the PSED in 2016 (House of Commons Library 2015) increases the need for empirical evidence in this area.

As well as representing a new approach to tackling inequality the PSED also represented a new approach to regulation. Under the duty public bodies are obliged to have ‘due regard’ to eliminating inequality, promoting equal opportunity and fostering good relations, but the Equality Act does not specify how they should do this. Instead they are expected to develop their own solutions through a process of reflection and deliberation with penalties imposed if they fail to comply. This model is known as ‘reflexive’ or ‘responsive’ regulation (McCradden 2007, Hepple 2011, 2012, Fredman 2011, 2012, Deakin et al 2012, Conley and Page 2015). Theories of mainstreaming and of responsive/reflexive regulation informed the development of the PSED (Hepple et al 2000 p57-59) and have subsequently been used to analyse it (see Squires 2009, Fredman 2012 on the PSED as mainstreaming and McCradden 2007, Hepple 2011, 2012, Fredman 2011, 2012, Deakin et al 2012 on the PSED as responsive/reflexive regulation). These two sets of theory are not incompatible - mainstreaming relates to the approach to achieving equality and reflexive/responsive regulation to the mechanism used to enforce mainstreaming. However they are not usually combined. By bringing them together I aim to show how different models of regulation can influence the form that mainstreaming takes.

Both Hepple and Fredman have identified the factors necessary for reflexive regulation; internal scrutiny and reflection within public bodies, a regulatory body

and the engagement with external stakeholders (Hepple 2011, 2012, Fredman 2011, 2012). They have suggested that the policies of the Coalition Government elected in 2010, have reduced the ability of the EHRC to act as an effective regulator and reduced internal reflection within public bodies, undermining the potential effectiveness of the PSED as a form of reflexive regulation. However, while they identify mainstreaming as the aim of the PSED they present mainstreaming as an uncontested concept. In contrast feminist scholars in particular have taken a more critical approach to mainstreaming. While Rees (2002) identifies mainstreaming as a ‘transformatory’ approach to equality others have highlighted the widespread variation in practices labelled as mainstreaming (Booth and Bennett 2002, Daly 2005, Walby 2011) and critiqued forms of mainstreaming that can be technocratic, privilege dominant groups or be interpreted as a way of achieving existing goals rather than challenging those goals. Some distinguish between ‘integrationist’ approaches where mainstreaming is presented as a way of delivering on existing policy goals of an organisation and ‘agenda setting’ which seeks to transform those goals (Jahan 1995, Lombardo 2005, Shaw 2002). Others distinguish between ‘expert/ bureaucratic’ approaches, which emphasise technical expertise in the analysis of gender impact and ‘participatory/democratic’ approaches which focus on the inclusion of effected groups in the policy making process (Beveridge, Nott and Stephen 2002). For many feminist writers on mainstreaming participation is central to an approach which is ‘agenda setting’ or truly transforms structural inequalities (Beveridge, Nott and Stephen 2002, Squires 2005).

This suggests that if, as Hepple and Fredman argue, the PSED is failing to deliver on its ‘transformatory’ promise this may be because it has led to a form of mainstreaming which does not address structural inequality. The model of regulation used to enforce mainstreaming in the PSED may be one factor influencing the form that mainstreaming takes. Although the terms reflexive and responsive regulation are often used interchangeably there are significant differences in the approach they represent. As I show in the next chapter responsive regulation emphasises the need for participatory engagement in the process of policy making, while reflexive regulation emphasises the need for internal reflection within the regulated body in order to allow it to develop strategies for meeting the goal of the regulation that are in tune with its own priorities. These differences in emphasis may lead to different

approaches to mainstreaming. The emphasis on participation by affected groups in the decision making process in responsive regulation could support a democratic/participatory model of mainstreaming. In contrast the emphasis on enabling public bodies to develop solutions that are in tune with their priorities in reflexive regulation might lead to an ‘integrationist’ form of mainstreaming that is not necessarily participatory.

This thesis therefore has two research aims. First to contribute to the empirical evidence base on the implementation of the PSED within public bodies. Secondly to contribute to theoretical debates about mainstreaming and reflexive regulation, using the experience of the PSED to explore the relationship between the regulatory mechanisms used to enforce mainstreaming and the form of mainstreaming that results.

1.3 Research Questions

The research questions addressed in this thesis are:

How has the PSED influenced equalities work and particular work on gender equality at a local level?

What factors have affected its influence?

Has the PSED resulted in action to tackle structural inequality?

How does the implementation of the PSED deepen our understanding of responsive/reflexive regulation?

Does it operate as a mechanism to promote mainstreaming?

1.4 Starting point for the PhD

The starting point for this thesis was a personal interest in how the public sector equality duty was working in practice. From 2007 to 2010 I was a Commissioner on the Women’s National Commission, which was the official advisory body to Government on the views of women’s voluntary organisations. In this role I took part in extensive discussions with officials and Ministers and attended seminars and workshops with academics specialising in equality legislation about the purpose and form of the Equality Bill as a whole and the public sector equality duty in particular.

Among the members of the WNC there was both an excitement about the transformatory possibilities of the new legislation and a worry that the shift from separate duties covering Gender, Race and Disability to a generic Equality Duty would lead to a loss of focus on gender.

From 2010 onwards I was a member of Coventry Women's Voices, which is a network of women's voluntary organisations, trade unions, academics and individual activists which campaigned and lobbied locally on policy affecting women. With other CWV members I took part in a series of meetings with equalities staff at Coventry City Council to discuss the Council's work to implement the PSED. I reviewed council policy and strategy documents relating to equality as well as impact assessments of policy in a number of areas. My sense from this process was that while there was a commitment to equality among many people in Coventry City Council the promise of a specifically transformatory approach was not being realised. The Council appeared to have set equality objectives by selecting existing priorities that had some relationship to equality and then re-defining them as equality objectives. There appeared to be no process to identify the inequality issues facing women (or other groups covered by the duty) in Coventry, analysing the underlying causes of these issues and identifying ways in which the council could tackle these causes. At one point the equalities team announced that Equality Impact Assessments were no longer a legal requirement and that they would no longer be carrying them out. CWV drafted a briefing on the legal status of Equality Impact Assessments with the assistance of the Centre for Human Rights in Practice at the University of Warwick, highlighting the number of local authorities that had been found in breach of the PSED for not carrying out an impact assessment. We sent this briefing to senior officers and councillors. Shortly afterwards the council reversed its decision. This suggested that civil society organisations could have a significant impact on how the PSED was implemented but also made me wonder how many other authorities had interpreted the law in this way, and what happened if there were no civil society groups locally able to challenge this interpretation.

During this period I was also working as a freelance consultant on gender equality providing training and guidance for a number of English local authorities on how to implement the Gender Equality Duty and then PSED. I was aware that there were some local authorities who were attempting a more comprehensive response to the

PSED, analysing the equality impact of their structures, systems, policies and practices, training staff and councillors to be aware of equality impact and introducing specific policies to promote equality. I was also in contact with local women's groups and networks around the country. I observed some groups which were highly engaged with their local authority and appeared to be having some impact in lobbying and campaigning on equality policy in those authorities. At the same time in other parts of the country local women's groups appeared to have little knowledge of or contact with local authorities, concentrating largely on awareness raising campaigns with the public on national issues. I was curious about the impact these different approaches might have on the attention given to gender equality in particular within local authorities.

My initial interest in the PSED arose out of this experience. I was interested not only in the impact that the PSED had had on work to promote local equality in local government, but what factors had influenced this. My observations from previous research into impact assessment practice in the UK (Harrison and Stephenson 2011), national and local activism and consultancy with local authorities suggested that practice was mixed. I had some thoughts about why this might be, relating to the political make-up of the authority, historical commitment to equality work and the attitude among key individuals in different authorities, but these were impressionistic. I was also aware from my own work with CWV and contact with other local women's groups and networks that civil society engagement with local authorities over equality varied significantly across and within local authorities. Again I wanted to know why. This thesis starts from this interest. The rest of this chapter sets out the structure of the thesis.

1.5 Structure of the thesis

The thesis is divided into eight further chapters. Chapter 2 is the literature review which brings together the feminist literature on mainstreaming and a legal literature on reflexive/responsive regulation in order to explore the relationship between mainstreaming and the regulatory mechanisms used to enforce it. The chapter places mainstreaming within wider feminist debates on the meaning of equality, how best to achieve it in practice and feminist theories of the state. It discusses the role of two groups of actors recognised as significant in mainstreaming: equality professionals

working within public bodies and civil society actors working outside and tensions between ‘insider’ and ‘outsider’ strategies. It then goes on to explore the background to the regulatory model used to enforce the PSED in theories of reflexive and responsive regulation, identifying similarities and commonalities within the two and discussing how these might influence the form of mainstreaming carried out in response to the PSED.

Chapter 3 sets out my methodology. I position myself as a feminist researcher and discuss three models of feminist epistemology: feminist empiricism, feminist standpoint theory and feminist postmodernism before aligning myself with those who argue in favour of drawing on insights from all three approaches. The chapter goes on to reflect on the personal background and experiences I bring to the research, how this might impact on the research process and how I plan to take account of this. I explain my reasons for focussing on local authorities, because of the impact of their work on the lives of women and my decision to limit my study to England. I then describe my methods, justifying a qualitative case study approach and addressing issues of access, interviews, documentary evidence, analysis of data and the ethical issues I faced during the research. I provide background information about the system of local government in England and a description of the three case study local authorities.

Chapter 4 provides the background to the PSED. It briefly sets out the history of equality legislation in the UK, identifying the weaknesses with the individual anti-discrimination approach this was based on and showing how concerns about institutional discrimination led to the initial introduction of a public sector equality duty in the Northern Ireland Act 1998 followed by the Race Relations Act in 2000. It draws on the policy proposals and consultation documents produced between the first proposals for a general public sector equality duty in 2000 and the passage of the Equality Act in 2010 to analyse the model of equality which informed the PSED and the models of regulation used to enforce it.

Chapter 5 explores the context in which the PSED was implemented following the formation of the Conservative/Liberal Democrat Coalition Government after the 2010 election. It details the change in approach to equality under the Coalition and argues that this, combined with the Coalition’s programme of public spending cuts,

significantly changed the context in which the PSED was implemented. The Coalition chose not to include socio-economic status in the protected characteristics covered by the PSED and did not enact the dual discrimination provisions in the Equality Act. It produced specific duties that were far more limited in scope than those under the previous equality duties covering race, gender or disability, and more limited than those proposed by the previous Government. The second section sketches out the Coalition's programme of public spending cuts, arguing that these cuts might be expected to have an impact on the implementation of the PSED in a number of significant ways. These include: a background of increasing inequality against which any action to promote equality would have to take place; a reduction in the resources available for work on equality; difficulty getting equality on the agenda of organisations facing spending cuts and a reduced power for public bodies to act as a result of outsourcing services. The third part of the chapter examines the impact of the reduced role of the EHRC which has significantly undermined the EHRC's ability to promote the PSED through training or information programmes and reduced its effectiveness as a regulatory body. With limited resources and a reduced role the EHRC has focussed its enforcement work on the PSED on monitoring the degree to which public bodies have met their obligations to publish information and equality objectives.

Chapter 6, 7 and 8 set out my findings in each of the three case study local authorities. These were a London Borough, a unitary authority (City Council) and a large County Council. The case studies drew on interviews with equality officers and managers as well as Director level staff responsible for equalities, local councillors with an interest in or responsibility for equality and representatives of local civil society organisations working on equality. They also utilise documentary evidence including equality strategies, plans and impact assessments. These documents provided evidence of official council policies, the way equality was framed in each authority and the extent to which gender analysis informed assessments of the equality impact of policy proposals. Each of these chapters is structured under the same sets of headings based on the framework used to analyse the data. However in each case study the emphasis of the chapters differs, reflecting the different approaches to equality and the factors influencing this that the case studies uncovered. These chapters draw on the theoretical frameworks discussed in the

literature review in order to analyse the findings of each case study. The final section of chapter 8 analyses the factors which appear to influence implementation of the PSED through a comparison of all three case studies.

Chapter 9 is the conclusion. I summarise my contribution to the empirical evidence base on the impact of the PSED. I then go on to explore the lessons that the implementation of the PSED might hold for theoretical and policy debates about mainstreaming and the regulatory mechanisms used to enforce it. I distinguish between reflexive and responsive models of regulation and show how they can lead to different forms of mainstreaming. I highlight the implications this has for both the study of mainstreaming and theories of regulation. The final section identifies the limits of this research and makes suggestions for future research on the subject.

A series of appendixes provide the research schedule, copies of information and consent forms and a full breakdown of interviewees.

Chapter 2: Literature Review

2.1 Introduction

This chapter explores the literature on two theoretical models which informed the development of the Public Sector Equality Duty (PSED), and which have subsequently been used to analyse it. The first, ‘mainstreaming’ is an approach to achieving equality. This approach grew out of work on gender mainstreaming which aims to ensure gender equality is considered at all stages in the process of developing and delivering policy in order to transform the systems and structures which create and perpetuate inequality (Walby 2011). The second, ‘responsive’ or ‘reflexive’ regulation is the regulatory means by which mainstreaming is enforced in the PSED. Initial proposals for a duty on public bodies to promote equality explicitly described the aim of the duty as being to mainstream equality and developed a model of enforcement which drew on theories of ‘responsive regulation’ (Hepple et al 2000 p57-59). Since then the PSED has been analysed as an attempt to enforce equality ‘mainstreaming’ within public sector organisations (Squires 2009, Fredman 2012) and as a form of ‘responsive’ or ‘reflexive’ regulation (McCradden 2007, Hepple 2011, 2012, Fredman 2011, 2012, Deakin et al 2012, Conley and Page 2015).

However the literatures on mainstreaming and responsive and reflexive regulation are not usually combined. Some scholars analysing the PSED as a form of reflexive regulation identify mainstreaming as the aim of the PSED but present mainstreaming as an uncontested concept (Hepple 2010, Fredman 2012). In contrast feminist scholars have highlighted the wide variety of practices that have been labelled as mainstreaming, critiquing some of the forms that it can take, but rarely relating this to the regulatory models used to enforce mainstreaming (Beveridge and Nott 2002, Booth and Bennett 2002, Daly 2005, Verloo 2005, Walby 2011).

In bringing these two literatures together I aim to explore not only the approach to promoting equality that the PSED represented (through the literature on mainstreaming) and the models of regulation on which it was based (though the literature on reflexive/responsive regulation) but also the relationship between the two. Through exploring this relationship I will contribute to deepening the analysis of both mainstreaming and reflexive/responsive regulation. As I will show there are significant areas of overlap between some models of responsive/reflexive regulation

and ‘participatory/democratic’ models of mainstreaming, particularly an emphasis on participation by civil society groups and other stakeholders in a deliberative process of policy development. Both of these models represent aspects of a shift from top down forms of government to a form of ‘governance’ based on citizen participation in decision making through civil society (Meehan 2003). However there are other forms of mainstreaming that do not share this emphasis on civil society participation in decision making. At the same time, while the terms ‘reflexive’ and ‘responsive’ regulation are often used interchangeably, some models of reflexive regulation emphasise allowing regulated bodies to develop their own solutions to the problems with regulation aims to address, which may not necessarily involve the participation of external groups. This raises questions which are generally absent from both sets of literature; does the model of regulation used to enforce mainstreaming influence the form which mainstreaming takes? Might different forms of mainstreaming require different models of regulation?

The first section of this chapter sets out the ways in which the PSED has been analysed as both a legally enforceable form of mainstreaming and a form of reflexive/responsive regulation. The second section explores the theory and practice of equality mainstreaming in more detail, showing the different forms that mainstreaming can take. The third section outlines the theories of responsive and reflexive regulation that informed proposals for and analysis of the PSED. It sets out the differences and commonalities between the ways in which these terms have been understood in order to show how these differences might result in different forms of mainstreaming. The final section summarises the evidence of the impact of the PSED to date. The chapter concludes with the research questions that have emerged from my analysis of this literature.

2.2 The PSED and regulation to enforce mainstreaming

The use of positive duties to promote equality have been widely recognised as a legally enforced form of mainstreaming. McCrudden analysed section 75 of the 1998 Northern Ireland Act as part of a wider process of legal and policy changes which he argued represented a move to mainstream equality (McCradden 1999). The Equal Opportunities Commission described the Gender Equality Duty as ‘a form of legally enforceable ‘gender mainstreaming’ – building gender equality into the core business

thinking and processes of an organisation' (EOC 2006 p7/8). Initial proposals for a single equality duty argued that it would promote mainstreaming, making equality central to a range of public policy debates and reducing the risk that the issue would become side-lined (Hepple et al 2000 p59). Both Hepple (2010, 2011) and Fredman (2012) have described the aim of the PSED as being the mainstreaming of equality throughout the work of public authorities. Hepple described the move to mainstream equality through public duties as representing the start of a 'transformative' model of equality (Hepple 2010). However with the exception of McCrudden, who raised some of the potential issues with mainstreaming identified in the next section, all of these authors treat mainstreaming as an uncontested term. The aim of the PSED is described as being the mainstreaming of equality with little exploration of what form that mainstreaming might take. As the next section will show there are significant differences between different models of mainstreaming. The research for this thesis will explore what forms of mainstreaming (if any) are taking place within the case study local authorities as a result of the PSED and the factors that might influence this. One possible factor is the form of regulation used to enforce mainstreaming through the PSED. Does it support the forms of engagement, participation and deliberative democracy that are central to participatory/democratic forms of mainstreaming or does it encourage a process of bureaucratic compliance?

The initial model for a single equality duty proposed by Hepple et al argued that 'interest groups should have opportunities to participate in the regulatory process through information, consultation and engagement' (Hepple et al 2000 p58). This would seem to support a participatory model of mainstreaming. However they also argued that 'regulation should be built on the self-interest of business and providers' (Hepple et al 2000 p57). There is an obvious tension between the two – what if the regulated bodies do not feel that consultation and engagement with interest groups is in their self-interest? At the heart of this question is a tension between the two models of regulation that informed these initial proposals; responsive and reflexive regulation. As section 3 will show although the two models share a number of common features, there are also significant differences between them.

These differences are obscured in discussions of the PSED which often use the terms reflexive and responsive regulation interchangeably. Hepple et al's (2000) model for a single equality duty explicitly drew on Ayres and Braithwaite's (1992) concept of

responsive regulation. Proposals for the duty included a regulatory pyramid of enforcement moving from persuasion and provision of information up through increasingly stringent sanctions for non-compliance developed from Ayres and Braithwaite's work. The pyramid rested on three interlocking mechanisms, internal scrutiny by the organisation itself, involvement of interest groups which regulated bodies should inform, consult and engage with the process and an Equality Commission to provide assistance and ultimately enforcement if voluntary methods fail (Hepple et al 2000 p59). This Hepple later argued, represented a 'transformative' approach to equality. Hepple (2011) later followed McCrudden (2007) in using the terms reflexive and responsive regulation interchangeably to describe the PSED, settling on reflexive regulation as a general term to cover elements of both theories. This approach has been used by other authors who either describe the PSED as an example of 'responsive/reflexive regulation' (Conley and Wright 2015), or use both terms initially before settling on reflexive regulation (Deakin et al 2012). Others use the term reflexive regulation (Fredman 2011, 2012), even when describing elements of the PSED, such as the enforcement pyramid, which have been drawn from theories of responsive regulation (O'Brien 2013). Whichever term is used there is broad agreement that the PSED represents a new approach to regulation that involves allowing organisations to develop their own solutions to the problems regulation aims to address through a process of deliberation involving the organisation, the regulator (in this case the EHRC) and external groups with an interest in the outcome. This combines elements of both reflexive and responsive theories but obscures the differences between them. Section three will set out the main models of responsive and reflexive regulation and explore the similarities and differences between them. First I will explore the concept of mainstreaming in more detail, situating it within feminist debates over the meaning of equality and how best to achieve it in practice.

2.3 Mainstreaming

This section covers the feminist literature on mainstreaming. It starts by discussing the different ways in which feminists have sought to define equality and how different conceptions of equality have influenced strategies to achieve it in order to situate mainstreaming within wider feminist thought. It then goes on to consider the strengths and weaknesses of different models of mainstreaming in theory and practice. Gender mainstreaming can be seen as an example of ‘state feminism’, the use of state policy machineries by feminist actors inside the state, often in alliance with actors outside the state, in order to promote a feminist agenda (Mc Bride and Mazur 2010, Mazur 2013). Therefore the final part of this section will address the role played by two groups of actors in the mainstreaming process, equality officers and others working inside state institutions and civil society actors working from the outside.

2.3.1 Concepts of Equality

Equality is not a straightforward concept; ‘the more closely we examine it, the more its meaning shifts’ (Fredman 2002 p1). When we speak of equality are we referring to equal treatment, equal outcomes, equal opportunities, equal respect or a mixture of them all? Does claiming equality with a dominant group simply reinforce a hierarchy that gives the behaviours, needs and priorities of that group more value than the behaviours needs and priorities of other groups? These questions have proved particularly problematic for feminists with debates focussing around whether gender equality is about treating women and men the same or about giving equal value to women’s difference to men (see for example Cockburn 1991, Squires 1999, Conaghan 2009, Walby 2011). More recently feminist writers have attempted to move beyond this division, proposing a model of equality as ‘transformation’, challenging gendered structures of power (Fraser 1997, Rees 1998, 2002, 2005, Squires 1999, 2005, 2007). These questions are complicated by greater recognition of how different structures of inequality relating not only to gender but also race, class, disability, sexuality and so on intersect in the lives of women, moving discussion from differences between women and men to differences between women themselves (Crenshaw 1989, 1991, Grabham et al 2009). These debates have been extremely wide ranging within feminism. This section focusses on the way these

questions have been applied to the theory and practice of work to promote gender equality inside and outside state institutions.

2.3.2 Equality and difference

The most basic concept of equality; that of equal treatment, has been traced back to Aristotle: ‘things that are alike should be treated alike, things that are unalike should be treated unalike in proportion to their unalikeness’ (Aristotle, cited in Chemerinsky 1983). For centuries this formulation excluded women (along with a range of other groups including ethnic and religious minorities, slaves and anyone who did not own property) who were denied equality under the law because they were considered unlike those men who did have the right to equal treatment (Fredman 2002). Early feminist writers such as Wollstonecraft (1792) argued that women were as rational as men, emphasising alikeness in order to argue for equal treatment. The claim of alikeness, of shared humanity or shared citizenship is the primary basis of claims to equality under the law, the right to vote, the right not to be legally excluded from certain professions and so on.

However a straightforward equal treatment model is inadequate to address issues where there is no direct comparison between groups. For example how can an equal treatment approach address questions of pregnancy discrimination when only women can get pregnant? The question of how the law should deal with pregnancy and maternity was particularly contested among US feminist legal scholars (Littleton 1987, Sohrab 1993). On the one side were those who argued for an ‘equal treatment’ approach, claiming that ‘special treatment’ for pregnancy and maternity would lead to more discrimination against women. This position was summed up by Williams who argued that ‘[w]e can’t have it both ways, we need to think carefully about which way we want to have it’ (Williams 1982 p196). Opposing this were those who argued that a strict ‘equal treatment’ model only benefited women in so much as they were willing or able to be the same as men (Wolgast 1980). Not only did this fail to take account of the needs of pregnant women and new mothers in the specific question of pregnancy/maternity discrimination, in a broader sense it prioritised masculine values of the public world of work over female values focussed on care (Jaggar 1990). These arguments extended beyond the question of how the law could best protect pregnant women to the more general issue of how best to achieve justice

for women. These debates are both theoretical and intensely practical. Are women essentially similar to men (Epstein 1988) or different (Gilligan 1982)? Should women be aiming for equality with men, or justice on the basis of different needs and priorities (Littleton 1987)?

Neither approach alone appears satisfactory. Phillips sums the problem up well: treating women equally to men reinforces male norms as superior; ‘the idea that equality depends on everyone being the same can be regarded as an inequitable assimilation that imposes the values and norms of one group on those who were historically subordinate’ (Phillips 1999 p25) At the same time in a world where differences are strongly associated with hierarchies of status and power Phillips argues that it is hard to see how a strategy of difference can sustain concepts of ‘equal worth’ (1999 p97). Equal treatment can offer some benefits for women who can adopt male norms, but create significant disadvantages for those that cannot, or do not wish to do so (Littleton 1987, Guerrina 2002, Rees 1998). An approach based on recognising difference can lead to essentialising those differences, reinforcing gender stereotypes (Ben Galim, Campbell and Lewis 2007) and excluding those women who do not adopt traditional female roles (Sohrab 1993). Feminist claims based on the differences between women and men can also serve to obscure differences between women themselves as the next section shows. Furthermore both sameness and difference approaches continue to endorse men as the standard for analysis (MacKinnon 1987, Rhode 1989, Sohrab 1993). In MacKinnon’s phrase ‘Under the sameness standard women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the difference standard, we are measured according to our lack of correspondence with him, or womanhood judged by our distance from his measure [...] masculinity or maleness is the referent for both’ (MacKinnon 1987, p34). This leaves women trapped in a situation where there appear to be only two options, joining the system on male terms or staying out (Bacchi 1990, p259). Bacchi’s identification of this as a ‘trap’ is echoed by Cockburn who concludes that a focus on sameness or difference ‘places unacceptable boundaries on the possibilities for change’ (Cockburn 1991 p9). Instead Cockburn proposed ‘equivalence’ rather than equality, parity rather than sameness, arguing that women can be both the same as and different from men and from each other at various times and in various ways.

2.3.3 Intersectionality

The question of women's equality to or difference from men is further complicated by differences between women. As Felski points out 'it is only certain women who have the luxury of perceiving the male/female divide as the foundational division, simply because their own (privileged) class or race position remains un-marked and hence invisible' (Felski 1997 p7). Writers such as hooks (1984), Harris (1990) and Spelman (1990) have criticised the 'essentialism' of much feminist thought; 'the notion that a unitary 'essential' women's experience can be isolated and described independently of race, class, sexual orientation and other realities of experience' (Harris 1990 p585) in a way which silences the voices of Black women among others. From this criticism developed the theory of 'intersectionality', a term coined by Kimberle Crenshaw (1989, 1991) to describe the way in which the experiences of Black women were situated at the intersection between racism and sexism. Crenshaw examined Black women's experience under anti-discrimination laws which allowed claims to be made on the basis of race, or sex, but not both and therefore failed to give them a legal remedy. She argued that the problem went beyond anti-discrimination law; both feminism and anti-racism tended to treat race and gender as separate categories and failed to take account of experiences at the intersection of the two (Crenshaw 1989). Subsequent scholars extended the concept of intersectionality to consider issues of sexuality (Eaton 1994) and class (Hutchinson 2001) and the term is now used to describe the relationship between a whole series of previously distinct categories such as gender, race, class, sexuality and disability recognising 'forms of inequality that are rooted through one another, and which cannot be untangled to reveal a single cause' (Grabham et al 2009 p1).

What this means for consideration of gender inequality has been a troubling question for feminists. For some scholars it is impossible to identify the separate effects of gender since oppressions are not experienced separately but are always intertwined (Spelman 1990). However Cooper argues that taken to its limit this approach, which she defines as 'hyper-intersectionality' would make it impossible to discuss class, race, gender or age altogether 'since, if they are always enmeshed how can we know what each of these different principles or elements contributes?' (Cooper 2004 p48-49). At the same time she concludes that none of these elements can be drawn out in some 'pure unadulterated form', identifying this as the 'paradox of intersectionality'

and arguing for an awareness that ‘relational inequalities can only be tentatively and hypothetically separated’ (Cooper 2004 p49). For others systems of gender, race and class interrelate in a way that means there are some independent effects of each system and some intersectional effects (Weldon 2008). Acker for example extended her work on gender and power within organisations to take account of intersectional inequalities by developing the concept of ‘inequality regimes’: ‘loosely interrelated practices, processes, actions, and meanings that result in and maintain class, gender, and racial inequalities within particular organizations’ (Acker 2006 p 443). These regimes are interrelated; class inequality is ‘inflected through gendered and racialized beliefs and practices’ (Acker 2006 p459), but are still conceptually separate.

A second challenge is posed by the fragmentation of broad categories into smaller and smaller groups. Weldon points out that a short list of categories (gender, race/ethnicity, class, sexuality, ability, religion, rural/urban and nationality) would produce 256 distinct social positions even if each category was assumed to be binary. In reality none of these categories are binary since there are many significant differences between people within each one, meaning that there are a multiplicity of different social positions (Weldon 2008). For some writers the power of intersectionality is precisely in this recognition of the complexity and multi-dimensional nature of identity. Grillo for example writes that intersectionality asks ‘that we define complex experiences as closely to their full complexity as possible’ (Grillo 1995 p20). However as Young warns this ‘strategy can generate an infinite regress that dissolves groups into individuals’ (Young 1997 p20). Young argues for the importance of being able to conceptualise women as a group in order to recognise the structured, systematic and institutional processes that lead to women’s oppression. This, she argues, does not have to depend on an essentialised model of womanhood but be based on the relations in which women stand to others; ‘In a relational conceptualization, what makes a group a group is less some set of attributes its members share than the relations in which they stand to others’ (Young 2000 p90). Conaghan critiques the ‘identity turn’ within intersectionality, represented by writers such as Grillo, arguing that ‘issues of identity are but an aspect, not a substitute for, fuller investigation into the operation of gender and race within inequality regimes’ (Conaghan 2009 p29). Furthermore she argues that this

approach tends to ignore issues of class, which are an expression of relational structures rather than identities. In place of an identity focussed intersectionality Conaghan argues for a feminist materialism which would recognise the interlocking nature of inequality regimes, an approach which is similar to that taken by Acker described above.

One response to theories of intersectionality has been a shift in focus among writers and policy makers from gender equality to questions of diversity (Cooper 2004, Kirton and Greene 2010). A focus on diversity can include consideration of structural inequality (see for example Squires 2009) but among policy makers in particular it more usually involves prioritising issues of identity (Kirton and Greene 2010). Discussion in this area is complicated by the fact that in public policy the term ‘diversity’ emerges not from intersectionality but from the concept of ‘diversity management’ which emerged in the US in the 1980s and 1990s (Ben Galim, Campbell and Lewis 2007). This is discussed in more detail in the section on equality officers and diversity specialists below.

2.3.4 Equality as Transformation

Moving beyond the sameness/difference ‘trap’ identified by Cockburn (1991) has led feminists to focus on ways of changing the structures of power rather than trying to claim equality, or special provision for difference within them (MacKinnon 1987). This approach has been described variously as transformation (Fraser 1997, Rees 2002, Benschop and Verloo 2011) or displacement (Squires 1999, 2005). Rees identifies three approaches to equality. The first is based on equality as sameness and results in equal opportunities and equal treatment programmes, referred to by Rees as ‘tinkering’ since they work to include women within existing structures while leaving these structures intact. The second, based on difference leads to special programmes for women, ‘tailoring’ policy to address the disadvantages suffered by women as a result of those differences. The third model is based on transformation of the systems and structures that cause inequality themselves. Rees identifies mainstreaming as an example of a transformative policy. Her three part typology is similar to that developed later by Squires who identifies what she describes as ‘displacement’ as a transformative approach to equality, which she compares to ‘inclusion’, based on an equality as sameness and ‘reversal’, based on difference.

She argues that the perceived incompatibility between equality and difference only occurs when equality is seen as meaning sameness, arguing instead for a ‘transformation of the norms of equivalence’ (Squires 2005 p369), challenging the positioning of men as a neutral norm against which women are compared. This means identifying ‘the ways in which particular institutions and laws perpetuate inequality by privileging particular norms’ (Squires 2005 p369). This process is not limited to identifying and challenging the way institutions and laws privilege male norms but can be applied to multiple categories of oppression making ‘displacement’ both transformative and intersectional. (Squires 2005). She and others have argued for diversity mainstreaming as a strategy of transformation (Hankivsky 2005, Squires 2005, Verloo 2005), this is discussed in more detail in the section on mainstreaming below. This use of the term diversity relates to the intersection of different structures of inequality and should be distinguished from its use to refer to individual identities in ‘diversity management’ (see below).

This politics of transformation has echoes of Fraser’s conclusions in her work on recognition and redistribution (Fraser 1997, 2013). Fraser identifies gender and race in particular as examples of structures of differentiation based on both the economic structure (distribution) and the cultural valuation structure (recognition) within society which at first sight would seem to require conflicting responses. Women experience both the inequality of the gender division of labour (an issue of distribution) and the harassment, violence and objectification that results from cultural androcentrism, defined by Fraser as the ‘construction of norms that privilege traits associated with masculinity’ (1997p 20), (an issue of recognition). The remedy for the first might be to ‘put gender out of business’ abolishing the gender division of paid and unpaid labour and gender divisions within paid labour through a politics of redistribution. However cultural androcentrism cannot be remedied by economic redistribution but requires a revaluation of characteristics seen as ‘feminine’ through a politics of positive recognition. Gender justice therefore would appear to require a politics that would remove the significance of gender in some areas while revaluing the female in others meaning that ‘neither equality nor difference alone is a workable conception of gender equity’ (Fraser 1997 p44). Fraser argues that under a politics of ‘affirmation’, which seeks to correct inequitable outcomes but does not address the structures which cause them these problems might

seem intractable. She raises similar concerns to those of Conaghan discussed above about what she sees as a shifting focus to issues of culture and identity arguing that the ‘politics of redistribution’ has become subordinated to this ‘politics of recognition’ within feminism (Fraser 2013). She calls instead for a politics of ‘transformation’ which would address both the structures of distribution and cultural valuation (Fraser 1997, 2013).

2.3.5 Multivalent approaches to equality

Although displacement or transformation are often presented as a third stage in a chronological series of approaches to equality, following on from an equal treatment approach and then a ‘difference’ approach, in practice all three may be necessary in different circumstances (Booth and Bennet 2002). Rees for example accepts that transformation through mainstreaming ‘is a long term strategy that needs to be accompanied by the secure underpinning of equal treatment legislation and positive action measures’ (Rees 1999 p166). Fraser argues for a multivalent approach to gender equity (a term she prefers to equality because of the association of equality with sameness), that would include elements of both recognition and redistribution, while seeking to transform the structures of both production and status (Fraser 2007). Squires highlights the pragmatic behaviour of many equality campaigners and professionals who, regardless of their theoretical conception of equality may in practice utilise the perspective that will generate the best results in the particular circumstances in which they are working (Squires 2005). Walby (2011) reaches similar conclusions, arguing that in practice feminist approaches to equality vary by domain, with the same organisation or feminist group utilising different theoretical perspectives to underpin demands for equality depending on the situation. At times the focus may be on sameness (for example, equal pay), at others on difference (for example improved maternity services or campaigns against sexual objectification of women in the media). Transformatory approaches may inform action to change patterns of work and caring so that both are shared between women and men. Booth and Bennett’s model of the three approaches as legs of a stool is useful here (Booth and Bennet 2002). They argue that depending on the particular context in any given country different equality approaches may be stronger or more under-developed; comparing the situation in the UK, where equality legislation based on an equal treatment perspective was introduced in the 1970s to Spain where there was a strong

‘women’s perspective’ but weak equality legislation until the 1990s. These differences in situation mean that equality campaigners and professionals may need to emphasise different ‘legs’ of the stool in order to address the particular situation in their country.

Fredman and Spenser’s work on a four dimensional model of equality takes the concept of the interdependence of different elements further. Fredman builds on Fraser, also arguing that there is a need to include both elements of equality and revaluing of difference not only because women experience both economic and status based inequality but also because the two are often inter-related. Economic inequality disproportionately affects groups experiencing status based discrimination such as women, members of minority ethnic groups or disabled people. At the same time issues like equal pay for women may appear to be a problem of economic inequality but are in part caused by the low value (lack of recognition) assigned to the skills involved in jobs in which women predominate. This interrelationship means that ‘status based inequalities both cause and are reinforced by socio-economic disadvantage’ (Fredman 2007). She proposed a four dimensional model of ‘substantive equality’ that would include breaking the ‘cycle of disadvantage’ in order to ‘facilitate genuine choice by providing the resources necessary to give everyone the possibility of making their own life choices’; promote respect for equal dignity and worth in order to address stereotyping, harassment, stigma and violence; go beyond equal treatment to respect and accommodate different ‘identities, aspirations and needs’ and finally facilitate full participation in society (Fredman 2002, Fredman and Spenser 2006). As chapter 5 will show this four part model had a significant impact on the Labour government’s proposals for the Equality Bill and was partially although not totally reflected in the definition of ‘Equality of Opportunity’ that the PSED aimed to ‘mainstream’. The different ways in which this process of mainstreaming has been interpreted are considered in the next section.

2.3.6 Mainstreaming

Definitions of mainstreaming vary; a commonly used definition is that given by the European Commission Directorate on Employment, Social Affairs and Equal Opportunities, which has defined mainstreaming as:

the integration of the gender perspective into every state of the policy process – design, implementation, monitoring and evaluation – with a view to promoting equality between women and men' (European Commission 2010)

In Rees' model of 'tinkering, tailoring and transforming' discussed above mainstreaming is the strategy that can deliver transformation through considering 'the ways in which systems and structures [...] cause [...] disadvantage in the first place' and 'embedding gender equality in systems, processes, policies and institutions' (Rees 2005 p558). For Rees and others this definition means that mainstreaming represents a 'transformatory' approach to equality (Rees, 1998, 2002, 2005, Squires 2005, Benschop and Verloo 2011). Rees links mainstreaming to the 'long agenda' identified by Cockburn (1989, 1991, see below) which Rees argues aims to address the organisational cultures and practices which embed inequalities. This form of mainstreaming as a tool to tackle structural inequality can also be used to address the ways these different structures intersect, mainstreaming not only gender but other bases of inequality. However as several writers have pointed out, while mainstreaming can have transformatory potential in practice it can take many forms which can become technocratic (Daly 2005), privilege dominant groups (Verloo 2005) or be interpreted as a way of achieving existing policy goals rather than challenging those goals (Walby 2011). Some have argued that mainstreaming can lead to a loss of focus because if everyone in an organisation has responsibility for equality in practice this can mean no one is responsible (Symington 2004). And extending the focus of mainstreaming from gender to broader questions of diversity can lead to a loss of focus on gender as other issues take priority (Conley and Page 2015).

These divergent experiences of mainstreaming reflect a widespread variation in strategies and practices labelled as 'mainstreaming' (Beveridge and Nott 2002, Booth and Bennett 2002, Daly 2005, Walby 2011). Theoretical concepts of mainstreaming as 'transformation' have developed alongside a widespread adoption of practices labelled mainstreaming within public bodies. Daly (2005) observes that while mainstreaming theory emerged from a desire to move beyond arguments about difference and sameness to address structures and systems, its adoption in the policy world was more a response to changing fashions, with countries adopting the term mainstreaming as the most 'modern' approach to equality. This has led to an

approach to mainstreaming that is conceptually vague: ‘everyone understands the general idea, but no one is sure what it requires in practice’ (Beveridge and Nott 2002 p299).

There have been various attempts to categorise different models of mainstreaming and those factors which might lead to its transformatory potential being realised. One distinction that is often made is between ‘integrationist’ and ‘agenda setting’ approaches (Jahan 1995, Lombardo 2005, Shaw 2002). Integrationist approaches to mainstreaming address gender within existing paradigms (Jahan 1995), presenting gender mainstreaming as a way of achieving existing policy goals more effectively. This has the advantage of making it easier to persuade policy makers to adopt a mainstreaming approach, but runs the risk that underlying inequalities remain unchallenged (Lombardo 2005). This approach is sometimes discussed in terms of ‘strategic framing’ (Hafner-Burton and Pollack 2000, Verloo 2005). Strategic framing refers to a process through which social actors ‘frame’ their goals in a way that resonates with the goals of the organisation or institution they wish to influence (Benford and Snow 2000). Hafner-Burton and Pollack argue that gender mainstreaming has been ‘sold’ within the European Commission as a way of helping the Commission achieve its aims, rather than representing a challenge to them. This, they conclude results in an integrationist model of mainstreaming which threatens its transformative potential. Verloo agrees with these conclusions arguing that feminist goals have been ‘stretched’ to link them with the goals of the ‘mainstream’. Through this stretching the two sets of goals are presented as harmonious, leading to the argument that consideration of gender leads to better policy making, improved productivity and other benefits for the economy. This may have short term benefits in ensuring mainstreaming is adopted as a strategy but can lead to the watering down of feminist goals and the exclusion of radical or marginalised voices (Verloo 2005).

In contrast ‘agenda setting’ requires the transformation and reorientation of the agenda (Jahan 1995). Rather than seeking to ‘frame’ feminist goals in terms of the priorities of the organisation or institution it would seek to shift the priorities of the organisation in line with feminist goals. This transformatory approach requires change in ‘decision making structures and processes, in articulation of objectives, in prioritisation of strategies, in the positioning of gender amidst competing, emerging concerns, and in building a mass base of support among men and women’ (Jahan

1995 p126). This avoids the danger that gender becomes subsumed within the mainstream, but, as discussed below, the people charged with leading work on equality are often marginalised within their organisations, meaning that in practice they may find it difficult to shift the priorities of these organisations.

Beveridge, Nott and Stephen identify a further distinction between ‘expert/bureaucratic’ and ‘participatory/democratic’ approaches to mainstreaming (Beveridge, Nott and Stephen 2002). Expert/bureaucratic models are based on developing sophisticated mechanisms to analyse gender impact, and embedding these mechanisms within the bureaucratic processes of public organisations. An advantage of this model is that it ensures that the policy making process is informed by experts in gender impact, although this expertise must be shared through the organisation if impact is to be widespread (Woodward 2003). A key mechanism in expert/bureaucratic approaches is ‘gender impact assessments’, which aim to analyse policies for their potential, or actual gender impact. The aim of this is to ensure that gender impact is considered at every stage of policy making. This process may not always lead to transformatory outcomes as revealed by a study by Rubery and Fagan (2000) of impact assessments which showed that these tended to be limited to producing gender disaggregated statistics with little understanding of how gender equality is reproduced. It is not clear if this is a failure of the expert/bureaucratic model itself, or the fact that the bureaucrats charged with implementing it were not in fact that expert. Veitch has reported that a lack of expertise among government officials was a barrier to gender mainstreaming in the UK, which suggests that some forms of expertise are needed if mainstreaming is to be successful (Veitch 2005). However there does appear to be a tendency in ‘expert/bureaucratic’ models to develop an agenda driven by the needs of the bureaucracy rather than equality goals meaning that the terms of the debate remain unchanged (Kantola and Squires 2012). This can lead to a ‘preoccupation with the minutiae of procedures’ but little consideration of issues of power and how ‘patterns of subordination are reproduced’ (Baden and Goetz 1997 p20). Furthermore ‘expert/bureaucratic’ models can allow little space for influence from external social movements, unless these groups can position themselves as expert (Alvarez 1999). These shortcomings can result in a form of mainstreaming which is technocratic rather than transformatory (Daly 2005).

In contrast participatory/democratic models are based on the inclusion and empowerment of disadvantaged groups at the heart of policy making. This could involve consultative or participatory agenda setting and decision making processes. Beveridge, Nott and Stephen consider that only the participatory/democratic model can be truly ‘agenda setting’ in Jahan’s formulation as an ‘expert/bureaucratic’ model is likely to become integrationist. They argue that participatory/democratic models, involving engagement with civil society can create space for groups that have previously been unheard in the policy making process, citing the involvement of Traveller communities in Irish mainstreaming models (Beveridge, Nott and Stephen 2000 p 278). However participatory models can have drawbacks. Donaghy and Kelly (2001) have identified the ways in which a seemingly democratic/participatory approach can rely on small voluntary organisations to take part in repeated consultations without the resources to support such participation. Within civil society, hierarchies based on policy expertise and understanding of how structures of power work can exclude those who are already marginalised within society (Hoeft, et al 2014). Rather than opening up opportunities for previously excluded groups, consultation process can become a burden for them, or continue to exclude those who lack the time or resources to represent their interests. This can mean that only certain groups are able to make their voices heard. Squires suggests a way forward which draws on innovations such as citizens juries and deliberative opinion polls in order to ‘generate a model of mainstreaming that is deliberative rather than bureaucratic or consultative’ (Squires 2005 p383). This focus on processes of deliberation and democratic engagement, builds on work by Young (1990) and Phillips (1999), which emphasise the significance of democratic participation in theories of justice and equality. This goes beyond participation in elections and increasing the diversity of political representatives to processes of decision making which involve the participation of all those likely to be affected by policy in a process of discussion and reflection about the development and delivery of that policy (Phillips 1999 p113). Phillips argues that this allows greater recognition of pluralism and difference. Such processes might involve arrangements that support Fraser’s proposal for ‘subaltern counter-publics’ where members of subordinate groups discuss their needs and priorities among themselves in order to ‘formulate oppositional counter discourses’ (Fraser 1997 p81) prior to taking part in wider deliberative processes.

Deliberative opinion polling is a process which gathers groups of citizens to develop policy responses to an issue through a process of group discussion over time with opportunities to examine research evidence and question policy experts in the area. The aim is to allow a fuller consideration of the issues and opportunities to understand other perspectives that are not available in a survey or other standard consultation mechanism (Gray 2009). There have been examples of the successful use of deliberative polling and other innovative participatory policy making methods by local and national public bodies in the UK (Davidson and Elstub 2013). These have been described as part of a move from a command and control system of government to a focus on ‘governance’ where government acts as a co-ordinator or facilitator of processes to develop and implement policy involving a variety of state, private and civil society actors (Loughin 2000, Meehan 2003). As the discussion on reflexive/responsive regulation will show this approach to governance is central to some models of responsive regulation, suggesting a congruence between these forms of regulation and democratic/participatory models of mainstreaming. However the ‘lack of a facilitating institutional landscape’ has hampered the widespread use of deliberative polling and other participatory decision making methods in the UK to date (Davidson and Elstub 2013 p367).

Walby argues that mainstreaming practice is more complex than both the integration/agenda setting and the expertise/democracy dichotomies suggest. She describes mainstreaming as a process of contestation and negotiation between visions of gender equality and the priorities of the mainstream, during which both change in response to each other and external pressures (Walby 2011 p84). Not only are feminist ideas ‘stretched’ to fit existing frames as Verloo suggests but the frames themselves are altered by contact with external pressure. Rather than seeing expertise and democracy as alternatives she suggests that they are in fact often intertwined. She points to the example of work on gender budgeting in the UK, where the Women’s Budget Group combined high levels of technical expertise with a broad membership of civil society groups, bringing about change through both expert arguments and democratic pressure. (Walby 2011 p94). Walby echoes both Woodward (2003) and Verloo (2005) in arguing that different approaches to mainstreaming depend very much on context. Woodward argues that a combination of political commitment, understanding of the issues, internal and external pressure

in support of or resistance to work on gender equality and the presence of gender experts inside and outside the institution will all affect the form taken by a gender mainstreaming approach and its chances of success (Woodward 2003). Verloo reaches similar conclusions about the importance of context, emphasising the impact of political opportunity, mobilising networks and the extent to which the goals of gender equality can be matched to existing frames on the form that mainstreaming takes (Verloo 2005). This contextual approach calls for attention to be given to those involved in mainstreaming within state organisations, the particular situation in which they are operating and the role played by external actors. The next part therefore considers feminist conceptualisations of the state while subsequent parts consider those working inside and outside the state.

2.3.7 Feminist actors inside and outside the state

Mainstreaming can be seen as an example of ‘state feminism’, a term first used by Hernes to describe the use of state policy machineries by feminists working within the state to promote a feminist agenda (Hernes 1987). ‘State feminism’ is sometimes used more broadly to describe women’s policy machineries within state institutions, (women’s units, equality units and so on), whether or not they serve feminist ends and more specifically to describe alliances between feminist actors inside and outside the state where the state actors help the non state actors gain access to policy arenas and achieve policy goals (McBride and Mazur 2010). Whatever the precise definition used state feminism involves a view of the state as ‘a potential, but by no means certain, arena for social change for women’s movements, organisations and individuals’ (Mazur 2013 p4).

This model of the state as a potential arena for change marks a move away from socialist and radical feminist concepts of the state as constructed in the interests of either capitalism or patriarchy (Rhode 1994). Socialist and Marxist feminists built on and expanded Marxist theories of the capitalist state to argue that capitalism is sustained by the unpaid reproductive labour of women and by relegating women to a reserve army of labour which can be used to keep wages low. State welfare and family policies reinforce women’s role as unpaid workers in the home and low paid workers outside the home (Eisenstein 1979). In contrast Mackinnon and other radical feminists have characterised the state as patriarchal, institutionalising male

dominance and female subordination. Mackinnon (1989) has argued that the ostensible neutrality of the state disguised the way it ‘coercively and authoritatively constitutes the social order in the interests of men as a gender’ and that the state is male ‘the law sees and treats women the way men see and treat women.’ Hernes and other writers on state feminism took issue with these monolithic conceptualisations of the state, pointing to changes to state structures and practices as a result of feminist campaigns and arguing that in some instances the state could work to change women’s lives for the better (Hernes 1987). Building on this idea Watson argued that states were complex entities which should be seen as ‘a set of arenas and a collection of practices which are produced historically and not structurally given’ (Watson 1991 p186). This view of the state as a ‘network of institutions with complex and sometimes competing agendas’ (Rhode 1994 p1185) was both a reflection of post-modern rejection of grand unifying theories, and a response to feminist writers’ observation of practice on the ground (Watson 1991, McBride and Mazur 2010). It has led to an interest in the differences between states (Kantola 2006) and the ways in which the state can be ‘experienced as both enabling and constraining, as oppressive and responsive to pressure for change’ (Charles 2000 p28).

The most significant example of research on ‘state feminism’ is a major cross national study of the different forms state feminism can take carried out by the Research Network on Gender, Politics and the State (RNGS), an international network of researchers. (Goertz and Mazur 2008, McBride and Mazur 2010, Mazur 2013). The RNGS has focussed in particular on the relationship between ‘women’s policy actors’ inside the state and women’s movement actors outside the state concluding that the characteristics of the women’s movement, the policy environment, particularly the role of left wing parties and the characteristics and actions of women’s policy agencies all impact on the state response to women’s movement demands. These elements will be discussed in more detail below.

Theories of state feminism have been complicated by the changing nature and role of the state. Kantola and Squires (2012) argue that ‘the concept ‘state feminism’ no longer adequately captures the complexity of the emerging feminist engagements with new forms of governance’ (Kantola and Squires 2012 p382). The concept of governance is often credited to Cleveland who argued for a move from ‘hierarchical

pyramids' with power at the top, to 'webs' in which 'power is diffused and centres of decision plural' based on 'collegial, consensual and consultative' decision making' (Cleveland 1972 p13). Cleveland identified a blurring of the lines between the private and public sectors, arguing that social problems required both to work together to find solutions. The term has been widely adopted to refer to a range of processes including 'good governance' centred around efficiency, evidence based policy making, transparency and equity, the fragmentation of power among different tiers of regulation including the EU, national governments and devolved bodies, and the shifting role of the state from being a provider of services to a regulator of privately provided services (Rhodes 2000). It is also used to describe the application of private sector management techniques to the public sector including de-regulation, privatisation, contracting out of services, creation of internal markets within large public bodies and a split between purchaser and provider in the provision of public services, often referred to as New Public Management (Lane 2001). All these processes are marked by a shift from the state as a direct provider of services to the state as a regulator and facilitator, working in partnership with private companies and civil society organisations in the design, evaluation and delivery of policy and services (Meehan 2003) with a transference of authority to non-elected independent or quasi independent regulatory bodies (Banaszak et al 2003). For some this represents the 'hollowing out' of the state with a shift from top down government to horizontal and fragmented systems of governance (Rhodes 1997). Richards and Smith in their study of governance in the UK, are more sceptical, arguing that the shift to governance represents adaptation and reconstitution of power by the state, which still exercises control through systems of regulation, contract management, performance standards and audit (Richards and Smith 2002).

In the UK the shift to these new systems of governance, with an enhanced role for civil society were central to the 'third way' politics of the New Labour government elected in 1997 (Meehan 2003). The third way was an attempt to find an alternative to both top down socialism and free market capitalism (Giddens 1998) and was described by Labour Prime Minister, Tony Blair, as combining the ideals of social justice associated with the left with the economic efficiency and innovation of the market (Romano 2006 p3). Throughout the late 1990s in a series of speeches Blair strongly associated the third way with a process of democratic renewal through

devolution, processes of participatory democracy and partnerships between the state and civil society (Meehan 2003). Through these partnerships the state, civil society and the market would work together to develop and deliver policies to address social problems. The move to government as ‘facilitator’ (Meehan 2003) or ‘co-ordinator’ (Loughin 2000) and the emphasis on ‘evidence based policy making’ in NPM (Marston and Watts 2003) offers new opportunities for women’s civil society organisations to engage with policy making, particularly when they can position themselves as sources of expert evidence. At the same time the outsourcing of services has enabled some women’s civil society organisations to play a larger role in the delivery of services (Kantola and Squires 2012). However as Kantola and Squires argue there are risks of co-option and watering down of political demands in both the technical expert strategy and taking on public contracts. Some organisations and individuals may gain influence and credibility as ‘experts’ but only where the evidence they provide fits the overall direction of government policy. This often involves providing evidence of a ‘business case’ in support of feminist goals, for example that workplace equality policies aid recruitment and retention of female staff or that gender mainstreaming leads to improved policy making. Other organisations may find themselves shut out of discussions altogether, particularly if they are seen as too challenging or lack the resources to present their ‘expertise’ in a way which public bodies recognise as expert. Tendering for public contracts may bring in resources to women’s civil society groups but again lead to co-option and reduced willingness to challenge government through fear of ‘biting the hand that feeds’. Smaller organisations may be unable to meet the reporting requirements of systems of audit and contract management.

Kantola and Squires conclude that the changing nature of the state has led to a change in the roles and strategies adopted by feminist civil society actors. These include a greater focus on professionalism and expertise, entering into contracts to deliver services on behalf of the state and the need to develop new sources of income from commercial activities or private donors, a process they describe as ‘market’ feminism. However this ‘market feminism’ does not appear to be a rejection of engagement with the state, rather a way of describing new forms of engagement which may emerge alongside more traditional campaigning. Despite the changing nature of the state and the new strategies adopted by some feminist actors in

response, work by the RNGS and others suggests that the relationship between feminist actors inside and outside the state is still a significant one. The next two sections explore the opportunities and tensions faced by those in both roles and the relationships between them in more detail.

2.3.8 Insiders - equal opportunity officers and ‘diversity specialists’

This section focuses on the particular experience of those people with responsibility for dealing with equality and/or diversity within bureaucracies. Many of the issues of integration and agenda setting highlighted in studies of mainstreaming practice appear in studies of those who might be responsible for carrying out this work.

Newson and Mason’s (1986) distinction between liberal and radical approaches taken to equal opportunities policy appears very similar to the integrationist and agenda setting approaches identified by Jahan and others discussed above.

According to Newson and Mason a liberal approach values equality of opportunity and fairness of procedures and is based on a ‘sameness’ model of equality. A radical approach values fair distribution and equality of outcome and is based on a ‘difference’ model. A liberal approach to equal opportunities is bureaucratic while a radical approach is described as political. However they observe that in practice both approaches may be combined in a sometimes contradictory way; radicals sometimes ‘disguise themselves in liberal clothing (Jewson and Mason 1986 p323) while some liberals use radical arguments to justify policy. This conceptualisation of a split between liberal and radical approaches was criticised by Cockburn (1989, 1991) who described it as a ‘straight jacket’. In her study of equal opportunities work within four organisations Cockburn argued that equality officers were often isolated within their organisations, aware that if they did their job too well they might jeopardise their careers by raising issues that challenged established hierarchies. They were situated between the competing demands of management and the previously excluded workers (women, Black people and so on) whose needs they were trying to represent, often exposed to criticism from all sides; to see them as either fundamentally liberal or fundamentally radical was to fail to recognise the way in which they attempted to negotiate these competing demands. Instead Cockburn suggested a recognition of equal opportunities agendas of shorter or longer lengths. At its shortest the agenda might simply aim to minimise bias in recruitment. This

was limited but important. At its longest an equal opportunities agenda aimed at nothing less than a project of transformation of the structures and systems of power within an organisation. This ‘long agenda’ has strong similarities to the model of equality of transformation articulated by Rees and others described above.

Meyerson and Scully (1995) developed the concept of ‘tempered radicals’ to describe the experience of those who seek to work within mainstream organisations while also trying to change them. Like Cockburn they identified that many people in this role had joined their organisation as outsiders with the aim of changing it from within. They were tempered because they were ‘angered by the incongruities between their own values and beliefs about social justice and the values and beliefs they see enacted in their organisations’ (Meyerson and Scully 1995 p586) and also by the need to fit in and avoid alienating others with whom they had to work. They are faced with the choice of trying to live with ambivalence, criticising both the status quo and radical change, or by seeking a compromise which may lead to criticism from both inside their organisation (for being too radical) and from external allies (for not being radical enough). Alternatively they may become co-opted by the values of their organisation, which would isolate them from sources of external support.

This model of tempered radicals was adopted by Kirton, Greene and Dean (2007) whose study of ‘diversity professionals’ reflected some of the issues of ambivalence about their role identified by Meyerson and Scully. However unlike the equality officers studied by Cockburn and Meyerson and Scully, these diversity professionals were not, by and large people who had come from outside the organisation to take up an equality role, but were recruited internally from other roles within their organisation. Although they also expressed concern about unfair practices within their organisation they did not experience the same level of tension between the goals of their organisation and their commitment to equality. Indeed most ‘seemed to have a genuine belief in the business case for equality and diversity, rather than simply using it as a discursive tool with which to disguise their goals’ (Kirton, Green and Dean 2007 p1988). There are two important shifts to note here: first the growing ‘professionalisation’ of equality/diversity officers who are recruited internally rather than coming from an activist role outside the organisation and second the shift in focus from equality to ‘managing diversity’.

Diversity Management emerged as a response to concerns about the changing demographics of the workforce and employer and Government resistance to formal equality measures in the US in the 1980s and 1990s (Ben-Galim, Campbell and Lewis 2007). Diversity Management practitioners argued that employers would benefit from inclusiveness and responsiveness to the needs of a diverse workforce through attracting the best employees, increasing staff retention and improving ability to work in overseas markets (Price 2003). This marked a shift in emphasis from the rights of employees and consumers to improving business success and required ‘diversity professionals’ who came from a business background rather than the social justice activist background of a previous generation of equality officers (Kirton, Greene and Dean 2007). The dangers of these business case arguments were highlighted by Dickens (2006) among others. While business case arguments may help ‘sell’ work on diversity to organisations that might be suspicious of equality, if the justification for action is based on what is good for an organisation then action may only be limited to certain groups and a business case may also be made against action in some organisations or situations. An organisation may accept the business case for recruiting and retaining highly qualified senior women managers for example, but not for increasing the pay of low paid women workers who are seen as cheaper and easier to replace (Dickens 2006). In addition, as Webb argues, Diversity Management can reinforce traditional gender roles, for example emphasising women’s ‘unique qualities’ that make them particularly suitable for flexible, non-hierarchical, relationship based ways of working (Webb 1997 p164). Rather than the challenge to essentialised notions of gender which intersectionality offers, diversity in this context would appear to mark a return to a ‘difference’ model. Other models of Diversity Management do not have this essentialising tendency, focussing instead on the differences between individuals (Kirton and Greene 2010). However, as Kirton and Greene point out, this can be used to justify inaction on structural inequalities; if we are all different, with different aspirations, needs and expectations then different outcomes are only to be expected. Ahmed makes a similar point in a study of higher education, arguing that ‘the turn to diversity [...] works to individuate difference and conceal the continuation of systematic inequalities within organisations’ (Ahmed 2007 p604).

The majority of Kirton, Greene and Dean's interviewees came from the private rather than the public sector, reflecting the shift from 'state feminism' to 'market feminism' identified by Kantola and Squires (2012) above. While the term diversity is associated with Diversity Management in the private sector, in the public sector it also reflects a desire to recognise issues of intersectionality (Conley and Page 2015 p106). This might be closer to the model of diversity mainstreaming proposed by Squires (2005). However the growing importance of making a 'business case' does not only apply within the business world but also within the public sector. Conley and Page reported in their study of the implementation of the Gender Equality Duty that equality advisors were obliged to present equality as a way of improving the quality of public services in order to protect equality work; 'while this had the desired effect of removing dysfunctional conflict associated with the past, it cut the transformative roots from the gender equality project' (Conley and Page 2015 p112). Within the public sector business case arguments are based on efficiency and improving public services. For example the Equal Opportunities Commission *Code of practice for the Gender Equality Duty* argues that 'making gender equality central to the way that public authorities work' will create 'better informed decision making and policy development; a clearer understanding of the needs of service users; better quality services which meet varied needs; more effective targeting of policy and resources; better results and greater confidence in public services and a more effective use of talent in the workplace' (EOC 2006 p7). These arguments present action to promote gender equality as primarily a way to improve the ability of public sector organisations to deliver on their objectives, with no mention of the position of women or gender equality. This appears to be an example of the 'stretching' of the goal of gender equality to fit organisational priorities identified by Verloo (2005). However as Conley and Page point out, in a climate of public austerity these business case arguments become harder to sustain as the focus of public sector organisations moves from improving public services to responding to dramatically reduced budgets (Conley and Page 2015).

Mainstreaming and other work by state actors to promote equality can be significantly influenced by external pressure from civil society groups (Kelly 2005, Rees 2005, Walby 2005, Woodward 2004). The next section explores the role played by these groups.

2.3.9 Outsiders - Civil Society

The active involvement of civil society groups can enable a process of participatory decision making which is central to the model of transformatory mainstreaming proposed by Squires (2005) and others. However, as we saw in the discussion of participatory/democratic models of mainstreaming, processes for engagement can create burdens for civil society groups that lack the resources to respond, meaning that certain groups are privileged while others are excluded. This section explores the tensions faced by civil society groups and the factors which have been identified as significant in successful engagement. But first it briefly explains the use of term ‘civil society’.

Throughout this thesis I shall follow Walby in using the term ‘civil society’ to include all those who take action in pursuit of equality outside state institutions (Walby 2011 p7). This is a reflection of the broad range of groups and individuals who are involved in this work including campaigning and activist groups and networks, which might be described as social movements (Charles 2000), national and international Non-Government Organisations (NGOs) and local and voluntary organisations delivering services. This last group blur the lines between the state and civil society since they may be funded by state institutions to deliver public services; the tensions caused by this blurring are discussed in more detail later in this section. Civil society is a broad term that is used to describe organisations and associations that are neither part of the state nor part of the market (Falk 1995, Giddens 1998), although there might be overlap as discussed below. The current usage reflects a concern with both state and market power (Morrison 2000) and represents a search for an alternative space for civic action. While the term is sometimes used interchangeably with other expressions, including the voluntary sector, the third sector and non-government organisations (NGOs), and there are clearly large overlaps between them there are also significant differences. The term third sector reflects the existence of organisations that are neither part of the state nor the market but is generally limited to formally constituted organisations, as is the term NGO, whereas civil society includes a wider range of associations, including informal networks and faith groupings (Pallas and Uhlin 2014). Civil society also goes beyond the organisations and groups covered by the term ‘voluntary sector’ to include informal groupings and networks that come together for a specific purpose,

for example to organise a protest march or other campaigning activity. This broad definition can encompass a wide range of groups and networks from small groups of a few people meeting on a largely informal basis for social, sports or faith activities, to large international charities employing thousands of staff and include service providing organisations, campaigning groups, faith organisations and self-help groups. Civil society is also broader than ‘social movements’ which specifically aim to bring about cultural or political change. Some studies of mainstreaming and other forms of state feminism use the term women’s social movements or women’s movements (Mazur 2013, Woodward 2004). Although the RNGS uses the shorthand ‘women’s movement’, Mazur explains that this includes ‘a broad spectrum of actors that could represent women’s interests’ including what might be described as ‘feminist social movements’, women’s movements, and women actors in other movements or groups (Mazur 2013 p5). She distinguishes this use of women’s movement from other definitions of social movements which include ‘contentious activism against the state’ as part of what defines a social movement. RNGS concluded that this is not always the case with women’s movements which may enter state institutions and activities (Mazur and McBride 2014). Walby uses the general term ‘civil society’ to refer to external groups that might put pressure on state institutions over equality issues in order to reflect the broadest possible range of actors, groups and networks, including NGOs and service providing organisations that might not be included within definitions of ‘social movement’ (Walby 2011). It is this use of civil society that I adopt here.

Studies of lobbying initiatives by civil society actors have identified a range of factors that lead to success. Most emphasise both external factors, including the political context in which the group(s) operate and the openness of the body that is being lobbied to external pressure and internal factors including the priority of the issue within the group or network, the level of support it can call on and the ability to present a case that resonates with those they are trying to influence. Alliances between civil society actors and actors inside the institution it is trying to influence are also critical. Pallas and Uhlin conclude that the success of civil society organisations in lobbying national governments depends on the openness of state structures to external pressure, social capital within civil society organisations including their contacts within the state, how closely the interests of the civil society

organisation align with the state organisation and the relative power of different policy makers to act (Pallas and Uhlin 2014). Studies that focus on the influence of women's movements in particular have argued for the importance of a combination of access to political elites through policy networks and mass movements to demonstrate public support and legitimise demands. These networks with decision makers may be facilitated by the presence of women in positions of power (Charles 2000). Friedman (2003) and Kelly (2005) have drawn on social movement theory to identify four elements which influence the success of feminist social movements to mainstream gender into political institutions. First the 'political opportunity structure'; the external context in which civil society groups are operating. Second the 'mobilizing structure'; the importance of the issue to the group and its ability to gain support. Third the ability of the group to frame issues and finally the 'action repertoires', the strategies of engagement used by the group or groups.

The RNGS researchers concluded that 'grand overarching solutions' to explain the success or otherwise of women's movement engagement with the state fail to recognise the complexity of the different patterns found in different contexts (Mazur and McBride 2014). However they identified some factors that were common across all the countries that they studied. These were the priority given to the issue by the women's movement as a whole, the openness to outside actors of the body being lobbied, the compatibility of the frames used by internal and external actors, alliances between women's movement actors and left wing politicians and the particular policy sector where the claim was being made (Mazur and McBride 2014).

Common to all these analyses is the question of context and the openness to external pressure, the way in which issues are framed and the ability of civil society actors to form alliances with actors inside the institution they are trying to lobby.

Framing can refer to the ability of the group or groups to frame the issues for themselves in a way that brings participants together for a common cause (Friedman 2003 p315). It can also refer to the way in which issues are framed to resonate within existing agendas, or to challenge those agendas (Kelly 2005). Challenging existing agendas may require shifting the frame of what is seen as acceptable. This process has been described as 'shifting Overton's window' (Russell 2006), based on the ideas of Joseph Overton who argued that policy proposals could only succeed if they

fell within a ‘window’ of acceptable ideas. Ideas outside that window would be seen as radical, or even unthinkable – those wishing to promote those ideas had to shift the window of what was considered acceptable before their ideas had any chance of translating into policy. How an issue is framed will affect the degree to which the interests of civil society groups and state institutions are seen to align which was identified as important by Pallas and Uhlin (2014).

The ability of civil society actors to build alliances with decision makers in an organisation they wish to lobby relates in part to both their understanding of how that organisation works and the social capital within civil society groups and networks. The ability to build relationships with decision makers and other influential groups and individuals is an example of what has been described as ‘bridging capital’; this is often distinguished from ‘bonding capital’, which refers to the strength of internal relationships within groups (Putnam 1995). The requirement for high levels of ‘bridging capital’ tends to benefit groups that are part of social, business or other networks of relationships with decision makers. These relationships are identified as critical by Rumbul (2013) who argues that the degree of ‘structural embeddedness’ with the state through networks of formal partnerships and informal relationships of trust are central to the influence of civil society organisations. This gives an advantage to larger better funded voluntary organisations, who are already funded by the state and through this are involved in formal partnerships and able to develop relationships of trust. Larger organisations are better able to absorb the cost involved in taking part in meetings, reading policy proposals and drafting responses. Those that are already involved in funding relationships will have a better understanding of how the state institution operates and be able to develop relationships of trust with decision makers (Rumbul 2013). These civil society groups can further embed their influence through participation in advisory groups, partnership boards and so on, meaning that a relatively small number of groups can gain disproportionate power, leaving other organisations excluded from networks of influence. As women’s organisations are rarely large or well-funded some have argued that this can lead to a model of ‘civil society engagement’ which replicates existing male dominated power structures, excluding the voices of women (Eto 2012). However some women’s groups, such as those

working on violence against women may be funded to deliver services and therefore able to develop relationships with state institutions (Kantola 2006).

The significance of funding relationships identified by Rumbul reflects the fact that, with the shift to new systems of governance described above, some civil society organisations are taking on an increasingly important role in delivering services on behalf of the state (Kendall 2003, Hodgson 2004, Fyfe 2005) blurring the line between state and civil society. Wolch (1989) has argued that the process of taking on public sector contracts turns civil society organisations into a ‘shadow state’ preventing marginalised voices from being heard. This can lead to criticisms from former allies when civil society organisations that have their roots in a culture of campaigning move into a service providing role (Charles 2000 148-50). Lang is critical of the German women’s movement for taking this path, arguing that it has become ‘a professionalised and state dependent women’s project culture that has altered its mission from feminist consciousness raising to providing services for women, from developing critiques of the masculinist state to becoming its bargaining partner’ (Lang 2007 p139). Groups that move into a service providing role may become wary of public criticism of their state funder, for fear of damaging the relationships on which the contract depends. This suggests that the inside/outside question does not simply apply to a decision to work within state institutions or stay outside, but to decisions faced by civil society groups about how closely they become involved with the state.

This dilemma is not only faced by service providing organisations. Groups that lobby state institutions may have opportunities to influence decisions if they manage to position themselves as ‘experts’ but find that this comes at a price (Kantola and Squires 2012). Some of the risks and benefits can be seen in accounts of the work of the UK Women’s Budget Group (Perkins 2000, Himmelweit 2005). The WBG successfully lobbied the then Chancellor, Gordon Brown, that Working Family Tax Credit should be paid to the main carer (usually the mother) rather than the main wage earner (usually the father) using research evidence that money paid to women was more likely to be spent on children than money paid to men. WBG members were aware that this meant they were fitting their arguments into Treasury priorities rather than prioritising women’s need for an independent income in their own right

but felt that this was the only way in which to have any influence (Perkins 2000 p35). Here ‘framing’ the issue of who benefits were paid to as an issue of child poverty led to short term success, but failed to change the terms of the debate in the long term. Himmelweit concluded from her experience with the WBG that it was possible to have some success when going with the grain of government policy, but not when trying to challenge the basis of that policy (Himmelweit 2005). Kantola and Squires echo this conclusion arguing that the risk of a technical expert strategy is that the terms of the debate are not changed (Kantola and Squires 2012). Alveraz, (1999), identifies an additional danger: commenting on feminist NGOs which she claims have been increasingly constructed by the state as ‘gender experts’ in Latin America she argues that only do their interventions become technical rather than political but that these NGOs become the ‘surrogates for civil society’ excluding more critical voices. The danger that some models of ‘engagement’ with civil society will privilege certain voices, in particular those who have a funding relationship or can position themselves as experts provides support for Squires’ (2005) call for an approach based on participatory democracy rather than formal ‘consultation’. This would mean actively seeking to engage those who might not otherwise be heard.

2.3.10 Critical actors

Rather than focussing on tensions between an insider/outside approach or between ‘experts’ and broader civil society it may be more useful to focus on these as separate elements which need to be combined in order to achieve transformatory change. Insiders may have opportunities for influence, but risk co-option, outsiders may retain their autonomy but at the price of marginalisation and lack of influence (Kantola 2006 p7). Delivering change requires expertise both in policy and in lobbying, but ‘experts’ may find they are only listened to where their arguments are framed in line with existing priorities and other voices may be ignored altogether. Charles (2000) argues that rather than an either/or approach to insider/outsider strategies feminist social movements have to engage with the state both internally and externally. Woodward conceptualises this strategy as a ‘velvet triangle’ of relationships between feminist bureaucrats, ‘gender experts’ from academia and elsewhere and activists in the women’s movement (Woodward 2004). This model recognises the role of actors both inside and outside the state in achieving feminist goals. Kantola’s (2006) study of Women’s Aid in the UK provides a powerful

example of this in practice. Women's Aid grew out of a radical feminism which informed not only its concern with violence against women but also a distrust of a patriarchal state. However as an organisation it has worked closely with sympathetic MPs and officials on legislation and policy while its member organisations are part of commissioning relationships with local government to provide publically funded refuge services (Kantola 2006 p77). Kantola cites this as an example of feminists adopting different strategies at different points or even pragmatically perusing insider strategies while maintaining a rhetorical commitment to autonomy. The success of this strategy depends on an understanding of the different roles of each point of the triangle, and on relationships of trust that can cross the insider/outsider divide. These relationships are as likely to be personal as structural. Childs and Krock's work on action to promote gender equality within parliament has identified the significance of what they refer to as 'critical actors', who they define as those who initiate policy and or embolden others to take action (Childs and Krook 2009 p138). Childs and Krook argue that while studies of the impact of increased political representation of women often focus on 'critical mass', the idea that political policies, cultures and processes will be transformed once the proportion of women in parliament reach a certain level, the success of particular policy initiatives often depends on the actions of these individual 'critical actors'. Although their use of the term focusses on elected politicians the concept of critical actors can be extended to include people working at any point of the 'velvet triangle', suggesting that what is important is not only the proportion of women within an institution but the actions of key individuals.

This section has focussed on mainstreaming, placing it in the context of wider feminist debates about equality and difference and exploring the role of two key sets of actors inside and outside state institutions. As the first section showed mainstreaming equality was the aim of the PSED. The next section considers regulatory theories which informed the model of regulation used to enforce mainstreaming within the PSED.

2.4 Responsive and Reflexive Regulation

2.4.1 Introduction

As section one showed the initial model for a single equality duty drew on models of responsive regulation, and the PSED itself was later analysed as a form of both responsive and reflexive regulation. Both responsive and reflexive regulation can be seen as part of a shift from a command and control system of government to a process of ‘governance’ described above where the state acts as a co-ordinator, or facilitator in a process involving a variety of actors. These shifts required new systems of regulation; both responsive and reflexive regulation provided models for how regulation might work in an era of governance.

2.4.2 Responsive law

The concept of ‘responsive law’ was developed by Nonet and Selznick (1978/2001) as part of a model of three different legal approaches, which they described as repressive, autonomous and responsive. Repressive law is defined as a system where the law is subordinate to the interests of those with political power, legal institutions serve the state, authority is shielded from challenge or criticism, privilege is consolidated and the interests of the governed are disregarded or denied legitimacy. Autonomous law aims to ‘tame repression’ (Nonet and Selznick 2001 p53). Governments make the law but it is interpreted and applied without political interference, the independence of the judiciary is emphasised and there is a focus on rules and procedures in order to elevate the law above politics. The outcome is ‘regularity and fairness, not substantive justice’ (Nonet and Selznick 2001 p54). Responsive law in contrast aims at substantive justice and involves a process of negotiation and dialogue about how best to achieve this. Rather than focussing on specific rules it aims to uncover the principles and purpose behind the law encouraging the questioning of the authority of the rules themselves. The law is open to challenge and based on participation, with external social pressures perceived ‘as sources of knowledge and opportunities for self-correction’ (Nonet and Selznick 2001 p77). In this way responsive law encourages a ‘problem centred and socially integrated approach’ which is better able to deal with crisis of public order (Nonet and Selznick 2001 p 92). Crucially the focus of responsive law is not on individual redress in specific cases through following legal rules but on rectifying or avoiding

injustice through ‘diagnosing institutional problems and redesigning institutional arrangements’ (Nonet and Selznick 2001 p106). This focus on redesigning institutional arrangements would be compatible with a mainstreaming approach to equality while the emphasis on participation would suggest participatory form of mainstreaming. Nonet and Selznick acknowledge that responsive law is a high risk strategy, which requires openness and political resilience in order to adapt to changing circumstances and social needs.

2.4.3 Responsive regulation

The ideas behind Ayres and Braithwaite’s model of responsive regulation ‘bear many of the marks of Nonet and Selznick’s “responsive law” concept, flexibility, a purposive focus on competence, participatory citizenship, negotiation’ (Ayres and Braithwaite 1992 p5). Again this would appear compatible with participatory forms of mainstreaming. However, while Nonet and Selznick’s model addressed broad questions of the relationship between law, politics and wider society, Ayres and Braithwaite focussed on the specific question of regulation of the market. Rather than ‘grand theoretical aspirations’ their work aimed ‘to transcend the intellectual stalemate between those who would favour strong state regulation and those who advocate deregulation’ (Ayres and Braithwaite 1992 p3). They argued ‘all corporate actors [business and other private sector organisations] are bundles of contradictory commitments to values about economic rationality, law abidingness and business responsibility’; a regulatory strategy based on punishment would undermine goodwill among those motivated by responsibility while a strategy based on persuasion and self-regulation would be exploited by those motived by economic rationality (Ayres and Braithwaite 1992 p19). In place of either approach Ayres and Braithwaite drew on game theory to propose a form of regulation that was not only ‘attuned to the differing motivations of regulated actors’ but responsive to their conduct; ‘the very behaviour of the industry or the firms therein should channel the regulatory strategy to greater or lesser degrees of government intervention’ (Ayres and Braithwaite 1992 p4). They argued for an enforcement pyramid from self-regulation at the bottom, through enforced self-regulation to command regulation with discretionary punishment and finally command regulation with non-discretionary punishment at the top (1992 p39). The aim was to change the regulatory culture to foster co-operation between regulatory bodies and the regulated

firms so that the majority of firms were persuaded to self-regulate. Inherent in this approach was a danger of regulatory capture or corruption where the regulator comes to associate too closely with the interests of the regulated firms. In response to this danger Ayres and Braithwaite suggest a form of ‘tripartitism’ empowering civil society (which they describe as public interest groups) to participate in negotiations between the regulator and regulated bodies ensuring all sides are held to account. This gives a critical role to ‘deliberative, participatory processes as a means of securing regulatory objectives’ (Yeung 2004, p171).

2.4.4 Reflexive regulation

Teubner’s concept of ‘reflexive regulation’ both drew on and critiqued the model of responsive regulation developed by Nonet and Selznick (Teubner 1983). Teubner distinguishes between three types of law: formal, substantive and reflexive. Formal law aims at individualism and autonomy, establishing ‘spheres for autonomous activity and fixed boundaries for the actions of private actors’ (Teubner 1983 p252/3). Substantive law is based on achieving substantive outcomes and is associated with increasing state regulation. Reflexive law aims at neither autonomy nor collective regulation of behaviour but searches for ‘regulated autonomy’, seeking to ‘design self-regulating social systems through norms of organisation and procedure’ (Teubner 1983 p254/5). Teubner argues that Nonet and Selznick’s model of responsive regulation contained both substantive and reflexive legal rationality but did not sufficiently distinguish between them. This distinction was important because reflexive and substantive law require different ‘institutional legal structures, cognitive models of reality and normative characteristics’ (Teubner 1983 p256). Teubner characterises the law as one of a series of autonomous social systems which are self-referential and obey their own developmental logic meaning that ‘external changes are neither ignored nor directly reflected according to a stimulus-response’ scheme (Teubner 1983 p249). This makes the form of state regulation required by substantive law difficult to achieve. Teubner argues instead for reflexive law, the aim of which is to ‘structure and re-structure semi-autonomous social systems [...] by shaping their process of internal discourse and their methods of coordination with other social systems’ (Teubner 1983 p255).

Teubner went on to develop the idea of law as one of a series of sub systems, utilising theories of autopoeises (self-reproduction) to argue that some systems, including the law, are self-reproductive, producing ‘their own elements, structures, processes and boundaries constructing their own environment and defining their own identity’ (Teubner 1993 p69). Each sub system will process messages from outside (for example regulation or legislation) according to its own norms and structures. Simply imposing law or regulation on systems with different language norms and logic can lead to what has been called the ‘regulatory trilemma’ (Teubner 1987) where legal intervention may be ignored, may damage the ability of the system to reproduce itself or may lead to a crisis in legitimacy for a law which is perceived as ineffective.

2.4.5 Commonalities between responsive and reflexive regulation

Both models of responsive law and theories of reflexive regulation share elements in common. Rather than mandating a series of specific actions they all emphasise an openness to different approaches. McCrudden describes the benefits of a reflexive/responsive approach as being that ‘it encourages each organisation to engage in its own assessment of the problem, but to deliberate with others in reconsidering whether this is adequate and how far its assessment needs to be reconstructed in the light of that deliberation’. In this way the law avoids both the traps of command and control regulation based on detailed and prescriptive controls and sanctions and of de-regulation which removes controls altogether (McCradden 2007 p259). These forms of regulation aim to work with the ‘inner logic’ of social systems, steering them to develop solutions rather than imposing them from the outside. Under these approaches ‘the cause of regulatory failure in the past is attributed to a failure to appreciate the limited role that the law can play in bringing about change directly in other sub systems because of the limited openness of these other sub systems to external normative interventions’ (McCradden 2007 p259). Fredman describes the approach as one which would ‘aim to harness the energy and problem solving expertise of those who are in the best position to bring about change, rather than imposing proscribed solutions, which are likely to encounter resistance or token compliance’ (Fredman 2011 p272). In this way organisations are encouraged to ‘own’ solutions that they devise themselves through a process of deliberation (McCradden 2007 p260).

2.4.6 Differences between responsive and reflexive regulation

Although the terms responsive and reflexive regulation are sometimes used interchangeably (see McCrudden 2007, Hepple 2011, Deakin et al 2012, Conley and Wright 2015), there appear to be a number of significant differences between them. Reflexive regulation identifies problems of communication between systems as a primary cause of regulatory failure. As McCrudden argues this is one of the potential problems with a reflexive approach; organisations or individuals with power may actively resist attempts to regulate, not because of a failure of communication and understanding, but because of ‘well understood resistance to the aims the Government wants to see adopted’ (McCradden 2007 p262). Assuming that the issue is primarily one of communication can ignore issues of power; organisations with power may resist regulation because they can rather than because of a failure of communication. In contrast responsive regulation as described by Ayres and Braithwaite is specifically designed to address self-interested resistance to the aims of regulation. The issue here is not a problem of communication between systems but the different priorities and values within regulated bodies. Another potential problem with reflexive regulation identified by McCrudden is that by positioning law as only one system among many reflexive regulation may underestimate the role of the law in articulating shared values which society regards as fundamental rather than debatable; the ‘enthusiasm for open-ended deliberation among stakeholders may encourage more debate on core values than the Government actually desires’ (McCradden 2007 p262). Deliberation may not be limited to how to implement but on whether to implement at all. In contrast Nonet and Selznick’s model of responsive law emphasises uncovering the principles and purpose behind the law, the specific details of how to achieve these are to be identified through a process of dialogue but there appears to be an assumption that the role of the law is to define what these values are. In Ayres and Braithwaite’s model there is space for regulated bodies to develop their own solutions, but a clearly defined pyramid of enforcement if those solutions do not meet the objectives that regulation is designed to achieve; there is no space for deliberation about whether to take any action at all. Conley (2015) identifies another significant difference between reflexive and responsive regulation, distinguishing between the emphasis on civil society participation in Nonet and Selznick and Teubner’s focus on behaviour change processes in legal and

organisational structures. While reflexive regulation concentrates on internal deliberation and communication within systems and organisations and between these systems and organisations and legal systems, theories of responsive regulation place more emphasis on processes of deliberation that include the participation of a wider community of interest groups.

The fact that the terms reflexive and responsive regulation are used interchangeably can obscure these differences. In particular it hides the tension between allowing organisations to develop their own approaches to equality and ensuring the participation of affected groups in the decision making process. If organisations are likely to resist solutions imposed upon them from outside are they not equally likely to resist obligations to involve external groups in their internal deliberations? Which is more important, to work with the grain of the priorities of the regulated body, or to ensure that that body engages with civil society groups, even if this is not one of its priorities? Clearly the two alternatives may lead to different approaches to mainstreaming. Working with the grain of the priorities of the regulated body might support an ‘integrationist’ form of mainstreaming, but not necessarily one that is participatory. Ensuring the participation of affected groups in the decision making process could encourage a democratic/participatory approach to mainstreaming. The next section explores the literature to date on which of these alternatives the PSED represents.

2.5 Literature on the PSED

There is agreement among commentators that the conditions necessary for the deliberative process which is central to both reflexive and responsive regulation ‘must be affirmatively created, rather than taken for granted’ (De Shutter and Deakin 2005 p3). Even at the consultation stage of the Equality Bill McCrudden was warning that the Bill would not create the necessary conditions for reflexive regulation (McCradden 2007). McCrudden identified three factors which he considered essential for reflexive regulation: that public bodies have to examine what they are doing on the basis of objective evidence, that they seriously consider alternative approaches to shift entrenched patterns of inequality and that this process is monitored, and that they are required to engage with stakeholders including civil society. He analysed the proposals for the PSED in light of the lessons of Section 75

of the Northern Ireland Act, arguing that the proposals for the PSED did not contain the elements that would ensure enforced self-regulation and civil society engagement. Public bodies were not required to carry out the processes of assessment and reporting contained in Section 75, nor were the requirements to consult and engage sufficiently robust.

Hepple (2011) also argued that the PSED lacked important elements needed for reflexive regulation, although he emphasised two changes made by the Coalition Government which undermined reflexivity in the duty. First the Coalition significantly reduced the functions of the Equality and Human Rights Commission and cut its budget. This severely limits the EHRC's role at various stages of the regulatory pyramid from providing information and supporting dialogue through scrutinising the actions of public bodies, supporting individuals taking legal challenge and regulation. Secondly it has reduced the obligations on public bodies contained in the specific duties. Among these was the obligation to consult and engage with stakeholders and civil society groups. Hepple argued that the involvement of stakeholders inside and outside the organisation was central to the working of the PSED as a form of reflexive regulation and that this had to go beyond 'consultation' which may only give a passive role to those consulted over policy proposals to a form of 'engagement' based on respect for dignity, elimination of discrimination, advancement of equality of opportunity and fostering good relations' (Hepple 2011 p323). These are actually elements of a responsive rather than reflexive approach, but Hepple uses the term reflexive regulation throughout. He concluded that as a result of the changes to the specific duties 'the public sector equality duty places too heavy a reliance on voluntary means to achieve engagement.... There is not enough carrot or stick to make engagement with interest groups an essential feature of the equality duty' and that this 'reduces the likelihood that reflexive regulation will be successful in Britain (Hepple 2011 p332).

Fredman reaches similar conclusions about the weakness of the PSED as a form of reflexive regulation in her analysis of judicial review cases taken under the duty and previous equality duties. Rather than triggering deliberative decision making she argues that the courts have 'stumbled into the paradox inherent in using judicial review in this context'. The need to establish a stable set of principles which can inform decision making without litigation increases the scope for 'procedural

compliance' rather than flexible decision making (Fredman 2011 p 420). This would suggest that the form of mainstreaming enforced by the PSED is in danger of being bureaucratic rather than participatory. The combination of detailed scrutiny by the courts of the process of decision making and inconsistency in judgements means that 'courts are in danger of becoming the first rather than the last resort for the deliberative process' (Fredman 2011 p420).

Fredman argued that there was a lack of empirical data on the impact the PSED was having on the behaviour of organisations (Fredman 2011). Indeed some have argued that it is difficult to determine the precise impact of any regulation since there are so many different factors influencing the behaviour of organisations and individuals within them (Quick 2011, Laing 2014). Since Fredman's article there have been a number of studies which have shown a mixed impact of the PSED on practice, which may reflect the different contexts within public authorities. Clayton-Hathaway's analysis of published evidence on the impact of the duty has revealed widespread examples of good practice, alongside evidence of lack of awareness of the duty, confusion about what it requires, lack of leadership and inadequate enforcement (Clayton-Hathaway 2013a and 2013b). This work drew largely on evidence submitted to the Independent Review of the PSED (see chapter 6) by local authorities, trade unions and equality organisations. The majority of public bodies who submitted evidence to the Review argued that the PSED had had a positive impact on equalities practice and between them supplied over a hundred specific examples of policies or practices that had been changed as a result of the PSED. However there was a widespread belief that application of the duty was patchy, largely as a result of lack understanding of what was required and inadequate enforcement. The Fawcett Society's submission argued that there was a lack of focus on gender in the mainstreaming process (Fawcett 2013) suggesting that concerns that the replacement of the Gender Equality Duty with the PSED would lead to a reduction in work on gender had proved accurate (Conley and Page 2015 p113). A high proportion of submissions argued that it was too early to judge the impact of the duty since at the time of the review it had only been in force for a short time. The Equality and Human Rights Commission (EHRC) has carried out, or commissioned a number of research projects in England Scotland and Wales focussing on the impact of the specific duties. In England their research on the duty to publish

equality information (EHRC 2012c) found that around half of the public sector bodies surveyed were publishing some information on staff and service users, with a higher number publishing information on staff only. Among those organisations that did publish information the EHRC identified a number which demonstrated that this had had an impact on their policies. The second EHRC report covered the requirement to publish equality objectives in England. Eighty seven percent of public authorities had published at least one equality objective, however less than half of these were specific and measurable, setting out the quantity of improvement required and a time frame in which this should happen. A relatively low proportion were specific to gender equality. In local government for example only 24.9% of objectives related to gender compared to 53.2% on disability, 40.9 on race and 54.5 on age (EHRC 2013). There was a significant variation in publication patterns by type of authority ranging from 93% of healthcare providers to just 21% of schools publishing an objective. Again this suggests a patchy pattern of enforcement.

In Scotland and Wales responsibility for the specific duties has been devolved to the Scottish Parliament and Welsh Assembly. The specific duties in both nations are more extensive than those in England. In Wales research by NatCen for the EHRC found a range of positive impacts of the PSED, with respondents stating that the Welsh specific duties provided greater clarity on the requirements of the law than the duties in England and that the Welsh duties were better able to ensure that equality was fully integrated into the service planning and delivery process (NatCen 2014). Consultation and engagement with service users was felt to be better than before the PSED, Equality Impact Assessments were regarded as having had an impact on mainstreaming equality in policy making and there was progress on action to close the gender pay gap. The report concluded that these outcomes were the result of a strong commitment to work on equality among senior leadership and management in Welsh local authorities, a high level of knowledge of how to address the PSED on a practical level and a widely shared ownership of the equality and diversity agenda. In Scotland a review of action by local authorities was more mixed. Some authorities performed well, integrating equality into their work and tailoring their work to meet the needs of service users. These authorities provided evidence that the duties had had a meaningful impact. Other authorities performed less well, failing to provide detail or specific measurements of progress on equality outcomes (EHRC Scotland

2015). The findings of these reports suggests that both national and local context has been important in how the duty has been implemented within public bodies. This is in line with research into the impact of regulation in other areas (Laing 2014). Huisings and Sibley's research into environmental and health and safety regulation for example argued that 'factors internal to the organisation, not legislative or regulatory design influence the dynamics of compliance' (Huisings and Sibley 2011 p17).

2.6 Conclusions

In this chapter I have explored three sets of literature relating to positive duties to promote equality. The first was the feminist literature on mainstreaming, which I situated within wider debates on the meaning of equality and how best to achieve it in practice. The second was the literature related to the specific form of regulation that the PSED represented, variously described as responsive or reflexive regulation. I have shown that although the two terms are used interchangeably there are significant differences, which could influence the form of mainstreaming carried out in response to the PSED. The third was the literature on evidence to date of the impact of the PSED on the policies and practices of local authorities.

From the evidence to date on the impact of public duties to promote equality it appears that levels of implementation vary significantly within England, Scotland and Wales, by type of local authority and within particular types of local authority. The main source of evidence relating to English public authorities is the submissions to the review of the PSED. These provide examples of positive impact, but these tend to relate to specific changes to an individual policy. There remains a lack of empirical evidence of whether and how the PSED has influenced work on equalities in a more systematic way. In particular it is not clear whether the PSED has resulted in consideration of equality being mainstreamed in a way that would address structural inequalities, nor whether the replacement of the Gender Equality Duty with a general duty would lead to a loss of focus on gender. This leads to my initial research questions:

How has the PSED influenced equalities work and particular work on gender equality at a local level?

What factors have affected its influence?

Has the PSED resulted in action to tackle structural inequality?

McCradden, Hepple and Fredman all suggest that changes to the original proposals for the PSED, whether made by the Labour Government during the consultation stage, or by the Coalition Government are likely to prevent the duty from working effectively as a form of reflexive regulation and therefore ensuring mainstreaming of equality. The literature on mainstreaming along with my analysis of the differences between reflexive and responsive regulation suggest another possibility; that reflexive and responsive regulation, even when working as intended may encourage significantly different forms of mainstreaming. The emphasis on participatory decision making in responsive regulation could encourage participatory forms of mainstreaming. Alternatively a reflexive approach, which encourages organisations to develop their own approaches to delivering on the aims of the duty but does not necessarily require the participation of external groups may lead to an integrationist or bureaucratic form of mainstreaming. This leads to my final questions:

How does the implementation of the PSED deepen our understanding of responsive/reflexive regulation?

Does it operate as a mechanism to promote mainstreaming?

The next chapter will set out the methodological approach I will be using to address these questions.

Chapter 3: Methodology

3.1 Introduction

In order to answer the research questions set out at the end of the last chapter I needed to examine in detail the way the PSED was being implemented and the factors influencing this. I decided to take a qualitative case study approach, examining the implementation of the PSED in three English local authorities. This chapter sets out my methodology. In the first section I discuss my epistemological approach with reference to three models of feminist epistemology, feminist empiricism, feminist standpoint theory and feminist postmodernism. The second section reflects on my own position as a researcher and how this might impact on the research process. Section three explores my reasons for choosing to focus on English local authorities. Section four describes my methods, the reasons for choosing a qualitative case study approach and addresses a series of methodological questions relating to access, interviews, documentary evidence and analysis of the data. Section five addresses the ethical issues in this research. Section six provides background information about the system of local government in England and a brief description of each case study.

3.2 Feminist epistemology

This is a work of feminist research. That is it starts with ‘the political commitment to produce useful knowledge that will make a difference to women’s lives through social and individual change’ (Letherby 2003 p4). The ‘overtly political’ nature of feminist scholarly work (Kemp and Squires, 1997 p4) has been criticised as ‘threatening honest enquiry’ (Haack 2003 p16) and placing ‘ideological constraints on the content of science’ (Koertge 2003 p230), replacing evidence and argument with a test of whether an idea furthers feminist political goals (Almeder 2003). However these criticisms are based on a misreading of feminist approaches to research (Alcoff and Potter 1993, Anderson 2004, 2015). It is not that feminist research is political while other research is objective and value free but that feminist researchers have sought to highlight the ways in which all research has reflected androcentric values and dominant power relations, producing accounts that are at best partial. Alcoff and Potter argue that rather than reducing epistemology to politics feminists have raised ‘a question about the adequacy of any account of

knowledge that ignores the politics in knowledge' (1993 p13). Anderson describes the way in which feminist researchers have shown how dominant research paradigms disadvantage women by excluding them from inquiry, producing theories that exclude women, rendering women's activities or interests invisible, presenting women as inferior or deviant or only significant in so far as they serve male interests, or obscuring gendered power relations (Anderson 2015). In this way feminists challenge the supposed neutrality and objectivity of all research practices (Hesse-Biger and Leavy 2007). This does not mean that feminists take an 'anything goes' attitude to research. Letherby argues that the acknowledgement of subjectivity by feminists 'could feasibly lead to the conclusion that our work is more objective in that our work, if not value free, is value explicit', although she prefers the term 'theorized subjectivity' (2003 p71-72). While some feminists reject the notion that objectivity is possible, others reclaim it either through a process of critical interactions within an epistemic community (Longino 2001) or through starting from the experiences and voices of the most marginalised, including women, in order to lead to 'strong objectivity' (Harding 1993). These different approaches to objectivity reflect different feminist epistemologies, which will be discussed in more detail below.

Many feminist writers have followed Harding (1986) in setting out three models of feminist epistemology; feminist empiricism, feminist standpoint theory and feminist postmodernism (see for example Letherby 2003, Hesse-Biger and Leavy 2007, Grasswick 2013, Anderson 2015). According to Harding feminist empiricists have challenged the way in which research has been practiced, the exclusion of women's experience, the sexism of questions asked and the assumptions behind them but retained the belief that once sexist and other biases were eliminated it was possible to produce value neutral work (Harding 1986). The problem was 'bad science', which could be improved by 'just doing more carefully and rigorously what any good scientist should do' (Harding 1993 p51). This approach assumes that it is possible to eliminate bias and that there is a reality 'out there' waiting to be discovered (Leckenby 2007).

Harding rejected the assumption that it was possible to eliminate bias to achieve conventional models of objectivity in this way since researchers could not step outside 'the dominant beliefs of an age' (Harding 1993 p52). Instead she argued for a

‘strong objectivity’ based on a systematic examination of the beliefs and influences of the researcher, turning these from a problem into a resource. This could be achieved through adopting a feminist standpoint, starting from the position that women, as an oppressed group, can not only understand their own experiences of oppression more clearly than others, but also have a view of the world that is less distorted than that available to dominant groups including men (Harding 1993, Jaggar 2004). This is because women and other oppressed groups ‘have an insight into the relations that subordinate them which is not enjoyed by those with power’, including into the experience of their oppressors as well as their own experience (Charles 1996 p25,27). Feminist standpoint theory has been criticised as essentialist and for ignoring the differences between women (Leavy 2007). Not all women are equally situated and focussing on power relations between women and men can ignore power relations between women. However most standpoint theorists recognise that there is not one single ‘feminist standpoint’ since ‘there is no typical or essential woman’s life’ and that ‘different women’s lives are in important respects opposed to each other’ (Harding 1993 p65), rather women ‘occupy many different standpoints and inhabit many different realities’ (Heckman 2004). Standpoint epistemology provides valuable insights into the importance of building knowledge from women’s own experiences. Its current form emphasises the plurality of women’s lives and the importance of starting from the positions of the most marginalised. However as Maynard points out with the recognition of varied standpoints ‘it becomes impossible to talk about ‘strong’ objectivity as a means to produce ‘superior’ or ‘better’ knowledge because there will necessarily be contested truth claims arising from the contextually grounded knowledge of the different standpoints’ (Maynard 1994 p20). This can lead to ‘unproductive discussions about hierarchies of oppression’ in the search for the most marginalised group (Leatherby 2003). Alternatively all viewpoints can be seen as equally valid, which may be problematic when there are differing power relations between groups or one standpoint contains racist assumptions (Maynard 1994).

Postmodern feminism also highlights multiple positions, but unlike feminist standpoint epistemology does not believe that this leads to a better knowledge of social reality which it regards as socially constructed. Instead feminist postmodernism ‘suggests that there is a variety of contradictory and conflicting

discourses, none of which should be privileged; there is no point trying to construct a standpoint theory which will give us a better, fuller, more power-neutral knowledge because such knowledge does not exist' (Millen 1997, 7:7) Furthermore postmodern feminist researchers challenge the use by both feminist empiricists and standpoint theorists of the category of woman itself (Leavy 2007). Both Butler (1990) and Cosgrove (2002) for example focus on the way in which both 'women' and 'gender' are constructed categories, arguing that, by using the category 'woman' as straightforward and representing some underlying reality, other feminists serve to reinforce oppressive constructions of gender. For some writers postmodernism poses serious problems for feminism. Some have raised concerns that just as feminism was giving women a 'voice' in the research process 'postmodernism tells us that seeking a liberating 'truth' about women is theoretically suspect' (Letherby 2003 p54 Leavy 2007). Other concerns relate to the impact of postmodern feminism on both feminist theorising and political practice; since feminism is a political project it is often hard to separate the two. A key question is what the consequences might be for feminism of the argument that no one discourse should be privileged over another. How, for example, can we argue that a feminist view that forced sex is rape should be privileged over the rapist's interpretation of it as seduction (Jackson 1992)? The deconstruction of the category of 'women' has also been seen as problematic. Alcoff asks '[w]hat can we demand in the name of women if 'women' do not exist and demands in their name simply reinforce the myth that they do? How can we speak out against sexism as detrimental to the interests of women if the category is a fiction' (Alcoff 1988 p420)? Conaghan warns against 'an idea of reality as wholly absorbed by discourse' (Conaghan 2013 p32) arguing for a feminist scholarship that recognises both the discursive and the material. Writing about feminist legal scholarship she argues that 'the outcome of law reform initiatives will be shaped both by 'language' and 'reality', that is, by both discursively imbued regulatory norms.... And by the material circumstances within which they operate (Conaghan 2013 p47). This would require a feminist scholarship that draws on postmodern understanding of the power of discourse to shape meanings, while not losing sight of the significance of a material reality. This challenge to clear distinctions between approaches is one that has been shared by other feminist scholars.

Harding's original classification of these three feminist epistemologies characterised them as fundamentally contrasting (Harding 1986). She subsequently distinguished between two forms of feminist empiricism; 'spontaneous' which was the term she used for the empiricist approach described above and a more 'sophisticated and valuable' feminist empiricism which she argued incorporated elements of standpoint theory (Harding 1993). Other feminist writers have also observed the ways in which the different positions 'shade into each other' (Stanley and Wise 1993) or have adapted and changed in response to each other (Anderson 2015). Anderson concludes that 'after twenty five years of development it is getting harder to identify points of disagreement between feminist empiricism and feminist standpoint theory' and that both have been informed by postmodernism, in particular through a focus on pluralist perspectives and the centrality of situated knowledge. Stanley and Wise argue that in practice feminists 'often manage to combine elements of a number of these positions in their work, which may be a sign of 'the human ability to work within contradictions', a failure to think through the conflicts of different positions, or a reflection of social reality (1993 p191). They argue for a 'feminist fractured foundationalist epistemology', a term which recognises a materially grounded social world (foundationalism) and that different groups develop different views of the realities involved (thus 'fractured'). It 'does not take sides on basic reality matters' but 'sees social facts and social reality as both constructed and experienced as external and constraining' (Stanley and Wise 2006 p447). Others have shared this search for a less absolutist approach to epistemology. Letherby argues for a position which avoids both 'crude essentialism' and 'crude difference/Deconstructivism' while retaining 'a commitment to an emancipatory project'. (Letherby 2003 p57). Assiter similarly argues that there are compelling reasons for upholding an outlook that recognises both the material reality of sexism, class and racial injustice and that 'as individual subjects of knowledge we construct pictures of reality that are structured by our own interests and values and our own historical locations' (Assiter 1996 p84). Anderson has argued feminist empiricists have drawn on insights from both standpoint and postmodern epistemologies to recognise that our understandings as researchers will always be subjective and partial (Anderson 2015). Rather than assuming that 'strong objectivity' can be found in the perspective of the most marginalised, or focussing on the way our understandings of reality are constructed through competing discourses I would agree with Longino (2001) on the need for

‘effective critical interactions’ within an epistemic community to ‘transform the subjective to the objective, not by canonizing one subjectivity over others, but by assuring that what is ratified as knowledge has survived criticism from multiple points of view’ (Longino 2001 p129).

There is broad agreement among feminists of all epistemological approaches on the need for reflexivity and transparency over our own subjective position as researchers, our choice of methodologies and the processes of our research and analysis (Gelsthorpe 1992, Hesse-Biger and Leavy 2007, Letherby 2003, Stanley and Wise 2003). This need to make our ‘interpretive schemes explicit’ (Gelsthorpe 1992 p214) informs the rest of this chapter.

3.3 My own position as a researcher

In this section I consider my own position as a researcher, setting out my personal background and how this relates to questions of power in the research process and my status as an ‘insider’ or ‘outsider’ in the organisations I researched.

I am a white, middle class, heterosexual woman in my mid-forties with a professional background in the voluntary sector and as a researcher and trainer on gender equality for voluntary, public and private sector organisations both in the UK and internationally. For over twenty years I have combined this paid work with activism and voluntary work in women’s organisations and campaigns and human rights organisations at a local and national level. All of these aspects of my identity and life experience are likely to impact on my research work. There is a long history in the women’s movement of a lack of awareness among white middle class heterosexual women of both their privileged position as members of the dominant ethnic and class group and how this position has affected their analysis and political priorities (Charles 1996). Although I have worked to overcome this in my own work and activism I am aware that ‘the effects of power are often taken for granted and hence invisible to those who have it’ (Charles 1996 p26).

Power relationships between researcher and those researched have been particularly important for feminist researchers (Oakley 1981, Maynard 1994, Charles 1996, Smith and Wincup 2000, Tang 2002, Letherby 2003). It is often assumed that in qualitative research the researcher is in a position of power relative to research

participants (Given 2008, Das 2010). Researchers decide what questions to ask, what counts as evidence and what does not and what interpretation to place on the data they collect. (Letherby 2003, Das 2010). However many feminists have rejected the straightforward assumption that researchers have more power than participants, while still recognising that power dynamics are always present in the research process (Maynard 1994, Smith and Wincup 2000, Tang 2002, Letherby 2003). These dynamics may be the result of hierarchies of race, class, social and professional status as well as differences in life experience such as number and age of children (Reissman 1987, Ribens 1989, Tang 2002). This can mean that at times the researcher has more power than research participants, and at times less (Cotterill 1992, Smith and Wincup 2000, Tang 2002). Sometimes these power dynamics appear clear cut such as in Whyte's work on researching powerful organisations, which had power to deny access or refuse to answer particular questions, or Smith and Wincup's work on women prisoners, a group with very little formal power (Whyte 2000, Smith and Wincup 2000). However even in research with women prisoners Smith and Wincup found a complex pattern of power relations which could shift even during the course of an interview (Smith and Wincup 2000). In other situations researchers can start with an assumption of equality between themselves and their interviewees but discover unexpected patterns of power. Tang for example found a range of different power dynamics in her interviews with those she considered to be her peers (other mothers working in academia), based on social, cultural and personal differences and assumptions about these differences made by both her and her interviewees (Tang 2002).

Like Tang I started my research with the assumption that most of the people I was interviewing could broadly be considered my peers. With the exception of the former Ministers they occupied similar roles to people I had worked alongside in the voluntary sector and public sector for most of my professional life. In addition the questions I was asking related to policy and practice in their work, rather than intimate details of their personal lives, where the 'micropolitics of power' might be more of an issue (Morley 1996 p133). However like Tang I quickly became aware of a range of power dynamics during the interview process and in particular the impact of how the interviewees positioned me. Most of the civil society interviewees appeared to view me as a peer – someone who shared their professional background

and concern with equality and who happened to be doing a PhD. Among the council officers and councillors there was a significant difference between those who were aware of my previous work history and those who viewed me primarily as a PhD student. With the first group I got the impression that the interview was seen as an opportunity for them to reflect on their work through a conversation with someone who had a history of working in this field. I sometimes had to work hard not to be drawn into giving my own opinion on the issues we were discussing. With the second group I was conscious of a difference in status. I was more likely to be kept waiting for interview, more likely to be told at the start of the interview that the interviewee ‘really didn’t have much time for this’ and found it harder to build a rapport. This did not seem to be a function of the position of the person I was interviewing in the council hierarchy; both officers at Director level treated me as a peer. I had not been prepared for the loss of status that I would experience as a PhD student and realised that while I might consider my interviewees to be peers not all of them thought the same about me. In order to build a rapport with the second group I found myself discussing previous work as we talked before the interview started, mentioning projects that I had been involved with and people we might know in common in a process Letherby described as placing me as ‘one of them’ (Letherby 2003 p115), making me at least to some extent an ‘insider’.

Savin-Baden and Howell Major distinguish between ‘outsider’ field work ‘in order to understand the unfamiliar and make the familiar strange’ and ‘insider field work where the researcher investigates the context where they work, live, study or socialise’ (Savin-Baden and Howell Major 2013 p343). Insider field work has the advantage of background knowledge, access and that people might speak more freely to an insider. It has the risk of unhelpful bias and the inability to ‘see’ other points of view (Devault 2004). During this research I was both an outsider, with no experience of working with or contact with any of the local authorities studied, and an insider, through a long history of activism in the women’s movement which meant that I was seen as a fellow activist by some of the interviewees. I was conscious that I found it easy to build rapport with many of the civil society activists. We shared political concerns and I was sympathetic to the issues they faced as grass roots activist or directors of small voluntary organisations as I had been in both positions myself. This created a risk that I would give more credibility to their accounts. Addressing

this risk required what Drake has described as ‘reflexive consideration of the researcher’s position’ (Drake 2010 p85), acknowledging the degree to which my position might affect my response to the interview evidence. With the officers and councillors in the case study authorities I was more of an outsider; I have never been directly employed by a local authority nor held office as a councillor. However I had worked as a freelance consultant on projects relating to equality for a number of local authorities, for example training councillors and staff on gender budgeting and other forms of impact assessment of policy and practice. I had also worked with both councillors and officers locally as fellow members of advisory boards, working groups and so on as a voluntary sector representative. This meant I had some understanding of the culture, language and working practices within English local authorities which helped build rapport with officers and councillors.

3.4 The focus on English Local authorities

In order to answer my research questions I decided to focus on local government rather than other parts of the public sector because local authorities are responsible for delivering services in a number of areas that have a substantial impact on women’s lives including social care, childcare, housing, education, support services for victims and survivors of violence and some aspects of transport (Stephenson 2000). Policy and practice by local government therefore has potential to have a significant impact on gender equality (Conley and Page 2015). This has led to a long history of feminist activity focussed on local government from both inside and outside local authorities (Coote and Campbell 1982, Bruegel and Kean 1995, Conley and Page 2015). This activity is potentially more significant following both the cuts to local government budget and the lifting of ring fencing of those budgets announced in the Coalition Government’s 2010 spending review (HM Treasury 2000). Local authorities have less money to spend, but more control over what they spend their money on, creating new threats and opportunities for those working on equality at a local authority level. This creates a context in which the impact of the PSED on practice is particularly important.

From an early stage I decided to concentrate on English local authorities. Northern Ireland has a different equality framework to the rest of the UK and is not covered by the PSED. The power to set specific duties is devolved to the Scottish Government

and Welsh Assembly, and both Scotland and Wales have set more comprehensive specific duties than exist in England. This has led to significant differences in practice in public authorities within the three nations of Britain. I considered a comparative study examining practice in local authorities in England, Scotland and Wales. However I concluded that the difference in the specific duties might obscure other factors that lead to differences in practice so concluded that it was best to focus on England.

3.5 Methods

3.5.1 Introduction

I decided that a case study approach would enable me to research in depth the way the PSED was being implemented. Case studies would allow me to explore the wider context in which this was taking place, helping address the question of the factors that influenced implementation of the PSED. I examined work to promote equality within three English local authorities. These were a London borough, a City council and a County council (more information about each authority and the structure of local government in England is given at the end of this chapter). I focussed on work carried out by the equality teams in each local authority through a combination of interviews, field notes recording general impressions of interviewees, the office space and initial reflections from the day and analysis of documentary evidence. Interviews were carried out with equality officers and managers, staff at Director level responsible for the equalities team, local councillors with responsibility for or an interest in equality and representatives of local civil society organisations working on equality. Documentary evidence included equality policies, strategies, plans and impact assessments produced by each authority. I interviewed a number of equality officers from other local authorities to provide a broader background against which to analyse the role of equalities officers within the case study areas. In order to place these case studies in a national political context I also analysed documentary evidence (speeches and policy papers) from the 1997-2010 Labour Government and the 2010-2015 Coalition Government and interviewed a series of national policy actors including former ministers, representatives of national civil society organisations, former civil servants and current and former staff members at the Equality and Human Rights Commission (EHRC). This section starts by setting out

the reasons for my choice of a case study approach. It then goes on to address how the case study authorities were selected, how I gained access, who was interviewed, the interview process, the documentary evidence considered and the process of analysis used.

3.5.2 Choice of methods

Despite the historic association of feminist research methods with qualitative research, feminists have used a wide variety of methodologies (Letherby 2003). Many feminist writers have emphasised that the choice of methodologies should depend on the question which the research seeks to address (Hesse-Biber 2007, Kelly, Burton and Regan 1994, Letherby 2003, Oakley 1998). I chose a case study approach because it appeared best suited to addressing my research questions. As the last chapter showed many studies of mainstreaming have concluded that the form mainstreaming takes and the impact it has depends very much on the specific local and organisational context in which it takes place. I concluded therefore that my study of the impact of this particular attempt at mainstreaming needed to consider questions of local and organisation specific context, which a case study format would allow. This is an approach that has been widely used by feminist researchers exploring equality work within organisations (see for example Cockburn 1991, Donaghy and Kelly 2001, Conley and Page 2015).

A case study approach involves an in depth examination of an organisation, drawing on evidence from several sources, in this case in depth interviews with a range of actors, field notes of observations during my time in each organisation and documentary evidence. The use of multiple sources of evidence enables a process of ‘triangulation’ which, Yin argues allows for a greater understanding of the process being studied and conclusions which are more accurate and convincing (Yin 2014 p120). It can also be used to document multiple perspectives on the same phenomenon acknowledging diverse points of view (Merriam 1988). In this instance a case study approach allowed me to compare the perspectives of different actors inside and outside the case study authorities with documentary evidence of the equality policies and practices used by each authority. Simons observes that case studies are particularly useful for studying policy innovations, arguing that it is important ‘to study the innovation in context to try to understand the broad range of

factors that contributed to the success or failure of the innovation, to capture the complexity of the interactions as the innovative ideas were interpreted in practice, and to understand the uniqueness of the case (Simons 1996 p228). Yin also argues that case studies are particularly appropriate where ‘the boundaries between phenomenon and context may not be clearly evident’ (Yin 2014 p116). According to Yin the ‘niche’ for case study research is when seeking to answer ‘how’ or ‘why’ questions and for considering issues in depth and in context (Yin 2014, p16). I was interested in how the PSED had influenced work on equality at a local level and what factors had affected this. My question about the factors that affected the implementation of the PSED was essentially asking why the PSED had been implemented in one way rather than another, which could only be answered by this sort of in depth contextual approach.

Yin describes three types of case study; exploratory, which can be used as a pilot or to help define research questions, descriptive, which involves a detailed account of the subject of the study and may or may not reach theoretical conclusions and explanatory, which moves beyond description to the development of theories about the subject of investigation. My approach was explanatory; I wanted not only to describe how authorities were implementing the PSED and the factors affecting this, but also explore broader questions about mainstreaming as an approach and the usefulness of reflexive/responsive regulation as a means to enforce this.

There are challenges to a case study approach. Dependence on a single case can be used to highlight the particular and unique, but can also lead to inconclusive outcomes (Simons 1996). This can make it difficult to develop general propositions and theories on the basis of specific case studies. However as Flyvbjerg argues the problems in summarising case studies ‘are more often the properties of the reality studied than related to the case study as a research method’ (Flyvbjerg 2006 p241). In order not to be overwhelmed with the complexity of detail Yin emphasises the importance of ‘bounding the case’, being clear what is and is not part of the study (Yin 2014 p33). This is not always straightforward (Savin-Baden and Howell Major 2013). I had initially planned to examine equality work more generally across the local authorities, looking not only at the work of equality teams, but work within Human Resources departments, finance and other departments. I soon realised that this would be too large a project in the time available and that once I went beyond

the work of people with specific responsibility for equality to others whose work might have an equality impact it would be difficult to set boundaries on which departments I did and did not consider. Concentrating on the work of equality teams would not give the same breadth of information, but would allow greater depth of focus.

3.5.3 Multiple case studies or a single study

I decided to use a multiple case study approach. Although Flyvbjerg argues that ‘one can often generalise on the basis of a single case’ (Flyvbjerg 2006 p228), multiple case studies can provide more compelling evidence and be considered more robust (Yin 2014). Yin differentiates between cases that have been selected on the basis that they predict similar results (which he refers to as literal replication) or predict contrastable results (which he describes as theoretical replication) (Yin 2014, p57). I chose the latter approach. Both the literature on mainstreaming, and the findings of my initial exploratory interviews with equality officers suggested that the form and effectiveness of mainstreaming work is very context specific. The political make-up of the authority, the history of equality work locally, the attitude of senior managers and the strength or otherwise of equality focussed civil society groups all appeared to be significant factors affecting the form and impact of local equality work. In order to explore these factors it was important to choose case studies that represented a range of different local authority types. The depth involved in a case study approach limited the number of cases that I could investigate. For these case studies I drew on evidence from interviews with council officers working on equality, including director level staff whose wider responsibilities included equality, councillors with an interest in or particular responsibility for equality work within the council and external civil society representatives that were engaged with the council to some extent on equality issues as well as documentary evidence of equality policies and practices within each authority. I concluded that three case studies would allow me to contrast the different authorities and compare differences in context, while at the same time being manageable. Any more than three case studies would have made the process overwhelming.

3.5.4 Selecting the case study authorities

Local government in England is responsible for a range of services including education, highways, transport planning, passenger transport, social care, housing, libraries, leisure and recreation, environmental health, waste collection, waste disposal, planning applications, strategic planning and local taxation collection. English local government consists of five types of authority: county councils, district councils, unitary authorities, metropolitan districts and London boroughs. In some areas there are also parish councils with limited responsibilities for services such as parks and playgrounds, community centres, allotments and with the power to make small grants to local charities. Parish councils do not employ large numbers of staff, or have equality teams so are outside the scope of this study.

In some parts of England local government operates under a two tier system with county and district councils with different responsibilities. In others there is a one tier system with unitary authorities or metropolitan boroughs responsible for all local authority services. In London each borough is a unitary authority. However, the Greater London Authority (GLA) provides London-wide government and shares responsibility for certain services such as highways, transport planning and strategic planning. In parts of the country with a two tier system county councils provide the majority of services including education, highways, transport planning, passenger transport, social care, libraries, waste disposal and strategic planning for the whole county. Each county in a two tier system is divided into several districts (which may be called borough or city councils), which cover a smaller area and provide more local services such as housing, leisure and recreation, environmental health, waste collection, planning applications and local taxation collections. In two tier systems councillors may be ‘dual mandate’ holding seats on both the district and the county council. Different types of authority have different electoral timetables. All councillors are elected for a four year term. In some areas elections for all council seats are held every four years. In others such as some district councils, a third of the council is re-elected with elections taking place most years, except for the year when the county council elections take place.

The local authorities with the longest history of equalities work in England have tended to be Labour controlled (Conley and Page 2015). These authorities have been

mainly urban, either unitary authorities covering a city, or London boroughs. Few county councils have had the same history. I decided therefore to select local authorities that represented three main types of local government structure: a county council, a unitary authority and a London Borough. I wanted authorities that reflected both urban and rural areas and councils under different political control. I decided to avoid those authorities with which I had worked in the past. Although my previous contacts with some senior managers in these authorities might have made access easier I believed that these contacts might affect the openness of other members of staff. In addition the authorities I had worked with were by their nature those with a strong commitment to equality that pre-dated the introduction of the PSED. In order to include authorities without this history I would have had to combine authorities which I already knew well with those which I did not know at all. This differing level of background knowledge might mean that I was not comparing like with like. I also made a decision not to study the local authorities where I lived or worked since I was involved in groups and networks that were involved in lobbying both authorities on equality issues and felt that officers would be understandably wary of discussing their views on their authority's equality policy as they might believe their comments would be shared with these groups.

3.5.5 The case study authorities

Three case study authorities were; a Labour controlled borough in inner London (referred to throughout as London Borough), a unitary authority covering a city, (referred to as City Council) with no party in overall control and a largely rural Conservative controlled county council which surrounds a different city council (referred to as County Council).

London Borough

London Borough is a small authority covering just a few square miles with a population of over 200,000 people. The population of London Borough is extremely ethnically diverse – just under half of the population at the time of the 2011 census were white British, around a fifth white other and the rest were from Black, Asian, mixed or other minority ethnic groups.

The borough contains extremes of wealth and poverty with a wealthy minority and widespread deprivation.

There are just under fifty council seats all elected once every four years. London Borough is currently Labour controlled. Over the period of the research the Labour majority on the council increased. Labour also holds the parliamentary seats representing the area.

City Council

The City Council is a unitary authority providing services to over 430,000 people and administering an area of over 40 square miles. Nearly 90% of the population is white British, just under 10% Black, Asian or mixed ethnicity. City Council contains a mix of pockets of high deprivation, which are among some of the most deprived areas in the UK alongside some of the least deprived areas in the UK.

City Council is made up of around seventy councillors (two per ward). Elections are held three years in every four with a third of the council being re-elected at each election. The council is led by a cabinet consisting of Labour, Conservative, Liberal Democrat, Green and Independents. There are four MPs whose constituencies cover the City; during the time of the research two were Labour, one Conservative and one Liberal Democrat

County Council

The County council is a large authority in a county with a two tier system of local government. The council provides services to nearly 650,000 people and covers an area of over 800 square miles. Sitting under the County Council are 7 district councils covering different parts of the county. The county council surrounds a separate city council, which is a unitary authority. This city council is not the City Council which is the focus of one of the other case studies.

Nearly 90% of the population of County Council is white. The largest other ethnic group is Asian (4%). This contrasts with the ethnic diversity of the city in the middle

of the county which is less than 50% white British. The county has one of the lowest levels of social deprivation in the UK.

The county council has 55 councillors with elections taking place every four years.

The County Council was under Conservative control during the period of the research. The MPs whose constituencies cover the county (not including MPs representing the city) are all Conservative. The city council is Labour controlled

3.5.6 Access in the case study areas

Having identified the types of local authority that I wished to study I drew on existing contacts to help identify those authorities that might be most responsive to taking part in the research. I contacted equality officers in authorities I had worked with in the past and friends and colleagues who might have contacts with equality officers in their authority. I quickly identified two authorities, a London borough and a unitary authority (City Council) where I knew local women who were able to put me in contact with senior managers with responsibility for equalities. I wrote to both of these managers explaining the background to my research project and asking if they would be willing to be interviewed and if they would encourage members of their team to be interviewed. Both were supportive, agreeing to interview and providing me with names and contact details for the equalities team. I visited the websites for both authorities to identify any councillors that were listed as having an interest in or responsibility for equalities. I used a combination of internet research and personal contacts to draw up an initial list of civil society organisations in each authority to interview. I wrote to all of these people asking if they would be willing to be interviewed. No one refused, but several did not reply. During my initial research trips to each authority I interviewed the senior managers and asked for their help in arranging interviews with those members of the equalities team that had not replied, and with identifying local councillors and civil society activists. Their support proved critical. I found that being able to start an email with a sentence saying that a senior manager suggested that I speak to the person I was contacting resulted in a far higher response rate. This was in line with Savin-Badin and Howell Major's observation that gaining access to and the support of gatekeepers within an organisation can be a crucial part of the research process (Savin Badin and Howell Major 2013). It was also an early indication of the significance of the attitude of

senior management within a large bureaucracy. At the same time I was anxious to ensure that all participants freely consented to take part in the study so was careful to word my emails to make it clear that their manager had suggested I ask if they were able to talk to me rather than using wording that might imply their manager wanted them to meet me. The issue of consent and other ethical questions are discussed in more detail below.

The third local authority was harder to identify. I wanted a rural, or largely rural county council with a Conservative leadership, ideally in a different part of the country to the City Council to avoid overlapping civil society organisations. I had worked on a number of projects for the Centre for Human Rights in Practice at Warwick Law School and their co-director suggested a county council with which he had contacts. I approached his contact at the council, an equality officer, who was willing to help with my research and offered to contact her colleagues on my behalf. This was the only one of the three authorities where I was not able to speak to a person responsible for equality at Director level. I spoke to the manager of the Equalities team, but did not get a response from the Director despite repeated approaches. There are a number of possible reasons for this; I had been put in touch with the Directors at both the other two authorities through shared personal contacts but did not have this personal contact with the Director at County Council. Both the Directors who agreed to be interviewed had a strong personal commitment to work on equality, although their responsibilities covered a wider range of policy areas, so may have agreed to take part because of an interest in the research subject. This may not have been the case with the Director at County Council. Alternatively it may have been simply a matter of bad timing; all the local authority officers I talked to repeatedly complained about increasing work levels as a result of the public spending cuts. In County Council equality work was the responsibility of the Director of Social Care. Since Social Care services at County Council were experiencing significant restructuring during the research period it may have been that the Director did not have the time to take part in an interview. Fortunately all the other members of the equalities team and councillors with responsibility for equality agreed to be interviewed.

I decided in the interests of keeping the case studies ‘bounded’ that I would concentrate on those civil society organisations whose work focussed on equality

and which had at least some contact with the local authority. I used internet searches, the local councils for voluntary service and ‘snowballing’ (asking other interviewees who they would recommend I speak to), to identify civil society groups that met this criteria. During the research period civil society organisations faced significant cuts to their funding meaning that many of the groups I had identified or been recommended to speak to had closed down and in others key staff had left by the time I started my field work. In London Borough I found that two of the civil society groups I interviewed worked not only with London Borough but across London, and in one case nationally. This had the advantage that they could compare their experience with London Borough with the experience of working with other authorities, but also meant that it was sometimes difficult to distinguish which authority they were talking about. In County Council many of the civil society groups that were most active in lobbying public authorities locally were actually based in the nearby city (covered by a separate authority). I spoke to two of these who met my other criteria – they worked on equality issues and they were engaged with County Council. There appeared to be few civil society organisations based in county council working on equalities that had a relationship with the authority.

3.5.7 Access to national actors

My own observations through working on equality with local authorities as well as work by both Hepple (2011) and Fredman (2012) had suggested that changes to the national political context had affected the implementation of the PSED. I felt that it was important to understand this changing political context alongside the specific local issues within each case study authority through interviews with ministers and former ministers, civil servants and national civil society actors. I was also interested in the changes to the role of the Equality and Human Rights Commission which is the body responsible for enforcing the PSED and for providing information to public authorities about their legal obligations under the duty. I decided to interview EHRC staff to uncover how they believed the PSED was being implemented at a local level and what role they saw the commission playing in enforcing implementation.

My research with Ministers and civil servants was limited by an inability to persuade any current civil servants or Ministers to speak to me. I spoke to one current civil servant who was happy to talk informally, but did not want to be interviewed, even

with the guarantee of anonymity. I did not get a response from the Minister I approached for interview. This is perhaps unsurprising. Ministers receive frequent requests for interview, most of which are turned down and requests from students are particularly likely to be unsuccessful. This meant that I had to rely on speeches and articles by Ministers for evidence of their understanding of equality, rather than being able to explore whether there were any tensions between this official position and their own personal beliefs which might have affected the way they directed policy. I interviewed two former Labour Ministers who had been responsible for the Equality Bill at different stages of its development and passage through parliament. I also interviewed a former civil servant who had been responsible for mainstreaming policy and another who had worked in the Women and Equalities Unit. Both of these women were currently working in civil society organisations. These interviews helped deepen my understanding of the process that had resulted in the final version of the Equality Bill presented to parliament. The interviews with former Ministers were probably only possible to arrange because I had worked with both of them in the past and because, as former Ministers, they had fewer requests for interview to manage.

I drew on personal contacts from previous work to arrange interviews with national civil society actors and current and former staff at the EHRC.

3.5.8 The interviewees

I interviewed a total of 45 people, 39 women and 6 men. Of these 11 were from City Council (all women), 9 were from County Council (6 women and 3 men) and 10 were from London borough (7 women and 3 men). The additional 15 interviewees were national civil society activists, a former civil servant, current and former EOC/EHRC staff and equality officers from other local authorities. All were women.

In all three local authorities the equalities teams were going through a process of change during the research period. Some people lost their jobs or took on different responsibilities while others who were on sick leave or maternity leave were not replaced. This meant that there were fewer currently serving equality officers available to interview than I had originally planned. I therefore decided I would interview some recently serving former equality officers. There were two of these in City Council, one who had left the authority to work elsewhere and one who had

been seconded on a temporary basis to a different role. There was one officer at County Council who had left the authority. I also carried out four interviews with equality officers from outside the case study areas to provide a broader background against which to analyse specific questions about the role of equalities officers. At the suggestion of one of the equality officers from City Council I attended a regional forum for equalities officers, which included officers from City Council. Officers at this forum agreed to take part in a round table discussion about how they were implementing the PSED, which again provided a broader background against which to consider the case studies.

The table below gives a breakdown of the categories of people interviewed. Several people fell into more than one category. Of the national civil society representatives two were former civil servants and one was a former EHRC staff member. These are shown under both categories with a note explaining that they appear twice.

Table 1: Number of interviewees in different categories

	City Council	County Council	London Borough	National	Other local
Officers/Managers	1 woman	2 women 1 man	2 men		4 women (+ round table discussion with 6, 3 women and 3 men)
Former officers/managers	2 women	1 woman			
Directors with responsibility for equality	1 woman		1 woman		
Councillors	2 women	1 woman 1 man	2 women		
Civil society representatives	5 women	2 women 1 man	4 women (one working at a national level but based in the borough) 1 man	5 women (two former civil servants, one former EHRC staff member and one based in London Borough)	
Current EHRC				2 women	
Former EHRC/EOC				4 women (including one currently civil society)	
Former civil servants				2 women (both currently civil society)	
Former Ministers				2 women	

In City Council and County Council the majority of council officers I interviewed were women. This reflects the fact that women are the majority of local authority employees (Stephenson 2011). In both the case study and non case study authorities the majority of equality officers were women. In London Borough the two equality officers I interviewed were men, however there were other women officers who were on sick leave and maternity leave so were unavailable for interview.

3.5.9 Interviews

All the interviews for this project were semi structured. Structured interviews have the limitation of restricting consideration of issues that were not considered when the questions were written (Savin-Baden and Howell Major p359). This point was made by Sayer who notes:

‘with a less formal, less standardised and more interactive type of interview the researcher has a much better chance of learning from the respondents what the different significances of circumstances are for them. The respondents are not forced into an artificial one way mode of communication in which they can only answer in terms of the conceptual grid given to them by the researcher (Sayer 1989 p245)

At the same time there were certain areas that I wanted to be sure to cover, and questions that I wanted to ask of all interviewees (or all interviewees in a particular group). I had a series of pre-set questions but responded to comments made by interviewees with follow up questions where new issues were raised or to explore an issue that appeared to be important to the interviewee in greater depth. I followed Cockburn’s ‘rule of thumb: “go with the material”’ (Cockburn 1991 p6) allowing time if an interviewee appeared to have something important to add. I started with a list of questions, and some prompts to guide follow up (see Appendix). Early interviews tended to follow the order of questions as originally set out. As the interviews progressed this list was used more as a prompt to ensure that nothing was forgotten and the interviews became more conversational in style

Two of the interviews with equality officers from authorities outside the case study area were conducted over the telephone but other interviews were face to face. This allowed me to observe the facial expressions and body language of the interviewees, which I recorded as soon as possible after the interviews in field notes.

I allowed an hour for each interview. Most lasted around an hour, the shortest was forty minutes when an interviewee arrived late and had to go to another meeting. Several lasted over an hour and a half. I deliberately did not arrange more than four interviews in a day, to allow for delayed starts if the interviewee was running late, interviews running over time and to ensure I had energy at the end of the day to write up field notes.

The majority of interviews took place in the interviewees' offices, or meeting rooms in the authority for those people who worked in open plan offices. This had the advantage that I was able to observe interviewees in their professional setting but could have had the disadvantage that respondents might be less willing to share any critical thoughts about their organisation within that organisation's office space. One interviewee did request that we met outside the office, as she was between meetings in another part of the City and it was notable that she was openly critical of many aspects of her organisation's policy and practice. However my experience was similar to that of Halford et al who found that 'many respondents treated the interview as an opportunity to 'let off steam' in a 'safe' encounter that they knew would not get back to anyone in the organisation' (Halford et al 1997 p61). As they point out interviews 'do not allow any privileged or unmediated access to people's thoughts and feelings, but rather produce specific accounts designed to meet the needs of the particular situation' (p60). Most respondents appeared to see the interview as an opportunity to reflect critically on their own practice and share frustrations about the pressures of their role. At the same time for all of the staff working in equalities part of their role was to promote the value of the work of the equalities team both internally within the organisation and in contact with external groups and their answers also reflected this professional role.

With agreement from the interviewees the interviews were all recorded and then transcribed by me. Transcription was an important part of the analysis process (see below for more details). I did not use video recording which is often perceived as more intrusive than audio taping (Savin-Baden and Howell Major 2013 p 351), but made notes after each interview about significant facial expressions and other body language during the interview.

3.5.10 Equality Documents

Documents can reveal what people value as well as providing a record of what they do or did (Savin-Baden and Howell Major 2013 p410). For case study research they can be used to corroborate other sources of evidence or suggest areas for further investigation if they contradict other sources of evidence (Yin 2014 p107). At the same time Yin warns against assuming that documents are accurate or unbiased stressing that ‘important in reviewing any document is to understand that it was written for some specific purpose and some specific audience other than the case study being done’ and that when reviewing documents researchers should always question the objectives of those who produced the document and how this might affect the document itself (Yin 2014 p108). The equality documentation from each case study authority included policies, strategies, plans and impact assessments. These were all public documents, published on the authority website so represented official council policy, although, with Yin’s warning in mind they were read as evidence of what the authorities’ official policies were, but not as evidence of actual practice. They were used to analyse the way in which equality was framed in each authority and how that compared to the way it was understood by individuals working on equality in the authority drawing from the conclusions of the literature review that the framing of equality is a key factor influencing outcomes (Woodward 2003, Verloo 2005, McBride and Mazur 2010, Walby 2011).

The documents provided evidence of the authorities’ equality strategies, which again were compared with the way in which these strategies were described by the officers. Analysis of equality documents also provided information about the comprehensiveness of equality policies, whether they included a meaningful assessment of gender equality, whether they considered how gender intersected with other structures of inequality, what issues they appeared to prioritise and what were absent.

Each authority produced different equality documents. For each authority I analysed the main strategy documents relating to equality, other strategy documents that the authority named as relevant to each authority’s equality strategy in their main strategy document, equality web-pages and the guidance produced by the authority on carrying out impact assessments. These documents are set out in the table below.

In order to ensure the anonymity of respondents (see section on ethics below) I have changed the names of the documents where they might allow the individual council to be identifiable.

Table 2: Equality documents analysed

	County Council	City Council	London Borough
Primary documents	Equalities Strategy Equality Diversity and Community Cohesion Action Plan	Equalities and Community Cohesion Policy Equality Plan	Equality and Diversity Policy Single Equalities Scheme
Secondary document named in primary document	Carers Strategy Family Poverty Strategy Staff equality Strategy	City Plan Child Poverty Strategy Strategy against violence and abuse of women and girls	Charter for Fairness and Equality Report on equalities within the borough
Webpages	yes	yes	yes
Guides to impact assessment	EIA guidance EIA pre questionnaire Full EIA form	EIA Form EIA guidance	Impact assessment guidance and template

All of these documents were available via the local authority website with the exception of the Impact assessment guidance from London Borough, which I was sent by one of the equality officers.

Alongside these documents I analysed Equality Impact Assessments of budget proposals produced by each authority over the past three years since these would be likely to have a significant gender impact. My initial plan had been to compare published EIAs for the same policy areas, identifying a series of policy areas which might be expected to have a significant impact on gender equality. Unfortunately this did not prove possible. All three authorities had a page on their website where impact assessments were listed, but the number of assessments published varied significantly. London Borough had only thirteen Impact Assessments listed on their website. During interviews with staff I learned that there were older EIAs available

via the website, but that they were published on the pages containing documentation for council meetings. This means that anyone searching for an impact assessment would need to know the committee that considered the policy it related to and the date of the committee meeting, then search the council website to find the relevant page for papers for that meeting. In contrast County Council published over 170 impact assessments carried out since 2010 on their website, while City Council published over 60. I decided to review impact assessments over the last three years and identify a sample of five from each authority, selecting those relating to policies which might be expected to have at least some gender impact. I looked to see whether there was any acknowledgement of gender impact and whether there were recommendations for a change to the policy as a result of the assessment.

In order to investigate the background to the introduction of the PSED and analyse the way in which equality was framed by national Government I analysed the most significant Government documents produced as part of the consultation process around the Equality Bill. These were *Fairness and Freedom: the final report of the equalities review*, (Equality Review 2007), the *Discrimination Law Review: A Framework for Fairness; Proposals for a Single Equality Bill for Great Britain*, (DCLG 2007), the *Government Response to the Consultation on the Discrimination Law Review* (GOE 2008) and the Government guide to the Equality Bill, *A Fairer Future: the Equality Bill and other action to make equality a reality*, published when the Bill was introduced in Parliament (2009). To understand how the approach to equality had changed under the 2010-2015 Coalition government I analysed the Coalition Agreement, Equalities Strategy and speeches by various Government Ministers. I also examined EHRC business plans from 2009 to 2015 and the guidance the Commission produced on the PSED.

3.5.11 Analysing the data

I analysed the data using a process of ‘thematic analysis’ outlined by Braun and Clarke which involves ‘searching across the data set to find repeated patterns of meaning’ (Bruan and Clarke 2006 p84) This is a recursive rather than linear process involving moving backwards and forwards between a series of different stages.

The first stage involved familiarising myself with the data. Transcribing the audio recordings was an important first part of this stage. Bird has described how during

the process of transcription she became more aware of tone as well as content of what was being said, identifying points where the interviewee was using sarcasm to give an opposite meaning to what might be conveyed by simply reading the words alone (Bird 2005). This is something I observed in the transcription process where silences, pauses and an uncertainty in tone of voice suggested meanings that would not have been apparent from the transcript alone. I transcribed everything, making notes in square brackets to record tone, pauses and so on. With the documentary evidence familiarisation was a case of reading, and re-reading documents. At this first stage I noted down initial ideas.

The second stage was generating initial codes. Bruan and Clarke distinguish between ‘inductive’ and ‘theoretical’ thematic analysis. Inductive analysis involves developing codes from the data itself rather than trying to fit them into a pre-existing theoretical frame. This approach draws on grounded theory, developed by Glaser and Strauss (1967) which strives to develop theory ‘from the ground up’ through analysis of data. This approach was originally seen as highly compatible with feminism because of a desire to locate theory in respondents’ worlds but it has been criticised on the grounds that no work can be free from theory (Morley 1996). Kelly et al argue that ‘as feminists we cannot argue that theory emerges from research since we start from a theoretical perspective that takes gender as a fundamental organiser of social life’ (Kelly et al 1994 p156). Theoretical analysis develops codes from existing theorising about the area being studied. I started with the latter approach, with codes that reflected ideas from my reading of the literature. However as I read and re-read the data I identified some themes which I had not previously considered. For example the importance of the political make-up of the authority was a well-established theme in the literature on equality work within public authorities. However it became clear that London Borough’s work on equality was not simply a reflection of an historical political commitment to equality within the authority, shared by councillors and staff, but also a way of positioning the authority in opposition to the Coalition government. Several participants commented that it was easier to raise issues of inequality within the council under the Coalition than it might have been under the previous Labour government. My approach to generating codes cannot therefore be described as purely theoretical since it contained elements that might be described as inductive.

The third stage was searching for themes, collating codes into themes and gathering all data relevant to each potential theme. These themes were reviewed in the fourth stage, at which point some codes became themes in their own right as it became apparent that there were sub themes within them. The review stage involved re-reading and re-coding, going back through existing transcripts to identify codes which had only emerged in later transcripts. One example of this was the confidence/lack of confidence shown by interviewees when describing what equality meant to them. Throughout this process I reviewed the themes against the research questions and the literature, searching for additional literature that related to the themes that had emerged from the data.

I chose to code manually rather than use NVivo or other forms of computer assisted qualitative data analysis software (CAQDA). CAQDA can be a very fast way to search for particular terms in the data, but interviewees often express the same concept using very different language which can only be picked up through a manual search (Welsh 2002). CAQDA can also be useful for managing large amounts of data, but my sample size was relatively small and I did not think it was necessary in this case.

3.6 Ethics

Savin-Baden and Howell Major identify a number of ethical issues in social research including issues related to the efficacy of the design of the research, issues related to the treatment of individuals, issues related to transparency of process and issues related to the plausibility of the final products of research (Savin-Baden and Howell Major 2013, p332). Ethical issues in research design include an ethical responsibility to develop knowledge, that research should have a sound methodological basis and that the researcher should have the skills and knowledge to under-take the study. The treatment of individuals includes respect for persons, ensuring that participants have autonomy and full understanding of the research they are being asked to take part in, that they are protected from harm and that they are treated with justice. Transparency of process requires researchers to make their own position clear, to conduct their research consistently and to present their findings in a way that allows others to evaluate them. Plausibility of the research product includes scrutiny and

accountability of the work to others, honesty in the portrayal of participants' voices, and dissemination for the benefit of all interested parties.

Many of these issues are addressed elsewhere in this chapter. This section concentrates on two key areas, informed consent and protection of interviewees through anonymity.

Informed consent involves ensuring that participants are fully aware of the potential risks and benefits of the research before taking part in it, and that they are choosing to take part freely and without any form of coercion. Simply providing participants with a consent form to sign at the start of an interview may not be enough to ensure informed consent if the participant does not understand what they have been given to read (either because they do not speak the language the form is in, they lack literacy skills or the language used in the form is complex and confusing) (Savin-Baden and Howell Major 2013 p323). For this research project information about the aims and purpose of the research was sent to all interviewees in advance of the interview via email. A second hard copy was given to interviewees to read at the start of the interview. I checked if interviewees understood what it said, and if they were still happy to go ahead with the interview, and then gave them a consent form to sign (copies of both documents are reproduced in the appendix).

The main risk to the interviewees was that any views they expressed in the interview about a local authority's policies or practices might affect their relationship with that authority. This could be damaging for employees of the authority and also for civil society groups that depended on the authority for funding. The best way to protect against this was to ensure interviewees could not be identified. I decided not to name either the individual interviewees, or the local authorities and as far as possible to ensure that neither were identifiable. This involved making some changes to the exact titles of equality documents produced by the authority and giving general rather than exact statistical information about the demographic make up of the authority, number of councillors and so on. The number of people working in equality in any given authority is relatively small, as is the number of civil society organisations working on equality in any local authority area meaning that it would be impossible to maintain interviewees' anonymity if the authority was named. It is impossible to ensure that someone who was really determined could be prevented

from working out the likely identity of any of the authorities. However I aimed to make this as difficult as possible and to ensure ‘plausible deniability’ for the individuals interviewed. I was conscious of the argument that that anonymity is undesirable because it makes research difficult to replicate and harder to review (Yin 2014). There is clearly a tension between the need to produce research that can be properly scrutinised and assessed, which requires as much information as possible about the case study organisation and the individuals who were interviewed and protecting those individuals from the harm that might occur if their identities were known. Cohen et al argue that researchers have to judge these benefits against possible harms in making these sorts of decisions (Cohen et al 2000). In this case I judged that the potential harm to the interviewees outweighed the advantages of naming their organisations.

3.7 Conclusions

This chapter has set out the methodological approach I used to address my research questions. The literature review suggested that mainstreaming can take different forms depending on context. It highlighted the importance of both the relationship between actors within public bodies and within civil society and the way equality is framed. This led to my decision to take a case study approach to investigate the implementation of the PSED. The case studies allowed me to consider questions of organisational context and to investigate the extent to which civil society actors were able to influence equality work at a local level. Within these case studies I analysed the way equality was framed in official documents and by officers and councillors in order to explore how this framing influenced equality work within each authority. In order to situate the case studies in a broader national context and explore the extent to which the PSED represented reflexive and/or responsive regulation, I analysed a series of consultation documents relating to the Equality Act and more recent equality documents produced by the Coalition Government and interviewed former Ministers and civil servants. I analysed EHRC documents and carried out interviews with current and former EHRC staff to research the EHRC’s role as regulator and the framing of equality within the EHRC.

The next chapter provides background to the PSED and the approach to equality that it represents.

Chapter 4: The Public Sector Equality Duty: background and approach

4.1 Introduction

This chapter covers the background to the Public Sector Equality and the approach to equality that it represents. I will first set out what the Public Sector Equality Duty is, and what it covers. I then briefly set out the history of equality legislation in the UK, identifying the weaknesses with the individual anti-discrimination approach on which early legislation was based. I go on to explore the use of the ‘positive duty’ model to promote equality showing how concerns about institutional sectarian discrimination in Northern Ireland led to the introduction of a public sector equality duty in the 1998 Northern Ireland Act. This was followed by the Race Equality Duty in the rest of the UK, again in response to concerns about institutional discrimination (in this case racism within the police). Similar duties covering disability and gender followed a few years later. I then analyse the framings of equality which informed the PSED and the model of regulation used to enforce it, drawing on the policy proposals and consultation documents produced between the first proposals for a general public sector equality duty in 2000 and the passage of the Equality Act in 2010. I argue that the definition of equality used in the PSED drew on multiple understandings of equality including sameness, difference and transformation. The inclusion of socio-economic status, combined with the recognition that different groups might have different needs represented an attempt to address both issues of recognition and issues of redistribution. The duty itself represented an attempt to enforce mainstreaming, going beyond outlawing individual acts of discrimination to placing a positive duty on public bodies to have ‘due regard’ to equality throughout its work. Mainstreaming was to be enforced by a regulatory model that drew on both responsive regulation (through a focus on participation and consultation) and reflexive regulation (through allowing public bodies to decide for themselves how best to meet the ‘due regard’ standard).

4.2 The Public Sector Equality Duty

The Public Sector Equality Duty, contained in the Equality Act 2010, brought together and harmonised existing public sector duties on gender, race and disability and included new ‘protected characteristics’ to cover ‘age, disability, gender

reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation’(Equality Act, Section 149, 7).

The PSED is made up of two parts – a General Duty, set out in the 2010 Equality Act and Specific Duties which were created by secondary legislation. There are different specific duties for England, Scotland and Wales. Since this thesis examines the impact of the PSED on English local authorities I shall be focussing on the specific duties for England in this chapter. The Public Sector Equality Duty, in common with most of the Equality Act does not apply in Northern Ireland. Section 75 of the 1998 Northern Ireland Act includes a public sector duty to promote equality.

The General Duty provides that:

A public authority, must, in the exercise of its functions, have due regard to the need to:

- d. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by, or under this act;
- e. advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
- f. foster good relations between persons who share a relevant characteristic and persons who do not share it (Equality Act 2010 section 149, 1)

While the focus on ‘equality of opportunity’ in 149(1) might seem to suggest a limited concept of equality, this is expanded in 149 (3) which specifies that ‘having due regard to the need to advance equality of opportunity’ means in particular having due regard to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (Equality Act, section 149, 3).

The Act goes on to state that meeting the needs of disabled people includes, ‘in particular, steps to take account of disabled persons’ disabilities. (Equality Act, section 149, 4). Fostering good relations involves ‘having due regard, in particular, to the need to (a) tackle prejudice and (b) promote understanding (Equality Act, Section 149, 5). Compliance with the general duty ‘may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.’ (Equality Act, Section 149, 5). The different understandings of equality that this formulation of ‘equal opportunities’ represents are explored in more detail later in the chapter.

The Duty applies to public authorities listed in Section 19 of the Equality Act. These include local authorities, health bodies, education bodies (including schools), police, fire and transport authorities and government departments. It also applies to bodies carrying out public functions such as private bodies or voluntary organisations that carry out functions on behalf of a public body. The Duty only applies with regard to these public functions, not to other work, so for example a company running a prison would be covered for work relating to the running of the prison but not for other work, such as providing private security services to another private company (EHRC 2012a p7)

The specific duties for England came into force in September 2011. They require public bodies to:

1. Publish information to demonstrate compliance with the general equality duty by 31 January 2012 (April 2012 for schools and pupil referral units) and annually after that. This should include information about employees and people affected by the body’s policies and practices who share a protected characteristic. Public bodies with less than 150 staff do not have to publish information on their employees.
2. Prepare and publish one or more equality objective the body thinks it should achieve (GEO 2011a)

These specific duties are significantly more limited than the specific duties under the previous public sector duties covering race, gender and disability (see below). They are also more limited than the specific duties proposed under the previous Labour

government. The significance of these changes will be explored in more detail in the next chapter.

4.3 Equality Legislation in the UK prior to the equality duties

The Equality Act, and the PSED in particular have been widely seen in marking a change in approach to equalities legislation in Britain. Analysis of this changing approach has emphasised a shift from equal treatment and anti-discrimination based on a formal model of equality to a pro-active ‘mainstreaming’ of equality and a move from a ‘single strand’ approach to equality to a multiple or intersectional approach. (Dickens 2007, Squires 2009, Hepple 2010).

Hepple (2010) uses a five ‘generation’ framework to set out the history of equality legislation in Britain. The first generation, based on the notion of ‘formal equality’, that likes should be treated alike, was contained in the 1965 Race Relations Act, covering discrimination in ‘places of public resort’. The second generation in the 1968 Race Relations Act expanded protection against racial discrimination in employment, housing, goods and services but was still based on formal equality. Hepple argues that the extension of protection against discrimination on grounds of sex in the Sex Discrimination Act (1975) and Equal Pay Act (1970) marked the beginning of a move to ‘substantive equality’ through its introduction of the concept of indirect discrimination, right to claim compensation and the setting up of the Equal Opportunities Commission. This move to substantive equality was continued in the 1976 Race Relations Act and the 1995 Disability Discrimination Act. The fourth generation marked the beginning of comprehensive equality through the extension of protection of discrimination on grounds of religion or belief, age and sexual orientation. This was a response to both pressures from within the UK from anti-discrimination groups and external pressures from Europe as a result of Article 13 of the Treaty of Amsterdam (1997) and the subsequent Race Directive (2000), Framework Employment Directive (2000) which covered equality on grounds of age, disability, religion or belief and sexual orientation and the Equal Treatment Directive (2006) covering sex equality. These required the member states to consider a broader range of equality issues. The fifth generation is characterised by the introduction of positive duties to promote sex equality, first through the 1998

Northern Ireland Act, then through the public sector duty to promote race equality as recommended by the Macpherson enquiry, extended to positive duties covering gender and disability and finally through the PSED in the 2010 Equality Act. Hepple describes this as the start of a ‘transformational’ approach to equalities, marked by a shift from a model based on individual rights not to be discriminated against to mainstreaming model based on a proactive responsibility to promote equality.

Squires similarly uses a framework based on a shift from formal equality through legislation against discrimination to transformational equality through mainstreaming, although her framework has three rather than five phases. She places particular emphasis on an increasingly intersectional approach to equality in the UK, arguing that intersectionality is not simply about the overlap of different forms of equality but the inter-relationship between them so that ‘intersectional discrimination is recognised as qualitatively different from the sum of its discriminatory parts’ (Squires 2009 p497). Dickens challenges the concept of a steady progress through ‘generations’ or ‘phases’ describing a ‘hesitant and uneven’ trajectory from a ‘piecemeal and patchwork approach to the legislative tackling of employment inequality towards inclusiveness, integration and intersectionality’. However she shares Hepple’s and Squires’ conclusions that the PSED is part of a new approach to equality legislation, describing the (then proposed) Equality Act as an opportunity ‘to embed more positive approaches to equality’ based on the recognition that ‘societal discrimination extends well beyond individual acts of prejudice and places more emphasis on the responsibility of organisations’ (Dickens 2007 p488). The PSED is central to this change in approach, although other factors are identified as important, notably the establishment of a single equality body, (the Equality and Human Rights Commission) and the recognition of multiple discrimination within the Equality Act.

The change of approach that the PSED represented was based on the recognition that giving individuals the right to challenge discrimination in court was not in itself sufficient to bring about equality (Bell 2010). The focus on individual acts of discrimination in earlier equalities legislation has been subject to widespread criticism (see for example Charles 2000, Fraser and Spencer 2006, Dickens 2007). Firstly it places the burden onto those who suffer discrimination to bring action in

court which is costly in both time and energy. Many individuals are unable to take claims meaning that the worst offenders may be unchallenged and many cases of discrimination are not addressed (Fredman and Spencer 2006). Secondly this individual focus has led to a ‘deficit’ model of equality where women and other disadvantaged groups are seen as needing additional support to adapt to existing structures, rather than changing the structures themselves. (Charles 2000 p99, Dickens 2007 p472). Thirdly equality law was retrospective, only addressing discrimination after it happened, rather than preventing it from happening in the first place, still less promoting equality (Fredman and Spenser 2006). Finally the individual complaints led model was seen as adversarial, creating the danger that rather than seeing equality as a shared goal the law might generate conflict and resistance from affected organisations (Hepple et al 2000, Fredman and Spenser 2006).

Feminist critics have also highlighted the fact that the Sex Discrimination Act, in giving rights to both sexes, can be used by men in order to challenge equal opportunity measures on the grounds that they discriminate against men (Cockburn 1991p33, Charles 2000 p99). The Sex Discrimination Act prevents the use of quotas or other forms of affirmative action, except in the case of selection of parliamentary candidates where quotas are permitted following the Sex Discrimination (Election Candidates) Act 2002. This ‘acts as a barrier to any employers wishing to implement more progressive equality and diversity policies’ (Dickens 2007 p474). Dickens further argues that this ‘symmetrical’ approach to equality, based on a notion of equality as ‘equal treatment’ ‘resonates with notions of assimilation (to a white, male, heterosexual norm) and integration rather than valuing of difference’. (Dickens 2007 p 474). As a result of these issues sex discrimination legislation was criticised for largely benefitting those (educated, professional) women who were able to take advantage of ‘equal opportunities’, while the majority of women did not benefit to the same extent (see for example Carter 1988, Cockburn 1991, Charles 2000).

These weaknesses led to proposals for a statutory duty to promote equality, rather than simply an outlawing of individual acts of discrimination. In 1999 an Independent Review of the Enforcement of UK Anti-Discrimination Legislation was established under the auspices of the Centre for Public Law and the Judge Institute

for Management Studies at the University of Cambridge by Lord Lester, with the support of the then Home Secretary, Jack Straw. (Hepple 2010). The report of the Review included recommendations for a single Equality Act to bring together and update existing disparate anti-discrimination laws and recommended a duty on public bodies to promote equality (Hepple et al 2000). The report argued that while ‘there can be no doubt that the third generation legislation in the UK has broken down many barriers for individuals in their search for jobs housing and services... many barriers remain’. Not only was their evidence of continuing discrimination but ‘the problem goes beyond “discrimination” in the narrow sense of unfavourable actions by individuals. There are also attitudes, policies and practices within institutions that cause disadvantage’ (Hepple et al 2000 p14-15). It was hoped that a duty on public bodies to promote equality would ‘make equality issues central to the whole range of public policy debates’ through a process of mainstreaming (Hepple et al 2000 p59). This would ensure that inequality was addressed at a structural rather than individual level.

There had been non-legislative attempts to promote mainstreaming as a way of addressing structural inequalities during the 1990s. The 1997 Labour Government had introduced policies to promote gender mainstreaming in the late 1990s, but these had not been underpinned by legislation and had had limited results (O’Cinneide 2004, Veitch 2005). One former civil servant based in the Women’s Unit in this period interviewed for this research described her frustration with the lack of support across Whitehall and in the cabinet for gender mainstreaming. In the absence of any legal requirement to mainstream gender she and her team found progress ‘very challenging’. Once Harriet Harman who had championed gender mainstreaming was replaced by Margaret Jay as Minister for women the policy ‘died a death’. In Northern Ireland the Policy Appraisal and Fair Treatment (PAFT) guidelines had aimed at a ‘light touch’ promotion of ‘equality proofing’ but an absence of enforcement mechanisms and lack of support in some departments meant that these had ‘signally failed to deliver anything but frustration and annoyance to anyone outside government’ (McCrudden 1999 p19). This led to the conclusion that only a positive duty to promote equality would deliver meaningful change (Hepple et al 2000).

4.4 The introduction of the ‘positive duty’ model

The positive duty model was introduced in the UK in response to two separate crisis; the conflict in Northern Ireland and the institutional racism in the police revealed by the murder of Stephen Lawrence. In Northern Ireland both equality and human rights been an important part of the peace process, culminating in the inclusion of a commitment to mainstreaming in the Good Friday Agreement (McCradden 1999).

This resulted in Section 75 of the 1998 Northern Ireland Act which placed a duty on public authorities to have ‘due regard to the need to promote equality of opportunity’ between people of different religious belief, political opinion, racial group, age, marital status or sexual orientation, men and women, disabled and non disabled people and people with and without dependents. Section 75 also requires public bodies to have ‘due regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group’ (Northern Ireland Act 1998, Section 75). This positive duty to promote equality was a response to the failure of the Policy Appraisal and Fair Treatment (PAFT) guidelines, which had represented a non-statutory approach to mainstreaming. It drew on models of environmental impact assessment in the US and Europe (McCradden 1991 p 1717).

The first positive duty to promote equality was introduced in Britain in the 2000 Race Relations (Amendment) Act. This followed the Macpherson Inquiry into the murder of the Black teenager, Stephen Lawrence, which concluded that the Metropolitan Police Service was institutionally racist. The Macpherson report defined institutional racism as:

‘The collective failure of an organisation to provide an appropriate professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people’ (Home Office 1999 para 6.34).

The Macpherson report made a large number of recommendations, including that there should be a public duty on public authorities to promote racial equality. The Race Relations (Amendment) Act 2000 provided that public bodies ‘shall in carrying out [their] functions have due regard to the need to eliminate unlawful racial

discrimination and to promote equality and good relations between people of different racial groups' (Race Relations Act 1975, Section 71 as amended 2000).

According to the Equality and Human Rights Commission the purpose of this duty was to 'shift the onus from individuals to organisations, placing for the first time an obligation on public authorities to positively promote equality, not merely to avoid discrimination' (EHRC 2011)

This model of positive duties was then extended in the 2005 Disability Discrimination Act and the 2006 Sex Discrimination Act following sustained lobbying from Disability and Women's organisations (Sayce and O'Brien 2005, Conley and Page 2015). The Disability Equality Duty, introduced in the 2005 Disability Discrimination Act, required public authorities to have 'due regard' to eliminate unlawful discrimination, harassment and to promote equality of opportunity. It also required public authorities to 'take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons' to promote positive attitudes towards disabled persons and to encourage participation by disabled people in public life (Disability Discrimination Act 1995, Section 49A as amended 2005). The Gender Equality Duty introduced in the Sex Discrimination (Amendment) Act 2006 required public authorities to have 'due regard to the need to eliminate unlawful sex discrimination and harassment' and to 'promote equality of opportunity between men and women' (Sex Discrimination Act 1975, article 76A as amended 2006).

Statutory codes of practice, agreed by Parliament, were produced by the relevant equality bodies for all three duties (Commission for Racial Equality 2002, Disability Rights Commission 2005 and Equal Opportunities Commission 2006). There were separate codes of practice for England and Wales and for Scotland. This section focusses on the codes for England and Wales. Although these are not a complete statement of the law they were admissible in court; public bodies who did not follow them might need to demonstrate how they had met the terms of the public duties in other ways (CRE 2002 p10).

All three codes of practice emphasise that the duties include a requirement to address structural inequality as well as individual acts of discrimination, an approach that moves beyond treating people equally to considering the different specific needs of

affected groups and the need to consult and involve all relevant groups (CRE 2002, DRC 2005, EOC 2006). All three emphasise the importance of consideration of equality throughout the policy making process. The codes of practice for the Disability Duty and Gender Duty specifically refer to this as ‘mainstreaming’ (DRC 2005 p4, EOC 2006 p7&16). The Code of practice for the Race Equality Duty does not use the term mainstreaming but refers throughout to the need to consider equality at all stages in the policy making process, which, as the previous chapter argued, is central to a mainstreaming approach (see CRE 2002 p18). All three justify the duties with arguments based on utility as well as morality, emphasising the benefits of increased efficiency and effectiveness they would bring to public sector organisations (CRE 2002 p8-9, DRC 2005 p8-12, EOC 2006 p7&16).

Although the duties on race, gender and disability shared these common points of approach there were notable differences. These were justified as reflecting ‘the different nature of discrimination faced by different groups, the varied communities involved and the lessons learned from the introduction of earlier duties’ (EHRC 2009). However others have argued that they represented ‘unnecessary inconsistencies’ (Wadham et al, 2012 p 152).

The most significant difference between the duties can be found in the understandings of equality that they draw on. None of the duties contain a definition of equality similar to that given in the PSED, however the codes of practice for both the Gender Equality Duty and the Disability Equality Duty do set out an understanding of what ‘equality’ means in terms of gender and disability. The Race Equality Duty code of practice does not give any definition of racial equality. The Disability Duty code of practice states that the Disability Duty rests on the ‘social model’ of disability arguing that the ‘poverty, disadvantage and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal and environmental barriers’ (DRC 2005 p2) and that equality for disabled people requires equality of ‘opportunities and choices’ as well as ‘equal respect and full inclusion’. The Gender Equality Duty code of practice does not explicitly define equality but states that ‘gender roles and relationships structure men’s and women’s lives’ and that ‘policies and practices that seem neutral can have a significantly different effect on women

and on men, often contributing to greater gender inequality' (EOC 2006 p7). There are a variety of understandings of gender equality implicit in the outcomes that the code of practice claims the duty will help achieve including equality as sameness ('the gap between women and men's pay narrows and is eventually eliminated'), recognition of difference ('the level of discrimination experienced by pregnant staff and staff returning from maternity leave reduces significantly and is eventually eliminated') and transformation of gender roles ('Fathers receive greater support for their childcare responsibilities from public services and employers') (EOC 2006 p8). The gender equality duty code of practice also recognises issues of intersectionality; '[w]omen and men, including transsexual women and men, will experience different forms of disadvantage depending on their age, ethnicity, religion or belief, sexual orientation, marital or civil partnership status, and whether or not they have a disability' (EOC 2006 p9).

In addition to these differing models of equality there were other differences between the duties. The Gender and Disability Duties included a requirement to eliminate harassment, but this was not included in the race equality duty. The Race Equality Duty included the promotion of 'good relations', which was not included in the other two duties. The Disability Duty included a number of specific requirements that were not included in the other two duties including 'the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons', to 'promote positive attitudes towards disabled persons' and to 'encourage participation by disabled persons in public life'. Both women and members of ethnic minority communities continue to be under represented in public life, but there was no obligation in the race or gender duties to address this. All three duties contained specific as well as general duties and there were differences between the specific duties for each. Significantly the specific duties on disability specifically required the participation of disabled people in drawing up an equality scheme, which was not required for women or members of ethnic minority groups. The gender duties referred to the gender pay gap, although bodies were only required to 'consider the need to have objectives' (EOC 2006 p27) rather than actually address the causes of the gender pay gap.

These differences, and the fact that positive duties only applied to race, gender and disability rather than covering a broader range of equality issues 'appeared to create

a hierarchy of regulation inimical to a coherent and fair domestic anti-discrimination framework' (Wadham et al 2012p149). The extension of equality legislation to cover sexual orientation, religion and belief and age following the EU framework employment directive created pressure for a general public sector equality duty to replace the previous equality duties (Hepple 2010). The differences between the legislation covering race, sex and disability discrimination was one of the arguments used for a single Equality Act to bring together existing equalities legislation (see for example Hepple et al 2000, GEO 2007).

4.5 Approach to equality in the PSED – analysis of Government documents

The Equality Act was finally passed in 2010 following a ten year process of debate and consultation. During this process a large number of proposals and recommendations were made, responded to, and amended. This section will examine the most significant Government documents produced as part of this process – *Fairness and Freedom: the final report of the equalities review*, (Equalities Review 2007), the *Discrimination Law Review: A Framework for Fairness; Proposals for a Single Equality Bill for Great Britain*, (DCLG 2007), the *Government Response to the Consultation on the Discrimination Law Review* (GOE 2008) and the Government guide to the Equality Bill, *A Fairer Future: the Equality Bill and other action to make equality a reality*, published when the Bill was introduced in Parliament (2009). It will focus on two areas; firstly the way equality is framed in the two documents and secondly the mechanisms they propose for promoting equality and how they suggest these would work.

These documents that preceded the Act provide an important insight into the conceptions of equality and approach to achieving it that fed into the final legislation. In addition, once the Government had announced its intention to introduce a single Equality Bill many public bodies started to develop a unified approach to equalities, producing a single equalities scheme and Impact Assessment processes to examine the impact of their policies on equality across all the equality 'strands' that they believed the Bill would cover (GEO 2008 p19). As a trainer and consultant working in this field for several years I observed that these documents

were used by public bodies to inform their preparation for the Equality Bill since they provided the clearest indication at that point of the form that legislation was likely to take. These consultation documents therefore not only provide a background to the thinking behind the legislation, they were also the basis of equalities policy development at a local level.

4.5.1 The Documents

Proposals for a single Equality Act were first made in the Independent Review of the Enforcement of UK Anti-Discrimination Legislation (Hepple et al 2000). This drew on both the experience of Section 75 of the Northern Ireland Act and the (then proposed) Race Equality Duty to recommend a general Public Sector Equality Duty as part of a single Equality Act. The review also recommended a single Equality Commission to replace the Commission for Racial Equality, Equal Opportunities Commission and Disability Rights Commission. There was little action from the Labour Government until 2005 when Labour made a manifesto commitment to introduce an Equality Bill. As part of the process of consultation around the Bill the Government established two parallel review processes; the Equalities Review and the Discrimination Law Review. The Equalities Review was established by Government but independent of it and was chaired by Trevor Phillips, then Chair of the Equality and Human Rights Commission (EHRC). Its aim was to ‘provide an understanding of the long-term and underlying causes of disadvantage that need to be addressed by public policy; make practical recommendations on key policy priorities for: the Government and public sector; employers and trade unions; civic society and the voluntary sector; and inform both the modernisation of equality legislation, towards a Single Equality Act; and the development of the new Commission for Equality and Human Rights’. (Equalities Review 2007 p13). Its remit therefore went beyond equality legislation to develop a strategy for equality that could inform the work of the EHRC and be taken forward by a variety of actors.

The Government also established the Discrimination Law Review to consider ‘the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage ...while reflecting better regulation principles.’ (DCLG 2007 p11). This was focussed specifically on reform of anti-discrimination legislation. Both these

reviews published their final report and recommendations in 2007. *Fairness and Freedom*, the final report of the Equalities Review explored the various meanings of equality, set out the extent of inequality in the UK and made a series of recommendations, including a ‘capabilities based’ approach to equality and a Single Equality Act with a Public Sector Equality Duty (Equalities Review 2007). The final report of the Discrimination Law Review, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* set out more detailed proposals for a Single Equality Act, including for a Public Sector Equality Duty.

These two documents were the basis of an extensive consultation responded to by over 4000 individuals and organisations. The Government published its response to that consultation in 2008 (GEO 2008). The Equality Bill was presented to Parliament in April 2009. At its introduction the Government published a paper, *A Fairer Future: the Equality Bill and other action to make equality a reality*, (GEO 2009a) setting out what the Bill was expected to do and why the Government believed it was needed. The Bill received Royal Assent in April 2010, just before parliament was dissolved for the 2010 General Election.

4.5.2 Framing of equality in the Equalities review

The Equalities Review process included extensive deliberation and consultation on the underlying conceptions of the meaning of equality that should underlie public policy. Informed by a discussion paper for the review by Dr Tania Burchardt of the Centre for Analysis of Social Exclusion it identified four broad possible definitions of equality; equality of process, equality of worth, equality of outcome and equality of opportunity (Burchardt 2006, Equalities Review 2007).

Equality of process, defined as ‘ensuring that people are treated in the same manner in any given situation’ was recognised as an important element of non-discrimination and one that underpinned for example the right to a fair trial but not sufficient to address broader concerns about equality (Equalities Review 2007 p14). Equality of worth, defined as ‘according each individual equal respect’, was also important, but did not necessarily engage with issues of unequal access to resources. Equality of outcome could be ‘interpreted as aiming for everyone to have, for instance, equal amounts of income or wealth, or the same educational attainment’ (Equalities

Review 2007 p14). This was easy to measure and possibly the ‘most intuitive idea of equality’ (Burchardt 2006 p7). However it risked ignoring differences in need, individual preferences and individual agency and responsibility. Equality of opportunity could be interpreted as meaning ‘opportunities should depend only on your talents and the efforts you make’ or that ‘ensuring that those circumstances that are beyond an individual’s control should not undermine the opportunity an individual has to thrive’ (Equalities Review 2007 p15). The review concluded that ‘it would be presumptuous to attempt to settle this theoretical argument once and for all’ but that ‘to ensure that everyone who could help with this task focuses their efforts to the same end’ it was ‘essential to establish an accepted definition that draws on, but overcomes the limitations of, these different interpretations of equality’ (Equalities Review 2007 p15). This should not be based on ‘woolly compromise’ but a consensus based on both academic understandings of equality, international policy and practice and consultation with individual citizens to create a definition which could ‘accommodate the rigorous testing of the intellectual, but also strives to be meaningful and practical to everyone’ (Equalities Review 2007 p15).

The definition of an equal society proposed by the review was

- ‘An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.
- An equal society recognises people’s different needs, situations and goals and removes the barriers that limit what people can do and can be.’

Such a society would recognise: ‘a positive role required of institutions in removing barriers or constraints and making sure that opportunities to flourish are real; that some people may need more and different resources to enjoy genuine freedom and fair access to opportunities; that a life of genuine and valuable choices for each individual leads to a better society for everybody; and that its aim should be to narrow gaps in real opportunities and real freedoms, not by reducing the freedoms of some but by increasing the opportunities of those suffering persistent disadvantage’ (Equalities Review 2007 p16).

This definition of equality includes not only ‘equal’ but ‘substantive’ opportunities. Its focus on ‘genuine’ choices reflects a recognition elsewhere in the Review report that simple ‘equal treatment’ is not sufficient to ensure equality. The definition also recognises that not only do different groups have different needs, but that equality can mean different things for different people and that ‘equality does not mean sameness’ (Equalities Review 2007 p16).

In order to measure progress the review suggested a ‘scorecard’ of dimensions of equality, based on recommendations to the review by the Centre for Analysis of Social Exclusion (CASE) at the London School of Economics (Burchardt 2006 p10, Equalities Review 2007 p125). The Review accepted CASE’s proposal for a ‘capabilities’ based approach, based on the work of Sen (1985). The translation of this approach to a ‘scorecard’ appears to draw on the work of Nussbaum who developed a core set of capabilities (2000), an approach rejected by Sen (2005). However the Review does not engage with this debate, simply referencing Sen as the basis for both the capabilities approach and the scorecard of dimensions of equality. The scorecard itself was based on the recommendations made by CASE combined with focus group and survey research into the priorities set by the public and particular groups experiencing disadvantage. (Equalities Review 2007 p17). The Equalities Review proposed that the score-card be used to measure and monitor progress towards equality, with specific targets and policies developed to address each dimension and that a Public Sector Equality Duty was one of the mechanisms that should be used to address these dimensions.

The proposals for a ‘scorecard’ for measuring progress towards equality were not reflected in any subsequent proposals for a single Equality Act produced by the Government. Nor do they appear to have had much influence on the work of the EHRC. Staff members who had been in post during the review process recalled the scorecard as a temporary enthusiasm of Trevor Phillips, in which he soon lost interest. Other staff recruited after the Equalities Review were unaware of the ‘scorecard approach. However there is considerable overlap between the framing of equality contained within the Equalities Review and that contained in the Discrimination Law Review particularly in terms of the definition of an equal society and what that would entail.

4.5.3 Framing of Equality in the Discrimination Law Review

The Discrimination Law Review report (DCLG 2007) starts with a vision of equality that appears limited to equal opportunities; ‘Our aim is for every single individual to have the chance to realise their potential – to be able to bridge the gap between what they are and what they have it in themselves to become. Equality is a fundamental part of a fair society in which everyone can have the best possible chance to succeed in life’ (DCLG 2007 p8). However it goes on to develop a ‘clearer articulation’ of what ‘equality of opportunity means in practice’ (DCLG 2007 p 87) which explicitly draws on the ‘four factors of equality’ (referred to as ‘four dimensions in the Discrimination Law Review) developed by Fredman and Spenser (2006). These four dimensions formed the basis of a proposed ‘statement of purpose’ for the single public sector equality duty, which would ‘guide public authorities in understanding what they should be trying to achieve through the action they take under the duty’ (DCLG 2007 p87). The ‘four dimensions’ set out in the Discrimination Law Review were:

- ‘Addressing disadvantage – taking steps to counter the effects of disadvantage experienced by groups protected by discrimination law, so as to place people on an equal footing with others.
- Promoting respect for the equal worth of different groups, and fostering good relations within and between groups – taking steps to treat people with dignity and respect and to promote understanding of diversity and mutual respect between groups, which is a prerequisite for strong, cohesive communities.
- Meeting different needs while promoting shared values– taking steps to meet the particular needs of different groups, while at the same time delivering functions in ways which emphasise shared values rather than difference and which provide opportunities for sustained interactions within and between groups.
- Promoting equal participation – taking steps to involve excluded or under-represented groups in employment and decision-making structures and processes and to promote equal citizenship.’ (DCLG 2007 p87)

As the literature review sets out Fredman proposes the same four aspects of equality, (respect for equal dignity and worth of all, recognition of difference, promoting participation and breaking the cycle of disadvantage), as the basis of a framework

within which the principles of redistribution and recognition can be integrated (Fredman 2007). Fredman follows Fraser in arguing that equality must be seen as ‘multidimensional’ requiring attention to both redistribution and recognition (Fredman 2007, Fraser 1997). Alongside the four aspects to equality she also proposes the use of ‘positive duties’ similar to the Public Sector Equality Duty as a mechanism to ‘link up recognition with redistributive equality concerns’ through the promotion of mainstreaming (Fredman 2007 p232).

While the ‘four dimensions’ of equality in the Discrimination Law Review draw on those proposed by Fredman and Spenser there are some significant differences. Fredman and Spenser propose as their first ‘factor’ of equality the need to ‘break the cycle of disadvantage resulting from on-going discrimination against a group’ (Fredman and Spenser 2006), whereas the Discrimination Law Review proposes the more limited ‘taking steps to counter the effects of disadvantage’. The third factor proposed by Fredman and Spenser requires that ‘instead of expecting all to conform to the standard of the majority or dominant group, equality duties should recognise and uphold differing identities’, while the Discrimination Law Review includes a focus on ‘promoting shared values’ even while promoting ‘an understanding of diversity’ and ‘taking steps to meet the particular needs of different groups’. The first of these changes reduces the focus on inequality of distribution to the effects of inequality, rather than an attempt to change the structures that cause that inequality. The second change, with its focus on ‘shared values’ may reflect a concern that too great a focus on diversity or difference will undermine social cohesion, which the Review elsewhere identifies as a major advantage of greater equality (DCLG 2007 p6). Nevertheless the model of equality proposed by the Discrimination Law Review as a ‘statement of purpose’ for the PSED can be seen as drawing on a multivalent approach to equality that attempts to bring together issues of recognition and redistribution.

The Discrimination Law Review was the basis of a Government consultation on a Single Equality Act. The statement of purpose recommended by the review was welcomed by the majority of those responding to the consultation. (GEO 2008 p21). The Government’s *Response to the Consultation* concluded that this statement of purpose would ‘help us move from what has in the past been perceived as a rather

process-based approach to one which focusses on outcomes' (GEO 2008 p22) and confirmed the Government's intention to move ahead with a statement of purpose that defined advancing equality of opportunity as 'addressing disadvantage where it exists, encouraging a culture which ensures that individuals' differences are accepted and do not hold them back; meeting different needs and encouraging participation and inclusion' (GEO 2008 p23). This was translated in the final Act into a definition of 'having due regard to the need to advance equality of opportunity' as the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. (Equality Act, section 149, 3)

This definition provides a more limited interpretation of equality than that contained in the 'four dimensions' or in the Government's response to the consultation. Significantly, while the PSED includes a duty to have due regard to 'good relations' between different groups and a recognition that different groups might have different needs it excludes 'promoting respect for the equal worth of different groups'. This recognition of 'equal worth' was central to Fredman's model for addressing equality of recognition (Fredman 2007 p225). The final statement of purpose contained in the Act includes a duty to encourage participation in public life, which is more limited than the proposed participation in 'decision-making structures and processes and to promote equal citizenship.' However the PSED does retain a recognition of inequality as a collective as well as an individual experience (Equality Act 2010 149 3 a), an understanding of equality that is not based on sameness but recognises differences in needs and priorities (Equality Act 2010 149 3 b) and a prioritisation of participation as a key element of equality (Equality Act 149 3 c).

4.5.4 Justification for action

Alongside these explicit definitions of equality given in the various Government documents are a series of different understandings of equality which emerge from the arguments put forward in the same documents about why equality is important.

The GEO guide to the Equality Bill, *A Fairer Future: The Equality Bill and other action to make equality a reality* (GEO 2009a) does not give a definition of equality but states that ‘equality is not just right in principle’ but necessary for individuals, the economy and society (GEO 2009a p1). This set of justifications for action on equality on the grounds of the benefit to individuals, the economy and social cohesion can be found in both the *Equalities Review* and the *Discrimination Law Review* (Equalities Review 2007, DCLG 2007).

The *Equalities Review* set out these three arguments in some detail: The economic case for equality made in the review rested on two claims. Firstly that greater equality would lead to improved targeting of resources, for example ‘when talented disabled students miss out on the chance to go to further education because nobody helped to encourage and steer them through the system, resources are not allocated to their best use and prosperity will be diminished.’ (Equalities Review 2007 p19). Secondly greater equality would bring greater efficiency and growth, ensuring that the ‘productive potential’ of individuals was not wasted and creating the stability and lack of social conflict that would lead to greater prosperity for all (Equalities Review 2007 p20). In support of the argument for the economic case for equality the review cited research evidence of the financial cost of inequality including benefit payments to disabled people excluded from the workforce and the cost to the criminal justice system as a result of social exclusion. It also reported potential gains from women’s increased participation in the labour market.

The social cohesion case for equality drew on work by Wilkinson (2005) to argue that ‘in the poorest areas of unequal societies, the quality of social relations and the social fabric are stretched to breaking point’ (Equalities Review 2007 p20). The review argued that equality leads to better social relations and higher levels of human capital and social stability, which in turn lead to higher quality of life, better health and higher growth.

Both the economic and social cohesion cases for equality are utilitarian. That is they are arguments for equality based on the benefit to the wider society. In making these arguments the Equalities Review specifically addressed claims that greater equality would act as a barrier to growth, ‘undermining incentives to invest, work, learn and innovate’ (Equalities Review 2007 p138) drawing on work by Perotti (1992, 1993, 1996) and others to argue that:

Inequality itself may actually be detrimental to growth, whether through the role of credit constraints, imperfections in capital markets, macroeconomic volatility as well as lower levels of work effort, less on-the-job training, restricted opportunities to undertake productive investments in both education and business, or by limiting co-operative problem-solving on the job (Equalities Review 2007 p138).

Alongside arguments based on the benefits to the economy and social cohesion the Equalities Review also made what it called a ‘Moral case’ for equality, based on ‘fair play’ or ‘social justice’. The report emphasised that belief in a moral case for equality was widely shared throughout society highlighting data which showed that 85% of the public identified with the view that ‘it is important that every person in the world be treated equally’ and that 84 per cent agreed or strongly agreed that ‘there should be equality for all groups in Britain’ (Abrams and Houston 2006 cited in Equalities Review 2007 p23).

The Discrimination Law Review made similar arguments based on morality, the benefit to the economy and improved social cohesion in order to justifying action on equality arguing that ‘it is right to treat people fairly’, discrimination ‘causes personal misery’, discrimination ‘undermines cohesion within and between communities’ and that ‘it makes sound economic and business sense to draw on the talents of all, and to make sure that people can fulfil their potential free from unfair or unnecessary disadvantage’ (DCLG 2007 p6). It particularly stressed the business case for equality arguing that ‘there is a clear business case for equality. In a rapidly changing world we cannot as a nation afford to waste the potential talent and skills of all individuals in our increasingly diverse society’ (DCLG 2007 p8). In addition to a general ‘business case’ based on the benefits to the wider society the review argued

that there were strong business case arguments for individual organisations to tackle inequality. It quoted the Confederation of British Industry, which argued ‘discrimination in employment, wherever it exists, squanders effort, ideas and, ultimately business sales. It leads to wasted potential, wasted labour and wasted revenues’ (DCLG 2007 p8). In terms of the public sector this ‘business case’ rested on improved efficiency and effectiveness (DCLG 2007 p7) and on a recognition of the benefits of diversity, in particular that ‘in groups of people who make important decisions, such as Parliament and public bodies, (diversity) ensures that conclusions are reached and services delivered with the benefit of a wide range of different experiences.’ (DCLG 2007 p64)

This focus on the needs of the organisation may be an example of ‘strategic framing’, where equality is framed in a way that resonates with other goals in order to ‘sell’ equality (Walby 2011). As the literature review highlights, this approach risks limiting the focus of equality actions to those which resonate with the wider goals of the organisation while those issues which do not fit into this framework risk being ignored. Furthermore if discussion of equality is based on what is good for an organisation then a business case can be made against equality in some areas (Dickens 2006). This suggests that the reliance on the ‘business case’ as a justification for the PSED may open the possibility of a later attack on the PSED on the grounds that the disadvantages for the economy or individual organisations of action on equality outweigh the advantages.

4.5.5 Proposed mechanisms for tackling inequality

The arguments for equality set out above address the reasons given in the various documents why equality should be a priority for Government. However legislation is only one form of possible action by Government on equality so this section examines the reasons given in both the Equalities Review and Discrimination Law review for recommending the Public Sector Equality Duty in particular, and what this can tell us about the approach to equality that the PSED represented. The Equalities Review made a series of proposals for Government action on equality, including a framework for measuring equality against which progress could be measured and a series of targeted actions in areas like education, the criminal justice system and pay. The Discrimination Law Review by its nature had a greater focus on legislation but

argued that ‘although the law is important, there are other ways of tackling inequality’ including action to tackle child poverty and the pay gap (DCLG 2007 p6), the national minimum wage, improved maternity, paternity and parental leave and action to tackle domestic violence (DCLG 2007 p9). However both the Equalities Review and the Discrimination Law Review recommended a Single Equality Act, and a Public Sector Equality Duty. This approach continued in the Government’s Response to the Consultation, which also concluded that the PSED should be extended to cover additional equality issues of age, religion or belief and sexuality.

The Equalities Review recommended a ‘strong, integrated public sector duty, covering all equality groups’ arguing that this would support the move away from the traditional focus of discrimination law on individuals, (Equalities Review 2007 p115). Once again ‘business case’ arguments for the duty were used, in particular that the duty would improve the design and delivery of public services. The Discrimination Law Review also argued that the traditional focus of equality legislation on outlawing acts of discrimination against individuals ‘will not necessarily be enough to ensure genuine equality in practice for everyone in our society, because not everyone is in the same position from the outset’ (DCLG 2007 p67). It proposed a single Public Sector Equality Duty as a ‘balancing measure’ in recognition of the fact that ‘outlawing discrimination may not in itself be enough to eliminate discrimination and tackle disadvantage’. The aim of the duty would be to ‘ensure that discrimination is tackled at source from policy making to service design and delivery’ (DCLG 2007 p71), through encouraging local authorities to embed equality throughout their activities, making equality ‘part and parcel of public authorities core business’ (DCLG 2007 p80). Both the Discrimination Law Review and the Government Response to the Consultation on the Discrimination Law Review refer to this as a form of ‘mainstreaming’ (DCLG 2007 p96, GEO 2008 p24-26).

The Discrimination Law Review initially proposed to bring together the existing public sector duties on race, disability and gender and to consider extending it to cover age, sexual orientation and religion and belief. According to the Government’s Response to the Consultation on these proposals over 80% of the ‘more than 350’

organisations who responded to the proposal to bring together the duties covering race, gender and disability were in favour of this proposal and more than 90% of the ‘nearly 350’ responses to the proposal to extend the duty to cover age, sexual orientation and religion and belief were in favour of extending the duty (GEO 2008 p18, p29). The Equality and Human Rights Commission, the former equality commissions, the majority of local authorities, the majority voluntary organisations working on equality and the majority of trade unions were all in favour of an extended duty. Many local authorities pointed out that they were already using an integrated approach to equalities, although some raised concerns of the potential dilution of focus on particular equality issues that might be caused by a single public sector duty (GEO 2008 p19-20). Following the consultation on the review the Government announced its intention to ‘adopted an integrated approach’ introducing a duty that would cover race, disability, gender, gender reassignment, age, sexual orientation and religion or belief (GEO 2008 p20).

The justification for this combined approach was partly practical. Separate equality duties ‘would result in inefficiencies’ (GEO 2009a p20). But it was also based on a recognition of multiple discrimination. The Equalities Review argued that while ‘most types of inequality amplify the effects of other types of inequality, some are more serious because they set off a ‘cascade’ of further disadvantage’ (Equalities Review 2007 p47). In particular inequalities in early years and education, employment, health, and crime and criminal justice were identified as being likely to cause further inequalities. Within each of these areas certain groups were identified as suffering ‘large and persistent equality gaps’, for example in employment women with children, disabled people and Bangladeshi and Pakistani women suffered persistent inequality. Although the Equalities Review does not use the term ‘intersectionality’ in recognising the way in which different factors including gender, ethnicity and disability can combine and multiply it can be seen as drawing on an intersectional approach. The Discrimination Law Review did not include this type of analysis of intersectional discrimination but did acknowledge ‘multiple discrimination’ and recommended combining the different equality duties as one way of tackling this issue (DCLG 2007 p86). Both documents recommended that the Equality Bill allow for discrimination cases to be taken on multiple grounds. The Equality Bill itself outlawed dual discrimination, although this provision was

removed by the Coalition Government following the 2010 election (see next chapter).

4.5.6 The Socio Economic Duty

Initial proposals for a Single Equality Duty limited the focus of the Duty to the ‘protected characteristics’ covered by the Equality Bill. The Government’s response to the consultation continued with this approach. However the equality grounds covered by the PSED were later extended to cover ‘socio-economic inequalities’ on the grounds that ‘inequality does not just come from your gender or ethnicity; your sexual orientation or your disability; your age, or your religion or belief. Overarching and interwoven with these specific forms of disadvantage is the persistent inequality of social class’ (GEO 2009a p9). The issue of socio-economic status as a grounds for discrimination had been identified by Fredman who argued that ‘with the expansion of the aims of substantive inequality to include redressing disadvantage associated with status groups comes the paradox that disadvantaged or socially excluded individuals who are not members of historically stigmatised status groups, such as poor white men, gain no protection (Fredman 2007 p228). The socio economic duty was contained in clause 1 of the Equality Act which stated that:

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage (Equality Act 2010, 1.1).

This extended the PSED beyond the ‘protected characteristics’ based on identity to consider poverty and social class. The introduction of the Socio-economic duty was one of a series of changes to the Equality Bill introduced by Harriet Harman, who had taken over responsibility for the Bill from Ruth Kelly (Conley and Page 2015). The introduction of the socio economic duty, described by Harman as ‘socialism in a single clause’ (quoted in O’Brien 2013), was part of a wider focus on economic inequality initiated by the Government which included the establishment of the National Equality Panel in 2008, which reported in 2010 (Hills et al 2010). The Government’s guide to the Equality Bill, *A Fairer Future*, argued that the National

Equality Panel underpinned the new socio-economic duty (GEO 2009a p10). However although ‘socio-economic inequalities’ were included in the Equality Act this part of the PSED was not implemented by the Coalition Government elected just after the Act was passed in 2010. Arguably this reduced the potential for the PSED to address issues of ‘redistribution’ as well as ‘recognition’. The next chapter considers this, and other changes in the Coalition’s approach to equalities.

The proposals for a Public Sector Equality Duty contained in these documents represent yet another understanding of equality, in particular the need to address issues of structural inequality as well as acts of discrimination against individuals through ‘mainstreaming’ consideration of equality throughout the structures and processes of public bodies and a belief that action to tackle inequality needs to involve a recognition of a range of equalities issues rather than a focus on a single issue such as race or gender. It is this combination mainstreaming and a focus on multiple discrimination, with its potential to address issues of intersectionality that led Squires to describe the PSED as a ‘profound transformation’ in the British approach to equality (Squires 2009 p499).

4.6 Enforcement of the duty

As the literature review explained, the original proposals for the PSED highlighted critiques of both self-regulation, which only works where organisations have a clear self-interest and command and control that can lead to resistance to change. In order to address these problems the proposals developed an approach based on Ayres and Braithwaite’s model of ‘responsive regulation’ (Ayres and Braithwaite 1992), arguing that ‘regulation needs to be responsive to the different behaviour of the various organisations subject to regulation’ (Hepple et al 2000 p57). It recommended that regulation should be based on both ‘the self-interest of business and providers’ and opportunities for ‘information, consultation and engagement’ for interest groups. While it emphasised the ‘strong “business case” for inclusivity and diversity’ the review also recognised that ‘voluntarism can only work if complimented by other methods such as enforced self-regulation’ (Hepple et al 2000 p56-57). In order to encourage this the review proposed a ‘regulatory pyramid’ that moved from persuasion and provision of information through increasing levels of sanction

including investigation by an equality commission, judicial action and finally loss of contract. The pyramid rests on ‘three interlocking mechanisms: internal scrutiny within the organisation to ensure effective self-regulation, consultation and engagement with interest groups, and a commission providing assistance and ultimately enforcement if regulation fails (Hepple et al 2000 p58). As chapter two showed this approach has been described as an example of responsive and/or reflexive regulation.

Neither the Equalities Review nor the Discrimination Law Review refer to either responsive or reflexive regulation by name. However both built on the idea that regulation is most effective when it is responsive to the needs of the regulated organisation. The Equalities Review argued that the duty should be flexible so as to enable ‘different public bodies to establish their own priorities, relevant to the customers and communities they serve (Equalities Review 2007 p116). The Discrimination Law review similarly argued that public authorities should ‘be given flexibility to respond to the duty in ways which are appropriate for their particular functions and circumstances’ (DCLG 2007 p93). This approach is central to models of reflexive regulation. The Discrimination Law review also emphasised four principles of consultation/involvement, use of evidence, transparency and capability (ensuring staff have the knowledge of their obligations and the skills to discharge the duty) (DCLG 2007 p93); the emphasis on participation and involvement of the wider community in developing and scrutinising responses to the duty is central to Nonet and Selznick’s model of ‘responsive law’.

Both the Equalities Review and the Discrimination Law Review recommended enforcement models that moved from persuasion to increasingly severe sanctions if persuasion failed. The Equalities Review suggested a number of functions that a Commission for Equality and Human Rights (the proposed name for what became the EHRC) could fulfil. These included publishing guidance, sharing good practice and providing assistance to help organisations fulfil their obligations. These should be backed up by powers of enforcement including powers of inspection, powers to publish the names of organisations that were not complying with the duty and powers to enter into binding agreements with public bodies on the action they would take. Involvement of the public and interest groups in developing approaches to delivering equality, and scrutinising the performance of public bodies were central to

this model (Equalities Review 2007). The Discrimination Law Review proposed a model of good practice for public bodies based on consultation and involvement of affected groups, use of evidence in policy making, public transparency over progress or lack of it and ensuring the capacity of staff responsible for equality through training and support. Based on the experience of the previous equality duties it argued that the role of the EHRC should be to ‘work in the first instance through informal contact with bodies which are not carrying out the duty adequately and seek improvement through providing advice and support. It is likely that formal enforcement action will only be used where necessary when informal routes have been unsuccessful – though it is important that strong enforcement powers are available for use when needed’ (DCLG 2007 p 102/3).

The assumption in all the various consultation documents and the final Equality Bill was that the primary route for enforcement of the PSED would be through the Equality and Human Rights Commission. The powers of the EHRC were set out in the 2006 Equality Act, which established the Commission. The persuasion and information end of the pyramid of enforcement was promoted through the powers of the EHRC to give advice, publish information and produce guidance on the law as well as a general duty which the 2006 Act placed on the EHRC to encourage and support a society in which ‘people's ability to achieve their potential is not limited by prejudice or discrimination, there is respect for and protection of each individual's human rights, there is respect for the dignity and worth of each individual, each individual has an equal opportunity to participate in society, and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights’ (Equality Act 2006, 3). It also contained a duty on the EHRC to promote good relations between different groups to work towards the elimination of prejudice against, hatred of and hostility towards members of groups, and to work towards enabling members of all groups to participate in society (Equality Act 2006 10). This provided a broad basis for the EHRC to carry out work to educate individuals and organisations about the duty, and what it required, and to provide advice and support for public bodies to help them meet their obligations.

The 2006 Act also contained a range of enforcement powers, which cover all equality and human rights legislation. These include powers of formal investigation if the EHRC suspects an unlawful act has been committed (section 20), the power to issue a notice requiring action if an unlawful act has been committed (section 21) the power to enter into an agreement with a person not to commit an unlawful act (section 23), the power to apply for an injunction preventing a person from undertaking an unlawful act (section 24), the power to assist in legal proceedings (section 28) and the power to intervene in legal proceedings (section 30). There are two powers specifically relating to public sector equality duties (initially covering the race, gender and disability duties, now covering the PSED). These are the power to carry out an assessment of the ‘extent to which or the manner in which’ a public body has carried out its public sector equality duties (section 31) and the power to issue a compliance notice requiring a public body to comply with public sector equality duties (section 32).

Following the 2010 election the Coalition Government introduced policies which significantly reduced the budget and role of the EHRC. The next chapter will consider the impact that this has had on enforcement of the PSED.

In addition to the enforcement powers of the EHRC, a failure by a public body to meet its obligations under the PSED can be challenged by way of judicial review. Judicial review had proved significant in enforcing previous public sector duties on race, gender and disability. Most notably in *R (Brown) v Secretary of State for Work and Pensions [2008]*, taken under the Disability Equality Duty, the court set out a series of principles for public bodies when meeting their ‘due regard’ obligations. In *R (Kaur) v London Borough of Ealing [2008]* Ealing Council was found to have breached the Race Equality Duty in not carrying out an impact assessment of a decision to cut funding to Southall Black Sisters. As subsequent chapters will show judicial review has become central to the enforcement of the PSED. However the Coalition Government launched a review of the PSED which recommended restrictions on judicial review and the rules relating to judicial review were changed by the Coalition in the 2015 Criminal Justice and Courts Act. This will be discussed in the next chapter.

4.7 Conclusions

Although there are differences in approach in the various Government proposals and policy documents that led to the Equality Act they share some common themes. All frame equality in a way that goes beyond individual acts of discrimination to include ‘substantive equality’ and recognition of both ‘structural inequality’ and differences in needs and priorities between different groups. All address multiple discrimination, although the Equalities Review goes furthest in addressing the ways in which inequalities intersect. All include the importance of participation of affected groups in strategies to tackle inequality. All justify government action to tackle inequality not only on concepts of fairness or justice but on the benefits to the wider economy and improved social cohesion alongside ‘business case’ arguments for the benefit to individual organisation. Finally all recommend an approach based on ‘mainstreaming’ consideration of equality throughout the policies and practices of public sector organisations and all argue that this should be done in a way that is responsive to the needs of the organisation concerned, an approach which characterises reflexive regulation.

This shift of focus from individual acts of discrimination to the structures policies and processes of organisations (although limited to the Public Sector) is the basis for claims by both Hepple (2010) and Squires (2009) that the Public Sector Equality Duty represents a potentially ‘transformatory’ approach to equality. Whether these objectives have been realised in practice is the focus of this thesis. Both Squires and Hepple identify the danger that the potential of this new approach to equalities will not be realised. Squires argues that while the single equality duty ‘may allow public authorities to address proactively cumulative and combined inequalities’ it can only offer ‘the potential for Britain’s equality framework to recognise intersectionality’ if combined with the multiple discrimination provision (Squires 2009 p508). Hepple warns that despite the Equality Act being a ‘major achievement’, and representing a move to ‘substantive and transformative equality’ there is still a ‘serious risk that the positive duties will become marginalised and ineffective.’ (Hepple 2010 p22). More recently Hepple has argued that the changes in approach to equalities introduced by the Coalition government risk undermining the potential for the PSED to effectively mainstream equality (Hepple 2012).

The next chapter will look at the changing political context in since the 2010 election and the impact this may have had on the implementation of the Public Sector Equality Duty. In particular it will examine the new approach to equality introduced by the Coalition Government and the context of public spending cuts which many have argued will have a negative impact on equality. It will explore claims by both Hepple (2011) and Fredman (2011) that the changed approach to equality introduced by the Coalition government will reduce the effectiveness of the PSED in mainstreaming equality.

Chapter 5: Changed context of implementation

5.1 Introduction

The 2010 Equality Act was passed shortly before the 2010 General Election, one of the last acts of the outgoing Labour Government. The General Election on 6 May 2010 returned a hung parliament with no one party holding the majority of seats and the Conservative and Liberal Democrat parties formed a Coalition Government. This chapter explores the impact that this change of government had on the environment in which the PSED was implemented. This context is important because, as the literature review argues, the form that mainstreaming takes and the success or otherwise of mainstreaming initiatives vary depending on the background against which they take place (Woodward 2003, Verloo 2005, Walby 2011). Furthermore the reflexive regulation model used to enforce mainstreaming in the PSED is arguably more vulnerable to changes in national government policy than more restrictive forms of regulation as it leaves more scope for regulated bodies to decide for themselves how best to meet a broad set of obligations. These decisions will be affected by a whole series of financial, political and other pressures which will change as the political context changes

The first part sets out the ways in which the Coalition's approach to equality and to the PSED in particular was different to that of the previous Labour government. Work on gender mainstreaming has shown that the priorities and attitudes of government can have a significant effect on the success of mainstreaming strategies; where a change of government leads to a change in approach to equality the impact can be 'devastating' (Hankivsky 2013 p637). The second part assesses the impact of changes to the budget and role of the Equality and Human Rights Commission (EHRC). Hepple et al highlighted the importance of a strong regulatory body in their initial proposals for the PSED; I will argue that changes to the EHRC reduced its ability to act as an effective regulator (Hepple et al 2000). The third part sketches the Coalition's austerity programme. I argue that austerity might be expected to have an impact on the implementation of the PSED in a number of ways. These include a background of increasing inequality against which any action to promote equality would have to take place, a reduction in the resources available for equality work

and a lowering of the priority given to equality in organisations managing reduced budgets.

5.2 Changed approach to equality

The Coalition government formed shortly after the 2010 election immediately identified itself with a commitment to a small state with minimal government intervention (Ridell and Watson 2011). This is set out in the first paragraph of the *Coalition Programme for Government* which argues for the end to big government and the distribution of power in order to build a ‘free, fair and responsible society’:

We share a conviction that the days of big government are over; that centralisation and top-down control have proved a failure [...] it is our ambition to distribute power and opportunity to people rather than hoarding authority within government. That way, we can build the free, fair and responsible society we want to see. (HM Government 2010a p7)

The focus on the end of ‘big government’ and the emphasis on the values of ‘freedom, fairness and responsibility’ were the main theme of both the *Coalition Programme* and the first joint press conference given by Liberal Democrat leader, Nick Clegg, and Conservative leader, David Cameron, shortly after the Coalition was formed. These shared values, and the ‘new politics’ they were said to represent, were central to a rhetorical strategy to demonstrate that the Coalition was not just a ‘marriage of convenience’ but a genuine partnership based on ideological agreement between the two parties (Atkins 2015). Freedom was defined in terms of individual choice and the transfer of power from government to the individual as set out in the quote above. Fairness was identified as removing barriers to social mobility:

We both want a Britain where social mobility is unlocked; where everyone, regardless of background, has the chance to rise as high as their talents and ambition allow (HM Government 2010a p7)

Responsibility meant managing the economy responsibly through cutting the deficit, identified as the most important priority for the Coalition in the *Programme* which stated in large type that ‘The deficit reduction programme takes precedence over any of the other measures in this document’ (HM Government 2010a p35). However

responsibility also meant fostering personal and social responsibility when linked to increasing people's freedom 'to make their own choices'. In this context the smaller state was not only an unavoidable outcome of the programme of public spending cuts, but necessary in order to increase individual freedom. Even where change in behaviour was seen as desirable this should be achieved not through rules and regulations but through supporting and enabling people to make better choices for themselves:

There has been the assumption that central government can only change people's behaviour through rules and regulations. Our government will be a much smarter one, shunning the bureaucratic levers of the past and finding intelligent ways to encourage, support and enable people to make better choices for themselves (HM Government 2010a p7-8)

This rejection of 'rules and regulations' and 'bureaucratic levers' in favour of fairness, freedom and individual responsibility through a smaller state and dispersal of power to the individual was continued in the Government's *Equalities Strategy* published in late 2010 and in an accompanying speech by Theresa May, then the Minister for Women and Equality. This speech explicitly distanced the new Government's approach to equality from that taken by the previous Labour Government. The introduction to the *Equality Strategy* makes it clear that the strategy 'sets out a new approach to Equality' (HM Government 2010b p5) while May's speech talks about her desire to 'turn around the equalities agenda'. This 'new approach' is framed as a rejection of what equality has 'come to mean', presumably under the previous government;

Too often the word 'equality' has been misused and misunderstood because it has come to mean political correctness, social engineering, form filling and box ticking (HM Government 2010b p6).

The critique here is of an approach to equality that is both bureaucratic (form filling and box ticking) and represents an unjustified interference in individual freedoms (social engineering) based on political ideology rather than an understanding of

‘human nature’. This is reinforced in the conclusion to the strategy, which argues that:

only if we work with the grain of human nature, not against it, will we achieve the fairer, more equal and more prosperous society that we all want to see (HM Government 2010b p24).

This new approach involved several elements; a framing of action by the previous government as bureaucratic and ‘politically correct’ as seen above; a move towards an individualistic model of equality based on fairness and equal treatment; and a rejection of government action as the best way to achieve equality in favour of a strategy based on empowering individuals and business to ‘do the right thing’.

The move towards an individualistic approach to equality is set out early in the *Equality Strategy* where the Government’s approach is defined as one that ‘moves away from treating people as groups or ‘equality strands’ and instead recognises that ‘we are a nation of 62 million individuals’. (HM Government 2010b p8). This focus on the individual appears throughout the document. Although the strategy includes examples of collective disadvantage, (for example the pay gap, high unemployment rates faced by BAME men, barriers to accessing services for disabled people), the majority of the language used focusses on individual experience; ‘no one’ should face disadvantage because of who they are or what they believe. The need to ‘recognise people’s individuality’ as opposed to the ‘identity politics of the past’ is repeated at several points in the document. Again this is matched by the language used in Theresa May’s speech which repeats the phrase ‘we are a nation of 62 million individuals’. This fits with the definition of equality that the strategy is based on. While the various strategy documents and consultation papers that informed the Equality Act recognised a wide range of definitions of equality, the Coalition strategy focusses on just two: ‘equal treatment and equal opportunities’. Theresa May’s speech goes further, arguing that ‘no government should try to ensure equal outcomes for everyone’, ruling out equality of outcome as an aim for the Coalition. The agenda of equal treatment and equal opportunities is defined by May as being about ‘fairness’ with the phrase ‘it’s not fair that...’ repeatedly used to introduce different examples of inequality. This links the *Equality Strategy* to the commitment to fairness in the Coalition’s *Programme for Government* described above. This focus on fairness, rather than equality is used by May to counter the accusations that

the Government's (then proposed) spending cuts would be likely to increase inequality as she argues that 'fairness includes dealing responsibly with the deficit; 'it is not "unfair" to tackle the record deficit. What is unfair is leaving our children to pay off the debts.' The exact meaning of the term fairness is unclear – as Hamnett (2013) has argued its illusiveness is part of its political appeal as it can mean whatever the hearer wants it to mean. This vagueness about the meaning of fairness means that May can use the term both as a synonym for equality and as a justification for policies that might have the impact of increasing inequality. May goes on to argue that the claim that spending cuts will unfairly hit women is 'fundamentally flawed' because women are not a homogeneous group:

And let me also say that I reject the fundamentally flawed idea that tackling the deficit will unfairly hit the single homogeneous group labelled "women". There are over 31 million women in the UK - each of them is an individual and each of them will be affected differently by the changes we are making (May 2010).

This argument goes beyond saying that failure to tackle the deficit would be unfair on the next generation to call the whole process of assessing impact of policy on groups (rather than individuals) into question by saying that impact cannot be assessed collectively because each member of a group has to be considered as an individual. As the previous chapter outlined the process of public sector duties to consider equality grew out of a recognition that previous anti-discrimination laws had failed to address collective experiences of structural inequality. May's comments here, along with the argument that 'we are a nation of 62 million individuals' appear to conclude that such a structural approach is not only undesirable but also impossible. This is an example of both the dissolving of groups into individuals warned of by Young (1997) and of the tendency observed by Ahmed (2007) for the individualisation of difference to conceal systemic inequalities, explored in the literature review.

Alongside a focus on fairness for the individual both the *Strategy* and May's speech position this new approach as a rejection of legislation as a solution to the problem of inequality. Both repeatedly argue that although legislation has worked in the past 'we cannot tackle these issues by simply passing more legislation' and that

‘legislation is not a panacea for the continuing gaps in inequality that we all face (HM Government 2010b p7/8). The continued existence of inequality is used in both the Strategy and speech as evidence that previous approaches to equality through legislation are unlikely to succeed in the future. Both conclude that a new approach, defined in terms of reducing Government intervention is needed. According to May; it is ‘not about government dictating what people and businesses should do - it’s about giving people and businesses the chance to choose what is right for them’, continuing the focus on a smaller state in the *Programme for Government*. This includes greater involvement in community groups, faith groups and charities in delivering public services since ‘these groups are often better at drawing in under-represented people than government’ and increased transparency to allow communities to hold local services to account.

5.3 Changes to the Equality Act

Although the Government’s *Equality Strategy* marked a move away from legislation as a tool to tackle inequality Theresa May herself did initially appear to accept existing equality legislation, including the Equality Act. Prior to the 2010 emergency budget she wrote to George Osborne and David Cameron reminding them of the Government’s obligation to have due regard to equality. Her letter argued that ‘there are real risks that women, ethnic minorities, disabled people and older people will be disproportionately affected’ by the budget and went on to warn that:

If there are no processes in place to show that equality issues have been taken into account in relation to particular decisions, there is a real risk of successful legal challenge by, for instance, recipients of public services, trades unions or other groups affected by these decisions
(quoted in The Guardian 2010).

At this point the Equality Act had yet to be implemented, so May’s warning related to previous equality duties covering race, gender and disability. This warning proved to be accurate as the Fawcett Society launched a legal challenge to the Emergency Budget on the grounds that the Treasury had not had due regard to the impact of the budget on women. The High Court refused to grant leave for judicial review arguing that the EHRC was the right organisation to carry out any analysis of equality impact, but ruled that budgetary decisions were not above equality law (Conley

2012). In February 2011 six local councils won a judicial review of the Government's decision to cut funding for the Building Schools for the Future programme on the grounds that the Department for Education had failed to meet its obligations under the public sector equality duties covering race, gender and disability. These two cases appear to have led to a shift in attitude in Government towards the Equality Act in general and the Public Sector Equality Duty in particular.

In April 2011, the same month that the Equality Act was implemented, the Government launched its 'Red Tape Challenge' which aimed to tackle 'excessive regulation' by gathering evidence from the 'real world' about which regulations were working and which were not. The Equality Act was one of the first areas to be considered leading many campaigning groups to raise concerns that the Government was asking whether the Act should be scrapped just as it was implemented (EDF 2012). Both the Equality and Diversity Forum and the Discrimination Law Association both encouraged their members to respond to the Red Tape Challenge in defence of the Equality Act. There were over 7000 responses to the inclusion of the Equality Act on the Red Tape Challenge website, the majority of which were in favour of keeping the Act (EDF 2012). While this process did not lead to the repeal of the Equality Act the Government did announce a number of specific changes to the Act in their response to the Red Tape Challenge. Among the most significant of these was a commitment to repeal the public sector duty to consider socio economic inequality and the decision to bring forward the review of both the general and specific duties under the PSED.

The socio economic duty had been a late addition to the Equality Act, introduced in order to extend the PSED beyond 'protected characteristics' based on identity to cover poverty and social class. Theresa May had first suggested its removal in her speech launching the Equality Strategy:

Just look at the socio-economic duty. In reality, it would have been just another bureaucratic box to be ticked. It would have meant more time filling in forms and less time focusing on policies that will make a real difference to people's life chances (May 2010).

As is clear from the analysis of this speech and the Equality Strategy above, the Government's opposition to the socio economic duty was more than simply a dislike of additional bureaucracy. Unlike other identity based 'protected characteristics' it is difficult to imagine how inequality based on poverty or social class could be addressed through the Coalition's preferred focus on individual rather than group experience. The removal of the duty left public bodies with no obligation to consider the impact of their policies on socio economic inequality, which as Fredman has argued, could lead to a skewing of priorities in favour of identity groups covered by the 'protected characteristics' in the Equality Act leading to 'fruitless competition between disadvantaged groups over diminishing funding, without increasing the availability of funding overall (Fredman 2012 p266-7).

Aside from the removal of the socio economic duty the most significant change to the PSED came in changes to the Specific Duties, which the Equality Act gave the Secretary of State the power to introduce. The previous Labour Government had launched a consultation on draft specific duties for England (the introduction of specific duties for Scotland and Wales was devolved to the Scottish Parliament and Welsh Assembly) in 2009. These included duties to develop and publish equality objectives and set out the steps to achieve them; to take account of priority areas as directed by the relevant secretary of state in developing their objectives; to report annually on progress and to review objectives at least every three years; authorities with 150 or more employees to publish data on their gender pay gap and employment rates for BAME and disabled staff; to demonstrate how they had taken evidence of equality impact into account when developing and implementing policy and what difference this had made; to take reasonable steps to consult and involve representatives of employees, service users and other relevant groups in setting equality objectives, developing action plans and reviewing progress (GEO 2009b).

The Coalition Government had consulted on more limited draft specific duties for England in 2010. Following the Red Tape Challenge these duties were reviewed with the final version laid before Parliament in June 2011. There were now two duties: to publish information to demonstrate their compliance with the Equality Duty, at least annually; and to set at least one equality objective, at least every four years. There was no duty to set out steps to meet equality objectives, no duty to consult or involve, no duty to publish specific information on the pay gap and no

duty to consider equality in procurement. The Government justified this change by arguing that the previous draft duties had measured the processes public bodies followed rather than the outcomes that they achieved and that this new approach would deliver equality through increasing transparency that would enable greater public pressure on public authorities (GEO 2011b).

In practice it is difficult to see how these two duties help the public to hold public bodies to account since all these bodies need to do is publish a single equality objective (not set out how it was reached, or develop a plan to deliver it) and some equality information. The removal of the duty to consult or engage appears to make it less rather than more likely that the public will be able to hold public bodies to account. The previous specific duties covering race, gender and disability all included a requirement to consult or consult and involve, as did the proposed specific duties published by the Labour government before the election. The removal of this obligation meant that the engagement with external stakeholders, recognised as central to models of responsive regulation, (Nonet and Selznick 2001, Hepple et al 2000) was no longer an obligation on public bodies.

The limited specific duties in England were in contrast to those in Scotland and Wales. The specific duties in Scotland require bi-annual reports on progress, preparation of equality outcomes which should cover all protected characteristics which have to be reported on, a duty to publish impact assessments, duties to gather and publish employment information including information on the gender pay gap for organisations with over 150 employees, duties relating to procurement and duties on ministers to publish reports on progress. The specific duties in Wales include a requirement to publish not only equality objectives but a timescale and plans for achieving them, to develop a strategic equality plan, to engage with effected groups, to carry out and publish equality impact assessments, to collect and publish employment statistics and to have regard to equality in procurement.

5.4 Review of the PSED

A third outcome of the Red Tape Challenge was the announcement of a review into how the PSED was working in practice. The decision to order a review so soon after

the duty had been implemented led commentators to raise concerns that the review would lead to the abolition of the PSED (O'Brien 2013). In the event the review concluded that it was too early to reach conclusions about how the PSED was working in practice and that it should be reviewed again in 2015 (GEO 2013). The majority of submissions to the review were positive about the PSED; the main complaint from public bodies was of lack of leadership and guidance on the duty and from civil society of the failure of public bodies to meet their legal obligations (Stephenson 2014). However the review report was largely negative claiming that there was a lack of evidence of positive impact, that the duty had increased bureaucracy for organisations tendering to deliver public services and for public sector organisations themselves and that it had led to unnecessary and intrusive collection of personal data because of 'gold plating' or over compliance with the requirements of the duty. These conclusions were reproduced in much of the press coverage over the launch of the report with several newspapers repeating claims by the report's Chair that there was 'little evidence of positive impact' and that the duty had left public bodies 'bogged down with bureaucracy' and 'swamped with box ticking exercises' (Stephenson 2014). The review also argued that the Government should consider whether there were 'quicker and more cost effective ways of reconciling disputes relating to the PSED than judicial review' (GEO 2013 p16). The Government's response to the review welcomed the reviews conclusions and recommendations, which it said should be implemented fully 'in particular to reduce procurement gold-plating by the public sector' (DCMS 2013a). Changes to judicial review were introduced in the Criminal Justice and Courts Act 2015 (see below).

As will be seen in subsequent chapters the decision to review the PSED, and the negative comments in the press which followed the launch of the review report, created a climate of uncertainty within local government about the future of the duty which sometimes made it hard for equality officers to develop strategies in response to the duty since they did not know if it might suddenly be repealed. This was reinforced by a series of public statements made by Ministers, including the Prime Minister, associating action to comply with the PSED with 'box ticking' and bureaucracy. In November 2012 the Prime Minister David Cameron announced that the Government was 'calling time' on Equality Impact Assessments saying:

We have smart people in Whitehall who consider equalities issues while they're making the policy. We don't need all this extra tick-box stuff. So I can tell you today we are calling time on Equality Impact Assessments. You no longer have to do them if these issues have been properly considered (Cameron 2012).

The following month Brandon Lewis, Minister of State for Local Government, wrote to all local authorities to emphasise that Equality Impact Assessments were not a legal requirement, describing them as 'time consuming, bureaucratic, tick-box exercises', which 'in many cases took staff away from planning and delivering important public services' (DCMS 2012).

Both interventions were carefully worded to say that Equality Impact Assessments were not a legal requirement so long as public bodies had had due regard to equality and were able to demonstrate this. However the media coverage for Cameron's speech focussed on his claim that he was 'calling time' on impact assessments, suggesting that there had been a legal obligation to carry out impact assessments which the Prime Minister was announcing would now be removed. This was misleading; while there is no requirement to carry out a process called an Equality Impact Assessment, Cameron's speech did not remove the requirement to have 'due regard' to equality, nor the need to be able to demonstrate this in some way. There have been a series of judicial review challenges under the PSED and previous equality duties where public bodies have been found to be in breach of the law because they had not carried out a proper impact assessment and therefore could not demonstrate that they had had due regard to equality. In *R (Kaur) v London Borough of Ealing* [2008] Ealing Council was judged to have breached the Race Equality Duty when cutting funding for the specialist domestic violence group Southhall Black Sisters. In an oral judgment, Lord Justice Moses reiterated the importance of undertaking an equality impact assessment, and also the importance of carrying out an impact assessment before policy formulation. In *R (Brown) v Secretary of State for Work and Pensions* [2008] the court found that there was no statutory duty on the public bodies to carry out a formal impact assessment (in this case under the Disability Equality Duty) but set out a series of principles through which the duty to have due regard could be met, which have become known as the

Brown Principles. These include the need for public bodies to be aware of the duty, to exercise the duty ‘with rigor and an open mind’ before any decision is made, that it is good practice to make reference to the duty in any assessment it carries out and that it is good practice to keep adequate records showing relevant questions have been considered conscientiously (EHRC guidance on case law, undated).

These principles make clear that while a public authority does not have to carry out a process called an Equality Impact Assessment they do have to rigorously assess equality impact and keep records of how this has been done. More recently in Child Poverty Action Group v. Secretary of State for Work and Pensions [2011] the courts made clear that a body subject to the duty would need to show that it had considered adequate evidence to have due regard to equality. In R. (on the application of) (1) Luton Borough Council and Nottingham City Council (2) Waltham Forest London Borough Council (3) Newham London Borough Council (4) Kent County Council (5) Sandwell Metropolitan Borough Council) v. the Secretary of State for Education [2011] the court found the Secretary of State in breach of the general duty and emphasised the importance of consultation, observing that ‘...if only the Secretary of State had consulted with them [the claimants] they would have been able (if they wished) to highlight those special equality considerations to him.’ These elements of rigorous consideration of equality impact based on collection and assessment of adequate data and if necessary consultation with affected groups, combined with the need to keep adequate records in order to show that due regard has taken place are the elements of an Equality Impact Assessment, whatever the process may be called. In the light of these and other judgements it would not be surprising if public authorities found Cameron’s comments that Equality Impact Assessments were not necessary confusing. As I will detail in subsequent chapters equality officers in the case study areas were clear that Equality Impact Assessments were the best way of ensuring compliance with the Public Sector Equality Duty, but sometimes had difficulty convincing their colleagues of this because of the confusion caused by the media coverage around Cameron’s speech.

5.5 Other changes impacting on the PSED

Aside from the removal of the socio economic duty and the decision to review the PSED there were three further announcements following the Red Tape Challenge that had a significant impact on the implementation of the PSED. The first of these was the decision to significantly reduce the role and powers of the Equality and Human Rights Commission, the body responsible for enforcing the duty. This will be considered below. The second was the decision to abolish the provision covering dual discrimination. The dual discrimination provisions would have allowed individuals to take discrimination cases on two grounds, for example allowing a Black woman to challenge discrimination that occurred as a result of a combination of her race and her sex. This provision had been welcomed as representing a move towards recognition of intersectionality in UK discrimination law (Squires 2009). Although the dual discrimination provisions related to discrimination rather than the PSED, public bodies would have needed to consider the specific experience of staff or service users as a result of a combination of protected characteristics in order to ensure that they were not discriminating. This might have led to an intersectional approach to implementing the PSED rather than one which simply considering each protected characteristic in turn.

The third set of changes related to judicial review. In April 2014 new regulations came into force to make legal aid for judicial review cases conditional on permission for judicial review being granted. This decision was overturned following challenge in the High Court (Ben Hoare Bell Solicitors & Ors, R (On the Application Of) v The Lord Chancellor [2015]). In March 2015 new regulations were introduced that re-imposed conditional funding with new exemptions for oral and rolled up hearings and cases where the defendant concedes pre-permission. In addition the 2015 Criminal Justice and Courts Act introduced changes to the rules relating to judicial review which many civil society organisations argued would deter charities and other civil society organisations from intervening in judicial reviews (Burne James 2015). Organisations that intervene as a third party in judicial reviews may face orders for costs if they have ‘behaved unreasonably’ or their actions ‘have not been of significant assistance to the court’. Capping orders on defendant’s costs that the claimant would have to pay if unsuccessful will only be set after permission to take

judicial review. Judicial reviews will not be permitted if it appears ‘highly likely’ that the decision or action of the public body would not have been different if the decision had been taken properly. Taken together these changes will make it harder to take judicial review cases (Burne James 2015).

5.6 The Equality and Human Rights Commission

This section examines how the Equality and Human Rights Commission’s role in regulating the PSED has changed following the change of Government in 2010. It is divided into three parts; the first sets out changes to the EHRC’s role and funding, the second analyses the changing ways in which equality was framed within the EHRC during this period and the third part explores the impact that these changes has had on the Commission’s work in enforcing the PSED. It draws on the Equality Acts of 2006 and 2010, EHRC documents, in particular business plans, its enforcement policies and guides to the PSED, as well as interviews that were conducted for this thesis with two past and two current EHRC staff members. It also draws on interviews with national equality actors including representatives from national civil society organisations, some of whom are former EHRC staff members or former civil servants to provide an external perspective on the EHRC’s work in this area.

5.6.1 Changes to the EHRCs role and funding

The Equality and Human Rights Commission was established by the 2006 Equality Act, which gave it a series of statutory powers to enforce equality and human rights legislation (see previous chapter for details of these). It replaced the three previous equality commissions (Commission for Racial Equality, Equal Opportunities Commission and Disability Rights Commission), each of which were responsible for specific areas of equality. Article 24 of the EU Racial Equality Directive (2000/43/EC) and Article 20 Recast Equal Treatment Directive (2006/54/EC) require the establishment of national equality bodies in all member states. The EHRC is the UK’s national equality body.

The EHRC is a Non Departmental Government Body, often also referred to as a Quango (Quasi Autonomous Non-Government Organisation) defined as ‘a body

which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers' (Cabinet Office 1997). It is headed by a Chair and a board of Commissioners, who are appointed through a public appointment process, subject to approval by the responsible Minister (this has varied as the responsibility for sponsoring the EHRC has moved between departments). During the 2000s a series of reports by parliamentary committees, official inquiries, think tanks and others had raised concerns with the proliferation of NDGBs, their growing budgets, lack of clarity over their roles (or even how many existed), and weaknesses in the relationship between these bodies and their sponsoring departments (Dommett and Filders 2015). As a result all three main political parties included a commitment to reform 'the quango state' in their manifestos for the 2010 election (Dommett and Filders 2015). Within days of the election the Coalition government announced a review of all public bodies. This recommended the abolition or amalgamation of over a third of all public bodies as well as changes to the governance of those that remained. These recommendations were taken forward in the 2011 Public Bodies Act which gave the Government to modify the 'constitutional arrangements' of a range of public bodies (including the EHRC). This included the power to change the chair, powers to employ staff, constitution and role and the 'extent to which the body exercises its functions on behalf of the crown' (Public Bodies Act 2011 3). The government also gained the power to amend the funding arrangements for a number of public bodies (again including the EHRC) and to modify their functions (Public Bodies Act 2011 4 and 5). This means that the Government can now change the functions of a range of public bodies without the need for primary legislation. The potential implications for the EHRC's role as an independent body were made clear during the parliamentary debate on the Public Bodies Bill. Baroness Meacher for example asked during the Lords' second reading of the Public Bodies Bill, 'How can an organisation hold the Government to account if that Government, without even proper parliamentary scrutiny, can turn around and punish that public body by reducing its powers?' (Meacher 2011, quoted in Brett 2012). Outside parliament, campaigning groups and trade unions also expressed concerns that these changes would make the EHRC far less likely to challenge Government on equality, since the Government now has the power to significantly reduce its functions (Brett 2012).

Following the passage of the Public Bodies Act, the Government launched a consultation on the future of the EHRC which proposed changes to the EHRC's role and function. These included the removal of the 'general purpose clause' in section 3 of the 2006 Equality Act to encourage and support the development of a society in which:

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and
- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

(Equality Act 2006, 3)

Other recommended changes were the removal of the duty to promote good relations in section 10 of the 2006 Equality Act, the ending of the EHRC's power to make grants and the closure of the EHRC's helpline for members of the public facing discrimination and replacement with a new private sector service commissioned by Government. The Government faced strong parliamentary opposition to the removal of section 3 of the Equality Act, which still remains in force. However the duty to promote good relations (section 10) was removed in the Enterprise and Regulatory Reform Act 2013 and both the power to make grants and the helpline have been removed from the EHRC. The helpline had dealt with over 40,000 calls a year and provided important link between individual cases of discrimination and the EHRC's wider strategic work (Brett 2012).

Also in 2013 the Government introduced a new Framework Document, governing the relationship between the EHRC and the Department for Culture Media and Sport (DCMS), which had taken over from the Home Office as the EHRC's sponsoring department (DCMS 2013b). This document sets significant restrictions on the EHRC's powers to run public information campaigns. Advertising and public information campaigns are only allowed where the EHRC has a legal duty to provide people with information, where critical to the effective running of the EHRC or where there 'is robust evidence that marketing and advertising delivers measurable outcomes that meet EHRC objectives' (DCMS 2013b p5). This is likely to make it

harder for the EHRC to run the sort of public information campaigns carried out by previous equality bodies such as the Equal Pay campaigns run by the EOC since the outcomes of these sorts of public information campaigns may be difficult to monitor with sufficient robustness.

Alongside these cuts to its role the EHRC has faced a dramatic cut to its annual budget. In January 2013 Maria Miller announced that the EHRC core budget would be £17.1 million per annum, down from £70 million when the EHRC was launched (GEO 2012). In written statement to the Guardian, Minister for Equality, Maria Miller, acknowledged that these changes were all part of a change of focus from the EHRC away from campaigns aimed at changing public attitudes or lobbying Government on the equality or human rights impact of policy to that of an ‘expert witness’:

Of course we need impassioned lobbyists in the area of equalities but that is not the role of the EHRC. It shouldn't be leading emotive campaigns; rather its role is to be an expert witness, [and] to make recommendations on the basis of the facts (Guardian 2013).

A further issue raised by several former EHRC staff members and national civil society activists was the refusal of the Coalition government to allow the EHRC to publish a statutory code of practice for the PSED. The previous equality commissions (CRE, EOC and DRC) all published statutory codes of practice for the previous equality duties that could be used as evidence of what public bodies were required to do in court. The EHRC produced a draft code of practice for the PSED but in order to be a statutory code it would have to be presented to parliament which has not happened. Both former EHRC staff members stated that this was because before the code could be presented to parliament it had to be signed off by all Secretaries of State and that Michael Gove, then Secretary of State for Education, refused to agree to this. Both EHRC staff members saw this as response to the judicial review against the Department for Education’s cuts to the ‘building schools for the future’ programme under the PSED. Instead of a statutory code of practice the EHRC has published the code as ‘technical guidance’, which does not have the same legal standing.

Taken together these cuts to budget and changes to its role significantly reduce the power of the EHRC. So long as the UK remains a member of the EU it is obliged to have a national equality body. However although all the mechanisms for enforcing the PSED and other parts of the Equality Act remain in place, the cuts to its budget means that the EHRC now has far fewer resources with which to carry out this work. The fact that the Government can now make significant changes to the EHRC's role through secondary legislation may make the organisation more wary of public challenges to Government policy. The removal of the 'good relations' function and the limitations on advertising and public information spending restrict the ability of the EHRC to run campaigns to encourage members of the public to hold public bodies to account under the PSED. How the EHRC is carrying out its enforcement role in this new situation is the subject of the final part of this section. The next part explores the changing way in which equality has been framed within the EHRC.

5.6.2 Changes to the framing of equality within the EHRC

This next part will examine the changing way in which the EHRC has framed equality through an examination of the organisation's business plans and through interviews with two former and two current staff members. As the literature review has shown equality is a widely contested term that has been understood in a variety of different ways. The meaning that it has been given within the EHRC is important not only because it might be likely to impact on the way in which the EHRC enforces the PSED but also because as the body with primary responsibility for explaining the PSED to public sector bodies the EHRC's framing of the term equality may also influence how the term is framed within public bodies themselves.

The 2009 Business Plan frames inequality as a structural issue, setting a commitment that the EHRC will 'address the structural inequalities which have an impact on the groups in our mandate.' (EHRC Business Plan 2009 p14). It describes the role of the EHRC thus:

As the independent advocate for equality and human rights in Britain, the Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. We

challenge prejudice and disadvantage and promote the importance of human rights (EHRC Business plan 2009-10).

By separating the elimination of discrimination from the ‘reduction of inequality’ the EHRC is framing equality as something broader than simple non-discrimination. It describes its role as an active one – to ‘challenge prejudice and disadvantage’, framing inequality as not simply the result of individual prejudice but also broader structural disadvantage. A similar formulation was included in the 2010/11 Business plan, published shortly after the 2010 General Election. However by the 2011/12 and 2012/13 Business Plans these concepts of equality had disappeared. This plan contains no general statement of the role of the EHRC at all. They both contain a report of work done over the past year and a series of specific objectives on particular work programmes but no overall ‘mission’ or ‘vision’ statement. By the time of the 2014/15 Business Plan the language used to describe the role of the EHRC has changed significantly:

The Commission was established by Parliament under the Equality Act 2006 to help make Britain a fairer place for everyone. We do this by helping to ensure that everyone is protected against unfair treatment and has fair opportunities; by promoting and safeguarding the human rights we all enjoy; and by encouraging mutual respect between people of all backgrounds.

If everyone, regardless of background, has an equal opportunity to fulfil their full potential in their work and in their day to day life, and to contribute what they can to our society and economy, Britain will be more successful and more prosperous (EHRC Business plan 2014-15).

Here the focus is on fairness and opportunity rather than structural inequality and ‘equal opportunity’ is framed in terms of its benefit to a ‘successful and prosperous’ Britain. This is a version of the ‘business case’ for equality, although focussing on the success and prosperity of the country as a whole rather than an individual business. The benefits of equality to Britain are framed in the language of business and the economy, rather than broader social benefits. There is no mention of reducing inequality, nor of challenging disadvantage. Inequality is framed in individual terms of people being unfairly or denied opportunities. These changes in approach reflect changes in the way in which equality has been framed by

Government both before and after the 2010 election. During this time period the EHRC has had a change of Chair, and a change of Chief Executive, which may also have contributed to the change in the way equality is framed. However the position of EHRC Chair is a public appointment, which has to be approved at Ministerial level and it is unlikely that a Chair would be appointed who was considered likely to publicly disagree with the Government's position on equality.

EHRC guidance on the Public Sector Equality Duty similarly frames the PSED in terms of a 'business case'; in this case focussing on the benefit to public sector organisations covered by the duty. There are two main guidance documents published by the EHRC covering the PSED; the 'Essential Guide to the Public Sector Equality Duty' and 'Technical Guidance on the Public Sector Equality Duty'. In both documents the emphasis is on the PSED as a tool to improve policy making, improving efficiency and targeting of services and increasing productivity through better use of human capital. This is a public sector version of the business case for equality. The focus is on greater efficiency rather than greater profitability but the emphasis is on the benefit to the organisation rather than the importance of equality as a value in its own right. This 'business case' was also mentioned by current and former EHRC staff. Although none used this exact term they described how the most effective way to persuade public bodies to take action on the duty was to focus on the benefits for their organisation. One former staff member said:

If it is all about enforcement [...] you scare people and they just do the minimum and tick box stuff to get them off your back. But if you go down the route that it is all about good policy making and delivering better services and actually meeting the needs of their communities, it helps you meet your core purpose more effectively.

In these interviews the business case approach was presented primarily as a strategy to encourage others to act on equality, rather than the way in which these staff and former staff members themselves framed equality. It was clear from interviews that all four women shared a commitment to delivering concrete equality outcomes, seeing the PSED as one of a series of tools that the EHRC had at its disposal to do this. The two former staff members framed equality as intersectional, discussing the impact of a combination of race, gender and social class in particular. Both made it

clear that they regretted the loss of the duty to consider socio-economic status, particularly when combined with other characteristics. One said

Often socio economic disadvantage goes along with protected characteristics [...] if you had the socio economic duty and dual discrimination that would have been an interesting combination. It could have been a useful lens.

This suggests a tension between the ‘official’ framing of equality based on a business case approach and the attitudes of staff members who used the business case as a tool to persuade others to act while retaining their private commitment to equality as social justice.

5.6.3 Action to implement the PSED

The 2006 Equality Act which established the EHRC provided the commission with a series of statutory powers to enforce equality and human rights legislation. Two of these refer specifically to public sector equality duties; the power to carry out an assessment of the ‘extent to which or the manner in which’ a public body has carried out its public sector equality duties (section 31) and the power to issue a compliance notice requiring a public body to comply with public sector equality duties (section 32). The Act also gives general powers covering all equality and human rights legislation including powers of formal investigation (section 20), the power to issue a notice requiring action if an informal act has been committed (section 21), the power to enter into an agreement with a person not to commit an unlawful act without an admission of fault (section 23), the power to assist in legal proceedings (section 28) and the power to intervene in legal proceedings (section 30). None of these powers have been removed or altered since the 2010 election.

Both the current and former EHRC employees interviewed for this thesis appeared frustrated at their lack of ability to enforce the PSED. Perhaps unsurprisingly the former EHRC staff were more outspoken than current staff. All mentioned both their reduced budget but also argued that the mechanisms they had for enforcement were difficult to use effectively, and that the law itself was difficult to understand. The cuts to the EHRC budget reduced the power of the commission to carry out proactive assessments of compliance with the PSED. It also meant that the work on

engagement with civil society groups had been reduced, particularly since the ‘stakeholder engagement team’ had been ‘pretty much dismantled’.

On enforcement mechanisms the former staff were most critical. Both complained that the powers that the EHRC had took too long, and required too many resources to be used on a regular basis. One described these mechanisms as ‘bringing in the big guns’ in a way that would ‘tie the organisation up for years’ and therefore could only be used in exceptional circumstances. The other expressed frustration that this meant they were continually disappointing organisations which came to them with complaints about public authorities that were not meeting their duties because the bar for taking action was ‘very high’, meaning there ‘was not very much that could be done’. According to both women these problems had existed under the previous equality duties, but they argued that under these duties they had been able to take action for non-compliance with the specific duties and had the power to provide statutory guidance to help public bodies meet their obligations. The PSED specific duties were described as ‘woolly’ meaning there was little for the EHRC to monitor or use to encourage or compel public bodies to take action on equality. One said:

To enforce the general duty is a big deal, and a far quicker approach potentially is to go down the specific duty [route], but it is.....If you have specific duties that are to publish information but we won’t tell you what information, publish an objective but [...] you don’t have to follow through on it. Frankly what is the point?

Current staff members were more positive about enforcement of the specific duties. They highlighted research the EHRC had carried out into the enforcement of the specific duties in England (EHRC 2012c and 2013) and explained that these had not simply been research exercises but had involved follow up with organisations that had not published equality information or an equality objective. However these were the only examples of pro-active work to enforce the PSED, with one staff member admitting that otherwise ‘we are not systematically in touch with authorities’ about the duty. All other compliance work was reactive, following up complaints from unions and civil society organisations. This was described as ‘often below the radar and not immediately visible’ but nonetheless both current staff argued that it had a significant impact and that their enforcement powers provided a threat to hold over

public authorities if they did not comply. It was difficult to quantify this work because even the two women (who worked in the PSED enforcement team) knew how often their colleagues raised PSED issues with public authorities. There was only one example of a section 31 investigation: the EHRC's investigation of the Treasury's spending review following the Fawcett challenge to the Emergency Budget. Section 23 agreements, where public authorities enter into an agreement to take action to improve compliance with the Equality Act are confidential and information about how they are being used is not publically available. Indeed the two EHRC staff members interviewed said they would not always know if a colleague was working on a section 23 agreement. Although these agreements were 'less onerous' than a section 31 investigation it could take 'a long time to get [public authorities] to the table' and 'require quite a lot of resourcing internally' so were not mechanisms that could be used frequently. In order to get authorities to agree it was often necessary to use the threat of a more severe penalty such as a compliance notice or section 31 investigation. The fact that even with this threat the process of reaching an agreement was time consuming demonstrates that the threat itself was not enough to push public authorities to respond, suggesting that while it might still be a lever it is not as powerful as the staff members claimed. The 'behind the scenes' nature of much of the work may be the reason for the slow response from public authorities. If they do not see other authorities facing investigations or compliance notices they may, quite correctly, conclude that these mechanisms are used rarely and so see the threat as less serious.

The Government refusal to allow the EHRC to publish statutory guidance was mentioned as a problem by both current and former staff members. All argued that there was a need for clear guidance because of lack of clarity around the term 'due regard'. This lack of clarity was summed up by one who argued that the law was 'not easy' going on to explain:

Due regard doesn't have a clear black and white, a bright line with what is compliant and what is not compliant [...] it has been great that the Braking decision has given more clarity on this [...] but it is difficult.

In place of statutory guidance the EHRC had published ‘technical guidance’. However former staff members complained of the ‘battle’ involved in getting that agreed. One argued that the Government was ‘trying to back-pedal over what due regard actually meant’. There were tensions between the Government and the EHRC about what the legal requirements of the PSED actually are. The Government position, as described in the previous section, were that equality impact assessments were not a legal requirement. In contrast the EHRC drew on case law to argue that although there was no requirement to carry out a process called an Equality Impact Assessment there was little to distinguish between the steps necessary to demonstrate compliance with the PSED and those in an EIA. This disagreement led to a time consuming process (described as ‘an on-going spat’ by one woman) to agree a form of words between the EHRC and the GEO on the status of impact assessments. Although the EHRC was responsible for publishing guidance staff were concerned that the Government ‘would make life difficult for us’ if they didn’t like what was published. Current staff members were less openly critical of the Coalition, but raised similar problems. Both argued that public bodies were ‘confused’ by the ‘mixed messages’ from Government on Equality Impact Assessments. One said that this made public bodies ‘discombobulated about what to say or do’ uncertain about whether to trust messages from Ministers or the EHRC guidance.

This confusion was exacerbated by the review of the PSED. On staff member explained that the review ‘did not have a good effect’ on the EHRC and that ‘in that period of time you will see us not being very visible around the PSED’. She did not wish to expand on this saying ‘you can draw your own conclusions’. When combined with comments from former staff about the fear that the Government would ‘make life difficult’ for the EHRC if they published anything the Government disapproved of it suggests an organisation anxious not to be seen to be promoting the PSED at a time when the Government was questioning whether the duty should exist.

The impact of these changes on the enforcement role of the EHRC was raised repeatedly in interviews with national equality actors. Both former civil servants and civil society activists expressed frustration with the limited role played by the EHRC. However this was tempered with sympathy based on the belief that the

EHRC had been put in a position by the Coalition government where it was unable to act effectively. Interviewees described the commission as ‘stripped to the bone’ by funding cuts, having ‘gone through a real beating’ which meant it was concentrating on survival and was ‘in a position where it is not able to challenge’.

5.7 Austerity

In the 2010 Emergency Budget the Coalition Government announced a major programme of public spending cuts totalling £83 billion. This was an inflation adjusted figure based on assumptions of the cost of the cuts in 2014; the Institute for Fiscal Studies calculated that this was the equivalent of a cut of £68 billion in 2010 (BBC 2010a). The cuts and changes made to welfare benefits over the course of the parliament were predicted to reduce spending on welfare by £19 billion a year by 2014/15 (Beatty and Fothergill 2013). Cuts to departmental budgets were announced in the spending review totalling an average of 19% per department (BBC 2010b). Local Government was particularly badly hit. Annual cuts to local Government Budgets meant that by 2015 local government faced a 40% cut from 2010 funding (LGA 2014).

These cuts were arguably designed not only to cut the deficit but in order to meet a wider ambition to shrink the size of the state (Grimshaw and Rubery 2012, Taylor Gooby and Stoker 2012). This ambition to shrink the state had been set out in the Coalition’s *Programme for Government* (see above); the Emergency Budget demonstrated that the commitments set out in the *Programme* were not simply rhetorical but would be central to the Government’s work for the next five years. Some of the changes were a continuation of cuts already started under the previous Government. On welfare for example the Labour Government had started a process of welfare reforms aimed at ‘reducing dependency’ getting people back to work and reducing welfare spending (Finn 2005). However the Coalition’s changes went far ‘further and faster’ (Hamnet 2014). Taylor-Gooby and Stoker’s analysis of the new Government’s programme concluded that the ‘unprecedented’ reduction in the size and role of the state represented a plan to take the country in a new direction ‘rolling back the state to a level of intervention below that of the United States’ (Taylor-Gooby and Stoker 2012).

These cuts and reforms changed the context in which the PSED was implemented in a number of ways. Many commentators warned that cuts to public spending would have the result of increasing inequality (Taylor Gooby 2012, Taylor Gooby and Stoker 2012) and gender inequality in particular (Annesley and Himmelweit 2010, Stephenson and Harrison 2011, Conley, Kerfoot and Thornley 2011). A major assessment of the cumulative impact of cuts to services and benefits for the EHRC (Reed and Portes 2014) demonstrated that these warnings were justified. The cumulative impact of cuts to benefits, tax credits and changes to direct and indirect taxation hit the poorest hardest with those in the bottom income decile losing the most (over 7% of their net income). Within all these income groups, women lost more than men and Asian and Black households lost more than white households. Households with no disabled person lost least, followed by households with a disabled adult and then household with a disabled child. Households containing both a disabled adult and a disabled child lost the most losing 5.5% of their income (Reed and Portes 2014 p 47).

Cuts to spending on services were similarly most likely to affect the poorest households with households in the lowest income decile losing services worth £1,500 a year compared to houses in the highest decile which lost an average of £750 a year (p84). When benefits, tax credits and changes to direct and indirect taxation were combined the two hardest hit groups of households were lone parents (who lost the equivalent of over 14% of their income) and lone pensioners (who lost over 10%). (Reed and Portes 2014 p88). Women form the majority of both these groups. Black and Asian households lost more than white households (p89) as did households containing a disabled person compared to those which did not contain a disabled person (p91). These findings have been mirrored by numerous studies which have shown that spending cuts have disproportionately affected the poorest parts of the country (Beatty and Fothergill 2013), minority ethnic groups (Runnymede Trust et al 2011), disabled people (Harris 2014), children (Ridge 2013) and women (Sandhu, Stephenson and Harrison 2013, Annesley and Gains 2015). Action by public bodies to promote equality would therefore take place against a background of increasing inequality.

This rise in inequality is exacerbated by the language used by Government ministers to describe the people who are worst affected by the cuts. For while austerity was

initially justified in terms of responsibility (dealing with the deficit) and freedom (from interference by an over large state) it soon also became linked to the third of the Coalition's three priorities 'fairness'. The claim that it is 'not fair' if someone claiming benefits is better off than someone in paid work was started under the previous Labour Government. Announcing a cap housing benefit in 2010 Yvette Cooper, then Minister of Housing stated that 'it isn't fair for the taxpayer to fund a very small minority of people to live in expensive houses which hard-working families could never afford (Parliament March 2010). However as with the cuts themselves the Coalition's use of the discourse of fairness to justify cuts went far further. George Osborne's speech to the 2012 Conservative Party Conference specifically justified cuts to welfare benefits in terms of fairness, placing the Government as the champion of fairness on the side of the 'hard working', the 'striver' who is losing out to the 'scrounger' or 'skiver' on benefits:

Where is the fairness, we ask, for the shift-worker, leaving home in the dark hours of the early morning, who looks up at the closed blinds of their next door neighbour sleeping off a life on benefits? (Channel 4 2012).

Here receipt of benefits has moved from the problems caused by people being abandoned to a life on benefits, rather than supported into work, to benefits as a lifestyle choice – the use of the phrase 'sleeping off' with its association with alcohol (sleeping off a hangover), suggests that those on benefits not only don't have to get up for work in the morning but are likely to be spending their money on the wrong things. This language of scroungers and strivers creates a stigma for those claiming benefits, which can lead to discriminatory treatment (Sandhu, Stephenson and Harrison 2013). Both the Church of England and Disability Charities have raised concerns that the stigmatisation of benefits by both politicians and sections of the media have led to increased discrimination and harassment against poor and disabled people in particular (Express 2012, Church Times 2013). If this rhetoric creates negative public attitudes against certain equality groups it may make work to promote equality harder to justify, particularly at a time when services are being cut.

In addition to the impact of the cuts on equality and attitudes to certain groups, cuts to budgets of public sector organisations might be expected to reduce the resources available for work on equality (Conley and Page 2010). This was certainly seen at a

national level where the Government Equalities Office faced a budget cut of 38%, double the average across all departments. This was met by a reduction of staff in the GEO, a significant cut to the budget of the EHRC and the closure of the Women's National Commission which had acted as the voice of the women's voluntary sector in Government for over forty years (Annesley and Gains 2014). The impact on equality work within local authorities is considered in subsequent chapters. A further likely impact of austerity has been raised by the work of Annesley and Gains (2013) who have shown that adverse economic conditions can make it harder to get equality on the agenda of public bodies. Smaller equality teams may lack the power to push for equality policies, or there may not be sufficient funding to meet the costs involved in pro-equality policies. In local government in particular the impact of 40% cuts to budgets may lead to a focus on re-structuring services that pushes equality down the list of priorities. Finally with a shrinking state the areas where public bodies have the power to act on equality are also reduced; with services contracted out to private or voluntary sector organisations or cut altogether the potential for consideration of equality to be mainstreamed into the delivery of these services is diminished.

5.8 Conclusion

The change of Government after 2010 created a very different climate for implementation of the PSED than that which existed when it was first envisaged. The approach to equality shifted from the multivalent model, including a recognition of structural inequality which informed the Equality Act to a focus on 'fairness' for individuals. The scope of the PSED was reduced by the removal of the socio economic duty and changes to the specific duties. Participation of external groups in decision making is central to responsive regulation; this participation through processes of engagement or consultation are no longer part of the specific duties. Comments by Government Ministers framed work on equality as bureaucratic red tape and were misleading about what was required to comply with the PSED. The power of the EHRC to act as an effective regulatory body was reduced by cuts to its funding and restrictions on its ability to publish statutory guidance and carry out public information campaigns. At the same time austerity increased levels of inequality overall and threatened to reduce the ability of public bodies to carry out

work on equality. Subsequent chapters will explore what impact this changed context had on work to promote equality within local authorities.

Chapter 6: London borough – Recognition or redistribution

6.1 Introduction to the case studies

The next three chapters describe and analyse the work on equality carried out in the three case study local authorities drawing on interviews with officers, councillors and external actors and the equality documents produced by each authority. I start by summarising the background to each authority and detailing the people interviewed (covered in more detail in the methodology chapter). I then set out the approach to equality within each local authority before going on to assess the impact that the PSED had had on this work. I go on to explore the factors influencing the different way in which the authorities approached equality. My starting point for this was the various factors identified in previous work on mainstreaming and other state feminism projects discussed in the literature review. These included the way equality was framed in the authority, the wider political context and the relationship between actors inside and outside the authority. I also considered the role played by equality officers, drawing in particular on Cockburn's work on the 'short and long agenda' (Cockburn 1989 1991) and Kirton, Greene and Deans work on 'diversity professionals' who seemed to represent a new approach to equality work (Kirton, Greene and Dean 2007). All of these factors seemed to influence the way in which the PSED was being implemented in the case study authorities. When analysing the interviews I also identified further factors, specific to the implementation of the PSED: the role of the EHRC and the fear of judicial review. In all the authorities the risk of judicial review was considered a far more significant factor than the risk of intervention by the EHRC in ensuring action was taken to meet the obligations of the PSED, suggesting that Fredman's warning that judicial review was in danger of becoming 'the first rather than the last resort' was proving accurate (Fredman 2011 p420). This led to a risk of bureaucratic compliance except where civil society groups were able to influence the authority through lobbying and campaigning.

I summarise my conclusions from each case study at the end of each chapter. I end the final case study chapter, on City Council, with an analysis of the findings across all three case studies.

6.2 London Borough: Background

London Borough is a small inner London authority with an extremely ethnically diverse population. It contains a wealthy minority and widespread poverty. London Borough is currently Labour controlled and Labour holds the parliamentary seats representing the area.

For this research I interviewed two equality and policy officers (both men), the corporate Director responsible for equality (a woman) and two councillors, the Equalities Champion and the former Leader of the council who had recently stood down (both women). I also interviewed representatives of four civil society organisations working on equality based in the borough (all women). These were a disability organisation, a social enterprise working on democratic participation, a pan London race equality organisation and a second tier women's organisation. Although the women's organisation was based in the borough its work was focussed at a national rather than local level. I also interviewed a trade union official representing staff working at the authority (a man).

London borough has a long history of commitment to work on equality. In all the interviews there was a repeated claim that equality was a strong value throughout the council with interviewees describing equality as 'in our blood' 'top of our agenda' and 'a feeling, a philosophy' which was shared by the executive, officers and councillors of all parties. However there was a clear tension within the authority over whether the focus of equality work should be primarily on socio economic inequality or on inequality between the different 'protected characteristics' in the Equality Act (race, sex, disability, sexuality and so on) reflecting the potential for tensions between recognition and redistribution identified by Fraser (1997). The predominant focus appeared to be on redistribution rather than recognition, which affected the way in which the PSED was implemented. Other factors affecting implementation included the way in which individual officers perceived their role, including the way in which they used fear of judicial review, the relationship between officers and councillors and changes to the national context. Neither the EHRC nor civil society organisations appeared to be a significant source of pressure on London Borough. There did not appear to be close relationships between equality officers and any civil society groups working on equality. I found no examples of the sort of close working

relationships between ‘women’s policy actors’ inside and outside the state that RNGS research identified as critical to the success of ‘state feminism’ (Goertz and Mazur 2008, McBride and Mazur 2010, Mazur 2013). This may explain the lack of focus on gender equality I observed within the Borough.

6.3 Equality structures within the Council

Work on equality in London Borough is led by a four person equality and policy team, created by the merger of separate equality and policy teams shortly before the research took place. This means that several of the equality officers have a policy rather than equalities background. This team sits within a wider group which also covers issues of strategy and performance. The group is itself part of a wider Directorate; one of seven within the authority. In addition there is an ‘equalities lead’ with responsibility for equality, among other roles, in each department. Staff within the equalities team do not have responsibility for particular equality groups, or areas of policy but work across all areas. There are ‘equality and community cohesion consultants’ working with schools across the Borough on equality issues. London Borough does not have an equalities committee. There is an Equalities Champion, a Labour councillor, elected by other councillors to take a political lead on equalities.

London Borough has a single Equalities Scheme which includes eight equality objectives organised under the five corporate priority areas; affordable housing, crime reduction, poverty reduction, child well-being and health and independent living. These corporate priority areas were developed out of the work of a Fairness Commission, established in London Borough in 2010.

All policies or changes to practice introduced by the council are assessed for their impact on the nine protected characteristics as defined by the 2010 Equality Act. This is done through a process of Impact Assessment, which also covers socio economic status, safeguarding of children and vulnerable adults and compliance with the 1998 Human Rights Act. This process is described in more detail in the section on impact assessment below.

Shortly before the research took place London Borough had approached a Pan London anti-racist organisation to carry out an equalities review which had

concluded that the equality impact assessments carried out by the council were ‘not fit for purpose’. Both councillors and officers were open about this review and its conclusions, claiming that it had acted as a spur to improve practice, particularly around the use of data in impact assessments and the publication of assessments in a single place on the council website. However as the section below shows practice around gender equality in particular remained poor. Impact assessments failed to consider the gender implications of policy and the ‘central page’ on the council website relating to impact assessments only contained links to thirteen assessments as of October 2015. This gap between stated commitments and practice on the ground was a recurrent theme in London Borough.

6.4 Impact of the PSED on equality work

All councillors and council staff interviewed in London Borough argued strongly that the council had a deep commitment to equality that pre-dated the introduction of the public sector equality duty. The PSED was seen as an opportunity to ‘refresh’ this commitment and as providing ‘more structure’ to ensure commitments were implemented in practice. According to officers this was not because of the legal obligations created by the duty, indeed all officers regularly referred to the duty as ‘toothless’ or ‘weak’. Nevertheless the introduction of the duty meant that the council had to reflect on and revisit its equalities work. This had led to changes to the equality processes in the authority, in particular a move away from detailed action plans to focus on a few specific objectives and a revised impact assessment process. These will be considered in turn. In England there are two specific duties under the PSED: to publish information and to set one or more equality objective. This is a significant change from the previous duties on race, gender and disability which involved more extensive specific duties, including to develop detailed action plans. This change was particularly welcomed by the corporate Director who headed the Directorate in which the equalities team sat (referred to as Director throughout). She saw the change as offering a positive opportunity to focus on a few areas where progress could be made rather than having to develop action plans which she believed did not always result in tangible change:

If you were to ask me what the impact of the PSED is I would say that one of the things it has certainly made me do is start again with ‘we are going to

make some concrete progress on a few key issues, key areas and these will be our objectives. The idea that you set the world to rights through detailed long action plans that have 150 actions I am not convinced of (Director).

The reduction in the specific duties can be seen as enabling London Borough to take an approach to equalities which was more in line with the priorities of the organisation, one of the key elements of reflexive regulation. The equality objectives set by London Borough suggest that gender equality was not a key priority for the organisation.

London Borough's Equalities Scheme contains eight very specific equality objectives. These are drawn from London Borough's corporate priority areas, housing, crime, poverty, wellbeing of children and health. All of these have significant gender implications, however there is limited gendered analysis in the Scheme. The Equalities Scheme refers to violence against women in the section on crime, but the objective set for this area relates to stop and search. There is an objective to increase the number of women lone parents in work in the section on poverty, but no recognition of poverty as a gendered issue. Other objectives refer to fuel poverty in terms of age and disability, but not gender. The two objectives on health both relate to smoking cessation programmes rather than any other health inequalities.

The Director appeared strongly committed to make progress on London Borough's equality objectives, discussing in some detail work she had carried out with the police to reduce rates of stop and search (the objective relating to crime). This focus on specific objectives was similar to that found in City Council. As with City Council it appeared to be both a pragmatic response to limited resources and a belief that real change required focus. However unlike City Council these objectives did prioritise gender equality. Under the previous Gender Equality Duty London Borough had produced a Gender Equality Scheme; the replacement of the GED by the PSED meant that this had been replaced with the Single Equalities Scheme with little focus on gender.

The impact assessment process used in London Borough had also been revised in response to the PSED. The Director argued that this was 'not because the duty makes you do it [...] but because it was a catalyst to stop, think, refresh, revise'. London

Borough's Impact Assessment process covers all the protected characteristics in the Equality Act, retains socio-economic status, which was removed by the Coalition Government and also covers safeguarding of children and vulnerable adults and compliance with the 1998 Human Rights Act. The Impact Assessment involves a two stage process. The first 'screening' process consists of a 'tick box' form which asks whether the proposed policy will discriminate, undermine equality of opportunity or have a negative impact on relations for any of the protected characteristics. It then goes on to ask if there are any opportunities to promote equality of opportunity or good relations as a result of the policy if there will be any negative impact on residents on grounds of socio economic status, any safeguarding risks or any potential breaches of the Human Rights Act. If the answer to any of these questions is yes then a full Impact Assessment must be carried out. This asks for more detail about the impact on any group, the evidence used to identify impact and any action proposed in response.

There were some examples given in interviews of changes to policy as a result of this process. These included a decision to overturn a policy to write to everyone on the housing waiting list and remove them from the list if they did not reply within a month. The EIA for this policy identified that certain groups such as disabled people or people who did not have English as a first language might take longer to reply or not reply at all. Another change was made to disciplinary and grievance procedures as a result of an assessment of impact on BAME and disabled staff (see civil society section below). However officers emphasised that policy making was an iterative process involving many different people and different pressures at different stages making it hard to attribute a change of policy directly to an impact assessment or to the PSED more generally:

The thing is it is often an iterative process the development of policy and you are often not sure what has had an impact [...] I just mean you can't always tell why [other departments] are doing what they are doing (Equality officer).

For this thesis I analysed the EIAs of budget proposals over three years and reviewed all EIAs from the same period with the aim of identifying the five that related to policies that might be expected to have a significant gender impact. My review of the

impact assessments produced by London Borough suggested that the revised process had not led to a meaningful assessment of gender impact of policy. In addition, despite the claims made by officers in interviews, most impact assessments were still not available via a single point. There are only thirteen Impact Assessments published on the main equalities page of London Borough's website. Most were still only available via the pages containing documents for committee meetings. This means that for a member of the public to find an assessment of a policy they would need to know the name of the committee that considered the policy and the date of the committee meeting, then be able to navigate the council website to find the relevant page for papers for that meeting. This was the process I used to access impact assessments of the council budget. This creates barriers to scrutinising the impact assessment process for individuals or civil society groups. Such scrutiny is central to a 'participatory' mainstreaming process and a responsive process of regulation.

Of the impact assessments that were centrally available only two related to policies which might have a gender impact; the procurement of mental health advocacy services, and a policy to bring housing repair services in house. The first concludes that since roughly equivalent numbers of women and men access the advocacy service there are no gender implications. There is no recognition of the widely acknowledged relationship between gender and access to mental health services (Mackenzie et al 2006, Nan et al 2010). The second mentions the opportunities to provide access to construction trades for women in the in-house repair service as part of a section on increasing employment and training opportunities but does not detail how this might be achieved. Gender analysis was also limited in the EIAs published as part of the documentation for council meetings. For example the Impact Assessment of London Borough's 2013/14 Budget under the heading sex/gender simply states:

Women are likely to be disproportionately affected by welfare reforms. The actions set out in paragraphs 3.12-3.13 to combat the effect of welfare reforms and those under section 12 on Socio-economic disadvantage will also benefit this group.

In contrast to this short paragraph the document contains two pages on the impact on younger and older people, a page and a half on disabled people, slightly less than a page on BAME people, half a page on LGBT people and two pages on socio-economic impact in addition to a four page section on ‘wider context’ which discusses the impact of national welfare benefit changes but does not explore the gender impact of these changes. Overall the Impact Assessment process does not appear to have led to any meaningful consideration of gender impact of policies in London Borough. The most significant reason for this appears to be the way in which equality is framed within the Borough, primarily in terms of socio-economic inequality, but with limited analysis of how socio economic inequality is gendered. This will be considered in the next section.

6.5 Framing of equality

6.5.1 Framing in council documents

Council documents from London Borough place equality work within the authority firmly in the context of tackling socio-economic inequality, which is the Council’s main political priority. London Borough’s main aim of tackling poverty and reducing socio-economic inequality is repeated in a series of policy documents and strategies and at multiple points on the council’s webpages. The opening statement of London Borough’s ‘Equality and Diversity Policy’ frames equality in terms of achieving these social justice outcomes:

The council’s over-arching vision is to make [London Borough] a fairer place by cutting the number of people living in poverty, narrowing the gap between rich and poor and making a difference to the lives of those who most need our help.

This model of equality as redistribution is combined at points with aspects of equality as an issue of recognition. The ‘Charter for Fairness and Equality’ starts with recognition with the opening sentence; ‘[W]e recognise, respect and value [London Borough]’s diverse community’ and moves to ‘we are committed to creating a borough where children and adults are free from poverty’, which would require a redistributive approach. Although some of the language draws on concepts

of diversity – discussing the need to identify understand and respond to the ‘different needs and experiences of our community’ these are placed within a context of the inequalities that people may face rather than simply describing diversity as something to be celebrated or managed. The Borough places equality of outcome at the heart of this charter with a commitment at one point to ‘narrow the gap in outcomes on the things that matter’ and at another to ‘secure fairness and equitable outcomes’. In London Borough the term ‘fairness’ in council documents is strongly associated with the borough’s Fairness commission (see below) and appears largely to relate to addressing socio-economic inequality and its consequences at a structural level.

In 2010 the incoming Labour council administration established a ‘Fairness Commission’ with the aim of exploring how to make London Borough a fairer place for those who lived and worked in the Borough. This commission drew on the findings of research by Wilson and Picket (2010) which argued that socio economic inequality had as significant an impact on a range of social issues including health, educational outcomes and crime as absolute poverty. The Fairness Commission therefore focussed on the gap between rich and poor in London Borough. The Commission recognised that many of the causes of inequality in the Borough were outside the Council’s scope for action. The council had no control over national taxation or spending rates and could not impose pay policies on private companies based within the Borough. However the commission made a number of recommendations where the Council could have an impact such as paying the London living wage to all staff, including a requirement to pay the London living wage when commissioning external services and enforcing a 10:1 ratio between the pay of the lowest and highest paid council employee.

The recommendations of the Fairness Commission informed the Council’s five corporate priority areas: decent, suitable and affordable homes, lower crime and anti-social behaviour, breaking the cycle of poverty, best start in life for children and healthy, active and independent lives. As described above these corporate priority areas provide the structure for the Council’s Single Equalities Scheme, which sets out a range of equality issues in each area and sets a smaller number of Equality Objectives that are seen as achievable for the Council in the short to medium term. The origins of the Equalities Scheme in the conclusion of the Fairness Commission

provide a strong socio-economic focus but the Scheme identifies particular ‘equality groups’ such as disabled people or members of minority ethnic groups that may be particularly affected for each priority area, combining redistribution with recognition of the different needs of the diverse communities in the Borough. However there is little focus on gender equality within this scheme.

6.5.2 Framing of equality by officers

While London Borough’s published documents attempt to combine equality of recognition and redistribution, interviews with councillors and council staff revealed a tension between these two approaches. The Director explained that within the authority people talked about both ‘equality and fairness’ but that there was a difference in how these terms were used and understood. Some people used them interchangeably. Some used ‘fairness’ to refer to work to tackle socio economic inequality (presumably following from the Fairness Commission) and ‘equality’ to refer to other equalities work. Some defined equality in terms of socio economic inequality. She argued that when people used the terms within the authority it was not always clear what they meant.

She described the approach among equality officers as divided with some focussing on socio-economic inequality and others on protected characteristics. This split was evident in the two officers interviewed. One argued that the focus on ‘protected characteristics’ in the PSED was a ‘blunt tool’ for getting at socio economic factors which should be the primary focus of equality work. The other argued against this emphasising that equality was more complex than simply socio economic factors:

In terms of the education and achievement agenda it is seen as if you fight poverty and if you improve outcomes for low income families then a rising tide will cover all needs. The reality is that the equalities landscape is more complex than that (Equality officer).

The Director argued that while the council was very clear about the importance of equality ‘in reality there is still quite a lot of struggle around specific areas’ giving the example of the Director responsible for another service:

[another Director...] doesn’t believe in equality particularly [...] she thinks a rising tide carries all ships [...] so she is generally resistant to focussed

activity, that is focussed on specific groups. So if you were to ask her about schooling she thinks that what you need is good teachers [...] so if you get good teachers you will benefit everybody, BAME kids will do better, disabled kids, boys, girls, that would be her view (Director).

The Director clearly did not share this view arguing that if you ‘drilled down’ into schools where performance had been raised there will still be evidence of different outcomes; some of these would be between socio economic groups and some based on ethnicity. Again gender was not mentioned as a relevant factor.

6.5.3 Understanding of equality among councillors

Similar divisions were evident among councillors. The former Leader of the Council discussed equality primarily in socio-economic terms, arguing that this was often more significant than other equality issues:

I think we took more of an economic look because of the mood of austerity, because of the cuts to benefits [...] We felt that was sort of the umbrella because in [London Borough] there are people who...there may be some ethnic diversity but they are not necessarily ‘in need’ so we did take as a sort of most important priority financial hardship, so that was looking at the bedroom tax, those sort of effects so it wasn’t looking at it in terms of ethnicity or other.... Although we do know that people with disabilities have been affected by a whole lot of policies from this Government (Former Leader).

In contrast the council’s Equalities Champion (the councillor who was responsible for promoting work on equality within the council) suggested that London Borough’s over riding focus on socio economic policy had meant that other equalities issues had not been recognised:

The Fairness Commission I suppose had an emphasis on income inequality and whilst we came up with some very good recommendations in terms of the Fairness Commission we can’t just say that is the be all and end all when it comes to equalities [...] What was happening was that because of the Fairness Commission when people were doing equality impact assessments they were doing socio economic impact assessments so you didn’t really

see....[other equalities] what we needed to do was to better define the tool in terms of what people needed to be looking for. So they had to explicitly break down the equality groups, you know. Break down each one and say how each policy effects each different group (Equality Champion).

These two approaches were evident in the issues raised by the two women in interviews. While the former leader highlighted the impact of welfare benefit cuts and job losses on the poorest people in the borough, the Equality champion discussed stop and search policy, racist and homophobic harassment and complaints of workplace discrimination by BAME and LGBT staff. It is worth noting that the officer and councillor who framed equality primarily in terms of redistribution were white. Both the Director and the Equality champion, who also raised issues of recognition, were Black. However another officer who raised issues of recognition was white. With such a small number of interviewees it is impossible to reach any definite conclusions about the link between ethnicity and framing of equality but this may be a factor. Both the equality officers interviewed were men (women officers were unavailable to interview as they were on maternity leave or off sick during the research period). This might explain the lack of focus on gender equality. However gender equality was not mentioned as a priority by the Director or the two councillors all of whom were women.

As with the documents published by the council, neither those councillors with a focus on socio economic issues of redistribution nor those with a focus on the recognition of the needs of specific equality groups appeared to have a particular focus on gender. Gender equality was rarely raised in interviews with either councillors or council officers, except in response to a direct question. The former Leader of the Council discussed the impact of welfare benefit changes on women in response to a direct question. The Equality Champion only mentioned gender in relation to tackling the disproportionate number of young black men who were stopped and searched by the police, but framed the issue as primarily one of race, rather than the intersection of issues of race and gender. While both officers and councillors raised issues that would have significant gender impact, particularly low pay, housing and welfare benefit changes these were framed as issues of socio economic inequality and/or ethnicity or disability rather than gender. The only council officer interviewed who discussed the gender impact of council policies at

any length was a (male) trade union representative, who did not work in the equalities team and who praised the council's decision to introduce the London living wage for the benefit it brought to low paid women workers.

Although London Borough's Impact Assessment model includes human rights this did not appear to be significant in the way equality was framed within London Borough. It was rarely raised in discussions by either officers or councillors apart from in passing in when describing the process of IAs and then only in terms identifying potential breaches of the 1998 Human Rights Act which would then be flagged up with the legal team. The only exception to this was one officer who was anxious that colleagues carrying out IAs would not have sufficient understanding of human rights to be able to make a judgement about whether a policy was compatible with the Human Rights Act:

I work with a team that does human rights all the time and I go and speak to them about something and based on that I will be able to make a value judgement about whether or not something is a risk, but it is a really.... I wouldn't trust my judgement and you are asking people who have zero background in this area to make a judgement (Equality Officer).

The Human Rights element of the Impact Assessment process focussed on legal compliance with the Human Rights Act rather than using human rights concepts in any broader way. Of the Impact Assessments analysed none identified any possible breaches of the Human Rights Act. Where there were potential human rights issues (for example with the advocacy service for people detained under the Mental Health Act) these were not identified. This suggests that human rights were not considered particularly significant, except where there was a potential risk of legal challenge.

As Fraser points out gender equity involves both issues of recognition and redistribution (Fraser 1997). In London Borough the dominant framing of equality was around redistribution. While this was challenged by some officers and councillors they had not been able to shift the frame to include issues of recognition. Both the recognition based framing of equality and the redistribution based framing of equality largely left gender out of the frame altogether. The impact that this had on equality work, with little meaningful consideration of the impact of policy on

gender equality, reinforces McBride and Mazur's conclusion on the significance of framing: 'the frame shapes the outcome' (McBride and Mazur 2010 p12).

Aside from the way in which equality was framed within London Borough there were a series of other factors affecting equality work in the authority. These included the way equality officers perceived their role, the relationship between councillors and officers and the changed national context. The absence of pressure from civil society groups also appeared to be a significant factor.

6.6 Role of equality officers

In common with County Council and City Council day to day responsibility for assessing the equality impact of policies rested with the team or department responsible for developing those policies. The equality officers and the Director were clear in interviews that their role was to help and support colleagues rather than do the work themselves:

Broadly, the majority of stuff is we are meant to be there to help people a bit but to be independent. They are meant to do most of this stuff themselves (Equality officer).

The Director saw this approach as part of making equality a 'day to day' issue, 'part of the job'. Although she did not use the term 'mainstreaming', her description of the need to ensure consideration of equality was part of the process of policy development from an early stage appeared to fit with a mainstreaming model. With shrinking council resources leading to job losses in the equalities team, making those responsible for developing a particular policy consider its equality impact was also a practical necessity. The size of the equality team (four people also responsible for policy), meant that it would have been very difficult for them to carry out impact assessments themselves even if they had wanted to.

Despite their repeated insistence on the strong commitment to equality throughout London Borough, equality officers did not see the process of mainstreaming as straightforwardly unproblematic. They were all open about the generally 'mixed' and sometimes 'poor' quality of impact assessments carried out by colleagues outside the team. The Director responsible for equalities admitted that there was

often a gap between high level policy commitments to equality and practice on the ground:

Say if you were an inspector, I would tell you that we are very clear, we've got corporate priorities, within that we have analysed what the inequalities are within our corporate priorities as part of our equality objectives and that trickles through to the organisation into practice on the ground. [....]. In reality there is quite a lot of struggle around some specific areas and to get the consistency of practice (Director).

However proposed solutions to this problem varied significantly and could be divided into two broad groups. One group of solutions might be described as broadly bureaucratic, focussing on improved processes to ensure people met their legal obligations. The other approach focussed on making a stronger case for equality in order to win 'hearts and minds', using the PSED as a tool to enforce compliance where this was not possible. Among those with a bureaucratic approach one officer explicitly argued that

There is a need for more bureaucracy in the way we do things a lot of the time because of the slap dash way that people generally operate. (Equality officer).

He also emphasised the lack of expertise among many of his colleagues in dealing with equality, which he believed was a complex area. In contrast the Director appeared focussed on outcomes, arguing that the problem was too much bureaucracy which did not 'speak to people's good intentions':

It is not that people don't have good intentions, but they can't... you have to try to enable them to see the connection between what might seem like a bureaucratic process. [...]I think one of the problems with this whole agenda is that equality professionals have generally done a dis-service to equality because they have so bureaucratised it [...]people's natural good intentions with what they are doing would have a greater effect than to produce grids and all sorts of things (Director).

She saw the expertise of the equalities team as a double edged sword. Used correctly it could be a resource to enable others to understand the equality impact of their

work; used incorrectly it could act as a barrier to change. These difference in attitudes between her and the equality officer were also observable in their attitudes to the PSED. The officer with the ‘bureaucratic’ approach described the PSED as ‘necessary’ in order to improve evidence based policy making arguing that ‘equality legislation has to be bureaucratic’. The Director also saw the PSED as ‘necessary’ but emphasised its role as a lever for change, describing a ‘carrot and stick’ approach of winning hearts and minds and strategically using the threat of judicial review when necessary. In common with all the officers and councillors at London Borough she felt that the actual risk of judicial review was low, since most civil society organisations lacked the resources or knowledge to use the law. Nevertheless where it was not possible to win support for work through a ‘hearts and minds’ approach she used the fear of judicial review in order to persuade colleagues to act:

All in all it [the PSED] is weak, but none the less what I would see as part of my job is to give people within the organisation the impression that it has more teeth than it has, to be honest, you know I would see that as part of my job (Director).

She was the only council officer in London Borough who described using this tactic, although as I will show it was used by some officers in all three case study authorities, and by some of the equality officers from outside the case study areas. The division between officers focussed on bureaucratic process and officers focussed on outcomes was common across all case study authorities. In London Borough and the other two authorities the officers focussed on process appeared similar to the ‘diversity professionals’ described by Kirton Green and Dean (2007), in that they came from other posts within the authority rather than a background in equality activism. In all three authorities this use of the threat of judicial review as a lever for change was one characteristic of officers with an ‘outcome focussed’ approach who combined commitments to a ‘long’ agenda of transformation with a focus on short term objectives; a pattern similar to that observed by Cockburn (1989). This division and its implications will be discussed in more detail in the analysis at the end of the case studies.

In London Borough other council officers mentioned the fears that some of their colleagues had about the risk of judicial review but did not appear to see their role as

using these fears in order to bring about change. In one case an equality officer talked at some length about how he calmed colleagues' fears by pointing out that people were unlikely to bring judicial review. This suggests that the tactic used by the Director was a personal one, rather than something she had encouraged the equality team to use.

6.7 Role of councillors

Both officers and councillors in London Borough emphasised that the council's commitment to equality was shared by councillors as well as officers. The degree to which the equalities agenda at London Borough was led by officers or councillors was difficult to determine. The Equalities Champion described her role as a 'critical friend' to both officers and other councillors. She situated herself as having an insider/outsider role suggesting it was her strong background in equalities that enabled her to lead the equalities agenda, rather than being led by others:

I come with an equalities background, I have been the director of two independent race equality councils and have done a number of things in equalities as a consultant so that helps to get very quickly into the whole equalities agenda. Otherwise you could [...] be led rather than leading. I am trying to [...] lead the equalities equality agenda rather than being led by officers (Equalities Champion).

In interview the Equalities Champion described how she had used the scrutiny function of the council to ensure that equalities was included as part of the Communities Review Committee. This had led to a review of equalities work within the council including an external assessment of impact assessment methodologies that had led to changes to the way impact assessments were carried out and published. However the Director described the changes to equalities strategy and practice as her own initiatives and appeared to see the Equalities Champion as playing a 'useful' rather than leading role:

The Equalities Champion had a blast at the members for not doing their bit properly; they got into a bit of a spin. She is one that goes for the bureaucracy, but she is useful for giving people a bit of a kick so she did that. (Director).

She described other councillors as committed to equality ('they mean it') but complained that it was often a 'struggle for them to give effect to it in their roles', citing situations where councillors had not raised the lack of an Impact Assessment of various policies when the policy was being discussed. Again this suggests that she saw equality work as being led by officers rather than councillors. The Equalities Champion had proposed a civil society forum on equalities. This proposal had been successfully resisted by the Director (see civil society section below). In this case at least the officers rather than councillors appeared to have the power to set the agenda.

6.8 Impact of a change to national context

Throughout the interviews in London Borough councillors and officers discussed equality, and socio economic inequality in particular, not only in terms of the political priorities of the council but as a response to the policies introduced by the 2010 Coalition Government. The Director argued that London Borough's commitment to equality was long standing, but had been given 'more energy' by the election of the Coalition government in 2010, which made it easier for Labour councillors in London Borough to highlight inequality as a way of defining themselves against the national government:

Because we are Labour, and strongly Labour and are opposed to the current central government administration it [change of government] actually gives us more energy. Our politicians will definitely take the opportunity to be distinct from this... defining themselves against.... So we will keep the socio-economic and so on. Whereas I think if it was a Labour government that had got rid of [the socio economic duty] (laughs) it would have been harder for councillors to say, 'typical you don't care about the poorest people' (Director).

All the interviewees raised negative impacts on equalities work that had happened as a result of Coalition policies. The main areas of complaint were the impact of spending cuts and the changed approach to equality. Local authorities have faced significant cuts to their budgets leading to substantial cuts to local services. These cuts overshadowed all the interviews that took place in London Borough. Concerns

included a reduction in the ability of the council to deliver on its aim to reduce inequality and fears about the future;

We are still not really through the cuts of the last 2-3 years and the budget in 2015 is going to be very hard. So it is looking very, very difficult for local authorities from then. I think that the figure is £50 million per local authority. So how that will fall because given that council services do already [...] serve the most vulnerable [...] it is all that knock on stuff you don't do [...] so it is all of the lack of community cohesion, social inclusion issues and I think we will only see the impact of that in 2016/17 (Former Leader).

In addition to cuts to services the equality team was facing shrinking resources in terms of staff and budgets:

As a team we have gone down from having six people in the policy team to having four in the [combined] policy and equality team so it is quite a significant shrink [...] we have got rid of our team of twenty people looking at equalities in education down to two so that is likely to have a big impact. (Equality Officer).

At a time when all council workers were overstretched, work on equalities was in danger of being seen as simply another burden:

I think officers were trying to, from their perspective when they were suffering cut backs and having less staff to do things they were trying to just basically slip through things that were going to reduce the burden of work on them, which is understandable, but the fact is that the people who were going to lose out, there would be equality strands who would suffer for that. (Equality Officer).

Activities such as data collection, which ensured that equality officers had the information needed to do their job were being given reduced priority;

There has been a move to marginalise the collection of ethnicity data and language data, so it is not being resourced as it should so I can't get hold of the information (Equality Officer).

Lack of data collection was not simply an outcome of lack of resources; it was also a result of a change of policy from central Government that reduced the obligation on public bodies to collect and publish data. The former Leader of London Borough observed that this had led to officers ‘slacking off a bit’ on collecting data. She also complained about the lack of data available from central Government agencies:

Things like the Office of National Statistics is not collecting data on a number of different benefit entitlements so whereas before we had quite granular detail about which groups were receiving different benefits and so on, now it is very much...it does mask where certain groups have a number of different equality issues within their lives that they are dealing with.

(Former Leader).

Alongside the cuts officers and councillors commented on the changed approach to equality from central Government. For councillors this was expressed in largely political terms as part of a wider criticism of the Government. Officers were more likely to raise the detail of changes to policy, for example the reduced need to collect data described above or the ‘shockingly negative’ outcome of the review of the PSED. However while equality activists and civil society groups in the borough complained of the ‘lack of leadership’ from the Coalition on equalities this was not raised by officers at London Borough, perhaps because of the strong leadership on equalities within the council. The Director described the Government’s attitude to equalities as ‘annoying’ but concluded that ‘in terms of practice on the ground I don’t think it has made much difference here’. In spite of her claims it did appear that the Coalition Government’s attitude to equality had made a significant difference in London Borough. Not only were there the changes to data collection policy described above but the decision to focus on a few equality objectives rather than more comprehensive action plans was only possible because of the changed specific duties introduced by the Coalition. This is in line with the conclusions of earlier studies on mainstreaming that political context can have a significant impact on the form that mainstreaming takes (Woodward 2003, Verloo 2005, Walby 2011). In addition the reduction to the role and budget of the EHRC under the Coalition meant that the Commission was not perceived as either a source of support, or pressure as described below.

6.9 Role of the EHRC

There were frequent critical comments about the EHRC from all officers and from the Equality champion. Officers complained about the lack of support and information that the EHRC was able to provide. Some were simply dismissive, describing the EHRC as ‘poor’ or ‘not helpful’. Others were more sympathetic to the impact that the cuts to the EHRC budget had had on its ability to provide support while still concluding they were ‘not important’ politically:

The rug was pulled out from under their feet at a time when we really needed clear guidance. The fact that they weren’t allowed to do statutory guidance, the fact that they were cut to smithereens, yeah, even on those obvious aspects on their provision and their ability to support and challenge they were weakened. But also if I sent in any questions at that time I rarely got a response. Now I have very little awareness of what they can do, the website is there, technical guidance has been helpful. Everyone knows politically they are not important (Equality Officer).

For those with a leadership role (the Director and the Equalities Champion), more worrying than the lack of support was the lack of scrutiny or external pressure provided by the EHRC.

The EHRC is absolutely rubbish. You know at no point have I ever, ever thought the EHRC would be checking me. Absolute rubbish (Director).

We invited the Equality and Human Rights Commission several times to come and talk to us or we would talk to them. They couldn’t respond. Not once could they respond to anything. We asked them to look at us, to look at our equality and human rights assessment to challenge us as to whether we were doing.... They couldn’t respond at all [...] in reality nobody is examining us, nobody is questioning what we do, nobody is checking we meet any standard or quality in terms of what we do. It doesn’t feel like there is any external pressure. We are just.... self-regulating. (Equality Champion).

Both women compared the lack of scrutiny from the EHRC with the ‘heat’ or ‘fear’ felt from the previous commissions, particularly the Commission for Racial Equality.

In terms of before you felt a bit more heat from the CRE and the Disability Rights Commission, you did feel heat from them (Director).

I have worked in the field of race equality when the Commission for Racial Equality was still there and public bodies were fearful of the Commission for Racial Equality launching an enquiry into them (Equality Champion).

It was clear that both wanted external pressure from the EHRC in order to strengthen their position in persuading colleagues to give work on equality a high priority. The lack of pressure meant that this process was harder. A strong regulatory body was identified as crucial for reflexive regulation in initial proposals for an equality duty (Hepple et al 2000). The experience in London Borough suggests that the lack of this body not only leaves public authorities largely self-regulating but also reduces the ability of officers inside these authorities to ensure the processes of internal deliberation which is central to reflexive regulation.

6.10 Impact of Civil Society Groups

McCradden described a ‘well informed and truculent civil society’ as a ‘fundamental precondition for the operation of reflexive regulation’ (McCradden 2007 p266). This truculence did not appear to be widespread in London Borough: there was general agreement among councillors and officers that the authority did not experience sufficient pressure on equalities issues from civil society groups. The Director was particularly scathing:

What about external pressure?

What external pressure? (Laughs)

Unions, lobby groups?

Rubbish, it is rubbish. The only people who put us under pressure with the duty is [disability organisation....]. Nobody else. [...] we have organised training for them and different things in order that they can put us under pressure, but we don’t feel the heat from them in anyway shape or form over

the duty. [...] [disability organisation] will challenge on the grounds of the equality duty and that is helpful, you know...[...] But the sense of being put under pressure by the people affected, [...] doesn't happen. Which I think is a shame (Director).

Unlike the other two case study authorities London Borough had a large number of national organisations based in the borough. These organisations were more likely to have the resources to lobby, which was reflected in the Director's comments:

London boroughs get heat from national organisations as well as local ones because of where we are. [Pan London race equality organisation], feel a bit of heat from them sometimes. So yeah, there are a few national ones that you feel heat from (Director).

However organisations with a pan London or national focus tended to concentrate their efforts at the London Mayor's office or Westminster government rather than local authorities. Concerns about lack of pressure from civil society groups were combined with fears that more prosperous residents in the borough were able to lobby effectively in their own interests. One equality officer described the problems caused by 'the pressures of having to deliver outcomes for better represented and for groups that are better at advocating their own interests' arguing that this is often 'at the expense of other groups'. This could lead to tensions between a commitment to provide services to the poorest and most vulnerable groups in the borough and the political pressures created by lobbying by 'people who basically don't really need it, because they are good at getting in there and getting what they want'.

While officers were more likely to complain about lack of pressure from civil society the Equality Champion, a councillor, was more sympathetic, arguing that it was a consequence of the lack of structures in place in the borough to support civil society engagement:

There are very few [civil society groups] challenging inequality [...] It is not that people don't want to challenge us... It is just that there is no mechanism. The structures aren't there. The groups that could be there just don't have the funding, the resources, and the capacity (Equality Champion).

She argued in favour of an ‘Equality Forum’ that would bring together civil society organisations to enable engagement with London Borough and encourage civil society pressure. However the Director responsible for equality resisted this idea, arguing that it would be a waste of time because the organisations would not put the authority under meaningful pressure:

I and most other people have resisted the idea [to set up an equality forum.....]. We had that before and it was worse. It is not that it isn’t possible. I have no faith in the people we have got to actually do it. [...] If we paid for it, if we actually enabled it and it would genuinely have what it takes to put a local authority under pressure then it would be fantastic. I would rather get on with my day job and get on with practical concrete things because there is no point in attending meetings where people have a lack of structural approach (Director).

It is clear from this comment that structures for engagement only work if they are seen as useful by both sides. The Director in this case believed that, judging from previous experience, the civil society groups locally would not be able to make use of the group in a ‘structured’ way. This did not seem to reflect a desire to avoid external pressure, but a concern that an equality forum would not provide meaningful pressure but would be a ‘talking shop’. At the time the research was carried out there was no ‘equality forum’ in London Borough, suggesting that the Equality Champion did not have the power to establish such a group in the face of opposition from senior staff.

There had been some issue specific groups in London Borough in the past but these had been shut down. For example the disability rights organisation in the borough had been funded to run a network to support London Borough to meet the obligations to consult in the Disability Duty. This had been closed down shortly before the research took place as part of the move to a single equalities approach. However the organisations involved in the network were still meeting informally and the disability rights organisation that had hosted the network was clearly well connected with the council. The Chief Executive of this group had been part of an informal grouping of civil society organisations that had first made the proposal for an equality forum to the Equality Champion:

I was arguing for a long time that what we needed was an equality forum to bring together all the equality groups to be able to influence the council and to strategically monitor all its activities around performance [we met with the Equality Champion] who is brilliant on equalities and suggested it [...] a number of us got together and put together a paper. [...] But we have never actually had a response [...] and I haven't had the time to pursue that (Chief Executive, disability rights organisation).

This account highlights a number of issues relating to civil society engagement with public bodies. The Chief Executive was part of an informal network of civil society groups, which worked together to make a joint policy proposal, demonstrating the importance of social capital. There was a potential 'critical actor' (Childs and Krock 2009) in the Council (the Equalities Champion) who was open to the idea and raised it internally. She had enough power to get the issue on the agenda of the Council, but lacked sufficient power to ensure the policy was enacted. Comments the Equalities Champion made in her own interview suggest that this may be because she was personally extremely overstretched, with paid work and other voluntary responsibilities on top of her council duties, meaning that she lacked the time for sustained campaigning on the issue. She was potentially a 'critical actor' in that she had the commitment and the position to put issues on the agenda, but she lacked either the political capital or the resources in time to make change happen.

The failure to establish the forum may also be because its proposed focus on the protected characteristics of the PSED might not align closely enough with the main priority of London Borough which was poverty and socio economic inequality. The way equality was framed was around this priority meaning the forum did not become a priority for equality work. The Chief Executive of the disability organisation lacked the time to pursue the issue or to lobby further. This lack of time was a result of lack of resources within the organisation to employ somebody to carry out the work, or take on other work from the Chief Executive to enable her to do it. The organisation's budget from London Borough had been cut substantially from £300,000 to £40,000 a year and the staff team had shrunk. Throughout the interview the Chief Executive made a series of comments about networks she was no longer part of and issues she was not able to lobby on because of lack of time. With these pressures on her time it was difficult to build a successful campaign. She argued that

public spending cuts had had a double effect on her organisation's ability to put pressure on the council; not only were she and other staff overstretched leaving little time for lobbying, but also in the climate of cuts public criticism of the council was seen as too risky:

It is very difficult because [we] are also seen by some.... We are campaigning organisation and some don't like the fact that we challenge really [...] it is very difficult for an organisation like us which is already being denied funding to challenge the local authority

This 'fear of biting the hand that feeds' was recognised by the former Leader of the Council who argued that civil society organisations moved into receiving funding from local authorities to provide services 'there is a tension between that and criticism' which led to less challenge from civil society. Even if, as Rumbul (2013) argues, organisations that are funded by state bodies have an advantage in building relationships with those bodies, this appears to come at a price as these organisations become unwilling to criticise their funders, a process observed by Lang (2007).

This tension was particularly visible when it came to using the PSED. The Project Officer at the Pan London Race Equality Organisation argued that many of the organisations she supported hesitated to use the law because it 'might get public authorities 'backs up'. Taking a local authority to court was simply too much of a risk for most of the small organisations that she worked with. Even if they had been willing to take the risk none of them could afford the costs of legal action. Most found the law complex and difficult to understand. None of the civil society organisations interviewed in London Borough had taken, or threatened to take a judicial review case against London Borough. However the Pan London Race Equality Organisation had used the threat of legal challenge and supported others to use the threat in other boroughs with some success.

One example involved them supporting a Tamil community organisation which had been told it could not allow children into a community centre used by the organisation to hold English conversation classes. The justification for this decision was that the centre was also used by a support group for people with mental health problems and that this created an issue for safeguarding the children concerned. The race equality organisation questioned this decision on the grounds that an equality

impact assessment of the decision had not been carried out, and that the Tamil women would not be able to access the English language classes if they could not bring their children. Their initial approach to the council officer responsible was rejected. They then approached a local councillor who put them in touch with a more senior commissioning manager who was sympathetic and commissioned a review of the decision. Eventually the ban on children was overturned. The project officer from the race equality organisation was certain that this result would not have been possible without the threat of legal action under PSED. However the PSED itself was not enough to guarantee that the equality impact of policy will be considered. The officer responsible had not carried out an impact assessment. Neither the initial complaint from the Tamil group, nor the intervention by the pan London race equality group made this officer reconsider. The policy was only reviewed when the Pan London group identified and enlisted the help of a supportive councillor, who raised their case with a senior manager, highlighting the importance of critical actors. At this point the PSED became a useful tool to persuade the senior manager to review the decision. It was the combination of the law, an experienced advocacy group and sympathetic individuals within the council that led to the change. Although the duty was useful in this case the project officer still regarded it as ‘weak’, because it was hard to enforce without these sorts of networks.

Other organisations in the Borough used the PSED in other ways, for example through the analysis of the equality impact of various London Borough policies and practices. The union official interviewed gave a series of examples of his use of the PSED including to argue successfully for a review of the high levels of disciplinary and grievance procedures taken out against and by Black, Asian and Minority Ethnic (BAME) and disabled staff. He argued that London Borough was ‘good on equalities’ and on the production of EIAs but that there was sometimes a gap between policy at a senior level and practice on the ground, which had led to problems for disabled and BAME staff. However because London Borough was also good at publishing data it was possible for unions to highlight these problems, which had led to London Borough instigating a review. In this case he had expertise in the law gained through his trade union role. London Borough was open to external pressure through the union, which was recognised and consulted, and the case that

the union was making for a review chimed with the borough's strong public commitment to equality for its staff.

Following an Equality Impact Assessment carried out by a local group of a national feminist organisation in City Council (see City Council case study) the national organisation encouraged other local groups to carry out similar projects in their areas. One such project was undertaken in London Borough by a local group that covered a large part of London. This group carried out an assessment of the impact of spending cuts on women in London Borough. Unlike the City Council impact assessment this report did not appear to have had a significant impact on the work of London Borough. None of the council officers or staff raised the report, or any other work of the group in interviews. When asked about it directly equality officers appeared unaware of the report, one saying it might have been 'before my time' and another saying 'I think I saw something but I don't know much about it'. Both the Director responsible for equalities and the former Leader of the Council were positive about the report, but saw it as a 'resource' or an opportunity to raise the impact of the cuts nationally rather than as a source of pressure on London Borough itself:

We found it [the impact assessment] useful and helpful. Didn't feel it as a pressure though, it was more like a resource and it was a helpful resource because that is where we are at as well, conscious that the people who are hardest hit are those with protected characteristics (Director).

It is clear from these comments that the issue raised by the group (the impact of spending cuts on women) did align with the political priority of the council to oppose national spending cuts. However unlike the local group in City Council, the local group that produced the report on London Borough did not have an on-going relationship with the council either before or after the report was produced. Although some members of the group lived in the borough, the group's regular meetings and public events took place in other parts of London. Since the launch of the report the bulk of the work of the group has been on other issues such as the representation of women in the media and organising a local mentoring scheme, suggesting that the priorities of the group had shifted. It did not appear that the group saw the PSED as a useful tool for their work because they were not primarily focussed on the policies

and practices of public bodies. This is in line with the finding by the RNGS that the priority given to an issue by the women's movement is critical to successful engagement with state institutions (Mazur and McBride 2014). Apart from this report there was no mention of any contact or work with this group by staff or councillors at London Borough. While in City Council the local group's report was seen by both sides as one element in an ongoing lobbying relationship with the Council, in London Borough the report was seen as a one off intervention, which did not build on an existing relationship, or form the basis of the start of an on-going one. Without such a relationship the impact of work of this type is likely to be limited.

Other organisations in London Borough did not use the PSED at all. The Chief Executive of the disability rights organisation believed her organisation had requested an Equality Impact Assessment in the past when there had been cuts to their funding but explained that this was before she had taken up her role. She herself said she 'hadn't thought' of using the duty, and in discussions it became clear that she did not have a great deal of knowledge of what the PSED was or how it could be used. Although she had a great deal of experience in lobbying the council, saw her organisation's role as including campaigning for all disabled people in the borough, and was part of a network of connections with councillors and other civil society organisations she lacked the specific knowledge about how the law worked which was needed to be able to use it effectively.

In an attempt to increase knowledge of the PSED among civil society groups London Borough had funded a local social enterprise to provide training courses for civil society groups on the PSED. However it was clear from the interview with the Chief Executive of this social enterprise that she did not recognise that London Borough was funding the training in order to encourage challenge. Asked about whether the training had resulted in any groups using the PSED to challenge London Borough she replied:

They [London Borough] are really open, they want to help us, they want to hear from the community so I have never needed to... [...]... but because there is a dialogue I don't think there has ever been a push.

Although the social enterprise described itself as an equalities organisation the bulk of its work appeared to be service provision, providing training for ‘marginalised communities’ primarily through media projects rather than challenging the council on equality. In addition the social enterprise was entirely funded by London Borough making any sort of direct challenge extremely risky. Throughout the interview the Chief Executive of the social enterprise repeatedly praised London Borough for its strong track record on equalities, essentially arguing that there was little need for civil society to put pressure on the council. While other civil society groups also praised London Borough for its commitment to equalities they were also critical of areas of shortcoming suggesting that her comments were not just a reflection of the fact that London Borough did have a strong track record but also a sign of her unwillingness to criticise her only funder. It appeared unlikely that this organisation would produce the kind of ‘heat’ that the Director said that she wanted.

There were a large number of national and pan London civil society organisations housed within the Borough. Many of these were large organisations with experienced public affairs teams. However these organisations rarely worked at a local authority level and did not take part in informal networks of borough based civil society organisations. One of these organisations was an organisation representing the women’s voluntary sector. Although this organisation had well developed lobbying skills and political networks and provided services to women’s organisations at a local level, its lobbying and influence work was nationally focussed. There was no broad based women’s equality organisation in the Borough and London Borough did not support any specific mechanism to consult with women. The authority did not appear to receive any sustained pressure on gender equality issues, although domestic and sexual violence service providing organisations did lobby in support of their own services.

6.11 Conclusions

Unlike the other two case study authorities, where equality was largely framed in terms of issues of ‘recognition’ and focused on the ‘protected characteristics’ covered by the Equality Act, in London Borough equality was largely framed as an issue of ‘re-distribution’ with a strong focus on socio-economic inequality. The political priorities of the council leadership which had led to the Fairness

Commission, and the policy recommendations the commission had made, had more influence on the direction of equalities work than the PSED. This focus on redistributive equality was contested by senior staff within the council, and by some councillors but at the time the research took place these individuals had not been able to shift the dominant way in which equality was framed. London Borough had a long history of commitment to equal opportunities in their internal employment policies, and the PSED had enabled trade unions to successfully call for reviews of some discriminatory practices but aside from a small number of very specific equality objectives most pro-active work in the council was focussed on socio-economic inequality. Neither those who framed equality in terms of redistribution nor those who framed it in terms of recognition appeared to prioritise gender equality. Those who focussed on socio economic inequality did not appear to recognise the ways in which poverty is gendered. Those who focused on recognition, emphasising the ‘protected characteristics’ of the Equality Act prioritised race and disability. This may reflect the lack of sustained engagement between equality officers and women’s civil society actors. There were one off attempts by women’s civil society organisations to engage with the council, such as the report on the impact of spending cuts on women in London Borough, but these were not continued as the group moved to prioritise other areas of work. Civil society organisations lacked the resources needed for sustained lobbying or to develop relationships with council officers or councillors. At the same time the formal mechanisms for engagement had been ended by the council and there was resistance to establishing new consultative bodies.

Among officers there was a clear division between those with a process focussed approach to their work and those with an outcomes focussed approach. This was common across all three authorities. The process focussed officers appeared closest to the ‘diversity professionals’ described by Kirton Greene and Dean (2007) while the outcomes focussed officers were similar to earlier examples of ‘equal opportunities officers’ studied by Newson and Mason (1986) and Cockburn (1989, 1991). These groups approached the PSED in different ways. The process focussed officers were primarily concerned with ensuring London Borough met its legal obligations through bureaucratic compliance. The outcomes focussed officers saw the PSED as a tool which could be used to achieve particular outcomes. They used

the threat of judicial review as a lever to encourage colleagues to engage with equalities issues beyond simply carrying out impact assessments. This suggests that individual ‘critical actors’ can have a significant impact on the way in which the PSED is implemented.

As in all three case study authorities the impact of spending cuts meant that much of the work of assessing the impact of policy on groups covered by the Equality Act was focussed on cuts to services rather than any pro-active projects to reduce inequality. Impact assessments themselves often appeared perfunctory with little recognition of the gender implications of policy. There had been some changes to policy and practice as a result of impact assessments but these were limited to particular areas. The hope that the PSED would lead to a transformatory approach to equality appeared unlikely to be realised in London Borough.

Chapter 7: County Council – meeting our legal obligations

7.1 Background

County Council is a large authority in a county with a two tier system of local government. Within the county is a separate city council (not City Council in this study) which is a unitary authority. Nearly 90% of the population of County Council is white, in contrast with the city where less than 50% of the population is white British. The county has one of the lowest areas of social deprivation in the country. County Council is Conservative dominated.

For this thesis I interviewed three serving equality officers and a former officer who was not responsible for equality, but who had been involved in challenging the council using the PSED. I interviewed two councillors; the cabinet lead on equalities and the Conservative group whip who had a particular interest in equality and served as equality lead on one of the district councils. I also interviewed three civil society representatives, from a race equality organisation, from a LGBT organisation and from a human rights organisation. These were the main three organisations working on equality within the county. The race equality organisation and the LGBT organisation were the leading organisations in a consultative body established by County Council (see below). There was a local group of a national feminist organisation listed in the county, but they appeared to be inactive. They did not respond to repeated attempts to contact them and neither the equality officers nor other civil society representatives had had any contact with them.

Officers at County Council repeatedly described the council as ‘unusual’ among Conservative local authorities for its high commitment to work on equality. This was ascribed to the leadership shown by senior council officers. Among councillors equality was far more contested, with some showing a high level of commitment to equality framed in terms of individual equal opportunities while others were resistant to what they described as ‘political correctness gone mad’. Within County Council there was a strong emphasis on ‘business case’ arguments for equality, based on improving the delivery of council services. These were largely focussed around recognition of ‘diversity’ and ‘equal opportunities’ for individuals and reflected the framing of equality in the Coalition Government’s Equality Strategy.

Equality was framed in terms of recognition rather than redistribution: there was little acknowledgement of socio economic inequality within County Council's equalities strategy. Alongside this was a focus on County Council's legal obligations under the PSED, which were framed by management in terms of process rather than outcomes. As a result of this framing equality work within the council focussed on individual equal opportunities with no work to address structural inequalities.

Neither the EHRC nor civil society organisations appeared to be a significant source of pressure. As with London Borough the relationships between equality officers and civil society activists appeared to be weak. There did not appear to be any organised women's civil society organisations or networks engaged in lobbying County Council. This may explain the lack of focus on gender equality by both councillors and council officers. As with London Borough and County Council there was a split between officers with a process focus and those focussed on outcomes. In County Council the officer who was most outcome focussed not only used the threat of judicial review to encourage colleagues to take action but had orchestrated a challenge to the authority using the PSED.

7.2 Equality structures within the council

County Council has a combined equalities and human rights focus, which is the responsibility of the Policy and Partnerships Team within the Chief Executive's Department. At the time the research was carried out there were four people working within this team who had responsibility for equalities and human rights alongside other roles, making up the equivalent of one full time manager post and 0.75% of an officer post responsible for equalities and human rights. The actual time spent on this work varies according to the projects being carried out at any particular time. In addition there is a part time officer who works primarily on equality and human rights within the Adult Social Care department. All other departments have a departmental equalities group which is responsible for ensuring equality and human rights impact assessments are properly carried out, but these responsibilities are in addition to other roles within the department. Only adult social care has a dedicated equality and human rights post because the work of the department is considered to have particularly significant human rights implications, particularly the right to be

free from inhuman and degrading treatment, and equalities implications because of the proportion of disabled people who need adult social care.

Assistant Directors from each department form a Corporate Equalities Board that meets every two months. The Board is chaired by the Director of Adult Social Care, who has lead responsibility for equalities at a senior management level. I was unsuccessful in attempts to interview this person, possibly because I lacked personal contacts in the authority or because social care was undergoing a restructuring during the research period making it difficult for the Director to make time for interview. Also represented on the Board are the three Employee support groups that the council supports; the Black Workers Group, the Disabled Workers Group and the LGBT Workers Group. There is no specific group for women workers reflecting the lack of attention to gender equality throughout the council. Alongside the Board there is an Equalities Forum which is a group for staff with a professional responsibility for equality, diversity, community cohesion and human rights to discuss matters of interest, share ideas and highlight issues to the Equalities Board. There are time limited ‘task and finish groups’ established to deal with specific equalities issues as needed. There is also a group which brings together voluntary organisations to ‘provide an equalities challenge’ to the council. Among the councillors there is a cabinet member who is the strategic lead on equalities. She and all members of the cabinet are Conservatives. The Conservative group whip has responsibility for equalities in one of the district councils covered by the county, where he is also a councillor, and is active in supporting equality work within the County Council.

County Council has an Equality strategy covering Equality, Diversity, Community Cohesion and Human Rights which contains ten equality objectives (see section on impact of PSED). In addition to the Equality Strategy the leaders of all the party groups in County Council have signed up to the council’s Equality, Diversity, Community Cohesion and Human Rights Charter. This contains a series of broad aims, which are similar to the council’s equality objectives, although with slightly different wording.

During the research period County Council introduced a new impact assessment toolkit based on a model of combined Equality and Human Rights Impact Assessment. This aims to assess the impact of policies or practices on groups with any of the protected characteristics set out in the PSED and as ‘good practice’ other groups including gypsies and travellers, carers, asylum seekers and refugees, migrant workers, looked after children (children in the care of the local authority), deprived and disadvantaged communities and issues of social inclusion and community cohesion. It does not include socio-economic status specifically, although poverty might be covered by ‘deprived and disadvantaged communities’. The human rights assessed are those set out in the 1998 Human Rights Act so do not include socio-economic rights. Assessments are published on the council’s website with separate pages for each Department, accessible from a single point.

7.3 Impact of PSED on equality work

As with the other case study authorities both officers and councillors in County Council described the PSED as an opportunity to ‘re-think’ the approach to delivering County Council’s existing commitment on equality. Councillors described this primarily in terms of reminding people who might have ‘got used’ to equality to look at the issue again, while officers described it as an opportunity to improve practice. The most significant change appeared to be around the impact assessment process, which had been revised shortly before the interviews took place. Prior to this County Council had a policy of carrying out Equality Impact Assessments (which had existed as a result of the previous equality duties), but this did not always happen:

Before we have been letting things go to cabinet that did not have an EIA attached, if we are being truthful, and all reports now have to have an EIA attached and all cabinet members are advised to comment where appropriate.
So I think it is a more heightened agenda (Equality Officer).

The inclusion of human rights in the revised impact assessment process was the result of a proposal by a group of officers who had been tasked with exploring how County Council could meet objective 8 of the council’s equality objectives: to ‘enhance understanding of equality, diversity, human rights and community cohesion issues’. These equality objectives were produced in order to meet the council’s

obligations under the specific duties, so the inclusion of human rights can be seen as an indirect result of the PSED.

Despite the revised impact assessment process equality officers still described the quality of EIAs in County Council as ‘varied’. One officer claimed that she could tell ‘if the officer had only spent an hour on it’ and that although these poor quality assessments should not get through the departmental equalities groups ‘I think in some departments maybe they do’. At the same time all equality officers also gave examples of what they described as good impact assessments which had led to significant changes in policy. In one instance the council reviewed a decision to cut support for work with gypsy and traveller women because the combined impact of this cut and the withdrawal of funding by the Learning and Skills council would have left these women unable to access adult literacy classes. However officers argued that changes as a result of EIAs were often made at an early stage in the policy making process as soon as a potential problem was flagged up making it ‘difficult to evidence’ the role of assessments in changing policy.

A former council officer was more critical about the impact assessment process in County Council saying:

It was very much something that you had to be seen to do, not something you had to do if you see what I mean. It was another task to be done and you found another way of ticking the box to show that you had done that task
(Former council officer).

This view was shared by some of the civil society groups in the county. Representatives of both the LGBT organisation and the race equality organisation described impact assessments they had analysed and found to be lacking any real understanding of the potential impact of policy on the communities their organisations represented (see section on civil society below).

The impact assessment toolkit produced by County Council is comprehensive, providing detailed guidance in how to carry out an assessment. It states that impact assessments ‘must be informed by consultation’ which should include users and potential users of the service, staff, interest groups and ‘secondary groups’ (for example carers if the policy would affect people receiving care). It includes guidance for making consultation meaningful, including issues of physical access, recognising

communication difficulties and the needs of people who do not have English as a first language and ensuring that people with caring responsibilities can participate. It provides an extensive list of the various sources of evidence of likely impact. The impact assessment form involves a two stage process: the first ‘screening’ stage includes a tick box for likely impact but also asks what evidence has informed the screening process and what consultation has been carried out. If a policy is considered likely to have some impact on equality or human rights a second stage is required. Officers are required to explain how they have explored the needs of the groups affected by the policy, the likely impacts and any barriers that these groups might face and what conclusions they have reached. They are also asked what further information they might require, and, if they identify negative impact, what mitigation they might recommend and how they will monitor impact on an on-going basis.

For this thesis I examined EIAs for budgets over the past three years and reviewed all published EIAs from the last three years to identify the five that related to policies most likely to have a gender impact. These were analysed in detail. Despite the comprehensive nature of this toolkit an analysis of the EIAs supported the conclusion among officers that impact assessment practice was mixed. Most appeared to be based on very little analysis or understanding of equality impact. For example an impact assessment of changes to the way in which social care is delivered contains only one sentence on gender:

As services will be adapted to the needs of the service user rather than the service user having to adapt to the services on offer, individual gender specific needs will be taken into account.

This ignores the fact that the majority of those receiving care and the majority of those providing care (whether paid or unpaid) will be women. A policy on childcare provision for under-fives highlights the fact that targets for availability of childcare rated ‘good’ may be missed under the section on age, but does not acknowledge the significant impact that this might have on women’s ability to enter employment. A policy on housing in rural areas to provide housing based on a ‘local connection’ with priority given to those already living in a particular parish was described as having no impact on different ethnic groups. The population of County Council is largely white British, but an increasing number of people from minority ethnic

groups are moving from the local city into more rural areas. There was no recognition that these people might be disadvantaged by the priority given to housing people who already lived in the parish.

Other impact assessments were more comprehensive. The assessment of the Youth Justice strategy includes a detailed breakdown of data on offenders and re-offending rates by gender and race, recognition of the disproportionate number of looked after young people among offenders and information on strategies to identify offenders with mental health problems and learning disabilities. It includes strategies to monitor offending rates and sentencing patterns, train staff in equalities and increase the relatively low proportion of male employees in the youth offending service. The assessment of the policy on commissioning Domestic Violence services recognises domestic violence as a gendered crime, identifies that disabled women are disproportionately likely to be affected by DV and that they may have specific needs in order to access services. It includes a requirement for services to provide outreach work and specially trained staff to ensure services reach minority ethnic and LGBT groups where there is a belief that DV may be under-reported. However there is no discussion of the potential impact of the proposal to move from grants to a variety of civil society groups to a single generic service covering the whole county. Work by the Women's Resource Centre has identified a range of impacts on BAME women in particular from the loss of specialist services (WRC 2015); the impact assessment ignores this describing the move to a single service as having a positive impact on all groups.

Despite the requirement for consultation as part of completing an impact assessment, the majority of assessments either reported that consultation had not been carried out, or identified gaps in consultation. Most included a commitment to consult but consultation did not appear to be central to the impact assessment process in practice. This mixed practice suggests that while County Council has developed a comprehensive model for assessing impact much depends on the skills and commitments of individual officers actually carrying out the assessments and that many do not carry out meaningful assessments.

In all the interviews carried out in County Council, among officers, councillors or civil society groups, the PSED was largely discussed in terms of Equality Impact

Assessments. There was very little mention of the equality objectives that County Council is obliged to produce under the specific duties. County Council has developed ten equality objectives, which are included in the Equality Strategy. The majority of these relate to internal processes and are fairly broad such as ensuring equality analysis is undertaken (objective 3) or promoting equality and diversity (objective 4). There are two more specific objectives; to ‘demonstrate’ equal pay and to reduce the number of hate crimes in the county. The objective to ‘demonstrate equal pay’ is expanded in the Action Plan to include a commitment to carry out pay audits and to monitor pay across ‘protected characteristics’ but there is no specific mention of the gender pay gap. There are no other objectives which might specifically relate to gender inequality. Prior to the introduction of the PSED County Council had a Gender Equality Scheme as required by the Gender Equality Duty, as well as schemes covering racial and disability equality, required by the Race Equality Duty and Disability Equality Duty. With the move to a single scheme under the PSED any specific focus on gender had been lost. Setting and implementing policies to meet meaningful equality objectives could provide an opportunity for proactive work to promote equality. However in the case of County Council the objectives are so broad, and appear from the interviews to have relatively low priority meaning that this opportunity is lost. The focus on equality impact assessments appears to reflect a fear of judicial review if these were not carried out (see below). With very limited resources (a team consisting of 1.75 equivalent full time staff) it is perhaps not surprising that the equality officers concentrated on those areas where there was a fear of legal challenge. These and other factors affecting the implementation of the PSED are considered in the next section.

The most significant factors affecting the implementation of the PSED in County Council were the way in which equality was framed within the authority, primarily in terms of ‘managing diversity based on, the attitude of equality officers and councillors to their role and a fear of judicial review. These will be considered in turn. Other potential factors such as the monitoring and enforcement role of the EHRC did not appear to be at all significant. Civil society organisations were not seen as a potential source of challenge.

7.4 Framing of Equality

7.4.1 Framing of equality in council documents

Equality work within County Council is placed within a wider framework which includes human rights and is centred around concepts of fairness, respect for individual diversity and the ‘business case’ benefits for the organisation. The County Council’s Equalities Strategy emphasises the link between equality, community cohesion and human rights presenting a ‘human rights vision of equality’ that ‘extends beyond discrimination to include fairness, dignity, respect and access to the basic rights that allow a person to take part in a democratic society’. Within the strategy equality is explicitly defined in terms of difference:

Equality does not mean treating everyone the same. In reality, it means treating everyone differently in order that all people are treated fairly and with respect. (Equalities Strategy, County Council).

This focus on difference and the need to meet the diverse needs of people in the county forms the basis for what is described as the ‘moral case’ for equality in the strategy:

We know that the population of [county] is diverse and that people have very different backgrounds and life experiences. Therefore, we want to ensure that we provide a range of services and facilities that meet the needs of local people and that, as an employer, we ensure fair recruitment and provide a work environment that is free from discrimination. (Equalities Strategy, County Council).

This emphasis on meeting the needs of a diverse population frames equality, along with the issues of community cohesion and human rights covered by the strategy, primarily as an issue of ‘recognition’, acknowledging, respecting and responding to difference. The framing focusses on difference at an individual level: the definition of equality given in the strategy refers to equality of opportunity in terms of ‘equal access and equal treatment’ for individuals. Rather than equality of outcome it refers to ‘outcomes that meet the needs of the individual’, although it does not specify how these are identified. This focus on difference is reinforced by the definition of diversity which immediately follows; ‘diversity is about recognising and valuing

differences in their broadest sense'. The definition also suggests that diversity should not be valued for its own sake but in terms of 'understanding how people's differences and similarities can be mobilised for the benefit of the individual, an organisation and society as a whole.' This focus on the 'business case' for diversity with its emphasis on the benefits to the organisation is repeated later in the document in a section entitled 'Why are equality, diversity, community cohesion and human rights important to the Council?' which states:

There is also a strong business case for investing in equality, diversity, community cohesion and human rights. It will result in us designing and delivering services that people want to receive and can lead to greater employee productivity, creativity, innovation and flexibility. Additionally, this effective equality, diversity, community cohesion and human rights activity will in turn create economic benefits that will positively impact upon all residents. (Equalities Strategy, County Council).

As Dickens (2006) has pointed out the danger with the business case approach is that can lead to equality issues where there is no business case for action being ignored and to business case arguments being made against taking action on equality at all.

The Strategy also includes a large number of examples of past and current council projects, the majority of which include some form of community engagement or consultation. The definition of human rights also refers to participation in decision making, stating that human rights 'protect people's freedom to control their own lives, effectively take part in decisions made by public authorities which impact upon their rights, and get fair and equal services from public authorities.' Human rights in this strategy are limited to the rights contained in the 1998 Human Rights Act and do not include social and economic rights which might involve a focus on re-distribution as well as recognition.

The absence of any issues of distributive equality can also be seen in the information given in the strategy in the section on the population of the county. This provides information about the ethnic breakdown, age profile, number of disabled people and so on in the county but does not provide any information about the relative situation of different groups. There is no information about income differences, or differences in employment, health, education or other outcomes except for a small amount of

data on the proportion of council employees from each group. Indeed throughout the strategy there is a notable lack of any concrete information about inequality or particular equality challenges facing the county.

Gender is largely absent from County Council's Equality Strategy. Under the heading 'gender' the strategy simply provides data on the proportion of the population that are women and men. Elsewhere in the strategy there is a brief summary of a project to improve the number of women in senior positions within the council but this does not include any information about the level of women in senior positions or provide evidence of concrete change to this as a result of the project.

The Equality Strategy refers to a series of other council strategies which relate to equality. Of these three might be considered to have a particular gender impact; the carers' strategy, the family poverty strategy and the employment strategy. None of these include any significant recognition of gender as an issue. The carers' strategy has one mention of gender, in the 'facts about carers' section which states that 42% of carers are men. The family poverty strategy mentions lone parents as being at particular risk of poverty but does not acknowledge that poverty is gendered in any other way. The employment strategy contains data showing that women are under-represented at senior management level compared to their representation within the council but does not comment on this. It contains an objective to increase the representation of under-represented groups within the council staff and at senior management level but does not state which these groups are, or provide any specific details of how it aims to tackle this. The Equalities Strategy makes no reference to any County Council strategy on domestic or sexual violence although both have been recognised as a cause and consequence of gender inequality.

This framing of equality in either individualistic terms, or in terms of a business case for managing diversity with little recognition of structural inequalities is close to the model adopted by the Coalition Government and appears to reflect the Conservative leadership of County Council. As with London Borough 'the frame shapes the outcome' (McBride and Mazur 2010 p12). In London Borough the framing of equality as an issue of redistribution lead to policies to reduce socio-economic inequalities. In County Council it led to a focus on individual equal opportunities.

7.4.2 Framing of equality by officers

Among Equality Officers at County Council there was agreement that equality was ‘quite a high level priority’. They suggested that this is unusual in a Conservative run local authority and was the result of leadership of senior staff within the Council who were ‘pushing for it’. A significant reason for this push was the growing ethnic diversity of the county as people moved from the extremely ethnically diverse city in the centre of the county into the County Council area. However there were significant differences in the way equality was framed by the officers themselves. One officer discussed equality largely in terms of the council’s policies and procedures, framing equality as a largely bureaucratic practice without mentioning any specific inequalities within the county that these policies might be aiming to address. She described equality work within the council using terms and definitions that closely reflected those used in official council documents referring to the business, legal and moral case for equality, respect and dignity and equality as difference. She made frequent references to ‘diversity’, mirroring the focus on diversity management and the business case for equality and diversity in the Council’s policy and strategy documents. A second officer also repeatedly used the language of diversity and respect for difference but did so in the context of discussion of specific problems such as under representation of BAME staff, racist language used by some councillors and the need to address tensions between different groups within the county, particularly LGBT communities and some religious groups. Her focus was largely on issues of recognition. A third framed his work largely in terms of protecting the needs of the most vulnerable, particularly poorer or disabled people. This may have been a reflection of his role within the adult social care department but his more general comments, beyond describing his specific role, suggested a personal concern with re-distributive equality.

While the first officer appeared to see the PSED almost entirely as a question of bureaucratic process the other two described it as a tool to deliver specific changes. This mirrored the split between outcome focussed and process focussed officers in both London Borough and City Council. Both of the process focussed officers welcomed the addition of human rights to their equality work, arguing that it provided an additional tool to help achieve specific ends. In the cases of the second officer human rights provided a useful framework in order to balance the sometimes

conflicting needs of different equality groups. Discussing potential tensions between LGBT groups and some religious organisations she argued that:

The new human rights impact assessment may be a way to help deal with this. It is clear that people have rights under article 10 [Freedom of expression] but that others also have the right to be treated with dignity. This balancing of rights comes from the Human Rights Act, there isn't anything similar in the Equality Act which might mean that human rights become more of an issue (Equality officer).

Here human rights become a tool to help manage diversity, balancing the needs of different groups with competing agendas. The same officer also argued that human rights could provide a better framework for explaining the needs of specific groups to colleagues. She argued for example that staff responsible for ICT were able to understand the need to make council websites accessible when it was explained in terms of the right to receive information (part of the right to freedom of expression). This explanation made more sense to them than arguments based on the needs of people with different 'protected characteristics'. Again this comment frames human rights as a tool to help manage diversity, rather than a value in its own right; in this case ensuring that the council is able to meet the needs of different groups by providing a framework for assessing issues that might be easier for some staff to understand.

The third equality officer interviewed also argued that human rights could be a more effective tool than equalities for improving the provision of services in some instances. However his focus was on human rights being a more appropriate framework for considering some issues. Discussing standards of care provision he argued that poor quality of home care is important not simply because it would be more likely to affect one group, such as older or disabled people, rather than another, but because of the impact that poor care could have on those experiencing it. This was essentially a human rights issue:

Article 3, that is inhuman and degrading treatment is so closely connected to care provision, particularly home care and there have been human rights challenges on the back of poor levels of care [...] it gives it an extra legal push and that will be really useful from our point of view (Equality Officer).

He argued that there could be a danger that equality was achieved by treating all groups equally badly, whereas human rights involved a focus on the actual standards of care provided. This was not a rejection of equality as a concept, rather a belief that combining it with human rights provided additional tools for protecting the needs of the most vulnerable. He frequently discussed his work in terms of the particular groups affected by public spending cuts and his commitment to supporting them. The PSED and Human Rights Act were particularly important as tools that he could use to try to protect services in the face of spending cuts:

I think it is going to be a bit like, you know an insurance policy, as services shrink over the next few years, where are they going to shrink? In order to protect them, if you are in a position where you want to protect services, and I assume we all are, it gives them that bit of extra weight. (Equality Officer).

7.4.3 Understanding of equality among councillors

Among councillors at County Council there were different views on equality. The two councillors interviewed saw themselves and were described by officers as champions of equality. Both positioned themselves as representing a ‘common sense’ version of equality which contrasted with people who took equality too far:

I think the thing we have done here is we haven’t carried it [equality] to the nth degree if you like, we have used common sense (Cabinet lead on equalities).

This ‘common sense’ model of equality was based on ‘treating individuals fairly’ and being aware that ‘different people have different needs’ which appeared to be very much in line with the ‘recognition’ and ‘diversity management’ approach set out in the Council’s Equality Strategy. However both these councillors and the officers interviewed mentioned other councillors who were opposed to action on equality and human rights or who viewed these concepts with suspicion:

I do think that a lot of people are concerned that this political correctness has gone mad (Cabinet lead on equalities).

Every now and again the old cliché comes out, you know, bloody human rights that sort of thing (Conservative group whip).

We have a cabinet member who then moved over to UKIP and when presented with a sign off on the equality strategy at cabinet [...] he said, well I just want to say that the strategy has been written really well, as a compliment, but of course as a UKIP member I can't support it (Equality Officer).

This equality officer who was an Asian woman mentioned the racist language used on one occasion by a councillor, although she said that this was swiftly dealt with by senior managers. Both councillors expressed anxiety over the behaviour of colleagues, particularly the fear that they would say something that would embarrass the Council:

Sometimes I think when they are talking about things they get carried away and forget....this sounds awful....the right sort of language to use if you know what I mean (Cabinet Lead on Equalities).

Because we are now on camera and part of my job as chief whip is to make sure my lot don't say anything stupid (Conservative group whip).

Forgetting 'the right kind of language' or saying something 'stupid' appeared in both these comments to refer to racist, disabilist, homophobic or sexist language. However both councillors argued that this was less of a problem than it had been in the past:

I hear less chuntering from my Conservative colleagues, which is where you would hear the chuntering [...] I am less alert than I used to be, waiting and worrying that the press are here, is she going to say something or is he going to say something (Conservative group whip).

This change was seen as the result of a generational shift in attitudes. Both councillors described themselves as sharing the attitudes of a younger generation, which centred around concepts of 'tolerance' and 'understanding' of different groups, from the 'old fashioned' and 'out of date' attitudes of some of their colleagues. Although neither were young themselves they described their personal life histories (as a former nurse and a former university lecturer) as keeping them 'in touch' with the attitudes of a younger generation and meaning they were 'used to' to

people from a wider range of backgrounds who might have ‘different ways of doing things’.

The equalities issues raised by both councillors in interview were primarily those of race, religion and sexuality. Gender was raised briefly by the chief whip, when describing his role as Chair of a local human rights organisation, in the context of the under representation of Asian women among local faith groups. When the cabinet lead on equalities was asked about gender she answered briefly before turning the discussion to issues of race:

The other thing I wanted to ask about is gender equality...

[interrupts] I am the only woman on cabinet. Yeah. We were just having that conversation when you came in. There are more men than there are women among senior staff. At the moment they are having a discussion because of the ethnic mix of higher up managers and there aren’t as many. What they are looking at, at the moment, is when they interview for jobs if the person is of a different race should somebody of that race be on the interview panel; would it make a difference? (Cabinet lead on equalities).

She appeared to see gender equality purely in terms of the council’s employment practices, and her own position as the only woman councillor at a senior level. When asked about whether equality impact assessments had uncovered any impact on women of cuts to services, she was unable to answer.

7.5 Role of equality officers

In common with the other case study areas Equality Officers at County Council are responsible for providing support to the people within each department who carry out impact assessments but not for carrying them out themselves. The impact assessments are signed off by the departmental equalities group, rather than the equalities team. One officer said that the team had a motto ‘equality is everybody’s business’, suggesting a desire to mainstream equality throughout County Council.

Although the equalities team ‘keep an eye’ on reports to cabinet, they describe their role as ‘support not scrutiny’ of the impact assessments carried out across County Council:

We keep an eye on cabinet reports [...] Our function as a corporate equalities team isn't to scrutinise and to do everything on behalf of everybody. We would look into things on an ad hoc... each of the four equalities people all sit on a departmental equalities group as well so we would pick up if something isn't right. But I wouldn't go round and say 'show me your EHRIA' [Equality and Human Rights Impact Assessment] or do a spot check kind of thing. [...]I think support is the right word rather than scrutiny. (Equality officer).

The 'support not scrutiny' model may be a response to the relatively small size of the equalities team, with only 1.75 full time equivalent staff it would be very difficult to scrutinise all the impact assessments produced by the council. It may also be a reflection of the relatively weak position of the equalities team. Although equality officers themselves claimed that equality was an important value in the council, and this claim was repeated in several council documents, comments by the former officer and by civil society actors suggest that the equalities team was seen as relatively powerless in the council hierarchy. This approach was in contrast to that taken in City Council where equality officers had the power to refuse to sign off on poor quality impact assessments and may explain the lack of meaningful equality analysis in many impact assessments produced by County Council.

The only exception to the 'support not scrutiny' model was the equalities officer based in the adult social care department, who was involved in writing and scrutinising equality impact assessments in his department; 'getting them into a shape where I think they will be OK'. This reflected the fact adult social care was the only department with a dedicated equality officer. In other departments the departmental equality lead had other responsibilities in addition to equality work.

The different ways in which the officers framed equality were reflected in the way in which they saw their roles. The officer who framed equality in terms of bureaucratic process described her role in terms of the formal requirements of the job – providing support and advice to other officers who were responsible for assessing equality impact in their own departments. The other two officers described their roles in terms of the end results they were hoping to achieve, tackling discriminatory attitudes within the authority in the case of the second officer and protecting services

for the most vulnerable in the case of the third. For these two officers the PSED was a tool to achieve broader ends, rather than simply a legal obligation. However the officer with the process focussed approach was the Equality Manager, which meant that much of the teams work appeared to be focussed on improving the bureaucratic processes in the Council rather than on specific objectives.

The officer who saw his role as protecting services had been involved in actions which went well beyond his role as a council employee. While in another role in the authority he had orchestrated a challenge to a decision by County Council to cut an advice service, encouraging and supporting a service user to take legal challenge against County Council for failing to carry out an impact assessment of the decision.

We engineered a challenge against the authority [...] which unfortunately was uncovered and some people got into a lot of trouble for it, myself included. The outcome was a reasonable one, the challenge was to the impact assessment being inadequate. As a result it was completely re-vamped and has become a model for a lot of the assessment work we have done since (Equality officer).

Although the challenge was taken in the name of a particular service user it was clear that it would not have been possible without support from a small group of officers who were unhappy about the decision to cut the advice service. In this case a legal challenge using the PSED had led to a change in the decision making process in the council, but this depended on the presence of officers who saw their role as broader than their job description and were prepared to risk their jobs in order to protect a service. Without these ‘critical actors’ the changes to council policy and practice that resulted are unlikely to have happened. Few officers are likely to be willing to risk their jobs in this manner. At the same time the context of national spending cuts (see below) meant that the officer who was most committed to using the PSED as a tool to achieve broader ends was focussed largely on assessing the impact of cuts to services rather than more pro-active work on equality.

This division between equality officers who saw their role in bureaucratic terms, ensuring County Council followed the correct processes, and those who saw it in terms of achieving specific outcomes was common across all three case study authorities. As in London Borough the process focussed officer had joined the

equalities team from another job in the authority, mirroring the experience of the ‘diversity professionals’ studied by Kirton, Greene and Dean (2007).

7.6 Role of councillors

The two councillors interviewed at County Council saw themselves, and were described by officers, as champions of equality. The Cabinet lead on equalities saw her role as ensuring that County Council met its legal obligations, but tended to refer any detailed questions about equality policy or practice back to officers, suggesting she was led rather than leading officers on equality issues. Both she and the Conservative group whip also discussed their role in terms of ‘asking questions’ and ‘raising issues’ rather than setting policy in any way. They also saw themselves as having a role in tempering the language used by other councillors who did not always ‘use the right language’ and could not be trusted not to ‘say something embarrassing’.

County Council, as with other councils organised training for councillors on equalities issues, but as with most training this was not mandatory, and tended to be attended by ‘the usual suspects’ with some (largely Conservative and UKIP) councillors refusing to attend. Neither officers nor other councillors had the power to compel councillors to attend equalities (or any other) training courses. The sense from both officers and councillors was of a split between the two groups, with officers seeing councillors at best as a group to be managed and at worst racist, and councillors, even those with a responsibility for equality, complaining of being excluded from meetings and kept in the dark. The Cabinet Lead on equalities complained in particular that she was prevented by officers from attending their meetings as they were for officers only. She felt that these were the meetings where decisions were being made, and that by being excluded she was being presented with policy as a fait accompli. The Conservative whip described councillors at County Council as ‘in the hands of officers’ not just on equality but on council policy more generally complaining that members did not always see documents, and were not involved in making policy. This made it difficult for councillors to raise questions about equality issues:

I don’t know [how equalities is handled in the county] is the honest answer. Because it is very difficult to have an overview. Often at the end of reports

you will have ‘are there any equal opportunities implications?’ Replied to with one word, ‘no’.... and no one challenges them on that (Conservative group whip).

7.7 Judicial review

Both officers and councillors argued that the fear of judicial review for failing to carry out a proper EIA had an impact on County Council’s equalities work. The officer who had engineered a judicial review against County Council discussed the impact of judicial reviews against other authorities at some length arguing that they had established the need for due regard of equality impact at all stages of the policy making process, and the need for impact assessments to be provided to those with responsibility for making the final decision. He described himself as ‘keeping a close eye’ on judicial review decisions, and using the judgements particularly in the Brown and Braking cases (see chapter 5) to argue internally for the need to integrate consideration of equality at all stages of the policy making process. This approach was similar to that used by the Directors responsible for equality in City Council and London Borough, both of whom admitted that they used the threat of judicial review to put pressure on colleagues to take action on equality, even when they themselves believed the actual risk of legal challenge was relatively low. It suggests that the threat of judicial review is an important tool for equality actors.

Although neither of the other Equality Officers discussed judicial review in such length they all described it as a significant factor in persuading councillors to take equality seriously, particularly in the context of shrinking budgets. Judicial review was the first thing named by all of the equality officers when asked what levers they had in ensuring equality impact assessments of spending decisions were carried out properly.

Councillors themselves said that judicial review was always ‘at the back of their minds’:

I think everybody has got that [judicial review] at the back of their minds when you do something because of the cost implications and that is why we are very careful about what we do (Cabinet lead on equalities).

The fear of judicial review may explain the concentration on the process of impact assessment at the expense of pro-active work to promote equality through equality objectives. In order to meet the specific duty obligations a public body simply needs to have set at least one objective and publish some equality information. The primary risk of legal action under the PSED faced by County Council would be if they failed to carry out impact assessments of a policy; the comprehensive impact assessment process appeared to be aimed at avoiding this risk. However as Fredman (2012) has argued judicial review is a test of process rather than outcomes; in County Council the fear of judicial review could be used by equality officers to ensure colleagues followed bureaucratic processes designed to assess equality impact, but not to make them take action as a result.

7.8 Impact of a change of national context

The changed attitude to equality from the Coalition government was not directly raised in interviews with staff or councillors at County Council. This was in contrast to nearly all the other interviews both inside and outside the case study areas where officers and some councillors repeatedly complained about mixed messages from central government, and a lack of funding for local and national equality work and infrastructure. The only mention was from one officer who mentioned the review of the PSED, arguing it had been ‘too early’.

The only reference by Councillors to the Coalition Government’s approach to equality was from the Conservative group whip, who mentioned the Government’s commitment to Gay marriage (which he personally supported) as a major cause of defections of party members to UKIP. The ruling Conservative Group on the council did not appear to share the negative attitude to the PSED of David Cameron and other Conservative Ministers. The duty was discussed largely in terms of providing an opportunity to re-visit a pre-existing commitment to equality, rather than for example a bureaucratic burden or unnecessary red tape. David Cameron’s argument that Equality Impact Assessments were not necessary was not shared by the Conservative Councillors interviewed who discussed County Council’s EIA processes as a way to ‘ensure we meet our legal obligations’. However neither councillor criticised the comments made by Government ministers directly.

7.9 Spending cuts

The Public Spending cuts were a constant theme in all the interviews carried out in County Council. With limited budgets the bulk of equality work was focussed on ensuring impact assessments of policies were carried out, rather than any more proactive work to promote equality. Very many of these policies involved cuts to services. With the exception of one officer both council officers and councillors discussed the cuts as a fact of life that had to be managed rather than a political process which they either opposed or supported. The most commonly used phrase was ‘in a time of budget cuts...’ framing cuts as part of a background context to which County Council had to adapt. For two of the officers the PSED was seen as a way of ensuring these cuts were managed ‘fairly’, ensuring services for the ‘most vulnerable’ were protected. However the third officer was far less sanguine about whether this was in fact possible:

One thing we need to be really cautious about with the cuts is when you are reducing services but still want to meet the needs of the most vulnerable there is a tendency to argue that even after cuts to services service levels will remain the same, to argue that there will be efficiencies or cost savings, or there will be advantages in increased choice and control for individuals. I resist use of these terms. I insist that when people say there will be increased choice and control that this is properly monitored and measured ‘you said that people will have increased choice, has this actually happened?’ (Equality officer).

For this officer the PSED was not a mechanism for ensuring cuts were made fairly, but a lever for challenging the unfair impact that cuts were likely to have:

The lever we have got is that there have been multiple judicial reviews where authorities have argued that they can’t maintain a protection for an equalities group because they can’t afford to do it and that [lack of resources] has never succeeded as an argument (Equality officer).

While the PSED might be used as a ‘lever’ in the short term he was anxious about what would happen as cuts continued into the future:

I would be interested to know what will happen when we face cases where the assessments show a clear equality impact but cuts still have to be made. Because we are going to be coming to that (Equality officer).

Among councillors there was a similar split. The Cabinet lead on equalities argued that the PSED had meant County Council had ‘looked more carefully’ at how cuts were made, although she was unable to give any specific examples of what this meant in practice. The Conservative whip was anxious that County Council’s commitment to equality would be undermined as cuts continued:

There is an acceptance that we should consider these things [equality and human rights], but how far they will be considered with the cuts I don’t know (Conservative Councillor, group whip).

7.10 Impact of the EHRC

The EHRC was rarely mentioned by either equality officers or councillors at County Council. When asked about enforcement of the PSED neither equality officers or councillors mentioned the EHRC at all, focussing instead on judicial review. When specifically asked about the EHRC, councillors referred me to equality officers who they said ‘would know more about that’. Equality officers said that they used the EHRC website and helpline on occasion, describing the website as ‘useful’. None of them seemed to view the EHRC as a body that might be policing their compliance with the PSED; all sharing the view expressed by one officer that ‘they don’t check up on us’. This experience of the EHRC was shared by all three case study authorities and by the equality officers outside the case study areas. The EHRC had been envisaged as the body responsible for the ‘pyramid of enforcement’ in original proposals for the PSED (Hepple et al 2000). This pyramid included a series of stages from sharing best practice through informal interventions up to more serious sanctions. Not only did none of the authorities fear enforcement action from the EHRC, they did not see the commission as a source of pressure or evidence of best practice. This suggests that one of the key elements identified as necessary for reflexive regulation is not fulfilling the role which it was hoped it would play.

7.11 Impact of Civil Society

On the face of it engagement with civil society groups is a high priority for County Council. The County Council's Equalities Strategy includes consultation and engagement with civil society organisations as one of its priority objectives and the strategy document includes a large number of examples of civil society projects supported by or undertaken in partnership with County Council. This commitment was repeated by equality officers who described how County Council had set up a group to encourage scrutiny of their work:

We have people who scrutinise what we are doing from outside. There is a group [...] which we provide a small amount of funding to, which brings together civil society groups and is asked to scrutinise our work (Equality Officer).

However there was little sense in any of the interviews that equality officers saw civil society groups as actually challenging the council on equalities. The equality officer who was most focussed on outcomes, rather than bureaucratic process revealed a level of frustration with the pressure from civil society groups:

The expertise of people sitting on scrutiny and advisory groups can make a difference. I wouldn't describe our local voluntary groups as particularly radical (Equality Officer).

He raised concerns about the differences between 'the issues that come up in consultation and those based on analysis of need', implying again that the groups that were best at getting their voices heard often represented the most privileged communities. This was the officer who had orchestrated a challenge against County Council using the PSED. The fact that he had done this himself, rather than the work being led by a civil society group reinforces the sense that there was an unwillingness, lack of expertise or capacity to challenge County Council within local civil society organisations. There were no examples of challenge from civil society groups given and when asked directly about pressure from civil society, officers suggested that this was limited. The Cabinet lead on equalities appeared confident that civil society groups 'would raise it if they were unhappy about something', but could not give any specific examples of where that had happened, instead repeating

the council's commitment to engagement and consultation. The Conservative group whip was more cautious about what consultation meant in reality:

And of course the way you ask a question is the answer you get. So we 'consult' [makes speech marks sign with fingers] and all of that stuff. I am asking the County Council to look at how it does consultations and why and what levels they do them from (Conservative group whip).

With the exception of the one equality officer mentioned above there was little sense in County Council that either officers or councillors believed that external pressure might be useful for their work. While there were formal mechanisms to support engagement in place this did not appear to lead to sustained challenge to the authority on equalities from civil society. The main reasons for this appeared to be the lack of willingness to engage seriously among some key staff in County Council and a lack of resources among civil society groups to carry out systematic lobbying work. Two of the leading organisations in the equality group set up by County Council were a Lesbian, Gay Bisexual and Transgender (LGBT) organisation and a race equality organisation. Staff at both had considerable experience of working with local and national public bodies and were well connected with other civil society organisations locally, but identified significant barriers relating to the attitude of council officers and their own resources. The Chief Executive of the race equality organisation argued that while equality officers were committed to working with civil society they were 'marginalised' within the authority. He complained that the council equality group was ineffective because other officers in County Council did not consult it and in some cases did not even know it existed:

The whole purpose of [the group] was to enable them to meet their obligations under the public sector equality duty. [...] But at the end of two years we could not find out a single occasion when they had carried out an equality impact assessment. [...] At no point did they contact us and say we have this policy in development can you help us consult with this group of people. In fact one of the things we found [...] was that officers [...] had no idea that this work was in process (Chief Executive, Race Equality Organisation).

He argued that there had been greater openness to engagement with civil society organisations in the past. His organisation had been involved in a regional equality partnership, which ran from the early 2000s until shortly after the 2010 election and brought together public authorities and civil society organisations. This network had helped develop social capital within civil society organisations by facilitating relationships with each other and officers from public sector organisations. Through this network officers would let civil society representatives know when policy relevant to their group was about to be considered within their authority, or suggest particular questions that civil society should raise. This work had stopped with the change of government, officially because of cuts to budgets. However the Chief Executive of the race equality organisation felt that this was ‘an excuse to stop doing things that local authorities found uncomfortable’. His account underlines that it is not simply the structures for engagement with civil society that are important but the willingness of officers to take such processes seriously, or to use them to support their own work within the authority.

The project officer from the LGBT centre complained that she could not recall being asked for an input into an Equality Impact Assessment by any officer of County Council. Since responsibility for Equality Impact Assessments rests with officers responsible for the policy, rather than the equalities team, the willingness of these officers to engage with civil society is particularly important if civil society organisations are to feed into the assessment process. However she was able to use her knowledge of the PSED as a lever to push for engagement with some public bodies. Her approach was to use the PSED to insist that her group was consulted and used to consult with the wider LGBT group in the County. She described using the duty as a ‘rap on the knuckles’ and an excuse to ‘gate crash’ various public sector organisations, forcing them to meet with her. This appeared to be most successful with local Clinical Commissioning Groups (CCGs) where she had built up ‘good relationships’ having made an initial demand for access using the PSED.

Both the race equality organisation and the LGBT organisation had carried out projects to review equality impact assessments of local authorities. The race equality organisation had carried out a systematic review of the budget proposals for both the County and the City the year before the interviews took place, reviewing impact

assessments of these proposals and identifying gaps in the assessments. The Chief Executive concluded that:

[There was] no real understanding of equality impact, of how impacts need to be targeted, of how the work needs to be differentiated to meet the needs of different communities, just a series of broad.... Not even broad bland statements. And there is a tendency certainly in this part of the country for equality impact assessments to be very generic in their descriptions (Chief Executive, Race Equality Organisation).

The project officer at the LGBT organisation was similarly critical of the impact assessments that she had reviewed:

[County Council] has now taken to publishing their equality impact assessments to inform its policies. And about 50% of the ones I saw published [...] were completely silent on either the protected characteristics of sexual orientation and gender reassignment. ‘These communities are hard to reach’ or ‘we don’t have this information’. We have been here in this building since 1995, we have been around in one form since 1970 whatever. Not that hard to reach (Project Officer, LGBT organisation).

Both individuals concluded that the PSED was ‘weak’ because public bodies were able to get away with poor quality impact assessments without any consequences from the EHRC or another external monitoring body. In both cases these initiatives to monitor impact assessments were a one off; neither organisation had the resources to carry out their own on-going systematic monitoring of equality impact assessments. Both organisations covered not only the County Council area, but the city that the county surrounded. Both were based in offices within the city and worked not only with both the city council and County Council but a range of other public bodies responsible for health, policing, probation and other services. As small organisations they lacked the resources to engage with all of these public authorities in the way they would have liked. The communities both served were more highly represented within the city than the county. This, and the lack of engagement from key actors within the County, meant that they prioritised work with the City rather than County Council.

The (limited) work that they were able to do at a County Council level was the result of two factors: their commitment to a broad agenda of promoting equality for the groups they represented and the skills and knowledge of the two individuals involved. The Chief Executive of the race equality organisation had been a member of a number of national and regional networks through which he had received information about the PSED from when it was first presented to parliament. The LGBT organisation's use of the PSED appeared to have come about because of the involvement of the individual staff member interviewed who had moved to the County from London where she had developed expertise in using the PSED in another LGBT group. At several points during the interview she mentioned that she was able to use the PSED because of her experience in this other organisation, suggesting that the LGBT group based in County Council might not have been able to carry out this work were it not for her presence. The work done by these two people highlights the significance of 'critical actors' identified by Childs and Krook (2009). The social capital and expertise which allowed their organisations to have an influence was largely down to these two individuals.

Other civil society organisations within the County Council area were far less actively involved in using the PSED. The Director of a Human Rights Organisation, covering a district within the County Council area, described her organisation as 'not too aware' of the duty. The only request for an Equality Impact Assessment she had made was for a decision to turn the grant that the organisation received from County Council into a tender for work (which they did not win). She had been told that an EIA was being carried out, but when she requested it was told that the officer she had been dealing with had left the council. She did not have plans to pursue the matter further. In this case she did not have the knowledge of the law that the two other organisations had. She did know that public bodies were obliged to carry out Equality Impact Assessments and had used that knowledge to request a copy of the assessment relating to funding of her own organisation, but did not know how she could take the issue further when an impact assessment was not produced. It is also notable that she only used the request for an EIA in order to question a decision relating to her own organisation. Unlike the LGBT organisation and the race equality organisation, the human rights organisation was primarily focussed on service provision to ethnic minority communities in the district. Her organisation had only

recently moved from being a community based advice organisation to presenting itself as a Human Rights organisation in order to broaden the services that they offered, and the funding that they were able to access. But its work was still service delivery focussed, advising individuals and communities who were unable to access services because of language or cultural barriers rather than challenging the structures that created or reinforced those barriers. It appears therefore that she did not use the PSED to challenge the broader equality impact of the policies and practices of public bodies locally not only because she lacked the legal knowledge and confidence to use the law, but because she did not see it as part of her organisation's role. As with the feminist group in London Borough this reinforces the conclusion of the RNGS that the priority given to an issue by external groups will affect the outcome within the authority (McBride and Mazur 2010).

There were no women's equality organisations covering County Council during the time the research took place. The Equalities Challenge Group focussed on issues of race and sexuality, but there was no formal mechanism to consult or engage with women's organisations making it harder for any women's organisation that was established to develop relationships with councillors or officers.

7.12 Conclusions

In County Council the PSED had resulted in the development of a series of bureaucratic processes in order to ensure that the authority was meeting its legal obligations to carry out impact assessments. However these had not led to a comprehensive analysis of the equality impact of policy or to projects to tackle inequality at a structural level. A range of factors influenced this outcome. Equality was highly contested within the council and viewed by some councillors as 'political correctness'. Other councillors and officers had succeeded in promoting some work on equality, using a 'common sense' approach framed largely in terms of a 'business case' for diversity management and individual equal opportunities. Among the small equalities team only one officer appeared to frame equality in structural terms. Internally equality officers lacked the power to scrutinise or refuse to sign off on poor quality impact assessments. As with London Borough and City Council officers were divided into those who were focussed on process and those who were focussed on outcomes. However while in the other two authorities senior staff were outcomes

focussed in County Council the Equality Manager was process focussed, which meant that the equality work in the authority largely concentrated on improving bureaucratic processes than on particular equality objectives.

There was limited external pressure from the EHRC or civil society actors. Formal structures for consultation with civil society were not backed up by a commitment to meaningful engagement across the authority. Those civil society actors with the expertise and social capital to engage on equality issues lacked the resources to do so in a systematic manner. However it was notable that the issues their groups worked on (race and sexuality/gender identity) were two of the issues most commonly mentioned by equality officers. There appeared to be little engagement with women's organisations and other civil society actors, which was reflected in the absence of meaningful consideration of gender equality issues.

As with all three case study authorities the public spending cuts meant that most of the resources of the equality team were focussed on the equality impact of cuts to public services, with few resources available for pro-active work. Although in a few cases impact assessment processes had led to changes to service proposals these were limited and depended on the commitment of an individual officer to use the PSED as a tool to try to protect services. With a shrinking budget, cuts to services provided by the authority were inevitable, regardless of the impact on equality.

Chapter 8: City Council – ‘relationships of trust’ between insiders and outsiders

8.1 Background

City Council is a large unitary authority. Nearly 90% of the population is white British. The City includes both some of the most and some of the least deprived areas in the UK. The council has a mixed cabinet with members from Labour, Conservative, Liberal Democrat and Green parties alongside independents.

For this thesis I interviewed the Equality Manager, the Director with responsibility for Equality, an equality officer who was on secondment to another team at the time the research was carried out and an officer who had left the council by the time the interview took place. I interviewed two former Council leaders, one Labour and one Conservative, both with a history of work on equality. I also interviewed five civil society activists: the co-ordinator of a local group of a national feminist organisation, the co-ordinator of a feminist network in the city, the Director of the city’s Council for Voluntary Service, a manager of an organisation supporting survivors of domestic and sexual violence and a former trade union official active in a number of local and national gender equality organisations. All interviewees were women. In both County Council and London Borough I struggled to find organisations campaigning at a local authority level on gender equality; I had no such problem in City Council, reflecting the high level of feminist activism within the city.

City Council was notable for the close working relationships and alliances between feminist campaigners and City council staff with responsibility for equalities. Such relationships can have a crucial impact on policies and practices to benefit women (Woodward 2004, McBride and Mazur 2010). These relationships were reflected in comments by officers, councillors and civil society actors, and in council documents, some of which specifically credited lobbying by women’s organisations with bringing about change in policy. Unlike the other two case study authorities many impact assessments in City Council demonstrated a high level of understanding of the gender impact of policy and a degree of intersectional analysis. Although these relationships pre-dated the PSED, the duty was used by civil society actors and the

majority of equality officers as a tool to ensure continued focus on the gender impact of policy. As with the other two authorities there were officers who were outcomes focussed and officers who were process focussed. The outcomes focussed officers were those with the closest relationships with feminist organisations. As in County Council and London Borough, some officers used the fear of judicial review as a lever to put pressure on colleagues to take action on equality. Also in common across all three authorities was the impact of public spending cuts, which meant that much action on equality was focussed on analysing the impact of cuts to services rather than pro-active work to promote equality.

8.2 Equality Structures within the Council

Equalities work within City Council is led by the corporate equalities team which is situated within Neighbourhoods and Communities. At the time this research was carried out the team consisted of six members of staff, all working on equalities, led by an Equalities Manager. This was significantly larger than the equality team in either of the other two case study authorities. The team had recently been restructured; the previous Equalities and Community Cohesion team had been split to form a separate Equalities Team and a single Community Cohesion officer. Staff within the equalities team work across the council rather than focussing on a specific directorate or area of equality. This is a change from previous arrangements where each staff member was responsible for equality within a specific directorate and also had specialisms in a particular ‘protected characteristic’ such as race or gender equality.

The equalities team is responsible for both internal equalities issues such as human resources and external issues relating to council service provision. The only exception is around physical access to buildings for disabled people which rests within the buildings team, also part of Neighbourhoods and Communities. The City Council Cabinet has final responsibility for equalities, and there is a Cabinet member with responsibility for Equalities. City Council has an Equality Plan that was agreed by the Cabinet in 2012 and is reviewed every six months.

The Equalities team funds ‘voice and influence’ groups bringing together civil society representatives. In addition there are self-organised staff groups. There are

voice groups and staff groups for each protected characteristic under the equality act including active women's groups. In 2013 the City Council established a Women's Commission made up of representatives of local public bodies, the two universities in the City, women's voluntary organisations and councillors from all political parties in the City. The purpose of the Women's Commission is to:

Work as a partnership to identify the key issues for women in [the city] and to produce an agreed Women's Strategy for [the city] with a specific, time limited and practical action plan for its delivery. (Women's Commission purpose statement, City Council website accessed January 2015).

The purpose document of the Women's Commission states that equality between women and men will only be ensured if multiple discrimination and disadvantage faced by women are addressed and that balanced participation of women and men in decision making is a pre-requisite of a democratic society. It also recognises the City Council's obligations under the Equality Act 2010 'to identify and address the impact of [its] policies, plans and practices on women'.

City Council has an Equality Plan which includes nine specific equality objectives as required by the PSED specific duties. All policies or changes to practice are assessed for their equality impact. City Council EIAs are limited to the nine protected characteristics under the act and do not include socio-economic inequality, human rights, or the impact on other groups such as carers. Both the equality objectives and EIA process are discussed in more detail in the next section on the impact of the PSED on equality work.

8.3 Impact of the PSED on equality work

As in the other case study areas both officers and former officers at City Council argued that while the PSED had had an impact on their work this was more to do with changes to the process followed than to the council's underlying attitude to equality, which they believed had long been positive. One argued that it 'added momentum and flesh' to an existing commitment to 'take equality seriously'. Another said that the things that had changed were to do with the impact assessment process, and improving consistency of practice but that there hadn't been a 'massive

shift in our culture'. The Director argued that while the PSED had 'crystallised' due regard for equality and had been an 'opportunity to refresh' equality practice, 'it wasn't like it was really revolutionary' because 'we had fantastic stuff already'. She claimed that most of the specific changes that had happened to City Council's equality processes and approach had been at her instigation when she came into post, rather than a response to the legislation. However other officers and councillors argued that the introduction of the PSED and previous equality duties had resulted in a significant shift from equality being seen as an issue of 'best practice' to a legal obligation:

Previously, I think before there was legislation it was thought to be a good thing or good practice whereas now whatever we do, really it has to be considered and that is a good thing (Liberal Democrat councillor).

What it felt with the public sector legislation coming along was that there was a sea change in terms of expectations and requirements because rather than just being good practice it was becoming a duty and woe betide you if you didn't (former officer).

This shift to legal obligation pre-dated the PSED for gender, race and disability because of the previous public duties in those areas. Equality work on other protected characteristic, (religion and belief, sexuality, gender identity and age), had been 'best practice' prior to the PSED. Both officers and councillors described how this legal obligation had 'put equality on the agenda' or 'on the map' and 'given a seat at the table' in a way that hadn't happened before. One officer argued that it had ensured a continued focus on violence against women and girls in the city. The Equality Manager credited the duty as the reason why the equality team was now represented at budget discussions from an early stage:

Without the public sector equality duty I don't think we would be able to get things done in the same way. [...] when we do the initial budget meetings it is finance, coms [communications] everyone and us all sat round the table, right from the very beginning. We have seen those proposals before anyone else has and I think we wouldn't be at that table unless there was a really strong compliance reason why we had to be. [...] I think that if equalities

became a nice to have and we didn't have that PSED it might just get dropped (Equality Manager).

However although the equality team now had a ‘seat at the table’ they expressed disappointment that they were still faced with colleagues who thought that the duty was about ‘ticking boxes’. For the Equality Manager this was because the PSED was still too ‘vague’

In practice that is the most common question you get you know – how far does due regard have to go? How much do we have to do this? And there is no answer; there is absolutely no answer at all. [...] because it is really vague and I think if you ask yourself ‘how well are we doing?’ – I still don’t know what good looks like. [...]I have a sense of what due regard looks like, but that is something that I have just developed from doing it, from reading case law stuff like that. But it is very vague as a piece of legislation (Equality Manager).

This meant that while the duty was a useful tool for those within the council committed to equality it was less powerful in ensuring that those who did not share that commitment took action.

The legislation was there for people to make the case for doing something they wanted to do. But when you are faced with people who don’t want to do something I am not so sure that the duty [...] can be used in that way (Co-ordinator, local branch of national feminist organisation).

Following the introduction of the PSED City Council revised its Equality Plan. The plan includes nine specific equality objectives as required by the specific duties. These are organised under four broad themes; a diverse workforce, services that reduce inequalities and meet the needs of vulnerable communities; engagement and participation and increasing satisfaction with council services among equality communities. The Equality Objectives are broad, for example ‘improve the safety of equalities communities that are subjected to hate crime’, or ‘promote a safe and fair working environment for all employees, particularly employees from equalities groups who are more likely to experience harassment and discrimination’ but each comes with a set of more detailed targets. The plan includes objectives relating to all protected characteristics and also covers looked after children and carers. It does not

include socio-economic inequality and none of the objectives relate explicitly to tackling poverty except one on the wellbeing of children which includes child poverty as an indicator. Other council documents such as the City plan include objectives on reducing socio-economic inequality, but the Equality Plan itself is framed largely in terms of issues of ‘recognition’. The plan was developed from an assessment of council performance data, the recommendations of the assessors from the Equality Framework for Local Government and consultation with ‘equalities stakeholders’ and staff. Part of this consultation involved two research projects; one into the needs of BAME communities in the city and one into the needs of women.

All policies or changes to practice introduced by the council are assessed for their impact on the nine protected characteristics as defined by the 2010 Equality Act. Impact Assessments for Gender, Race and Disability had been carried out under the previous equality duties. City Council EIAs are limited to these nine protected characteristics (referred to in guidance as ‘equality communities’) and do not cover socio economic inequality, human rights or the impact on other groups such as carers. Shortly before the research took place City Council revised its EIA methodology. The current methodology consists of a short ‘relevance check’ to assess whether a full EIA needs to be carried out, similar to the ‘screening stage’ used in both County Council and London Borough. This is followed by a longer process for the EIA. The guidance for this process emphasises the importance of consultation with affected groups and asks for the outcomes of any consultation that has taken place. Rather than a ‘tick box’ approach the form asks open questions. Staff at City Council described this change as an attempt to move to a more ‘narrative’ EIA that would encourage officers completing them to ‘really think through’ equalities issues. The Director described this process as placing the ‘stretch’ with the officer completing the form:

What we have done in budget times is that we have written a cumulative report which is all about narrative, no tick boxing and that starts to shape the story. We want that for every piece [...] So we have re-written the actual EqIA document so it looks really small. The stretch is with you [the officer completing the form] (Director).

As with the other case study authorities officers described the quality of impact assessments as ‘mixed’ and ‘variable’. One officer said ‘we get some that are good and we get some that are....*very* bad’. This was explained largely in terms of people lacking the time or capacity to carry out impact assessments rather than resistance to the idea of impact assessments themselves. Impact assessments had led to changes in policy in some instances. Both parking policy and the process of commissioning dementia care homes had been amended following consultation with disability groups and proposed cuts to domestic violence services had been reduced following consultation with women’s organisations. As with the other two authorities officers emphasised that it was often hard to provide evidence of changes to policy as a result of impact assessments because ‘if it is done properly [problems] get filtered out at such an early stage that you don’t notice’.

For this thesis I analysed impact assessments of council budgets for the past three years. I reviewed all impact assessments carried out over the last three years to identify the five that related to policies that would be expected to have a high level of gender impact to analyse in depth. All impact assessments were available from a single page on the City Council website making them easy for city residents or civil society organisations to find. The impact assessments analysed for this thesis were far more comprehensive than those produced by either of the other two case study authorities. Impact assessments of the commissioning policy for domestic and sexual violence services, housing allocation policy, commissioning of home care services and City Council’s response to the ‘bedroom tax’ all included the full policy documents, details of extensive consultation processes, the advantages and disadvantages of the different options considered including detailed risk assessments and changes to the policy made as a result of the consultation process. All contained a high level of analysis of gender impact, alongside analysis of the impact on other ‘protected characteristics’. Most considered each ‘protected characteristic in turn’, but some included analysis of intersectional impact. For example the analysis of the commissioning policy for domestic and sexual violence services identified these as gendered crimes that primarily affected women, with men the majority of perpetrators, but included analysis of the particular needs of minority ethnic women, disabled women, younger and older women, lesbians and transgender women. There was also recognition of the need for specialist services for male victims and

discussion of how these might differ from services for women. This analysis was reflected in the commissioning policy itself.

This recognition of gender equality across a range of policy areas is continued in the City Council's Cumulative Impact Assessment of its budget plans for 2014/17 which contains a significant section on the gender impact of proposed cuts and changes. The document recognises that women are the majority of public sector workers so are more likely to be affected by job losses at the council, are more likely to be affected by changes to adult social care, both as carers and those needing care, more likely to be affected by cuts to children's services, more likely to be affected by proposals to cut the number of toilets in the city and more likely to suffer a negative impact from cuts to domestic and sexual violence services. This focus on gender in City Council equality documents appears to be the result of strong relationships between equality officers and a well organised women's voluntary sector in the city. These mirrored the 'velvet triangle' identified by Woodward (2004) and support the conclusions of the RNGS on the importance of relationship between feminists working inside and outside state institutions (McBride and Mazur 2010). This is discussed in more detail in the section on civil society below. The impact of this relationship is reflected in the opening section on gender in the impact assessment of the budget which makes reference to lobbying from feminist and women's organisations around the budget proposals:

There has been significant concern that our budget proposals have a disproportionate impact on women in [city], compounding impacts already in play from previous budget reductions (EIA of City Council budget plans).

The comprehensive nature of these impact assessments mean that potentially negative equality impacts are recognised, but not necessarily avoided. In 2014 City Council had to make around £90 million in savings to its budget by 2017 as a result of cuts in grants from central government. In this context cuts to services are unavoidable. As Fredman points out 'ultimately the due regard standard cannot produce more funding' (Fredman 2012, p282). City Council impact assessments include proposals to mitigate the negative impacts of policies on particular groups, but recognise that these cannot prevent negative impact altogether. In some cases, such as the policy for responding to the 'bedroom tax', the impact assessment

includes a recommendation that City Council lobby national government about the negative impacts of their policies, recognising that the ability of the council to avoid these impacts without change in national government policy is limited.

As the cumulative impact of the budget suggests one of the most significant factors influencing the implementation of the PSED and other equality work in City Council is the relationship between officers and a well organised women's voluntary sector. This will be discussed in more detail in the section on civil society. Other factors include the way equality is framed within the council, how officers and councillors see their role and the fear of judicial review. As with the other case study authorities the EHRC was not seen as having a significant impact on equality work. These factors will be discussed in turn.

8.4 Framing of Equality

8.4.1 Framing of equality in council documents

There are two main documents setting out City Council's policies and objectives on equality. These are the Equalities and Community Cohesion Policy, which sets out a series of obligations on staff and managers at City Council as they carry out their work and the Equality Plan which sets out City Council's equality objectives and policy on equality impact assessments. In addition the Council's website contains a series of equality pages, including pages which set out the council's objectives. These documents frame equality in two overlapping ways. The first reflects almost word for word the obligations in the PSED:

‘Our objective is: To eliminate discrimination, harassment, victimisation, advance equality of opportunity between people from different groups and foster good relations between people from different groups’ (City Council Equality Plan 2012-15).

This definition is repeated at various points in all City Council equality documents. The second frames equality in terms of ‘difference’ and ‘diversity’:

Equality of opportunity is not about treating everyone the same. It is about treating everyone according to their needs; it is about treating people fairly. Diversity is about recognising that people are different and have different needs (City Council website, equalities front page accessed January 2015).

As chapter five highlighted, the term ‘treating people fairly’ can have many meanings (Hamnett 2013). Unlike in London Borough ‘fairness’ does not seem to have strong associations with socio-economic justice. However its use here suggests a model based on need, rather than for example on what people ‘deserve’ as it was used in George Osborne’s speech to the 2012 Conservative Party Conference discussed in chapter five. The term ‘diversity’ is used repeatedly in City Council equality documents both in order to emphasise a model of equality based on difference, and as in the context of being an asset of the city. Diversity is ‘one of the city’s greatest strengths’ according to the introduction to the Equality and Community Cohesion policy. Throughout the documents equality is framed largely as an issue of recognition, valuing difference equally and responding to the different needs of diverse groups, or in terms of avoidance of discrimination. The Equality Plan does include some objectives that relate to redistributive equality, for example child poverty is included as an indicator under the objective to ‘improve wellbeing, inclusion and educational attainment levels for children and young people from equalities groups who experience poorer outcomes’. There is no mention of socio-economic inequality in these policy documents except where it relates to a particular ‘protected characteristic’ (age in the case of child poverty). However ‘reducing health and wealth inequalities’ is the first of four priorities in the City Council’s overall City Plan, which is one of a number of other plans and strategy documents referred to as related plans in the Equality strategy. Socio economic inequality is also the primary focus of the Child Poverty Strategy, also referred to in the Equality Plan. The fact that the City Plan sets socio economic equality as a priority, but that this is not reflected in the equality plan appears to reflect the fact that, in these documents at least, equality work is heavily framed by the PSED, which does not include socio-economic status as a ‘protected characteristic’.

Gender equality appears as a significant concern in equality documents from the council. The Equality Plan includes measures to increase the percentage of top earners who are women, measures on harassment at work, measures on sexual and domestic violence and measures on participation in public life. The Plan itself was drawn up following a research project into the needs of women in the city. Other related plans and policies listed in the Equality Plan also include reference to gender. The City Plan includes action on domestic violence and a commitment to reduce

inequality based on a range of factors, including gender. The Child Poverty Strategy includes considerable focus on lone parents, recognising that the majority of lone parents are women, and proposing action to improve availability of affordable childcare. It makes several references to research by the Fawcett Society on women's poverty. The 'strategy against violence and abuse against women and girls and domestic and sexual violence against men' recognises such violence as 'gender based' and explicitly starts from a feminist analysis of violence and abuse against women and girls:

Our approach is based on a feminist analysis -in which violence and abuse against women and girls is linked to and is both a cause and effect of gender inequality - to best protect women, men and children and work towards prevention and complete eradication of such violations of human rights, challenging the inequalities between women and men and promote human rights. This strategy addresses domestic and sexual violence against men, as this is understood as resulting from socially held assumptions about the meaning of masculinity. (City Council, Strategy Against Violence and Abuse Against Women and Girls and Domestic and Sexual Violence Against Men).

The working group which developed this strategy included not only representatives of relevant public sector organisations, such as health and police, and local service providing organisations but also the local group of a national feminist organisation. This involvement of feminist activists may explain the explicitly feminist approach in the strategy.

8.4.2 Framing of equality by equality officers

Among staff with responsibility for equality at City Council equality was framed in two distinct ways. One officer largely framed equality in legal terms, reflecting the focus in the Equality Plan on the council's obligations under the PSED:

And in terms of equality do you have an official definition of what equality means that you are all working towards?

Ummmm. (Laughs), interesting.... I am sure it is framed somewhere in our equalities policy but I don't have it on the top of my head, but we tend to work quite strictly within the parameters of the Equality Act so 99% of our

effort is within protected characteristics, some broader areas of equality and certainly diversity as an agenda but we tend to focus on protected characteristics (Equalities Manager).

Her answers focussed largely on the bureaucratic processes of equality work within the council. Although she appeared committed to ensuring other departments carried out good quality impact assessments and talked at length about the levers she used to make this happen her answers gave the impression that this was more of a professional commitment than a personal passion. She did not mention any particular inequalities in the city she was keen to address. Nor did she give examples of specific projects or changes to policy as a result of the work of her team around the PSED except when directly asked and then only briefly, quickly moving back to discussing process. The impression that her focus was more professional than personal was reinforced when I asked about what equality meant to her personally and she was unable to frame an answer for some time:

Finally we have been talking about equality and as you said it is a term that means different things to different people. What does it mean to you?

Ohhh. God what a question.... What a question! Equality generally? Equality in my job? (Laughs)

Well, give me the different definitions. Is there a difference between equality generally and equality in your job?

Ahhh. (long pause). I don't know... I don't know really.... I don't know.... I think what it means to me is about reaching a point where characteristics, or attributes, bits of your background, culture the way you chose to live your life, doesn't have.... An unnecessarily adverse or positive difference on your ability to access opportunities or contribute in life generally (Equality Manager).

This particular officer had worked in an equalities role in another public body before joining the council but appeared to see her role as primarily a council employee who worked on equality, rather than someone who had come into the role in order to pursue a particular agenda.

In contrast two of the other officers interviewed talked about equality processes in City Council, but placed them in the context of specific examples of inequalities they were keen to address or concrete changes that had been brought about as a result of equality impact assessments. Both discussed equality as a multivalent issue, raising a wide range of issues which touched on equality as difference (particularly around the needs of disabled people), equality of distribution of resources (in terms of the impact of welfare reform and equal pay), equality of outcome (in terms of equal representation among councillors and senior managers), equality of participation (in terms of programmes to encourage public engagement and participation in public life) and domestic violence as a cause and consequence of inequality.

Both of these women framed equality as a structural issue. One, a former member of the equalities team, at the time on secondment in another role, was worried that structural inequality was getting lost in an increasing focus on ‘fairness’:

I worry to be honest that the focus on ‘fairness’ is a way of depoliticising issues. We are talking about the ‘most vulnerable’ as though it were a characteristic of those people rather than a result of Un-equal structures. We’re talking about fairness but not recognising issues of injustice (Former Equality officer).

This seemed to reflect a resistance to the framing by the Equality Manager, based on fairness and individual equal opportunity. The Director also framed equality as a structural issue, talking with great animation about the need to ‘radically transform’ the way services were delivered. She argued for a move from a system where people set objectives based on the work they were already doing to one based on assessment of need, which might involve working very differently. At the same time she also described herself repeatedly as ‘pragmatic’, talking about the need to identify and focus on a small number of specific issues where it was possible to make a difference. These two positions could be seen as contradictory, or they could be an example of Cockburn’s long agenda – focussing on short term concrete goals without losing site of a longer term transformatory aim. In the context of public spending cuts she and her team faced a significant gap between their assessment of what needed to be done to achieve their equality goals, and the resources available to

do this work. Focussing on a small number of objectives may have been the only realistic strategy available to her in this situation.

Both she and the former equality officer raised gender equality frequently during their interviews and both discussed the impact that feminists and women's organisations had had on equality work within City Council (see section on civil society below). Again gender equality was framed as multivalent. All the officers discussed issues of race, sexuality and disability in addition to gender. However in contrast to the council equality documents, officers rarely used the term diversity itself, except to describe the population of the city as diverse. The Equalities Manager observed that diversity was less often used than equality by officers within the council, although it had been widely used in the past and argued that this was because of the impact of the Equality Act.

It is an interesting one because [diversity] is a term that was used almost everywhere. And I think it is driven by legislation. People use the term that makes sense because of the legislation (Equalities manager).

In line with other officers she argued that the PSED was important in marking the move from 'best practice' to a legal requirement. The changing use of language reflected this; she believed that 'diversity' was associated in people's minds with 'including everyone' as a form of best practice, while the term 'equality' had greater legitimacy because of the legal obligations of the PSED.

8.4.3 Understanding of equality by councillors

Two former council leaders (one Labour, one Liberal Democrat) were interviewed from City Council. Both had been described by others as having an interest in equalities. They framed equality in significantly different ways. For the Liberal Democrat councillor equality was about empowerment of individuals:

Because somebody has an unequal position that should not prevent them from doing the things that everybody else does, that they should be empowered to live as everybody else. (Former Liberal democrat leader)

Structural inequality was only raised by her as an example of something she believed local authorities could do little to effect.

My scope as a leader to change some of the things that would discriminate against women is very limited because a lot of them are to do with national factors, to do with the fact that women are among the lowest paid, to do with the fact that many women are carers and workers [...] in terms of what action I could take it was limited (Former Liberal Democrat Leader).

She saw the role of equality work within the authority as being to mitigate the impact of inequality, including socio economic inequality, rather than to remove the underlying inequality:

Where you have poor communities [...] the city council's job is to try to mitigate... whether it is in children's learning, or how old people live, or [...] the voluntary sector (Former Liberal Democrat leader).

The former Labour leader worked as an equality consultant, and had a background in working on gender equality in both the voluntary sector and trade unions. Perhaps unsurprisingly her main focus was on gender equality which she discussed as a structural issue. She framed gender equality as multivalent, mentioning violence, participation in public life, pay, childcare and the economy but with a particular focus on women's socio economic inequality. While stressing the importance of socio economic inequality she raised concerns that other aspects of equality might be missed, particularly in the work of Fairness Commissions which several local authorities (not including City Council) had set up:

The thing about fairness commissions is that actually they are looking at poverty issues [...] the ones that I am aware of are looking at poverty rather than looking at [other] inequality issues [...] it doesn't address quite a few issues does it? (Former Labour leader).

This concern reflected her framing of equality as multivalent, including issues of both redistribution and recognition. Her primary approach to equality was as a political rather than a 'process' issue. She distinguished between those equality officers who were primarily focussed on process and those who focussed on fair public services and equality:

I think there is always a dissonance between people who are looking at the process and doing risk assessment and people who actually think we are

supposed to be delivering fair public services. Or equality. And people in the second group are using the process to get their way (Former Labour leader).

These comments mirrored my own observations of a split between outcomes and process focussed equality officers in all three authorities.

8.5 Role of Equality officers

The equalities team focussed primarily on compliance with the PSED and in particular the Council's Equality Impact Assessment process and ensuring delivery on the equality objectives in the Equality Plan. As with the other case study authorities the role of Equality officers at City Council was to support and advise colleagues in carrying out impact assessments, but not to carry them out themselves. This was explicitly described as a process of 'mainstreaming' by the Director and marked a shift from having specialists in each department with responsibility for equality to making equality a general responsibility, with a central team providing support. While this process was largely described in positive terms by officers, civil society actors raised concerns that there were no longer specialist equality officers within each department with whom they could build relationships. These contrasting views reflect a tension at the heart of mainstreaming approaches. Lone, relatively junior officers with responsibility for equality within individual directorates may be isolated internally (Conley and Page 2015) and lead to equality being seen as separate from the core function of the department. A move to make the entire department responsible for considering equality may result in 'transformational' change as claimed by Rees (1998, 2002) but only if officers within the department have the expertise and commitment to carry out this work. It can make it harder for civil society actors to find allies they can work with and can lead to a loss of focus on equality: if everyone is responsible for equality in practice this can mean that no one is responsible (Symington 2002).

The shift in structure required the equality team to take on a 'coaching' role with colleagues as the Equality Manager explained.

We did some really interesting work last year around using coaching methodologies [...]what I encourage with my team, when somebody rings and says 'I am doing this proposal' we get face to face with them to find out

what the proposal is, what support they might need to complete their assessment (Equality Manager).

The move to a coaching model had been initiated by the Director when she took over responsibility for the Equality team three years earlier. It involved supporting and working alongside colleagues to help them improve their practice. This was in response to what she saw as an unhelpfully ‘dictatorial’ approach previously used where officers ‘were sort of saying, “that’s not good enough, go away and do it again”’. She felt the previous approach had created a barrier to other parts of the council engaging with equalities work by creating an image of the equalities team as purists who did not understand the issues faced by their colleagues:

Equalities practitioners can be a little purist. On the one hand that is good because it is absolutely what we need on the other hand it is very tricky if you are not wired into the heart beat of the organisation because you come across as a policing force and people don’t really think you understand what the difficulties are, what they are trying to achieve which undermines the really good core advice you give from an equalities perspective. So that is what I have tried to break down a bit, to make the team a bit less precious in the nicest possible way. Not to undermine the expertise but to soften them a bit so that they are able to work alongside people (Director).

Part of this ‘working alongside people’ was ensuring that the equality team communicated in a way that spoke to the ‘hearts and minds’ of their colleagues. However the coaching model also seemed a reflection of the fact that the equalities team lacked the power or authority to use any other approach. The Director described her team when she took over as ‘lacking the clout to be able to force or cajole’ colleagues to improve their practice. She explained that the coaching model was also about recognising they were not sufficiently senior to force colleagues to act so had to be ‘empowered’ to persuade them.

Among the equalities team the need to talk to ‘hearts and minds’ appeared to be accepted, with officers discussing their attempts to work alongside colleagues and ‘support them to do it themselves’. However there was clearly a tension between this coaching role and the fact that the equality team also had an enforcement role in signing off on impact assessments. In contrast to the two other authorities where sign

off was the responsibility of other staff, equality staff at City Council were also responsible for sending back assessments they felt to be inadequate and in some cases raise problems with senior managers:

I really discourage sign off when things aren't adequate [...] I mean a lot of the time when something is woefully inadequate we just won't sign off and we will escalate that if we need to and I think if there is something of crucial importance where the impact assessment is not being given the weight it needs to be given then that might be escalated to me then I might escalate it to their manager, or their managers manager (Equality Manager).

The willingness of the Equality Manager to 'escalate' inadequate assessments suggests that, contrary to what the Director said, she did feel that she had the clout to force colleagues to act. This may reflect the greater priority placed on equality within the council, or the growing anxiety about the risk of judicial review in the authority (see below).

Alongside work on Equality Impact Assessments the equalities team was also responsible for delivering on the Equalities Plan, which set out the equality objectives that City Council was obliged to set under the specific duties of the PSED. For the Director the purpose of this plan was to 'focus' on a few things, which she saw as a move away from the 'thorough' but 'enormous' action plans produced under previous equality duties. She welcomed this change:

I think one of the things I have learned in three years of trying to do this job in a large and tricky organisation is that you have just got to focus you have to pick on something and just nail it, or a few things and really, really focus (Director).

This shift to a focus on a smaller number of objectives reflected the difficulties in delivering a more comprehensive action plan, particularly at a time of cuts to the council's budget. This was described by the director as an example of her 'pragmatic' approach to achieving change. Unlike London Borough, which had seen a similar shift from detailed action plans to a small number of objectives, the objectives in City Council appeared relatively broad and maintained a clear focus on gender equality.

8.6 Role of councillors

In interviews with officers and civil society groups councillors were largely described as ‘less active than they should be’ on equality issues. The two former council leaders were exceptions to this but generally councillors did not appear particularly relevant to equality work within the council. Two officers did not mention councillors at all except when specifically asked. The Equality Manager felt that councillors did not ask questions about equality as much as they should, although she said that councillors from ‘left leaning parties’ (Labour, Liberal Democrat and Green) were better at this. The Director argued that the PSED had improved councillors’ engagement with equality issues, moving it from something to be ‘ticked off’ to something they had to seriously consider. However it was clear that both saw councillors as led, rather than leading on equalities work. This attitude was shared by civil society groups who talked far more extensively about lobbying officers than lobbying councillors. The Co-ordinator of the local group of a national feminist organisation summed up the attitude of many when she argued that ‘councillors get presented with proposals which they agree or not. It is the officers who make the recommendations to the councillors, it is the officers who are told that their budget will be cut by this much and have to work out how you are going to do it’.

8.7 Judicial review

The main lever when dealing with colleagues was the threat of judicial review. The Equality Manager described judicial review as ‘the risk that most people care about, that is the risk that most operational managers care about’. Although she felt that the actual risk was low the impact of a judicial view would be serious, meaning it was something that had to be taken seriously. The Director also thought the actual risk of judicial review was low, but was prepared to use the threat of judicial review in order to put pressure on colleagues: ,

JR [judicial review] is always a useful spectre to have sort of hovering in the side. I am as likely to use that as a threat as anyone else and I do use it

actually, if someone is being a bit reluctant. It is probably a bit naughty isn't it but I do use it as a stick [Laughs] (Director).

This practice of over-emphasising the threat of judicial review in order to put pressure on colleagues was similar to that reported by the Director in London Borough and one of the officers in County Council. In all three authorities these officers saw the PSED as a tool to achieve outcomes rather than a bureaucratic process that had to be followed. However the Director recognised that the threat of judicial review was limited to whether an impact assessment process had been properly followed, rather than whether it had had an impact on policy:

I mean making them follow the process, is really useful, it means you have to look at the impact and think about it. But it doesn't mean you have to do anything once you have done that. It doesn't mean that there is anything you actually have to do (Director).

This indicates that judicial review is a blunt tool for ensuring the aims of the PSED are met. The threat of judicial review can be used to make officers consider the equality impact of their policies, but once that impact has been considered it cannot be used to make them change policy. This provides evidence to support Fredman's warning that 'it is unlikely that judicial review on its own is capable of achieving the internal culture change required if equality is truly to be mainstreamed (Fredman 2012 p281).

8.8 Impact of a change to national context

8.8.1 Government attitude to equality

Officers at City Council frequently expressed frustration, and in some cases confusion about comments made by Government Ministers about the PSED. Complaints centred on comments by the Prime Minister and other Ministers that impact assessments were no longer necessary, which had been picked up by colleagues who then thought they did not have to do anything:

Any leverage it was going to have in the long term was somewhat undermined by Mr Cameron's comments. Because I was just working up to a massive great push on making sure that we are impact assessing anything

[...] and then suddenly it was ‘well, you know it may not be here anymore’ (Director).

I remember when Pickles did his ‘chat’ we got loads of queries from people saying ‘oh we don’t have to do impact assessments any more?’ (Equality Manager).

The response from the equalities team to these announcements had been robust – equality impact assessments would continue:

Well um, would you like my line to be any harder on that?! [laughs] If you can do it [meet PSED obligations] without doing an impact assessment and you can do it consistently, and you can meet all the Brown principles [see chapter 5], show me. [...] It might not be called an impact assessment, but it is. We had that discussion should we change the name [...] I said what is the point? Everyone knows it is an impact assessment (Equality Manager).

Nevertheless these ‘mixed messages’ created a sense of confusion about what was required of public bodies. Ultimately the Equality Manager said she had decided to ‘ignore Government and just look at the case law’. She was also dismissive of the decision to review the PSED, and of the review report which she felt ran counter to the evidence presented to it, which was largely supportive of the PSED. Although the review did not recommend the PSED be abolished the Equality Manager felt ‘sceptical’ and ‘suspicious’ of plans for a follow up review, particularly because of the cost and administrative burden that would fall on her if the PSED was abolished because she would have to re-write all the training and guidance already produced. The changed attitude to equality from central government was mentioned more frequently in City Council than in the other two authorities. This may be because unlike the other two authorities City Council had a mixed administration. In London Borough, which was heavily Labour dominated, the attitude of national government was deplored but only seen as affecting work on equality in terms of changes to data collection because the leadership of the council retained a commitment to work on equality. County Council had been under Conservative administration for many years prior to the 2010 election and the leadership of the council appeared to share the Coalition Government’s framing of equality. In City Council with a mixed

administration with differing views on equality the impact of rhetoric at a national level appeared to have more significance in arguments within the authority.

8.8.2 Spending cuts

As with all the local authorities in this study public spending cuts were a constant factor in all the interviews at City Council. Comments about the cuts from officers and councillors fell into three main themes; the reduced resource available for equalities work, the impact that the cuts would have on particular equality groups and whether or not the PSED could be used as a tool to impose cuts ‘fairly’.

At the time the research took place City Council retained what everyone inside and outside the council agreed was a ‘larger than average’ equality team. However the Director made it clear this was unlikely to be able to remain at that size and any cuts would have an impact on the work of the team. The question she faced was ‘how to I deliver with quite a significant amount less?’ This challenge may have influenced her decision to focus on a relatively small number of equality objectives rather than the previous comprehensive action plan. Although the equality team in City Council remained relatively large, cuts to equality officers in other public bodies had had a knock on effect on equality networks locally, leaving equality officers without sources of external support, in what the Equality Manger described as a ‘pretty lonely job’

We did have a lot of equality networks and I think a lot of equality practitioners have seen those networks reduce as staff teams have been reduced [...] equality networks have been disbanded or got rid of, the ability to maintain those kind of networks is reduced. [...] And that is a shame because I think if you are by yourself as an equalities practitioner it is actually a pretty lonely job (Equality Manger).

This comment mirrors the isolation reported by equality professionals in previous studies of their role (Cockburn 1989, 1991, Meyerson and Scully 1995, Conley and Page 2015). While the equalities team in City Council still had each other for support they were aware of colleagues in other local authorities who were the only equality officer still employed and were finding this situation hard. Several of the equality officers interviewed from outside the case study areas were the only equality officer in their authority. The officers at City Council missed the opportunities that the

networks had given them to share best practice with and learn lessons from other public bodies locally or local authorities in different areas. This sharing of best practice was one of the first stages in the ‘pyramid of enforcement’ presented as part of the original proposal for the PSED (Hepple et al 2000) and was an important part of the processes to encourage internal reflection and deliberation within public bodies that are central to reflexive regulation.

Most officers at City Council raised concerns about the impact of spending cuts on particular equality groups in the city, especially women and disabled people. The only exception to this was the Equality Manager who concentrated on equality policy and processes rather than the situation of particular groups in the city. The two former council leaders both discussed the impact of spending cuts in the city and in particular the role of the PSED in assessing the impact of these cuts. They had divergent views about this process. The former Liberal Democrat leader felt that impact assessments might help City Council ensure cuts were made more fairly:

Throughout the cuts we have done full equalities impact assessments. [...] I found it helpful particularly from that point of view as leader, particularly when you are having to make big expenditure savings and to look at some of the more vulnerable groups to give us a chance to see what the impact is to see whether it is disproportionately affecting some of those groups (Former Liberal democrat leader).

This was similar to the approach of some of the officers and councillors in County Council who thought that impact assessments were a way to ensure cuts were made ‘fairly’. It runs counter to the research into the impact of spending cuts discussed in chapter five which concluded that these cuts were having the effect of increasing inequality because of the disproportionate reliance on public services and welfare benefits among women, disabled people, BAME people and poorer people (Stephenson and Harrison 2011, Conley, Kerfoot and Thornley 2011, Taylor and Gooby 2012, Reed and Portes 2014). This point was made by the former Labour leader who felt that the impact assessments of the cuts which had taken place were unrealistically optimistic in that they claimed that cuts would not have an impact on services for the most vulnerable:

I mean they were what I would call Pollyannaesque because they were impact assessments but said we are going to cut this budget by two thirds but we are going to deliver all of these things because we are going to do more for less, we are going to be more targeted and you think, that is not possible. That is not analysis. Can you not say that that is not going to be a better service? [...] I'm afraid that with those cuts over so many years, they are going to have an impact, so is it best that we admit that and we identify that it will have an adverse effect on groups (Former Labour leader).

Civil society groups were also concerned about the impact of the cuts on equality work within City Council:

We still have women at high positions in the council who care very deeply and want to do what they can to promote gender equality but they are all headless chickens.

Because...

Because of the cuts [...] There have been so much restructuring, re thinking, re-evaluating, people who have lost jobs right left and centre, new jobs, new directorates being created, old ones disappearing, there is so much flux and change and strain on the system that it becomes very difficult to maintain a clear strategic direction towards promoting gender equality (Co-ordinator, local group of national feminist organisation).

Civil society groups were often critical of the impact assessments of the cuts carried out by City Council, sharing the view of the former Labour leader that they were unrealistically optimistic. The local group of a national feminist organisation had carried out their own impact assessment of the impact of the cuts on women living in the city but both they, and other feminist activists argued that this placed the focus on decisions made by the council when the political responsibility for cuts rested with national government:

It is a problem isn't it because it is a political thing, but one of the problems is that the space where decisions are made is local but the responsibility for the overall cuts is a national decision (Civil society activist).

8.8.3 Lifting of ring fencing

The other change to national context, mentioned only by one person, but with potential future significance was the lifting of ring fencing of local authority budgets. Under the previous Labour government most local authority funding had been ring fenced, leaving little room for local decision making. The Director argued that the lifting of this ring fencing created more opportunities for local decision making, and in turn for local campaigning by civil society groups. However the context of spending cuts meant that the opportunity was also ‘hideous’:

So long of the budgets were ring fenced that the room for manoeuvre was so little but now the ring fencing has been lifted. [...]. But there is an opportunity and it is a hideous opportunity on one level because clearly adversity or crisis creates opportunities to think about things differently (Director).

Local authority budgets were shrinking significantly even while their room for local decision making increased. However she was concerned that there were few civil society organisations that were sufficiently organised to take advantage of this ‘hideous opportunity’ to influence.

8.9 Impact of the EHRC

The EHRC was hardly mentioned by officers at City Council. There was no reference to its role as a regulator or sense that any of the officers felt that they might face a challenge from the EHRC for any failure by City Council to meet its obligations under the PSED. When specifically asked about the EHRC officers briefly mentioned using their website or other resources, describing these as ‘generally good’ or ‘helpful’. However as with London Borough and County Council the EHRC’s regulatory role appeared largely irrelevant to their work.

8.10 Impact of civil society groups

City Council was notable for the close working relationships and alliances between feminist campaigners and City Council staff with responsibility for equalities. Formal engagement structures had helped build these relationships. The former Labour leader of City Council had established a Women’s Forum, since renamed [City] Women’s Voice which brought together civil society groups representing

women in order to support their engagement with the council. Her work in establishing equality structures is an example of the importance of ‘critical actors’; she had a strong commitment to gender equality and used her position on the council to prioritise it. The forum was represented on various council scrutiny commissions enabling members of the forum to develop relationships with officers and councillors in key positions across a range of policy areas. This built the social capital within these organisations identified as necessary for effective lobbying (Pallas and Uhlin 2014). The impact of these relationships was revealed in both interviews and in council policy documents which specifically credited lobbying by feminist and other women’s organisations as bringing about a change in policy. During interviews council officers repeatedly mentioned a local group of a national feminist organisation and/or the group’s co-ordinator as being particularly influential:

[Local group of national feminist organisation], of the equalities groups they were one that was most strong and articulate. [...] you look at their report [on the impact of the spending cuts on women] they put together a very forceful and powerful argument, with lots of evidence, well-argued obviously that did very much influence what was happening (former council officer).

The report referred to above was an Equality Impact Assessment on the impact of the spending cuts on women in the City, carried out by the local group. This report took a cumulative approach to the spending cuts, examining how policies could combine to increase inequality overall. It drew on an intersectional understanding of inequality identifying particular groups of women (for example Black women or disabled women) who were likely to experience the most severe impacts or experience the spending cuts in different ways. This is in contrast with most of the Equality Impact Assessments carried out by local authorities reviewed for this research which examined the impact of policy on each ‘protected characteristic’ separately, discussing the impact of a policy by gender, then race, then disability and so on but not looking at the specific experience of for example Black women or disabled older women. The Director responsible for equalities credited the report by this group with helping provide the model for proposed work by City Council on the cumulative impact of the spending cuts:

They did a fantastic piece of work around the cumulative impact on women across the piece. Interestingly I used that with my senior director colleagues and got [co-ordinator of local group] in to talk to them. [....we] will use that model to think about how we will do our own cumulative impact assessment (Director).

As this comment shows she actively promoted the findings and methodology of the report within City Council. This was one example of an on-going relationship between the Co-ordinator of the group and City Council officers. It was clear from interviews with both sides that the Co-ordinator and officers were in regular contact, with officers promoting the work of the group within the Council, and on occasion advising the Co-ordinator on lobbying strategy. This was demonstrated by the Co-ordinator who said:

Today I was at a meeting at the [City Council] partnership [with council officers], so obviously after the meeting we have a ten minute conversation. And I would say ‘look, we have just had a ten minute look at the cuts, here are the top three things we are furious about [...] ‘do you think that will play well, is there a risk of highlighting this, do you think there is a danger’, you know, ‘what are the politics behind this decision?’ So a lot of this is intelligence based stuff which relies on people who know what they are talking about [...] who also know where political movement is or is not possible. [...] We couldn’t do this without strong relationships of trust that have built up over many years (Co-ordinator, local group of national feminist organisation).

The City Council’s structures for engagement had supported these relationships; the co-ordinator had been a member of the women’s forum and represented the forum on scrutiny commissions, building up a network of contacts across the council and strengthening the social capital within her organisation. However her ability to use these contacts was based on the fact that there were key officers (critical actors) in the council who shared her aims. These shared aims were not just a concern for gender equality, but, in the case of the report, opposition to the national government’s policy of public spending cuts. This created some problems for the group among some councillors who supported the Government’s austerity

programme; the former Liberal Democrat Leader of the Council for example was critical of both the group and their report, which she said was seen as party political. The local group co-ordinator denied that the group was party political, arguing that it involved women with a range of political views and worked with councillors from all parties. However the overall conclusion of the impact assessment carried out by the group was that public spending cuts would seriously damage gender equality in the city and cause significant harm to certain groups of vulnerable women. This did represent a political challenge to national Government policies. As this Government was a Coalition between the Liberal Democrat and Conservative parties it is perhaps unsurprising if the Labour group on the council used the report to support political criticism of national government policies. The Liberal Democrat councillor saw impact assessments as an opportunity to ensure that cuts were made fairly, in a way that did not disproportionately affect any equality group but was clearly resistant to a conclusion that a policy of cutting public spending was inherently unjust.

The different responses from officers and councillors with different political backgrounds to the report shows the difficulty faced by civil society organisations in attempting to influence local authorities. Rather facing an institution with a shared set of political priorities civil society organisations are faced with a range of actors, with many different priorities. Not only will priorities change with the political control of the council but officers themselves have priorities which may lead them to promote some voices but not others. This suggests that approaches to mainstreaming may be more complicated than the clear division between ‘agenda setting’ and ‘integrationist’ described by Jahan (1995). Some officers worked with civil society groups to successfully set the agenda in some areas such as persuading City Council to carry out a cumulative impact assessment of spending cuts, or to adopt a feminist model of violence against women as a cause and consequence of gender inequality. At others, as is clear from the co-ordinator’s comments above officers advised civil society groups on which issues political movement was possible, suggesting a more ‘integrationist’ approach, working with the grain of existing priorities.

The local group found it easier than some other civil society organisations to negotiate these tensions because it was not reliant on the City Council for funding, meaning that it did not have to worry about alienating people who might be responsible for grant making or commissioning of services. The programme Director

of the local women's refuge made this clear when she explained that the local group 'can say things that groups which receive statutory funding cannot say'. The Co-ordinator of the local group also recognised this, saying that they were 'completely unafraid to say it as we see it' in part because they were not 'hogtied' by their funding relationship with City Council. At the same time while the group did not have to worry about 'biting the hand that feeds' it was entirely dependent on the voluntary labour of a small number of members to carry out its work. The Co-ordinator, who was widely recognised by officers, councillors and other civil society groups, as an extremely effective lobbyist, was able to carry out her role because she was a stay at home parent to school age children. It appeared unlikely that the group would be able to continue all the work she had initiated if she re-entered paid work, or was faced with additional domestic responsibilities. Although there were a number of feminist groups and networks within the city they all faced the same problem: without funding they were dependent on the voluntary labour of women who were balancing this work with other paid and unpaid responsibilities. The absence of an effective feminist lobby in County Council and London Borough may reflect the low number of women who combined the lobbying skills and social capital of this co-ordinator with the time to undertake sustained lobbying. The City Council's Women's Forum brought together a number of representatives of civil society organisations and individual activists, many of whom carried out work on the equality impact of policies which they then promoted through the forum. One retired trade unionist had carried out research to highlight the impact of spending cuts on women and to pressure the City Council and others to introduce policies such as childcare and improved public transport that would improve women's position in the labour market. However she was involved in a series of local and national campaign groups and explained at interview that she had not had time to follow up on the research in the way she would have liked. Another activist who worked as a freelance equalities consultant had helped the women's forum produce a response to the City Council's equality impact assessment of the Budget. Although she brought a high level of expertise to this project she was constrained in the amount of work she could do by her paid commitments. In all of these cases lack of resources was a major factor limiting the work that could be done by civil society actors.

Some women's organisations were funded by City Council to provide services such as the organisation that ran the women's refuge and provided housing and mental health services to women in the city. This organisation was clearly well connected with council officers and took part in a range of consultative forums. However its lobbying work was focussed on funding for its own services and it did not lobby City Council on wider equalities issues. This appeared to be partly a result of its funding relationship with the council, and partly because it saw itself as a service providing rather than campaigning organisation. However one of the strengths of the relationship between the women's organisations in the City was that each recognised the different roles the others had to play and the constraints upon them. The Co-ordinator of the local group of a national feminist organisation said that while there were tensions and occasional arguments over tactics there was also an understanding that 'we will take the hit for doing it this way, you do it in a different way and we will triangulate'.

These networks brought in other women's organisations that only rarely engaged with City Council. The City Feminist Network, for example, was a discussion and campaigning group made up largely of young women. The Co-ordinator of this group had initiated various campaigns aimed at City Council but expressed disappointment about how few members of the network took part in these campaigns. She felt that there was a general sense among members that the council and campaigns aimed at council services were 'not relevant' to younger feminists preferring to concentrate on discussion meetings or campaigns on social media. The network had been involved in a letter writing campaign to prospective councillors before the 2013 local government elections asking them to commit to support funding for violence against women services. This campaign was jointly organised with the local group of a national feminist organisation, and appeared to have come about in large part because of the personal relationship between the co-ordinators of the two organisations, again demonstrating the ability of the local group co-ordinator to build effective coalitions and the importance of critical actors with high levels of social capital. However few members of the feminist network turned up to the letter writing meeting:

It is the first time that they have ever had anything to do with the council and hardly anyone turned up (laughs). Because it is not exciting. [...] It wasn't an

interesting discussion group about you know... transgender oppression, but... it has had an actual impact (Co-ordinator, City Feminist Network).

Through this letter writing campaign the two groups were able to gain commitments from councillors before they were elected to support violence against women services. They did not use arguments based on the PSED, focussing instead on persuading candidates that this was an important issue to women voters. Here they were using the size of a particular constituency (in this case women) as a source of pressure on the council. They later reminded councillors of these promises when the services were under review as part of a co-ordinated strategy with service providing organisations and other groups to lobby the council. Although there were some cuts to funding, City Council continued to fund services at a higher level than many other local authorities.

The influence of this network of women's organisations can in part be traced to the decision of the previous Labour leader of the council to establish a women's forum. However other equalities groups were also represented through similar forums, which did not have the same level of influence. The Director responsible for equality described equality groups outside the women's sector in the main as 'weak' and ready to 'moan' but not take collective action:

I think some of the other groups are rather weak [...] I get quite cross with the voluntary sector sometimes. [...] I get a bit miffed about the fact is that generally what I see is a lot of people moaning and not a lot of collective action.

The only exception to this was some disability groups. The 'disability voice' group was described as 'very articulate [...] they push stuff in, they pick up stuff around services'. This appeared to be the result of well-developed mechanisms for consultation established as a result of the Disability Equality Duty. While lobbying from the disability voice group was welcomed, in other cases the Director's attitude to civil society lobbying was less positive. While promoting the 'voice' groups she was also wary that the voices of some groups could dominate discussion and have a disproportionate impact on decision making. The main example of this she gave was the Older People's Forum in the City, which had successfully argued against cuts to adult learning using the PSED. However, unlike successful lobbying by the women's

sector which was described in largely positive terms, this victory was described by her as an example of the danger of those with the loudest voices being heard at the expense of more vulnerable groups:

[It was] a massively powerful lobby of people who have got themselves together and looked at all the different routes that they can make to make a point and used it. [...]. It did mean that other difficult choices were made as a result of that. [...]When you are looking at something else, like supporting people and the reductions that have been made to that, at the toughest end, domestic violence, homelessness, drug use, vulnerable women, BAME, everybody is in that pot and over the years it has been cut.

In this case the Older People's Forum had successfully lobbied councillors to reject proposals from officers to cut funding for adult learning based on the equality impact. It is not clear whether her opposition to their lobbying was because she did not share their priorities, believing that money was better spent on more vulnerable groups or because she was angered that they had lobbied councillors to reject officers' proposals. Her arguments reflect the concerns raised by Rumbul (2013) and others that some civil society groups may gain a disproportionate influence at the expense of smaller, less well funded and less well connected groups.

8.11 Conclusions – City Council

The final part of this chapter is divided into two parts. This part focusses on the findings from the City Council case study. The next part will bring together and analyse the findings across all three case studies.

Of all the case study authorities City Council produced the most comprehensive impact assessments, and was the only authority with a sustained focus on gender equality. The strong relationships between officers and feminist civil society actors appeared to be a significant factor influencing the council's equality priorities reinforcing the conclusions of the RNGS that relationships between feminists inside and outside the state are crucial to 'state feminism' (McBride and Mazur 2010). These relationships were the result of both formal structures for participatory decision making established prior to the PSED, and the role of individual 'critical actors' both inside and outside the authority. This led to a form of mainstreaming

that was closer to the ‘participatory/democratic’ model identified by Beveridge, Nott and Stephen (2002) than found in the other two case study authorities. However this did not lead to a straightforwardly ‘agenda setting’ approach to mainstreaming; both equality officers and civil society actors were able to set the agenda at some points while at others appeared to adopt an integrationist approach, avoiding issues where political movement seemed unlikely.

The influence of critical actors from civil society organisations depended in part on their expertise; City Council’s cumulative impact assessment was based on a model developed by a civil society organisation for example. This supports Walby’s assertion that both expertise and democratic participation are needed for effective mainstreaming (Walby 2012). Although officers complained about the ‘mixed’ quality of impact assessments, their power to refuse to sign off on poor quality assessments did appear to result in a higher level of analysis than seen in either of the other two case study authorities. This was a reflection of the fact that the equalities team was still relatively large (so had the resources to scrutinise assessments in detail), appeared to have the high level of expertise identified as vital by Woodward (2003) and Veitch (2005) and had support from senior leadership. In this context the PSED was a useful tool for those officers committed to equality to put pressure on colleagues to consider the equality impact of their policy proposals. As with London Borough and County Council the officers who did this had an ‘outcomes focussed’ rather than ‘process focussed’ approach to their role. As with all the authorities the impact of the public spending cuts meant that the work of the equality team was largely focussed on highlighting the equality impact of proposals for cuts to services, rather than pro-actively promoting equality. Even the comprehensive analysis of equality impact produced by City Council could not prevent significant cuts to services, which were likely to have a negative impact on equality in the city.

8.12 Analysis across the three case studies

In the previous three chapters I have described and analysed the results of my research into the implementation of the PSED and the factors affecting this in the three case study local authorities. This final section summarises the similarities and differences in approach to equalities in the three case study areas.

8.12.1 Influence of the PSED on equality work at a local level

Equality work in all three local authorities was structured around their obligations under the PSED. This involved work in two main areas: firstly the use of equality impact assessments to analyse the effect of policy proposals on equality, in order to meet the obligations of the general duty, and secondly the development of specific equality objectives and publication of data in order to meet the obligations of the specific duties. The introduction of impact assessments was a direct response to public sector equality duties. In all three authorities impact assessments had been started in response to previous duties on race, gender and disability and revised following the enactment of the PSED to cover all ‘protected characteristics’. Anxiety about judicial review cases had led to formal policies that all policies should be screened to see if a full impact assessment was needed. All three authorities had developed detailed equality impact assessment methodologies and guidance for staff. However both the review of authorities’ impact assessments and comments from interviewees demonstrated that practice varied; while there were some good impact assessments the quality of many was poor.

In all of the case study areas responsibility for carrying out impact assessments had been ‘mainstreamed’ to the departments responsible for the development or delivery of the policy being assessed: the role of equality officers was to provide support and advice to colleagues but not to carry out the impact assessments themselves. This has the advantage that those responsible for developing a policy are also responsible for considering its potential impact on equality from an early stage. However the mainstreaming of responsibility for carrying out assessments appeared to be more a response to shrinking equality teams, and the need to screen all policies in order to avoid risk of judicial review. None of the equality teams had the staff resources to carry out impact assessments on all policies themselves. The poor quality of many impact assessments highlights the risk with this approach that officers without specific expertise in equality may fail to recognise the potential impacts of the policies they are assessing. This problem is exacerbated if equality teams lack the power to scrutinise or refuse to sign off on poor quality assessments. This confirms the conclusions of Woodward (2003) and Veitch (2005) about the importance of expertise on equality if mainstreaming is to be meaningful. In all three case study areas equality officers reported that some colleagues saw impact assessments as a

‘box-ticking exercise’. This was a particular complaint from officers with an ‘outcome focussed’ approach to their work. These officers attempted to win ‘hearts and minds’ in order to build commitment to carrying out meaningful assessments of equality impact that might lead to changes in policy. However one of the main levers they had to persuade colleagues to take action was judicial review (see below). Since this is a test of process rather than outcome it may reinforce the emphasis on bureaucratic compliance within public bodies.

Aside from impact assessments the other action taken in response to the PSED by all the case study authorities was the development of equality objectives. In all three case studies officers argued that the PSED had provided an opportunity to ‘refresh’ or ‘revisit’ a pre-existing commitment to equality, rather than requiring a new approach. However all three had moved away from the detailed strategies required by the previous equality duties to produce a shorter list of equality objectives in order to meet the minimal requirements of the specific duties introduced in 2011. Arguably the move to reduce the scope of the specific duties brings the PSED more in line with reflexive regulation models since it allows public bodies greater control over how they meet the requirements of the PSED. This is reflected in the different approaches to drawing up equality objectives in the three case study authorities.

In both County Council and London Borough there was little focus on gender inequality. This appeared to be the result of a lack of both internal commitment and external pressure from women’s civil society organisations. Under the Gender Equality Duty (GED) which preceded the PSED all public authorities were obliged to produce a Gender Equality Scheme, and all three case study authorities had done this. The replacement of the GED with the PSED had led all three authorities to develop single equalities schemes. The low priority given to gender equality in County Council and London Borough supports concerns raised when the PSED was first introduced and subsequently that it would lead to a loss of focus on gender (Conley and Page 2015). The fact that this had not happened in City Council appeared to reflect the commitment of critical actors within the authority, and a strong relationship between these actors and a well organised network of women’s civil society actors (see section on factors influencing implementation of the PSED below).

8.12.2 Action to tackle structural inequalities

There was evidence of action to tackle structural inequalities in two of the three case study authorities, but only in one of these did this appear to be even partially a result of the PSED. County Council's approach was limited to avoiding discrimination against individuals as part of a general 'business case' focus on diversity management. In London Borough there was action to address socio-economic inequality on a structural level, but this was explicitly described by officers as a response to the recommendations of the Fairness Commission rather than the PSED. Work on other equalities was concentrated on a limited number of very specific equality objectives. In City Council the Women's Commission had a remit to address structural inequalities faced by women in the city. The Commission reflected a long standing commitment to gender equality within City Council, which pre-dated the PSED. Although the Commission was presented in council documents as a way for City Council to meet its obligations under the PSED, the experience in the other authorities suggests that the Commission would not have been established without that pre-existing commitment.

The hope that a single equality duty, combined with the dual discrimination provisions elsewhere in the Equality Act, would result in an intersectional approach to inequality (Squires 2009) does not appear to have been realised. The vast majority of impact assessments produced by the case study authorities considered each 'protected characteristic' (race, gender, disability and so on) in turn. There were a few examples of assessments that took an intersectional approach (such as the youth justice strategy in County Council or the violence against women and girls strategy in City Council) but these were exceptions. The removal of the dual discrimination provision by the Coalition Government means that public bodies no longer have to take steps to avoid discrimination claims based on two grounds (for example a Black woman claiming a combination of race and sex discrimination). Since a primary focus in the impact assessment process is avoiding discrimination there is no incentive for public bodies to consider how the impact of a policy might be affected by the combination of two or more structures of inequality.

8.12.3 Factors influencing implementation of the PSED

These case studies mirror the findings of early work to assess the impact of the PSED (Clayton Hathaway 2013a and 2013b, NatCen 2014). Together they reinforce the argument that it is difficult to isolate the specific impacts of regulation because of the many other factors which might influence behaviour (Quick 2011, Laing 2014). This section considers the factors that appeared most significant in the case study authorities. The difference in the priority given to gender equality in City Council compared to the other case study authorities highlights the importance of the relationship between critical actors inside the authority and within civil society organisations (Woodward 2004, McBride and Mazur 2010, Walby 2011). These relationships depended on a number of factors. Formal structures to support engagement helped build relationships within civil society organisations and between these organisations and local authorities. This can be seen in the continued influence of disability organisations in local authorities which had established structures to engage with disability organisations as a result of the Disability Equality Duty. Even when these structures had been disbanded as in London Borough their influence could be seen in a well organised disability sector with relationships with council officers. However formal structures alone were insufficient to guarantee civil society impact. In County Council even civil society groups who were active in the local equality forum felt that there was a lack of commitment to meaningful engagement among many council officers. In City Council formal engagement mechanisms combined with a high level of commitment to civil society engagement and to gender equality among critical actors created opportunities for relationships to be built between ‘insiders’ and ‘outsiders’. In order for civil society organisations to take advantage of these opportunities they needed expertise, social capital and resources. In both London Borough and County Council there were actors within civil society organisations with expertise and social capital, but they lacked the resources for sustained engagement and lobbying. Much of the work of feminist and women’s organisations in City Council appeared to depend on the voluntary labour of a few individuals who had the resources in terms of time to build relationships across the sector and with public bodies. It appeared unlikely that these relationships could be sustained if the personal circumstances of these individuals changed. Organisations that received funding from a local authority had

more resources than entirely voluntary groups, but were constrained by their funding relationship and the fear of ‘biting the hand that feeds’.

In the absence of this relationship between feminist actors inside and outside the state in London Borough and County Council, forms of mainstreaming have developed which give very little priority to gender equality. In County Council these were largely bureaucratic, with detailed processes for ensuring legal compliance but little expert understanding of actual equality impact. In contrast in London Borough there were high levels of expertise in particular forms of inequality (primarily socio-economic with some focus on racial inequality) but a lack of consideration of other inequalities, including gender and low levels of participation by external groups. Only in City Council was there an approach to mainstreaming that was both participatory and expert.

Other factors which influenced the way the PSED was implemented include cuts to local authority budgets, the political priorities of the authority and the way equality was framed, the limited role of the EHRC, fear of judicial review, the national political context and the different approaches of equality officers to their role. In all three authorities cuts to budgets had led to a reduction in the size and budget of the equality team, meaning that their ability to support mainstreaming across the authority was limited. Budget reductions across all departments also meant that the priority for all authorities was managing cuts to services. The majority of equality work was focussed on carrying out impact assessments of these cuts. This meant that the hope that the PSED would lead to pro-active work to promote equality rather than simply avoid discrimination has not been realised. Such funding as was available for work on equality was dependent on the political priorities of the authority. In County Council, despite statements from equality officers that equality was a ‘high priority’ the equality team consisted of 1.75 equivalent posts, with officers responsible for equality among a range of other issues, suggesting that in reality equality had a relatively low priority. There were high levels of resistance to work on equality among some councillors. Councillors who supported equality work argued that they were able to persuade their colleagues based on a ‘common sense’ approach. This appeared to involve framing equality largely in terms of individual equal opportunities and the ‘business case’ for diversity management with little recognition of, let alone action to tackle, structural inequality. In London Borough

equality was framed largely in socio economic terms. This was a high political priority and was central to all the work of the authority, but other equality issues were marginal. Although this approach was contested within the authority, the priority placed by London Borough's leadership on socio economic equality meant that this approach dominated. City Council had retained a relatively large equalities team, with significant resourcing for a range of consultative forums, suggesting that equality was a high priority. However it was not clear how long this situation would continue in the face of on-going reductions to the authority's budget. Equality was framed in council equality documents largely as an issue of 'recognition'. However other council documents contained commitments to address socio-economic inequality and equality officers framed equality as a multi-valent issue. This had resulted in a wide ranging focus for the Women's Commission, addressing issues of both recognition and redistribution.

As chapter five showed the EHRC lacks the resources to carry out any systematic work to monitor or enforce impact assessment practice. Work by the commission to promote best practice through information campaigns or supporting networking between equality officers is extremely limited. The EHRC's power to carry out public education campaigns has been severely curtailed. The lack of external scrutiny, public education or support for sharing best practice means that most of the stages of the 'pyramid of enforcement' developed by Hepple et al (2000) in their proposals for a general equality duty did not appear to be relevant in any of the case study authorities. Judicial review was the only enforcement mechanism of which any officers or councillors appeared to be aware, confirming Fredman's warning that it was in danger of becoming 'the first rather than last resort' (Fredman 2011 p420). Judicial reviews have clearly had an impact on compliance with equality impact assessment processes but the primary concern of the courts is whether an impact assessment process has been followed, not what conclusions it reaches or what action is taken as a result of those conclusions. While the PSED has resulted in some form of assessment of equality impact becoming standard practice in the case study authorities, by itself it has not been sufficient to ensure that these assessments identify the full range of potential impacts of a policy, nor that they result in changes to policy or practice. Indeed the desire to avoid judicial review meant that large amounts of time and energy are spent on bureaucratic compliance, perfecting the

process of impact assessment, rather than developing an understanding among policy makers of the equality implications of their policy areas, or winning the ‘hearts and minds’ of councillors who are opposed to work on equality. At the same time the open antagonism to the PSED among senior Government Ministers has led to confusion about what is required of public bodies and in all three authorities required officers to counter the belief that impact assessments were not necessary.

In all authorities at least one officer used the threat of judicial review in order to increase the priority given to work on equality. Throughout the research I observed a distinction between officers whose work was outcomes focussed and those whose focus was on process. The use of the threat of judicial review was one of the characteristics of officers whose work was outcomes rather than process focussed. This distinction between outcome and process focussed equality officers differs from that made in earlier studies of equality professionals between what Jewson and Mason characterised as ‘radical and liberal’ approaches to equality and Cockburn described as the ‘short and long agenda’ (Jewson and Mason 1986, Cockburn 1989). Although there are significant differences in the two models (see chapter two) both identify two broad approaches, one more limited based on small scale change and one more transformative. The outcome focussed officers I observed seemed to fit Cockburn’s model of officers who combined a short and long agenda; while they focussed on short term specific objectives, often in response to the limitations of their role, they expressed personal commitments to a ‘long’ more transformative agenda and saw the short term objectives as contributing to more substantial change. They actively sought external pressure from civil society groups in order to raise the political priority of equality issues. The ‘process focussed’ officers appeared closer to the ‘diversity professionals’ discussed by Kirton, Greene and Dean (2007). Unlike the previous generation of equality officers in Cockburn’s study they came from other posts within the authority rather than from external activism. They differed from the outcomes focussed officers in that they discussed process as an end in itself rather than in terms of the changes that it could bring about. They were far less engaged with civil society groups and did not encourage external pressure. They referred to their role in terms of ensuring that the authority met its legal obligations under the PSED rather than seeing the PSED as a lever to bring about more fundamental change. The difference seemed to be between those people who saw

themselves as council officers who happened to be working on equalities and those who saw themselves as working for equality who happened to be doing that work through the council. This reinforces my conclusion from comparing Cockburn's work to that of Kirton Greene and Dean (see chapter two) that there has been a significant shift in the way some equality officers see their role. This has important implications for the future impact of equality legislation. Process focused officers may ensure that public authorities meet their legal obligations but as the case studies have shown this can be done in a limited way; it was the officers focussed on outcomes who went beyond this to use the law as a tool for changing policy and practice. It is useful here to extend Childs and Krook's work on 'critical actors' beyond the parliamentarians which were the focus of their work (Childs and Krook 2009). Outcome focussed officers, along with some civil society activists can be seen as another form of 'critical actors' without whom equality work in the three local authorities would have been limited to the legal/bureaucratic focus of their process focussed colleagues.

Chapter 9: Conclusions

9.1 Introduction

This thesis set out to explore the impact of the PSED on work to promote equality within public bodies through case studies of three local authorities. There has been limited empirical research into the impact that the PSED has had on the behaviour of public bodies (Fredman 2012). The main evidence of impact in England has been evidence submitted to the Independent Review of the PSED, which provides a series of individual examples of specific impact on policy but little evidence of whether and how the PSED has influenced equalities work in a systematic way (Clayton-Hathaway 2013a and 2013b). The PSED replaced previous positive equality duties covering race, gender and disability. While there were weaknesses in the Gender Equality Duty it had provided ‘an essential framework for sustaining and protecting commitment to women’s equality’ and there were concerns among equality practitioners that the PSED would lead to a loss of focus on gender (Conley and Page 2015 p113). The first aim of this thesis was therefore to contribute to the empirical evidence base on the impact of the PSED on equality work and in particular on work to promote gender equality.

Positive duties to promote equality (which include the PSED and previous duties covering race, gender and disability) have been analysed in two main ways; as forms of mainstreaming and as examples of reflexive/responsive regulation. As I explained in the literature review these two are not incompatible but they are not usually combined. Those analysing the PSED as a form of reflexive/responsive regulation identify mainstreaming as the aim of the duty, but do not interrogate what is meant by the term mainstreaming (Hepple 2010, Fredman 2012). Feminist scholars have identified the variety of practices that have been described as mainstreaming and critiqued some of the forms that mainstreaming can take but have not related these to the form of regulation used to enforce it (Beveridge and Nott 2002, Booth and Bennet 2002, Daly 2005, Verloo 2005, Walby 2012). My second aim in this thesis was to use the experience of the PSED to explore for the first time the relationship between regulatory mechanisms used to enforce mainstreaming and the form of mainstreaming that results thus contributing to both bodies of literature.

The research questions for the thesis were:

1. How has the PSED influenced equalities work and in particular work on gender equality at a local level?
2. What factors have affected its influence?
3. Has the PSED resulted in action to tackle structural inequality?
4. How does the implementation of the PSED deepen our understanding of responsive/reflexive regulation?
5. Does it operate as a mechanism to promote mainstreaming?

Previous studies on mainstreaming have shown that the national, local and organisational context in which mainstreaming takes place can have a significant impact on the form mainstreaming takes and the impact that it has (Woodward 2004, Verloo 2005, Walby 2011). Similar conclusions were reached about other forms of ‘state feminism’ in the RNGS research (Goertz and Mazur 2008, McBride and Mazur 2010, Mazur 2013). I therefore decided to use a case study approach to address these questions as this would allow me to explore how the PSED was implemented in the context of three specific organisations. I set these local case studies in a changing national context following the election of the 2010 Coalition Government, which took a very different approach to equality in general and to the PSED to its predecessor.

In this concluding chapter I will briefly summarise my contribution to the empirical evidence base on the impact of the PSED. I then go on to explore the lessons that the implementation of the PSED might hold for theoretical and policy debates about mainstreaming and the regulatory mechanisms used to enforce it. The final section identifies the limits of this research and makes suggestions for future research on the subject.

9.2 Summary of empirical findings

In the previous three chapters I have described and analysed the findings of my research into the implementation of the PSED and the factors influencing this in the three case study local authorities. I have shown that the PSED has influenced the structure of equalities work within each case study authority in that work is organised around meeting the authorities’ legal obligations under the PSED.

However the form that this work took varied significantly by authority. This reflects findings of earlier research that both mainstreaming practice and the impact of regulation can vary significantly depending on external and internal context (Woodward 2003, Verloo 2004, Walby 2011, Quick 2011, Huisings and Squires 2011). Previous studies have suggested that a key issue is the way in which equality is framed (McBride and Mazur 2010, Mazur and McBride 2014). My findings support this: each authority framed equality in a different way and this framing had a significant impact on the form that work on equality took in each authority. In two of the case study authorities gender equality appeared largely absent from the equality frame, resulting in a low level of focus on gender in these authorities. This was enabled by the move to a single equalities focus under the PSED. Prior to the PSED even those authorities where gender was a low priority were obliged to develop a Gender Equality Scheme in order to meet their obligations under the Gender Equality Duty which ensured at least some consideration of gender. With the replacement of the GED by the PSED this obligation was lost.

My findings also support the conclusions of earlier studies which have identified the significance of relationships between actors inside the state and civil society actors outside (Woodward 2003, Verloo 2004, Walby 2011, McBride and Mazur 2010).

The relatively high level of focus on gender at City Council appeared to be the result of strong relationships between council officers and feminist and women's organisations in the city. These relationships required a shared commitment to common equality goals, formal structures for engagement combined with a commitment to making that engagement meaningful and civil society organisations with the expertise, social capital and resources necessary to engage effectively.

I have shown that the different ways that the implementation of the PSED can be influenced by the actions of 'critical actors' inside and outside the authority. Within the authority those officers with an 'outcome focussed' approach to their work have used the PSED as a lever to promote wider change. This is in contrast to those with a 'process focussed' approach who have concentrated on bureaucratic compliance with the duty. However the tool most commonly used by outcome focussed officers to persuade colleagues to consider equality impact has been the fear of judicial review. Since judicial review is a test of processes rather than outcomes this has meant that even outcome focussed officers run the risk of promoting bureaucratic compliance.

The regulatory role of the EHRC did not appear to have any influence on the behaviour of any of the case study authorities. Neither did it appear to play a role in promoting best practice. This severely undermines the ‘pyramid of enforcement’ which was central to the design of the PSED.

I found little evidence that the PSED has resulted in action to tackle structural inequalities. In all three authorities the resources available for equality work were constrained by cuts to the authorities’ budgets. This background of austerity, combined with the fear of judicial review meant that in all three authorities the majority of equality work was focussed on carrying out Equality Impact Assessments (EIAs) of cuts to services rather than pro-active work to promote equality. These EIAs were of variable quality and in both County Council and London Borough generally showed little evidence of real consideration of equality impact. Where there was recognition of structural inequality this appeared to be the result of factors other than the PSED (the Fairness Commission in London Borough and a history of commitment to gender equality combined with a strong women’s civil society in City Council).

These findings contribute to the research base on the impact of the PSED on the behaviour of organisations, helping to address the lack of data identified by Fredman (2011). The next section explores the theoretical implications of these findings.

9.3 Theoretical implications

When the PSED was first introduced it was hailed for its ‘transformative’ potential (Hepple 2010). The promise of transformation was based on the belief that the duty would result in public bodies taking pro-active measures to tackle inequality at a structural level through a process of mainstreaming rather than simply avoiding individual acts of discrimination. Claims that are made for the transformatory nature of mainstreaming rest on a very specific use of the term; to address the structures and practices that embed inequalities (Rees 2005). However as Daly (2005) pointed out while theoretical accounts of mainstreaming grew out of a desire among feminists to move beyond arguments about sameness and difference to focus on structures, in practice the term can be used to describe a wide variety of approaches, meaning that mainstreaming is conceptually vague (Beveridge and Nott 2002). Distinctions have been made between ‘integrationist’ and ‘agenda setting’ approaches to

mainstreaming (Jahan 1995, Shaw 2002, Lombardo 2005) or between ‘expert/bureaucratic’ and ‘participatory/democratic’ approaches (Beveridge, Nott and Stephen 2002). Both the ‘integrationist’ and ‘expert/bureaucratic’ approaches aim to integrate consideration of gender equality into the bureaucratic processes of an organisation, framing equality as a way to achieve existing goals rather than a challenge to them. ‘Agenda setting’ and ‘participatory democratic approaches’ seek to shift the priorities of the organisation in line with feminist goals and are closer to Rees’ description of mainstreaming as ‘transformatory’ (Rees 1998, 2002, 2005). Beveridge, Nott and Stephen argue that ‘agenda setting’ is only possible through the participation of civil society organisations and in particular disadvantaged groups within the policy making process. This is because expert/bureaucratic models are likely to become integrationist.

My findings suggest that the clear distinction between integrationist and agenda setting or expert/bureaucratic and participatory/democratic models does not fully reflect the complexity of mainstreaming practice. I observed well developed bureaucratic processes but little sign of expertise in one authority (County Council) and participatory processes where feminist and women’s groups sometimes shifted the agenda and sometimes worked within existing agendas (City Council). These groups used both democratic pressure and expertise to influence the authority in line with Walby’s observation that both expertise and participation are required for effective mainstreaming (Walby 2011). Rather than models based on a split between integration and agenda setting or expertise/bureaucracy and democratic participation I would argue that it is more accurate to consider mainstreaming in terms of what is being mainstreamed, what is meant by mainstreaming and who participates in the process.

The first key question, what is being mainstreamed, depends on how equality is understood. As the literature review showed two of the main issues for feminist understandings of equality have been firstly whether the aim is that women should be treated equally to men or that they should have their difference to men equally valued and secondly the relationship between inequality based on gender and other inequalities. These will be considered in turn. Neither sameness nor difference alone seems to provide an adequate model for equality (Phillips 1999). Both Fraser (1997)

and Fredman (2007) have argued for a multi-valent approach to gender equality that addresses both socio economic injustice and androcentrism and the inter-relationship between the two. Socio economic inequality would require the removal of differences through redistribution while androcentrism would require the revaluing of characteristics seen as feminine through a politics of ‘recognition’ (Fraser 1997, Fredman 2007). This would be compatible with a ‘transformatory’ model of mainstreaming that was presented as a way to move beyond arguments about difference and sameness to address the structures and cultures that cause disadvantage (Rees 2005, Squires 2005). However it is clear from the case studies that forms of mainstreaming can develop that centre on either sameness or difference rather than move beyond them. This appears particularly likely with a reflexive approach to regulating mainstreaming which allows regulated bodies to develop procedures to meet their obligations to mainstream in line with their own priorities as seen in the very different approaches in London Borough and County Council. Although the PSED included a definition of mainstreaming that drew on the multivalent model developed by Fredman and Spenser (2006) this appeared to have less impact on mainstreaming practice than the way equality was framed within individual authorities.

The relationship between different forms of inequality has been the focus of much feminist debate. Following Crenshaw’s work on the intersection between inequalities based on race and inequalities based on gender in the lives of Black women (Crenshaw 1989,1991) her concept of intersectionality has been extended to describe the relationships between a series of categories including gender, race, class, sexuality and disability that had previously been distinct (Grabham et al 2009). One response to this has been a shift in focus from gender equality to diversity (Cooper 2004, Kirton and Greene 2010). Squires welcomed the introduction of a single public sector equality duty as an example of ‘diversity mainstreaming’ which would better address the intersectional nature of inequality than gender mainstreaming (Squires 2009). However, as this thesis has shown, in practice this can lead not to greater recognition of the ways in which gender equality and other forms of inequality interrelate but to a loss of focus on gender altogether. Both London Borough and County Council largely ignored gender equality, although this is not an inevitable outcome of the framing of equality within either authority. London

Borough could have focussed on socio economic inequality while recognising the extent to which this is gendered. County Council could have prioritised gender within its difference model. The absence of consideration of gender in both authorities appears to be the result of a shift from gender mainstreaming under the Gender Equality Duty to ‘diversity mainstreaming’ under the PSED. Clearly gender inequality inter-relates with other forms of inequality and the examples of intersectional analysis of impact of policies found in some of the case study authorities shows how this approach can bring greater depth of understanding of the specific needs of different groups. At the same time simply merging analysis of gender into a broader analysis of ‘diversity’ does not guarantee an intersectional approach. This would suggest the need to maintain a specific focus on gender even while recognising the way it intersects with other inequalities at a structural level in line with the work of Acker (2006) or Weldon (2008).

The second key question is what the process of mainstreaming actually entails. In the case study authorities the term ‘mainstreaming’ itself primarily described the transfer of responsibility for equality from specialist equality teams to those devising and implementing policy. These people were theoretically responsible for considering equality at all stages of policy development, which could have had transformatory potential, but in practice it was often sufficient to ensure an Equality Impact Assessment had been carried out regardless of how meaningful this process was or whether it led to any change in policy. In addition the limited resources of the equality teams meant that impact assessments were restricted to changes in policy or practice rather than assessments of existing structures and practices. This meant that consideration of structural issues was limited. To be truly transformatory mainstreaming has to involve not only reactive consideration of the impact of new policies but pro-active consideration of the inequalities facing different groups with an analysis of how the organisation concerned can influence these. This requires a combination of expertise and commitment among those in positions of power in the organisation to provide resources for this analysis and act on its conclusions.

This leads to the third question – who is involved in mainstreaming? The case studies suggest that external pressure from feminist and women’s civil society groups is vital to ensure that gender is included among the equalities that are

mainstreamed. The experience in City Council shows that it is possible to retain a focus on gender within a combined equalities approach where there is a political commitment to do this, and strong relationships between feminist actors inside and outside the state. Although this sometimes led to an integrationist approach, limited by the priorities of the council, these actors were able to set the agenda on some issues. These relationships depended in part on a relatively small number of individual ‘critical actors’ (Childs and Krook 2009). Although there were structures in place to encourage participation across civil society it was only women’s organisations that were reported as able to translate these formal structures into meaningful engagement and this was largely credited to a number of key individuals. These case studies therefore provide further evidence to support Woodward’s conclusion that the presence of individual ‘gender experts’ inside the state and the ‘velvet triangle’ of their relationship with political actors and feminist civil society actors is critical to effective mainstreaming practice (Woodward 2003). Where these relationships are not in place gender is at risk of falling off the equalities agenda.

Using this model transformatory mainstreaming requires a specific focus on gender as a multivalent issue, expertise and commitment within bodies responsible for mainstreaming and meaningful participation by external civil society groups. From the evidence of the case studies the PSED has not succeeded in delivering a model of mainstreaming that can be described as transformatory. The next section explores whether the form of regulation used to enforce mainstreaming might be a factor in this.

One theory for the failure of the PSED to reach its transformatory potential is based on warnings by Hepple (2011) and Fredman (2011) that the changes introduced by the Coalition Government would undermine some of the key elements of reflexive regulation, the regulatory mechanism the PSED used to enforce mainstreaming.

Chapter five showed how the Coalition Government reduced the power of the EHRC, the main enforcement body for the duty, and introduced specific duties that were far more limited than the specific duties under the previous equality duties covering race, gender and disability or those proposed by the previous Labour government. Crucially the specific duties no longer included any obligation to consult or engage with external groups. We have seen how these changes

undermined the pyramid of enforcement and led case study authorities to focus on a relatively small number of equality objectives. This would suggest that mainstreaming through the PSED failed to be transformative because the regulation used to enforce it was not reflexive enough.

However as I explained in chapter two although the PSED is described as an example of ‘reflexive regulation’ it includes both reflexive and responsive elements. Although Hepple uses the term ‘reflexive’ regulation to refer to both there are important differences between the two. Reflexive regulation conceptualises the failure of earlier forms of regulation as a problem of communication between the law and regulated bodies. These organisations will process messages from the law according to their own norms and structures; and may resist regulation imposed from the outside (Teubner 1987). Reflexive regulation therefore concentrates on internal deliberation and communication within regulated bodies and between those bodies and legal systems in order to encourage forms of self-regulation through a process of internal deliberation about how best to meet the ends which regulation aims to achieve. Theories of responsive regulation also aim at processes of negotiation and dialogue but place more emphasis on the participation of a wider community of interest groups in the process of deliberation (Nonet and Selznick 1978/2001) and on increasingly severe enforcement mechanisms if the regulated body fails to respond (Ayres and Braithwaite 1992). Although there are elements in common between reflexive and responsive regulation there are also potential tensions between them particularly if the regulated organisation decides that engagement with external groups is not necessary in order to meet the aims of regulation. These differences are obscured by the use of the single term ‘reflexive regulation’ to describe the PSED. The changes introduced by the Coalition Government, particularly the removal of any duty to consult or engage with civil society from the specific duties and the reduction in the power of the EHRC, represent a move away from responsive regulation. There is no mechanism to ensure the participation of the wider community and most of the stages in the ‘regulatory pyramid’ proposed by Ayres and Braithwaite are rarely used. The more limited specific duties arguably make the PSED more reflexive in that they increase the ability of public bodies to decide for themselves how best to have ‘due regard’ for equality. My findings reinforce the concerns I raised in chapter two about the tension between ensuring a participatory

decision making process and allowing public bodies to decide for themselves how to meet the aims of the law.

Distinguishing between reflexive and responsive elements in the PSED suggests that its failure to live up to its transformatory potential may be because it was too reflexive rather than because it was not reflexive enough. In Chapter two I suggested that different models of regulation may encourage different forms of mainstreaming. Responsive regulation is highly compatible with participatory models of mainstreaming since it is built on external participation in decision making. In contrast the emphasis in reflexive regulation on internal deliberation and allowing regulated bodies to define their own responses to the problem regulation aims to solve can lead to a purely ‘integrationist’ form of mainstreaming (Jahan 1995, Lombardo 2005, Shaw 2002) based on the priorities of the regulated body. The findings of the research provide evidence for this; both County Council and London Borough in very different ways interpreted mainstreaming in line with their priorities which led to little consideration of gender or engagement with external voices. The fact that City Council developed a participatory approach to mainstreaming does not undermine this conclusion. The council gave a high priority to engagement and consultation and for gender equality at least there were critical actors who were able to take advantages of the mechanisms set up to support this. The higher levels of consultation and engagement with disabled people reported under the previous Disability Equality Duty in response to the obligations in the DED’s specific duties show that a more responsive, less reflexive model of regulation can lead to a more participatory form of mainstreaming.

This is not to say that a more responsive model of regulation alone would ensure participatory forms of mainstreaming. The case studies highlighted the many barriers faced by civil society groups in engaging with local authorities. The case of County Council shows that structures for engagement with civil society are not enough to ensure that this engagement is meaningful. There needs to be a commitment to take account of the views of civil society at a senior level within the authority and civil society needs the expertise, social capital and resources to be able to take advantage of whatever structures are in place.

While the form that mainstreaming takes can be influenced by a variety of factors, the experience of the PSED suggests that the model of regulation used to enforce mainstreaming can be significant. This demonstrates the importance of distinguishing between reflexive and responsive elements in regulation rather than using the blanket term ‘reflexive regulation’ to cover both. This has implications for studies of regulation in other areas. The tension between allowing regulated bodies to develop their own solution to problems and ensuring participation by external groups is not limited to equalities.

9.4 Policy implications

The reduction in the role of the EHRC has resulted in information and enforcement gap around the PSED. Even equality officers express uncertainty about what is required of them and the EHRC lacks the resources to ensure that impact assessments are meaningful. Without mechanisms to educate, share best practice and enforce the PSED public bodies will remain free to take a relatively minimal approach to implementing the PSED.

The change in approach within public authorities when obligations to consult and engage in earlier equality duties were removed under the PSED shows that these obligations are important to ensure a participatory approach to mainstreaming. However formal obligations to consult and engage are not enough; there needs to be commitment to engagement at a senior level and civil society organisations require support and funding if participatory mechanisms are to be meaningful.

The poor quality of many Equality Impact Assessments demonstrates the need for those carrying out such assessments to have the necessary expertise not only in the bureaucratic process of assessment but also in the equality implications of their policy area. The lack of any recognition of the gender equality implications of policy proposals in many EIAs highlights the need for specific training on gender equality for staff responsible for developing and analysing policy.

The loss of focus on gender since the Gender Equality Duty was replaced by the PSED underlines the need for specific obligations on gender equality. This could include restoring the duty to take action to address the pay gap which existed under the previous Gender Equality Duty. A stronger EHRC could play a role in highlighting the gender implications of some of the main policy areas addressed by public bodies and the relationship between economic and status based inequality for women.

9.5 Limits of the research

This project aims to both fill a gap in empirical evidence about how the PSED is being implemented in practice, and address a theoretical question about the relationship between mainstreaming and the form of regulation used to enforce it. The case study format can provide information about how the PSED is implemented within the case study authorities, but cannot be used to generalise about impact of the PSED more broadly. Existing literature in the area suggests that the impact of mainstreaming policies varies significantly and depends on particular local context. This research allows conclusions to be drawn about what some of these contextual factors might be including the way equality is framed, the political make-up of the authority, the role of equality officers and the relationship between officers and civil society groups but cannot provide an exhaustive list. This is an area of policy and practice which is fast changing. Equality teams within local authorities are shrinking, and authorities are facing significant and on-going budget reductions. Some are looking to merge many of their administrative and policy functions. This reduces the replicability of this study.

When drawing up the interview schedule for this research I did not include questions about the participants' ethnicity, age, social class or work history. This meant that I was unable to explore the extent to which these factors might have influenced their framing of equality or their approach to their role. For example although from appearance the officers with the 'process focussed' approach to their role appeared younger than those with an 'outcomes focussed' approach my impression of their relative ages could have been wrong so I was unable to comment on this. Nor did I collect information about the backgrounds of those officers who I was not able to interview, which would have allowed me to record whether there were any

differences between the characteristics of the officers I interviewed and those who were not available for interview.

9.6 Suggestions for further research

This study has contributed to the research evidence on the impact of the PSED at a local level. There is still a need for more evidence, particularly since the Government has announced its intention to review the PSED again in 2016. In particular a comparative study of practice in England, Scotland and Wales could provide useful information about the influence of different specific duties and political climates on how the PSED is working in practice. This could test my conclusion about the importance of a specific duty to consult and engage with civil society. The EHRC research into how public authorities are meeting their obligations to produce equality objectives and publish information has shown significant differences between different parts of the public sector. Comparative case studies examining a number of public bodies in a particular area could expand on this statistical information to explore the factors influencing these differences.

This study has highlighted the importance of women's civil society organisations in influencing policy at a local level. There has been a noticeable increase in feminist activity among young women in particular but very little appears to be focussed on local government. Comments by the Co-ordinator of the City Feminist Network suggest that this might be because younger feminists place a higher priority on campaigning around issues of individual identity than structural inequalities. Further research in this area could test whether this is the case and what factors influence feminist priorities.

9.7 Conclusions

The evidence from the case studies suggests that the PSED has not simply resulted in box ticking as some Ministers have claimed, but neither has it been the transformative force that it was originally hoped it would be. There have been some changes to policy and practice as a result of the PSED but the duty has not led systematic work to address inequality at a structural level. Implementation of the duty has tended to focus on developing bureaucratic processes to assess equality impact and to result in limited analysis. This is not simply because of the changed

approach to equality and programme of public austerity from the current Government but also because of inherent weakness in the reflexive regulation model. Participatory models of mainstreaming, which might be more transformatory, would require an obligation within the PSED to consult or involve external groups in decision making. This would move towards a more ‘responsive’ approach to regulation, ensuring participation by effected groups is central to the policy making process. It would make the PSED less ‘reflexive’ since it would require regulated bodies to take particular actions, rather than allowing them to decide on the basis of their own priorities.

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Appendix 1

Interview Schedule

Introduction

Introduce self, explain purpose of research, explain answers may be quoted, but that neither those being interviewed, nor their organisation will be named and that I will do my best to ensure they are not identifiable. Ask for consent to record interviews. Give written details of purpose of research and consent form, ask them to read and sign if they are happy with it.

Can you provide some background by telling me a bit about how the equalities team is structured within the council and your role within it?

Follow up:

how many other staff in the team, what are their roles? Are all equalities staff based in one team or are there equalities specialists within other directorates? Who is the team answerable to? among council staff? Among councillors? Is there a committee with responsibility for equalities, or a cabinet member?

What is your own background? How long have you been in this role? Have you had other equalities jobs elsewhere? What about the rest of the team?

What is the official remit of the team? Eg. equality, equality and diversity, equality and community cohesion etc. What does that mean/is there an official definition of what that means?

Follow up – are there tensions between the different roles of the team? (maybe move that until later?)

How would you describe the approach to equality within the council? WAIT then prompt – political priority? Resources? Mainstreamed or responsibility of single unit? Diversity and social cohesion – part of equalities, in tension with it?

So as you know I am looking at how the Public Sector Equality Duty is working in practice. So I wanted to start with a **general discussion about your thoughts about the public sector equality duty...WAIT GIVE A CHANCE TO SPEAK**

What do you think are the aims of the duty?

How does it work in your council? – what do you do?

What about impact assessments? (prompt – what issues do you cover, - other issues, rights? Socio economic?)

What do you think about how this works?

Is that different from what you used to do before the duty? in what way ,

Do you think it changed how people thought about equality, or what you did..

can you remember when changes happened?

Has it changed more recently? (WAIT – then prompt – with new govt, change to socio economic duty, specific duties - govt says it has a new approach, has that changed what happens here?)

So what effect has the duty has on what the council does? WAIT – then prompt – changes to equality processes and practices.?

Specific examples of policies that have changed.

For example I know **councils are facing big cuts at the moment**, what does the PSED mean in terms of how you monitor the equality impact of these cuts?

Has it had an impact on budgeting decisions, what impact? What drives it (threats of legal challenge?)

Have the cuts had an impact on equality? Do you think the PSED has had any impact on this? (wait for focus of response and then ask What about nationally/locally?)

(In City Council London Borough) - Are you aware of the impact assessment of the impact of the cuts on women carried out by civil society groups locally? What did you think about the conclusions of the assessment? Did it have an impact locally? What was this?

How effective do you think the PSED is in promoting equality locally? What are its strengths and weaknesses? Are there approaches that would work better

Prompt... there have been some criticisms – it leads to a tick box approach, those with the loudest voices heard most

We keep talking about equality, but people have different ideas of what it means – what does it mean to you? WAIT.

How is your work on equality developed? WAIT and then prompt – legal obligations, best practice, political pressure, links with other orgs.

Anything else you want to add?

Anyone else I should talk to? -who are the key councillors? Etc.

Questions for civil society groups

Opening question

Can you tell me a bit about your organisation and your role within it/ who you represent etc.

I'd like to start with some general discussion about the public sector equality duty and what you think about it?

Does it work? For whom?

Do you use the Public Sector Equality duty in your work (eg. asking for copies of impact assessments, legal challenge?) – how, do you think it is working? Who does it work for?

Are you aware of how the council uses the PSED? Can you think of examples What examples can you think of?

Do you think it makes a difference to what the council does. And how? Were things done differently before?

In terms of the spending cuts are you aware of impact assessments that have been carried out by the council on the spending cuts? are you aware of any changes of policy as a result of impact assessments.

(in City Council/London Borough) are you aware of the impact assessment on the impact of of the cuts on women carried out locally? Were you involved in the assessment? For those that were – what was your involvement, can you tell me what you did? What the objectives were? was it successful? Why?

We've been using the term equality a lot but it means different things to different people. What does it mean to you? Do you think this is the meaning in the public sector equality duty?

Interview Schedule for impact of PSED

Introduction

Introduce self, explain purpose of research, explain answers may be quoted, but that neither those being interviewed, nor their organisation will be named and that I will do my best to ensure they are not identifiable. Ask for consent to record interviews. Give written details of purpose of research and consent form, ask them to read and sign if they are happy with it.

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What is your own background? How long have you been in this role? Have you had other equalities jobs elsewhere? What about the rest of the team?

What is the official remit of the team? Eg. equality, equality and diversity, equality and community cohesion etc. What does that mean/is there an official definition of what that means?

Follow up – are there tensions between the different roles of the team? (maybe move that until later?)

How would you describe the approach to equality within the council? WAIT then prompt – political priority? Resources? Mainstreamed or responsibility of single unit? Diversity and social cohesion – part of equalities, in tension with it?

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What do you think about how this works?

Is that different from what you used to do before the duty? in what way ,

Do you think it changed how people thought about equality, or what you did..
can you remember when changes happened?

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How effective do you think the PSED is in promoting equality locally? What are its strengths and weaknesses? Are there approaches that would work better

Prompt... there have been some criticisms – it leads to a tick box approach, those with the loudest voices heard most

We keep talking about equality, but people have different ideas of what it means – what does it mean to you? WAIT.

How is your work on equality developed? WAIT and then prompt – legal obligations, best practice, political pressure, links with other orgs.

Anything else you want to add?

Anyone else I should talk to? -who are the key councillors? Etc.

Questions for civil society groups

Opening question

Can you tell me a bit about your organisation and your role within it/ who you represent etc.

I'd like to start with some general discussion about the public sector equality duty and what you think about it?

Does it work? For whom?

Do you use the Public Sector Equality duty in your work (eg. asking for copies of impact assessments, legal challenge?) – how, do you think it is working? Who does it work for?

Are you aware of how the council uses the PSED? Can you think of examples What examples can you think of?

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We've been using the term equality a lot but it means different things to different people. What does it mean to you? Do you think this is the meaning in the public sector equality duty?

Appendix 2: information sheet for interviewees



Information Sheet – Mainstreaming Equality in an age of austerity

Research project:	Mainstreaming equality in an age of austerity? What impact has the Public Sector Equality Duty had in practice on work to promote gender equality within and through local authorities as they face widespread public spending cuts?
Outline of project:	The Public Sector Equality Duty contained in the 2010 Equality Act was welcomed as offering a transformatory approach to equality when it was first introduced. This project seeks to uncover what impact the PSED has had in practice on work to promote gender equality in the context of widespread public spending cuts
Researcher	Mary-Ann Stephenson PhD student Dr Ann Stewart (supervisor)

Information sheet for participants

The participant has been made aware that her/his participation is voluntary and that she/he is free to withdraw at any time without giving any reason and without being penalised or disadvantaged in any way.

The participant has been selected for interview based on her/his involvement in the policy and practice of equality at the local authority, or work with the local authority on equality issues

There is no financial or other direct benefit to participants from taking part in this research.

The interview will be tape recorded to enable the researcher to more accurately transcribe the interviews

The tape recording and transcript will only be seen by the researcher and her supervisors and will not be seen by the local authority or other participants

Neither the participant, nor the local authority nor the names of other persons mentioned in the interview will be identified within the research project

Recordings and all consent forms will be securely stored and destroyed after ten years in accordance with the University of Warwick's data protection policy.

If participants have any concerns about the research project these should be addressed to the researcher at mary-ann.stephenson@warwick.ac.uk or to Ann Stewart at a.stewart@warwick.ac.uk

Should anyone have any complaints relating to a study conducted at the University or by University's employees or students the complainant should contact

Jo Horsburgh

Deputy Registrar

Deputy Registrar's Office

University of Warwick

Coventry

CV4 8UW

http://www2.warwick.ac.uk/services/rss/researchgovernance/complaints_procedure/

Consent form

Project title Mainstreaming Equality in an Age of Austerity

Name of researcher Mary-Ann Stephenson

To be completed by the participant

I confirm that I have read and understood the information sheet dated

.....
(date on information sheet)

for the above project which I may keep for my records and have had the opportunity to ask any questions I may have.

I agree to take part in this study and am willing to:

Be interviewed and have my interview tape recorded for the purpose of enabling the researcher to more accurately transcribe the information

I understand that my information will be held and processed for the following purposes

To be included as anonymous qualitative data for use within the researcher's PhD thesis and associated academic publication.

I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason without being penalised or disadvantaged in any way.

Name of Participant _____ **Date** _____ **Signature** _____

Name of person taking _____ **Date** _____ **Signature** _____
consent if different
from Researcher

Researcher _____ **Date** _____ **Signature** _____

