

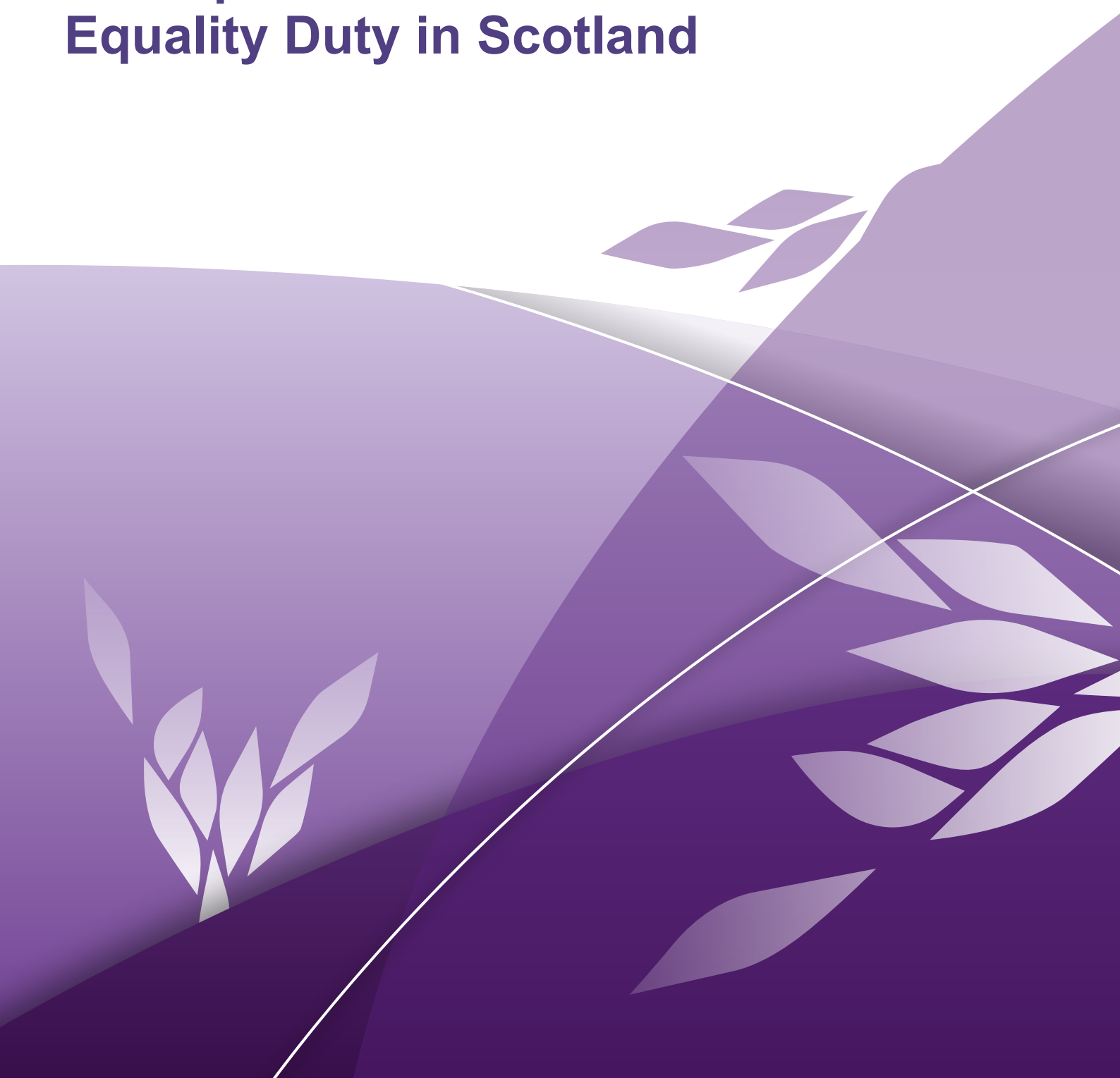


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Equalities, Human Rights and Civil Justice Committee

The Operation of the Public Sector Equality Duty in Scotland



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Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

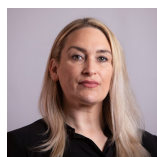


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Membership Changes

The following changes to the Committee's membership occurred during the Committee's inquiry:

- On 19 June 2025, Paul McLennan replaced Evelyn Tweed as a member of the Committee.
- On 2 September 2025, Rhoda Grant replaced Paul O'Kane as a member of the Committee.

Introduction

1. The Committee agreed at its meeting on 17 December 2024 to undertake an inquiry on the operation of the public sector equality duty (PSED) in Scotland .
2. The Committee agreed to explore whether the Scottish Government's proposed reforms will improve the delivery of the general duty. More specifically, the Committee agreed to focus on the following themes:
 - the extent to which the Scottish-specific duties are delivering on the aims of the general duty and improving outcomes for people with protected characteristics;
 - the extent to which public authorities understand the terms of the aims of the general duty and the requirements of the Scottish-specific specific duties;
 - whether the proposed reforms will assist public authorities in embedding an equalities focus;
 - why the Scottish Government's original proposals have been changed; and
 - how effective the Equality and Human Rights Commission is at regulating public authorities' performance against the PSED.
3. To inform the inquiry the Committee launched a [call for views on 7 February 2025](#) closing on 28 February 2025. The Committee received [51 submissions](#).
4. The Committee also held three evidence sessions. The first was with public authorities on [4 March](#), the second with equalities organisations on [11 March](#), and finally with the Equality and Human Rights Commission (EHRC) and the Scottish Government on [18 March](#).
5. The Committee is very grateful to all those who provided the Committee with written and oral evidence.
6. In this report, drawing on the evidence it received, the Committee reflects on the key themes it set out at the outset of this inquiry and makes recommendations for how it considers the PSED in Scotland could be delivered more effectively to improve outcomes for people with protected characteristics.
7. The Committee appreciates that there has been a considerable delay in the publication of this report. The Committee had intended to consider a draft report in April 2025, on Parliament's return from Easter recess. However, the Committee agreed to delay consideration of a draft report in light of the issuing of the Supreme Court's judgment in *For Women Scotland v The Scottish Ministers* on 16 April 2025.
8. Members considered whether they wished to reflect on the implications of the judgment for the PSED before agreeing this report. The Committee has now agreed to hold evidence sessions on the EHRC's revised Code of Practice on Services, Public Functions, and Associations, which arises out of the Supreme Court's judgment, once that revised Code has been approved by the UK Parliament. The Committee hopes to hold these sessions in the Autumn.

9. **The Committee would welcome an update from the Scottish Government on how the Supreme Court judgement in *For Women Scotland v The Scottish Ministers* has impacted on the PSED since April 2025 in order to inform the Committee's upcoming work.**

10. In the meantime, the Committee publishes this report, reflecting on the evidence it took earlier in the year.

Background

11. The PSED is a legal requirement for public authorities and organisations carrying out public functions (private or voluntary sector contracted to work on behalf of public authorities).
12. The purpose of the PSED is to make sure that public authorities and organisations carrying out public functions think about how they can improve society and promote equality.
13. There are two parts of the PSED – the general duty and the specific duties.
14. Section 149 of the Equality Act 2010 creates a single equality duty for the public sector which incorporates all the protected characteristics, although marriage and civil partnership is only partially covered. The “general equality duty” came into force on 5 April 2011. It requires public authorities, and any organisation carrying out functions of a public nature, to consider the needs of protected groups, for example, when delivering services and in employment practices.
15. The public sector equality duty requires public bodies to have due regard to the need to:
 - eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between different groups; and
 - foster good relations between different groups.
16. Section 153 of the Equality Act gives Ministers in England, Wales, and Scotland the power to impose 'specific duties' through regulations. The specific duties are legal requirements designed to help public authorities meet the general duty. Each administration has developed the duty differently.
17. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) came into force on 27 May 2012. The EHRC in Scotland published a range of guidance to support Scottish public authorities subject to the Scottish specific duties. Public authorities subject to the specific equality duties are required to:
 - report on mainstreaming the equality duty ;
 - publish equality outcomes and report progress ;
 - assess and review policies and practices;
 - gather and use employee information ;
 - publish gender pay gap information ;
 - publish statements on equal pay ;
 - consider award criteria and conditions in relation to public procurement ;
 - publish required information in a manner that is accessible.

A further duty is imposed on Scottish Ministers to publish proposals for activity to enable listed authorities to better perform the general equality duty.

18. Listed public authorities are required to meet the specific duties. The majority of public authorities began reporting in 2013 and publish every 2 years or 4 years depending on the specific duty. Further authorities have been added by regulations, so some report on different timescales.
19. The EHRC publishes statutory guidance on complying with the Equality Act 2010. It has also published non-statutory guidance on separate and single-sex services (April 2022). This applies to all service providers, not just public bodies.
20. The EEHRC published research in 2018 on the effectiveness of the public sector equality duty across Great Britain, and on the effectiveness of the PSED specific duties in Scotland. The EHRC in Scotland also published a series of research on compliance with the specific PSED in Scotland, between 2013 and 2017.
21. The report on the effectiveness of the PSED specific duties in Scotland found that, overall, there was limited evidence of change for people with protected characteristics. It was possible for public authorities to meet the requirements of the duties "without investing substantially in producing or demonstrating change." It made a number of suggestions for improvement, including:
 - a greater focus on producing change for people with protected characteristics;
 - more consistent application of the available guidance produced by the EHRC ;
and
 - improvements to the quality of data and how it is collected.
22. The Scottish Government committed to reviewing the PSED specific duties and began work on this in 2018. However, work on this review was disrupted by the COVID-19 pandemic, requiring resources to be diverted.
23. Please note that in the remainder of this report where we refer to the PSED this is with reference to the Scottish specific duties.

Key themes

24. On the basis of the evidence the Committee received a number of key themes emerged around the following topics:

- Understanding of the PSED;
- Delivering on PSED aims;
- Balancing protected characteristics and fostering good relations
- Proposed Reforms
- Approach to inclusive communication
- Effectiveness of the EHRC

25. Before turning to look at these themes individually, however, the Committee reflects that on the basis of the evidence the Committee received, it is clear that the PSED is not currently having the impact on outcomes for people with protected characteristics it was intended to. People are being failed by public bodies.

26. As noted earlier, the PSED requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity between different groups: and
- foster good relations between different groups.

27. Over the course of the inquiry it has become apparent to the Committee that while some public bodies might have regard to the first of these elements, they are failing in their duty to have regard to the other two. Moreover, there is clear evidence of different understandings and implementation across public bodies.

28. Although not a part of the Committee's evidence taking, the Committee found the Ethical Standards Commissioner's reflections on the current position in public authorities in its recent report on Diversity in Public Appointments in Scotland particularly compelling:

” Divergence of policy and legislative frameworks: some interviewees highlighted a tendency of policy-makers to seek to apply their own policies rather than following national law, and for organisations to attempt to go beyond the law. This tendency has resulted in actual legal cases and the risk of others to follow. Practice has diverged from legislation to a point at which there is perceived competition and resulting tension between equality groups. Public organisations frequently fail to act on the third part of the general equality duty: to ‘foster good relations between people who share a protected characteristic and those who do not’. These are live and important issues for public body boards, which need to appoint board members who are able to identify any potential tensions between policy and the law within their organisations, and to hold the executive to account when such tensions require it. Understandings and misunderstandings of diversity: political and institutional pressures have shaped how diversity is interpreted and applied in Scotland’s public. ¹

29. **There is a need for fundamental reform, however, it appears doubtful that the reforms proposed by the Scottish Government are sufficiently ambitious enough to effect the radical change necessary to improve outcomes.**

30. With that in mind, in the remainder of this report the Committee considers the key themes set out above and makes recommendations on how it considers the PSED can be more effective and make genuine improvements in outcomes for people with protected characteristics.

Understanding of the PSED

31. In order to be able to deliver on the aims of the PSED it is first necessary to have good understanding of it. The Committee explored in writing and in its oral evidence sessions how well public authorities understand the terms and aims of the PSED in Scotland.

32. At the session on 4 March, the public authorities the Committee heard from stressed that they do have a good understanding of the terms and aims of the PSED in Scotland and that those terms and aims are aligned with their core objectives.

33. For example, Nareen Turnbull, Service Director of Human Resources, City of Edinburgh Council told the Committee that:

” From our perspective in the City of Edinburgh Council, we understand the objectives of the duty, which I would say are in line with our vision and our agenda—particularly the ambition to embed systemic change in how we deliver our core services. We have had quite a lot of engagement with local equalities and human rights stakeholders who I think share that vision. We are clear on, and probably align with, those objectives. ²

34. Similarly, Nicky Page, Head of Human Resources, Police Scotland told the Committee that Police Scotland had a strong appreciation of the duty:

- ” I can say with some confidence that the duty runs root and branch through policing. It starts with our values of integrity, fairness, respect and the protection of human rights, and it goes right down to our probationer training.²
35. There was a recognition, however, by the local authorities the Committee heard from on 4 March that compliance with process can take precedence over achieving outcomes. Andrew Groundwater, Head of Human Resources and Organisational Development, Orkney Islands Council made this point to the Committee:
- ” It has been recognised by the Scottish Government that there is still a heavy focus on compliance and process around the PSED. I am concerned that, at times, that takes precedence over achieving the outcomes, both nationally and at local level.²
36. Moreover, there was a recognition by the local authorities at the meeting on 4 March that in some cases the understanding of the terms and aims of the PSED in Scotland was stronger at a senior level than for those delivering services on the ground.
37. Andrew Groundwater of Orkney Islands Council emphasised this point:
- ” I think that, generally, people who are involved in decision making and are in more senior roles probably have a higher level of understanding of the aims than people throughout the organisation have.²
38. This sentiment was echoed by Deaf Links:
- ” Our experience through the advocacy work we provide is that managers at strategic level in Public Authorities are aware of the terms and aims of the PSED. However, this is not well communicated to middle management and the front-line workforce in terms of how the PSED works in practice on an everyday basis in the services they provide to the public.³
39. Several equalities organisations in written evidence and at the oral evidence session on 11 March said that understanding of the PSED by public bodies was limited; that there is too much focus by them on process rather than outcomes and there is variation in understanding across public bodies and within public bodies.⁴
40. CEMVO Scotland told the Committee:
- ” From our work with listed public authorities, it is clear that many of them do not understand the terms and the aims of PSED in Scotland. It is the opinion of CEMVO Scotland that many listed public authorities understand the processes of the PSED but largely see it as process focused duty rather than outcome focused.⁵
41. This view was echoed by others including Age Scotland:
- ” We believe that not all the listed public authorities fully understand the terms and aims of the PSED in Scotland.” It said that reports are published, but this doesn’t mean they understand the aims of the PSED.⁶

42. Some individuals and organisations in written evidence said that public authorities do not understand the PSED in particular in the context of differentiating between sex and gender.
43. This concern was voiced by For Women Scotland, amongst others, who told the Committee of its concerns that public authorities conflate the protected characteristics of sex and gender reassignment. In its submission For Women Scotland suggests that this is due to “faulty guidance from the government and the influence of lobbyists with a partial reading of law [which] has led to misapplication.”⁷
44. Members explored this issue with the Minister for Equalities specifically in the context of the Workplace (Health, Safety and Welfare) Regulations 1992, which state that changing rooms “shall not be suitable unless they include separate facilities for, or separate use of facilities by, men and women where necessary for reasons of propriety”. Members asked the Minister whether Health Boards and Police Scotland are observing these requirements. The Minister told the Committee that:
- ” I do not know for a fact that they are not. I cannot sit here and say that about every single hospital or local board. I do not think that it would be reasonable to expect me to have that information here and now. However, I will refer you to my earlier comments. If we start with dignity and fairness, and if we ensure that the measures that we take are proportionate, we can accommodate. Nobody, from any community at all, should be forced into an undignified position. I am very clear on that, and always have been, wherever it might happen on the public estate.”⁸
45. The Committee also heard concerns about how public authorities apply the PSED to the protected characteristic of race. In its written submission BEMIS advised the Committee that there is variation in how the PSED is applied on Race, across the Scottish Government and other listed authorities. It states:
- ” Routinely we identify evidence where Government only applies the provision of Colour and does not take into consideration the other provisions.”⁹
46. BEMIS argued that this approach of prioritising single provisions within Race creates a “...competitive equalities environment where rights holders must compete and advocate in opposition to each other to have their voices heard, included and responded to.”⁹
47. The Committee was told that this inconsistency has led to challenges in effectively embedding equality considerations into their functions. It was also suggested that understanding is getting worse rather than better.
48. At the session on 11 March, some witnesses also questioned whether public authorities understand how to apply the terms and aims to “bread and butter issues” like housing and social security.
49. Vic Valentine, Policy Officer, Scottish Trans Alliance, explained this disconnect between the duty and its application to bread and butter issues:

” On challenges around the public sector equality duty for LGBT people specifically, and maybe trans people in particular, there can be a real lack of understanding of how LGBT inequality relates to what you might call bread-and-butter issues. We tend to find that public authorities approach us about issues that specifically consider LGBT or trans people’s lack of access to a particular kind of healthcare or experience, but there can be a total lack of awareness of inequalities for LGBT people when it comes to things such as housing, homelessness or social security. That, again, has to do with a lack of connection to the whole purpose of the duty, which is to drive change for all people with protected characteristics and to genuinely transform people’s lives. If people are not able to connect their policy processes and what they are working on to the fact that inequality is even there or that they need to address it, then, automatically, those processes will not address those issues.⁴

50. The EHRC reflected to the Committee that “top-line compliance with publication is relatively strong” by public bodies, but noted that “the quality of the work with regard its impact on outcomes for people can be a bit more hit and miss.”⁸
51. The Minister for Equalities in evidence to the Committee recognised the concerns being expressed by stakeholders about public bodies level of understanding of the PSED. She stressed that greater consistency in the application of the PSED by public bodies is needed. Moreover, she recognised it is incumbent on the Scottish Government to ensure that “strong scaffolding” is in place to ensure that public authorities are able to embed equalities and human rights in their work.⁸

52. **As noted at the beginning of this section, understanding of the PSED is key to being able to deliver on its aims and improve outcomes for people with protected characteristics. While the Committee recognises that there will be examples of good understanding of the PSED within public authorities, from the evidence that the Committee received that understanding within public authorities is not good enough.**

53. **There seems to be a clear understanding within public authorities of the processes and reporting requirements they must follow, although it is clear to the Committee that not all public authorities follow them. It is also clear to the Committee that public authorities lack the genuine understanding of the protected characteristics and the interrelationship between them necessary to be able to effect improved outcomes.**

54. **Where there is understanding though there appears to the Committee to be an inability to apply it to so-called “bread and butter” issues. The evidence presented to the Committee suggested that understanding of the PSED is not being cascaded from senior management down throughout organisations and perhaps this makes challenges in the delivery of “bread and butter” issues inevitable.**

55. **The Committee recognises that the PSED is not the only tool to improve outcomes for people with protected characteristics, but nonetheless a genuine understanding of the PSED should exist throughout public authorities.**
56. **Embedding a deep and rich appreciation of the PSED within public authorities will require leadership, strategic thinking and the investment of resources by the Scottish Government. The Committee urges the Scottish Government to provide that leadership, direction and investment to provide the foundations of understanding that will be critical to improving outcomes. The Committee recognises that there will be costs associated with this in the short-term, but these are outweighed in the Committee's view by significant societal and economic benefits to this investment in the long-term.**

Delivering on the aims of the PSED

57. As noted earlier, the three “needs” or “aims” of the PSED are as follows:
 - eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between different groups; and
 - foster good relations between different groups.
58. The Committee explored with witnesses whether or not public authorities were delivering on these aims.
59. There was a general sense from both the written evidence and the oral evidence that the aims of the PSED are not being realised.
60. Lindsey Millen, Head of Policy Development, Close the Gap stressed this point to the Committee in oral evidence:

” ...although public bodies understand the process, they are not enacting it in a way that achieves the aims of the duties, so there is definitely a disconnect. One of the big drivers of the lack of action is that the PSED has contributed to a diminishing focus on the inequality that is experienced by people with protected characteristics from the different groups. That concern was highlighted when the duties were brought in. The duties were designed to minimise the process approach in favour of outcomes, but that has not been reflected in practice.⁴
61. The EHRC echoed this sentiment, indicating that while compliance with the duty is often met on paper, there is limited evidence of tangible positive outcomes for individuals with protected characteristics.⁸
62. In oral evidence, public authorities set out some of the barriers they felt existed to achieving positive outcomes for people.
63. Andrew Groundwater, Head of Human Resources and Organisational Development,

Orkney Islands Council, indicated that there remains a heavy focus on compliance and process in the PSED. He expressed concern that the consequence was that at times, compliance and process takes precedence over achieving the outcomes, both nationally and at a local level.²

64. All of the local authorities the Committee heard from on 4 March also highlighted a lack of data as a barrier to improved outcomes. Martin Ingram, Principal Solicitor at Aberdeenshire Council, emphasised this point:

” ...there is still work to be done in relation to the resourcing and collection of the data that enables local authorities to make evidence-based and informed decisions...A challenge for many local authorities—I am sure that it will be the case for some of the more remote locations—is how to ensure that we are reaching the right people in our consultations and processes, so that we get meaningful data that we can transpose into the outcomes that we are looking for on the ground.²

65. Nareen Turnbull, Service Director of Human Resources at City of Edinburgh Council, amongst others, advocated for national data collection:

” ...our view is that having a national data set could help us to work together to drive a national priority and drive and evidence some national outcomes, and to achieve a scale of efficiency that would allow us to come together and work on the national priorities.²

66. Public authorities also highlighted a range of different and unaligned reporting frameworks that are acting as an impediment to delivering on outcomes. Alyia Zaheed, Corporate Officer (Equality and Diversity) at East Ayrshire Council, noted the lack of alignment and stressed the benefits that could be derived from a more joined up approach:

” ...our reporting time framework needs to be in synch with our local outcome improvement plans— LOIPs—or with our community planning framework to help better understand the issues in relation to equality. We are very comfortable across the piece—including in the Scottish Government—talking about inequality, but when it comes to equality, I sometimes think that there is a slight disconnect. If we could align some of the reporting time frameworks, that would help improve outcomes for our local communities, tackling equality and inequality at the same time.²

67. John Dawson, Head of Strategy and Transformation at Public Health Scotland, also emphasised the benefits that could accrue from aligning reporting cycles:

” ...consistency (in reporting cycles) would strengthen cross-sector collaboration between us and other partners. Collaboration is a key value for Public Health Scotland, so that would help us to promote the prevention discussion through a health-equality lens.¹⁰

68. Ultimately, there was a sense from public authorities that they do not have the financial resources to deliver the outcomes that they would wish to do so. SEPA, Glasgow City Council, South Lanarkshire Council all referred in their written submissions to the impact that financial constraints have on delivering on the aims

of the PSED and in turn improve outcomes for people.

69. Equalities organisations were for the most part of the view that the PSED is failing and not changing lives for the better.

70. Engender in its written submission to the Committee was damning and succinct about the impact of the PSED:

” The PSED is categorically failing to deliver on its aims to improve outcomes for people with protected characteristics. ¹¹

71. As with some of the public authorities the Committee heard from, equalities organisations attributed this in part to an emphasis on process over outcomes.

72. Jatin Haria, Executive Director of the Coalition for Racial Equality Rights, expressed this concern about an emphasis on process over outcomes:

” The point of the public sector equality duty was to change people’s lives, but that change has been missing. It has become largely a process issue about how much people can publish, what they can get away with saying and how they can fit anything that they do into a public sector equality duty report. It is not about the change that we need to see in people’s lives—the inequality that we are facing, the steps that the public sector needs to take to change that inequality or the evidence that they have made that change. We just do not see that. ⁴

73. Close the Gap attributed the poor performance to three factors: leadership, accountability, and investment:

” The lack of resource and investment that has been allocated to work on equality and human rights, and women’s equality and rights specifically, is a direct result of a lack of prioritisation by leaders in government and the wider public sector. This failure of leadership is enabled by an absence of accountability: there is no imperative for leaders to devote resource to this work, in increasingly straitened times, when there are no consequences for not doing so. ¹²

74. Lindsey Millen, Head of Policy Development, Close the Gap also suggested that the prospects of delivering on the ambitions of the PSED had been undermined by the adoption of a homogenised approach. She noted that public bodies have been treating individual protected characteristics in an undifferentiated, homogenised way, glossing over and ignoring specific disadvantages. ⁴

75. Relatedly, concerns were presented to the Committee about an absence of an intersectional approach. Witnesses stressed to the Committee that the absence of such an approach was a serious impediment to improving outcomes for people. Clare Gallagher, Human Rights Officer, CEMVO questioned, however, when public bodies were unable to understand protected characteristics in isolation, what prospect there was of them being able to take an intersectional approach. ⁴

76. Women Won’t Wheesht said that the PSED is not delivering on its aims because “if it were women’s needs would be considered before potentially unlawful guidance is issued”. It suggested that examples of such guidance include the Scottish

Government's guidance to support trans pupils and the SPS policy on trans prisoners. ¹³

77. There were suggestions for improving the delivery of the aims of the PSED through better planning, data collection, better use of EQIAs, investment, leadership and stronger accountability.
78. In terms of accountability, a number of equalities groups advocated for much stronger regulation and consequences for public authorities for failing to deliver on the aims of the PSED. Amongst others, Lindsey Millen, Head of Policy Development, Close the Gap emphasised to the Committee the importance of accountability:
- ” We know that what gets measured gets managed. Evidence on effective equality regimes, particularly gender pay gap reporting regimes, both internationally and at the UK level, shows that you need to put in place a set of regulations that produce measurable commitments, then follow up on that with progress reporting and accountability for failure to meet them. ⁴
79. Concerns were also raised about public authorities understanding of the aim of fostering good relations between different groups. The EHRC reflected that there is limited evidence of public authorities focussing on this aim and this is explored later in this report. ⁸
80. There was frustration too from some equalities organisations in the lack of progress being made and a sense that public authorities need to make progress now and not wait for more guidance or resources before driving change.
81. Lindsey Millen, Head of Policy Development, Close the Gap suggested that delays in reform have resulted in a sense within public authorities that "...the PSED is on pause and it is therefore okay for bodies to operate as they are doing—or, indeed, to do even less than they were already doing. " ⁴
82. In its response to the Committee's call for views, the EHRC references its reports on 'How fair is Scotland' which shows the extent to which equality and human rights are improving. The most recent report: '[Equality and Human Rights Monitor 2023: Is Scotland Fairer?](#)' showed a mixed picture of progress for equality in Scotland. Significantly it noted that not all changes can be addressed through the PSED. ¹⁴
83. The view that the PSED is just one tool in addressing inequalities was echoed by other organisations including the Minister for Equalities. However, she told the Committee that she recognised the frustrations that exist about the effectiveness of the PSED. She indicated that she felt that there are examples of public authorities doing good work, but that she wanted to provide personal leadership to drive improvement in the delivery of the PSED's aims. Moreover, she indicated she would be listening carefully to the issues emerging from this inquiry as the Government develops its mainstreaming equality and human rights strategy due to be published before the end of the year. ⁸

84. **The Committee recognises that the PSED is just one tool in improving**

outcomes for people with protected characteristics. Nonetheless, it is an important tool and one that is not currently delivering on its aims.

85. As the Committee noted earlier, there is an over emphasis on compliance with process rather than outcomes. This approach needs to be changed. The Committee urges the Scottish Government to provide leadership and guidance to ensure that public bodies place realising outcomes at the core of their work and not simply see the PSED as an administrative tick box exercise.

86. The Committee notes the obstacles that public authorities feel they face in delivering on the aims of the PSED. The Committee urges the Scottish Government to examine what can be done to assist public authorities to overcome these obstacles. In particular, it asks the Scottish Government to progress work on data collection, including examining national data collection. Data collection is key to enabling public bodies to be able to design services and respond to challenges. It is essential that public bodies are able to rely on robust, comprehensive and consistent data.

87. The Committee also asks the Scottish Government to work toward improved alignment of reporting cycles to enable public bodies to work in a more joined up and effective way.

88. Fundamentally, the Scottish Government must ensure that this work is properly resourced. This work should not be seen as an add on that is "nice to do", but should be a core part of the work of public authorities and to do that resourcing must be in place.

89. As a corollary to this, the Committee agrees with the views of the equalities groups that the Committee heard from that there is a need for greater accountability. While recognising that there are impediments to public authorities delivering on the aims of the PSED, there must be consequences for public authorities for failing to meet the aims of the PSED.

90. Moreover, the Committee is of the clear view that public bodies can act now to improve outcomes and should not wait for reforms or the Scottish Government's mainstreaming equality and human rights strategy before seeking to improve on delivery of the aims of the PSED. The answer to improving outcomes cannot always be another strategy or more guidance.

Balancing protected characteristics and fostering good relations

91. The Committee explored in evidence whether public bodies understand how to balance the protections between different equality groups, and how to foster good relations. In particular, between the protected characteristics of sex and gender reassignment, and more specifically, between women and trans women.
92. This issue of balancing the interests of women and trans women was raised by a number of the submissions to the call for views.
93. For Women Scotland argued that public authorities conflate the protected characteristics of sex and gender reassignment. It suggested that this is due to “faulty guidance from the government and the influence of lobbyists with a partial reading of law [which] has led to misapplication.” ⁷
94. It was suggested to the Committee in a number of other responses that public authorities conflate the protected characteristics of sex and gender reassignment. Those responses argue that this is due to a lack of clarity in the law or application of that law, unclear guidance from the Government and the influence of specific organisations on public policy.
95. Murray Blackburn Mackenzie suggested that public authorities have:
 - ” ...introduced policies based on gender self-identification without any statutory basis, opening themselves to the risk of legal challenge.... Instead of seeking formal legal advice, public bodies have relied on staff organisations or lobbyists without relevant legal expertise, and/or internal EDI staff. These groups have promoted the unregulated introduction of gender self-identification as a basis for policy across the public sector, without due regard for relevant legislation. ¹⁵
96. A number of responses also drew attention to what was at the time the forthcoming judgment of the Supreme Court in *For Women Scotland v the Scottish Ministers*. As noted at the beginning of this report, this judgment emerged after the conclusion of evidence taking in this inquiry and its implications will be explored by the Committee separately to this report.
97. Some Members explored these issues with witnesses in the oral evidence sessions. In particular, those members explored issues around the lack of clarity around definitions of sex and women, the capacity to exclude trans women from women-only spaces, advice provided to public bodies, data collection and the robustness or otherwise of equality impact assessments in informing the decisions of public authorities, in particular the need to ensure there is balance in the perspectives taken into account in such assessments.
98. At the time the EHRC noted to the Committee that it is still awaiting a response from the Scottish Government on this issue, specifically on how it is taking into account the rights of all protected characteristic groups. The Committee will continue to explore this issue separately to this report. ⁸
99. Concerns were also raised in the evidence the Committee received about public authorities understanding of the aim of fostering good relations between other

different groups. It was suggested that this is often overlooked by public authorities and it is difficult to measure.

100. Alyia Zaheed, Corporate Officer - Equality and Diversity, East Ayrshire Council, however, suggested that this is a focus for authorities. She gave an example of how in her experience a local authority goes about fostering good relations:

” We have done events where we have brought our refugee communities together with our local communities; we have used Robert Burns day, for example, to achieve that fusion. At times, that is like going back to multiculturalism in bringing communities together and fostering good relations.
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101. Jatin Haria, Executive Director, CRER, recognised that fostering good relations is a hard concept however, argued that fostering good relations must go beyond events:

” One reason that good relations are overlooked—I will be generous to public bodies—is that it is really hard to get a grip on how to foster good relations and how to measure that you have achieved that. It is an incredibly hard thing to measure. It is not just laying on events for BME people—that is not fostering good relations. We need to bring communities together somehow in a meaningful way, which would take resources and time. Last week, some people said that they had had such events, but, in my opinion, the people coming to those events do not need to work on fostering good relations; they are there because they already believe in equality between people. It is a really tricky one, so I am not going to criticise public bodies about it.⁴

102. The EHRC reflected that there is limited evidence of public authorities focussing on fostering good relations.¹⁴

103. The Committee also explored with the Minister for Equalities her understanding of fostering good relations. She set out for the Committee her understanding:

” I have a two-fold approach to fostering good relations. We want to make sure that we maintain and advance cohesive communities. That is essential. We also have to make sure that we always deal with conversations with communities in a compassionate way. The two-fold bit is that communities can come together and public organisations and bodies have a role to play there. Moving on from that, it is also about increasing understanding between different communities, and education is needed to make sure that we do that in a compassionate way that shows that building strong, cohesive communities is important.⁸

104. **The Committee recognises that fostering good relations is a challenging concept to understand and to deliver upon. Nonetheless in the current climate of increasingly polarising debate it is one that is increasingly critical to deliver upon.**

105. **In that context it is immensely disappointing to the Committee that the**

EHRC is unable to identify much focus on fostering good relations by public authorities.

106. **The Committee notes the importance that the Minister for Equalities has attributed to fostering good relations. This recognition must be accompanied by leadership and tangible action by the Minister. The Minister must provide direction to public authorities on what it should do and prioritise in order to ensure that there is an increased focus on fostering good relations, taking account of all protected characteristics.**

Proposed Reforms

107. Having reflected on the current position, the Committee considered whether the Scottish Government's proposed reforms will assist listed authorities in embedding an equalities focus and in turn improve outcomes for people with protected characteristics.

108. The Scottish Government ran a consultation on proposals for the review into the effectiveness of the PSED in Scotland between 13 December 2021 and 11 April 2022 (extended from 7 March 2022).

109. There were seven proposals to change the reporting regime for the specific duties:

Proposal 1: Creating a more cohesive regime and reducing perceived bureaucracy – reduce the reporting requirement to every four years and the ability to satisfy all of the reporting duties through one report.

Proposal 2: Embedding Inclusive Communications - listed authorities would be required to report on how they have met this duty as part of their overarching mainstreaming reporting duty.

Proposal 3: Extending pay gap reporting to include ethnicity and disability - extend the current duty on gender pay gap reporting to include ethnicity and disability.

Proposal 4: Assessing and reviewing policies and practices - adjust the duty to emphasise that assessments must be undertaken as early as possible in the policy development process and require the involvement of people with lived experience.

Proposal 5: A new equality outcome setting process - take on board the suggestions for the Scottish Government to take on more of a leadership role in setting national equality outcomes, which listed authorities could then adopt to meet their own equality outcome setting duty.

Proposal 6: Improving duties relating to Scottish Ministers - intends to take more of a leadership role in relation to the equality outcome setting process. This would therefore create a mechanism where the Scottish Government could direct listed authorities to consider what it views as significant inequalities.

Proposal 7: Procurement – as with Proposal 1, incorporate this into the mainstreaming reporting obligation.

110. The intention was for revised regulations to be introduced in late 2022 and come into force by end of April 2025. However, the changes are still to take place.
111. There was some support for the Scottish Government’s proposed reforms in the evidence the Committee received, but also notes of caution.
112. For example, extending gender pay gap reporting to include ethnicity and disability pay gap reporting was welcomed by public authorities and some already do this. However, it was also noted that reporting on pay gaps is in itself not enough to close pay gaps.
113. In its written submission, Glasgow City Council expressed this concern to the Committee:
- ” ...revising pay gap reporting to include Ethnicity and Disability will lead to increased transparency but reporting alone may not lead to reducing pay disparities and therefore improved outcomes. ¹⁶
114. CEMVO Scotland welcomed ethnicity and pay gap reporting, but was also concerned that it does not go far enough:
- ” ...CEMVO Scotland is aware of the risks of ethnicity reporting, particularly around low numbers impacting the results of data. CEMVO Scotland would encourage the Scottish Government to ensure rigorous statutory guidance, co-designed with relevant stakeholders, to be provided to listed public authorities when reporting on ethnicity pay gap. ⁵
115. In oral evidence, CRER said it is not in support of prioritising reporting on the ethnicity pay gap right now; suggesting that the data is so weak that the analysis would be meaningless. Instead, it argued that the priority should be getting more minority ethnic people into the workforce. ¹⁷ Close the Gap supported this view. ¹²
116. Inclusion Scotland, however, argued that pay gap reporting should be extended to include disability pay gap reporting. ⁴
117. More generally, some of the evidence the Committee received suggested that the reforms are not ambitious enough. Professor Busby and Dr Cannon in their written submission suggested that the proposals are ‘light touch’, aimed at reducing bureaucracy for listed authorities, rather than bringing about changes for protected groups. ¹⁸
118. Close the Gap echoed these concerns:

- ” The poor standards of compliance with PSED were a key driver for Scottish Government commitments to reform the duties. However, despite the wealth of evidence that substantive reform is a necessity, these commitments have progressively diminished in scope and ambition, with only two minor reforms to the duties being proposed. This is a significant departure from the original proposals in the public consultation in 2022, which were themselves criticised as lacking in ambition and scope. ¹²
119. Clare Gallagher, Human Rights Officer at CEMVO Scotland was equally pessimistic about the potential impact of the reforms:
- ” With the reforms in general, there is nothing specific in them that we would be confident would achieve what we would like them to achieve. ⁴
120. Lindsay Millen, Head of Policy Development at Close the Gap also noted the ever decreasing ambition of the reforms. Moreover, she noted with concern that during the engagement process on the reforms the duties have been framed by the Scottish Government in conversations as a resource burden. She told the Committee that when you frame something as a resource burden, you are saying that it is a “nice to have”. She further suggested that in adopting this approach you are telling public bodies that it is okay to devote minimal resources to it. ⁴
121. Nicky Page, Head of Human Resources, Police Scotland was more equivocal about the reforms and noted that the reforms will “likely improve things”, but at the same time considered that unless they are underpinned by resources reform will not be achieved. ²
122. It was also noted that there has been a very significant delay in the reform process and some argued that the reforms should be re-visited. CEMVO noted that it had not been involved in any discussions since 2023. ⁴
123. The delays prompted Engender to issue a briefing in June 2024 “calling on the Scottish Government to revisit proposals on PSED reform, to expand the duties so that outcomes for people with protected characteristics are improved.”
124. Vic Valentine of Scottish Trans Alliance, however, felt that the process of revisiting changes had been going on too long. They stated that this is ultimately about the change in outcome that is wanted as a result of the reforms, and not about consistently revisiting changes to the process. ⁴
125. The Minister for Equalities recognised that the PSED in Scotland is not currently delivering on its ambitions. As noted earlier, the Minister stressed that she would be carefully considering the outcomes from this inquiry before proceedings with reforms. She and her officials conceded that progress had not been as swift as would have been hoped, but that factors such as Covid had taken away resources from this work. They indicated, however, that the resources were now there to drive this work. ⁸

126. **The Committee notes the Minister's willingness to reflect on the outcomes**

of this inquiry. The Committee hopes that in spite of the delay to the Scottish Government's reforms of the PSED specific duties, as well as the delay in the publication of this report, the Minister will still carefully reflect on the evidence the Committee took and the recommendations made in this report.

127. **As it stands, however, the Committee is not persuaded that the proposed reforms will be sufficient to make the fundamental changes to the delivery of the aims of the PSED that are required.**

128. **The Committee echoes the concerns expressed to it about the dilution of the reforms that has taken place. Arguably the reforms were not ambitious enough at the outset, but as time has passed they have become increasingly less ambitious.**

129. **The Committee encourages the Scottish Government to re-visit reforms. At the same time, the Committee recognises the concerns expressed to it about further delay and the need to focus on outcomes rather than constantly re-visiting reforms. The Committee agrees with this sentiment and with that in mind urges the Scottish Government to move quickly with any reforms, ensuring that the reforms are substantive and focussed on measures to improve outcomes. Moreover, the Committee would welcome further reassurance that the Scottish Government now has the necessary resources in place to drive this reform. This process has already taken too long and there should not be any further delays.**

Approach to inclusive communication

130. The Committee sought views on the Scottish Government's revised approach to assisting listed public authorities to embed inclusive communication.

131. Initially the Scottish Government had proposed to introduce a new duty on listed public bodies in relation to their use of inclusive communication.

132. On 11 August 2024 the Minister, however, provided a further update regarding proposals on inclusive communication.

133. That update noted that during the policy development, several restrictions related to legislative competence had been identified.

134. The update further noted that the focus will now be on training for officials in inclusive communication practices, as well as the provision of more information, guidance, tools and materials for listed public authorities. This will follow a scoping exercise of existing provision in this area.

135. The Minister also noted the intention to use the Ministerial Powers under regulation 11 to draw listed authorities' attention to these materials: "I intend to specify that listed authorities should consider inclusive communication in carrying out certain of their specific equality duties."
136. Inclusive communication is viewed as important for a range of groups, including disabled people who may have access needs and those for whom English is not their first language. However, there is a shared view from public authorities and equality organisations that it needs to be properly resourced, both financially and in terms of capacity.
137. East Renfrewshire Council said it was concerned about the budgeting for inclusive communication, as well as issues with "capacity, resourcing, timing, practicality and limited available data about the range of local communication requirements." ¹⁹
138. It was also stressed to the Committee that there is a need to go back to first principles with inclusive communication and go back to who it is for and who are the audience.
139. In oral evidence local authorities welcomed the drive for inclusive communication, but noted that it would be helpful if a national, central steer and involvement could be provided to assist with more all-encompassing communication between public authorities. Martin Ingram of Aberdeenshire Council noted that it would enable local authorities to undertake more inclusive communication. ²
140. In oral evidence, some of the public authorities also said that providing for inclusive communication needs to be considered in proportion to the populations that they serve. For example, Andrew Groundwater of Orkney Islands Council, noted that in Orkney:
- ” ...99 per cent of our community have English as their first language, and fewer than 10 people have British Sign Language as their main language. Such figures are a factor for us in deciding on proportionality around those issues. ²
141. Moreover, some of the evidence presented to the Committee suggested that the revised approach by the Scottish Government was not sufficient, specifically it was suggested that drawing attention to existing guidance is not a strong enough step and was unlikely to lead to meaningful change.
142. Age Scotland in its written submission was strongly supportive of any action to make communication more inclusive but had reservations about the revised approach:
- ” Firstly, we do not believe that simply 'drawing attention' to existing guidance is a strong enough step. Inclusive communication requires training and simply signposting to resources will not help create a sufficient understanding of what truly inclusive communication is. Additionally, if the revised approach no longer includes an element of co-production with those with protected characteristics, it is unlikely that approaches will be truly inclusive. We are particularly concerned that if older people are not involved, it risks overlooking how age as a protected characteristic presents unique challenges to inclusive communication, especially when this intersects with other intersectional characteristics. ⁶

143. Inclusion Scotland told the Committee it had welcomed the initial proposal for a specific duty on inclusive communication. However, now that the proposal is for a duty to refer public bodies to guidance, it argued that it is unlikely to lead to meaningful change. It is suggested that the realisation of what it would cost, probably caused the Scottish Government to rethink the proposal. ⁴
144. Moreover, Clare Gallagher of CEMVO Scotland questioned whether the Scottish Government's revised approach was devised with a view to genuinely eradicating racist and discriminatory practices. ⁴
145. Jatin Haria of CRER suggested that the main problem is with trying to lump inclusive communication into the public sector equality duty review when it is already a legal requirement. He suggested that the Government is trying to bring in things just to pretend that it is doing a review, when that is already in existing legislation. ⁴
146. The EHRC also noted that accessible communication is already a legal requirement under the 'reasonable adjustment duty' (section 20 of the Equality Act 2010). It was unclear to the EHRC what the detail of the proposal is, although it recognised that by using the Ministerial Regulation duty, inclusive communication can go wider than the protected characteristic of disability. It advocated for further clarity to understand the proposal. In any approach though it stressed that an anticipatory rather than reactive approach should be adopted. ⁸
147. The Minister for Equalities recognised the value of inclusive communication. She suggested that the Scottish Government guidance and toolkits would be a more impactful approach than a regulatory approach. She also highlighted the work being undertaken by the [Communication Inclusion People](#) and [Disability Equality Scotland](#) to explore this issue further. ⁸

148. The Committee welcomes an increased focus of inclusive communication and the value the Minister places in it. The Committee is not persuaded, however, that guidance and toolkits in and of themselves will be sufficient enough to make transformative change. Moreover, it appears to the Committee to be debatable what this will add when there is an existing duty under the Equality Act 2010.

149. The Committee considers that for this to be successful there is a need for capacity building and resourcing. Moreover, there is a need for greater direction and leadership at a national level while still allowing for local flexibility at a local level, recognising the differing needs in Scotland's communities.

150. The Committee strongly urges the Scottish Government to consider further investment and leadership rather than simply relying on toolkits and guidance to embed inclusive communication.

Effectiveness of the EHRC at regulating public authorities' performance against the PSED

151. Finally, the Committee explored how effective the EHRC is at regulating public authorities' performance against the PSED.
152. The EHRC regulates the PSED by providing guidance, setting specific duties in regulations, and enforcing compliance for public bodies in England, Scotland, and Wales. The EHRC offers technical and general guidance on the Equality Act 2010's PSED, which requires public authorities to eliminate discrimination, advance equality of opportunity, and foster good relations between groups with protected characteristics.
153. There was acknowledgement of the EHRC's role as a regulator, and submissions from CRER, the Scottish Women's Convention and Disclosure Scotland reflected positively on the range of guidance made available by the EHRC on the Scottish PSED.
154. CRER in its written submission, for example, noted that the majority of the EHRC's guidance is "clear and comprehensive, with numerous helpful examples to guide practice".¹⁷
155. However, some evidence also suggested that the EHRC's effectiveness is limited, due to resource constraints and a lack of proactive engagement with public authorities. There were calls for the EHRC to do more in terms of enforcement of the PSED.
156. Specifically, a number of witnesses stressed that the EHRC is not really performing a regulatory role, rather it is being a source of guidance and can not be anything else within its existing resources.
157. Engender expressed concern that the PSED is underregulated in Scotland and that compliance with PSED goes unenforced. Professor Busby and Dr Cannon attributed this to a light touch approach to regulation by the EHRC.¹⁸
158. Murray Blackburn Mackenzie also suggested that the EHRC needs to take a much more active role in holding public bodies to account. The Women's Rights Network and For Women Scotland, suggest that the EHRC writing to NHS Fife about their legal duties offered a good example of how the EHRC could be conducting its role.¹⁵
159. Close the Gap suggested to the Committee that the EHRC's declining budget significantly impacts on its capacity to play an effective regulatory role:
 - ” The Equality and Human Rights Commission's PSED compliance oversight has been increasingly under-resourced and therefore ineffective. Since its establishment in 2007, the Commission's budget has been cut significantly from £70m to £17.9m in 2023-2024.¹²
160. Clare Gallagher of CEMVO recognised the need for more resource, but stressed that the EHRC needs to do more with its existing powers:

” ...we think that the Equality and Human Rights Commission needs to use its regulatory powers more. We understand that that has to come with more resource, but it really has to do more with its powers. We also believe that there is lots to be learned from the private sector in some instances, such as the use of business penalties for corporate financial mismanagement. There is also a threat of reputational damage if organisations do not comply with their duties.⁴

161. The Minister for Equalities expressed support for the UK Government providing more resources to the EHRC to enable it to do its work more effectively.⁸
162. The EHRC also recognised the impact of budget cuts on capacity, but at the same time, encouraged the Scottish Government to also use its powers to further equality.

163. The Committee considers that a key part of making the PSED work and in turn improving outcomes for people with protected characteristics is an effective regulatory regime.

164. The Committee recognises that for that to work the EHRC needs to have the necessary resources to perform the role. It is clear to the Committee that as it stands, it does not have those resources.

165. The Committee notes the Scottish Government's recognition of a need for greater resources for the EHRC and acknowledges that the funding of the EHRC is a matter for the UK Government. There are, however, issues which can be remedied within the Scottish Government's devolved competence.

166. Regardless of the level of resources provided to the EHRC, the Committee urges the EHRC and Scottish Government to work closely together to develop more effective mechanisms to regulate public bodies and ensure they are delivering on the aims of the PSED.

Conclusion

167. It is of concern to the Committee that while a number of public authorities may be meeting certain compliance and process requirements in relation to the PSED, there is not nearly enough focus on delivering outcomes. There needs to be a significant shift in culture to focus on outcomes as well as processes, ensuring that public bodies have a robust understanding of the PSED and the Equality Act 2010.

168. In order to make this change the Scottish Government must work with public authorities to better appreciate why this lack of understanding has transpired, including examining the impact of guidance, the influence of external advice and whether appropriate advice has been taken.

169. The Committee recognises that we are at a time of significant funding challenges for public authorities and at such times the capacity to focus on the aims such as those under the PSED can be severely challenged. However, the Committee considers that it is even more vital that public authorities focus on these aims at this time. This should be a priority, not an add on for public authorities. To deliver positive outcomes under the PSED, consideration should be given to the available resources to support public bodies with this work.

170. The Committee urges the Scottish Government to provide leadership and resources to improve understanding and delivery of the PSED in public authorities.

171. The Committee recognises that there have been very significant delays by the Scottish Government in the process of reform. This process must now be accelerated and resources put into it in the Scottish Government to ensure this happens. At the same time, there must be reflection on the proposed reforms. As it stands, the Committee is not persuaded that they are sufficiently ambitious to effect the transformative change that is required.

172. Although this might delay the realisation of reforms it should not in the meantime prevent public authorities from pursuing improvements in how they deliver on the aims of the PSED and seek to improve outcomes for people with protected characteristics.

173. There will always be the next strategy or the next reform to come and public authorities cannot exist in a paralysis waiting for that clarity while the outcomes for those with protected characteristics decline.

174. The Committee looks forward to considering the Scottish Government's response to this report. The Committee recognises, however, that this is not the end of a process. This is an ever-evolving climate and the Scottish Government must be flexible to respond to new challenges as they emerge. The Committee would also encourage its successor committee to follow-up on this work and ensure that not only is the Scottish Government responding to the recommendations of this report, but it is demonstrating flexibility in its response to any new challenges.

175. Moreover, as noted at the beginning of this report, the Committee will return to this issue in the context of the EHRC's revised Code of Practice on Services, Public Functions, and Associations once that has been approved by the UK Parliament.

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