

The Race Equality Coalition: PSED Review submission (19th April 2013)

THE RACE EQUALITY COALITION
SUBMISSION TO THE REVIEW OF THE PUBLIC SECTOR EQUALITY
DUTY

Date submitted: 19th April 2013

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SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

1. General comments

Addressing institutional discrimination and inequalities associated with race and other protected characteristics takes commitment, evidence, leadership, legislative tools, a long term vision, support and time. There is always scope for improvements in the Public Sector Equality Duty's (PSED) requirements and its practical application. The most important factor in ensuring the most effective implementation of the PSED is leadership from senior management and political leaders. We are concerned that, despite clear support from some Ministers for action to advance equality of opportunity, the messages from other senior Government members characterise equality considerations as unnecessary 'red tape' are having a negative effect and undermining effective implementation of the PSED. The focus should be on improving outcomes.

2. Concerns about the timing of, and process adopted, for this review

We are committed to reducing the ethnic inequalities that continue to result in unfairly worse experiences in British social and economic life for Black and ethnic minority citizens, and agree with the Government that public legislation and policy must be effective in doing so. We therefore agree with the principle that we should review whether or not policy and legislation is achieving their intended results. It is, however, curious, that the PSED review is somewhat anomalous in being assessed in this way, not least given the short time period it has been in effect. We are unaware of any other piece of legislation that has been subject to this level of scrutiny. In short, we have serious reservations about the process of this review.

The process of this review has also been inadequate; in failing properly to consult with those affected by any proposed changes, and by a lack of clarity on the grounds on which the review will be conducted. This undermines the government's commitment to transparency and accountability, and also suggests that the voices of those most affected (and protected) by equality legislation matter less than those affected by what is perceived as 'red tape'. For the government to imagine that existing policy – in this government, in previous governments or indeed among employers – will always undermine racial or other inequalities is not only empirically dubious (and we have further concerns about the methodological coherence of conducting this review at this time), but also suggests a failure of political commitment and leadership to equal citizenship.

Our concerns about the process of this review are not simply procedural technicalities, but go to the heart of why the PSED was developed, namely to ensure that government discharges its duty to ensure the equal protection and participation of disadvantaged groups in society. Along with the other protected characteristics, race continues to be a ground upon which people experience unjust disadvantage.

3. Stephen Lawrence's legacy and challenging characterizing equality as red tape

The Race Equality Duty (RED) was implemented in response to the murder of Stephen Lawrence, an event whose 20th anniversary falls this week. Stephen's tragic death highlighted in the starkest terms how BME people in Britain are subject to violence and

disadvantage simply because of who they are – and nearly 100 more racist murders have taken place in the intervening years. This is one reason the framing of the PSED and indeed the entire Equality Act as ‘red tape’ is fundamentally in error.

As we highlight in our response, the evidence on racial inequalities extends across education, employment, criminal justice and health, even when we control for factors such as family size, country of birth and socioeconomic background. The Equality Act 2010 and PSED recognize the negative implications for our economy as well as British society of these racial and other inequalities and the need to identify and address the inequalities associated with the 2010 Act’s protected characteristics. Democracies view equal participation as a right as well as a matter of effective governance and legitimacy. The PSED and equality of opportunity are not ‘red tape’, but rather a way for the government to publicly affirm its commitment to the equal rights and participation of all citizens in our democracy and society. We have outlined case studies of how the PSED has had this effect, and to the extent that we believe it could be better, our view is that the general and specific duties should be strengthened to ensure the fair participation of everyone in society.

We are not of the view that the PSED could not be improved, it certainly could. We have suggested practical steps in our recommendations, and hope these assist in improving the implementation of the PSED. Racist murders such as Stephen Lawrence’s are the most extreme and devastating examples of the unequal life chances of ethnic minorities in Britain, and any democratic government must demonstrate its commitment in words and deeds to ensuring not only that discrimination is rooted out, but that all citizens have equal access to participation in social and economic life.

Conclusions and recommendations

4 Ensuring compliance legislative, administrative and/or enforcement changes

- a. The structure of a general duty supported by specific equality duties (SEDs) and a statutory code of practice reflecting the regulatory regimes in each country (England, Scotland and Wales), is the right framework. We would therefore recommend that this review considers whether a statutory code of practice giving authoritative, clear guidance on what the duty requires would provide more rather than less assistance to public bodies.
- b. We regret that the English SEDs have been over-simplified and we are not persuaded that they provide a framework for the better performance of the PSED.
- c. The SEDs to support the PSED for England, Scotland and Wales are very different with much more comprehensive specific equality duties for Wales and Scotland. We would suggest that it is probably too early to assess what lessons can be learnt from these different regulatory frameworks. We would suggest that a review in 2 years time would be much more effective. It would be very useful for the Government, in conjunction with the devolved administrations, to take advantage of this natural experiment through independent research into their impacts to try and identify which model will have greatest impact.
- d. The Government has made it clear that transparency and accountability are key principles (see appendix 3). It is essential that individuals and community organisations outside of a public body are able to access and use evidence of how that public body has

complied with the PSED. This means the evidence needs to be written down. It is almost impossible to engage with a public body or seek to hold it to account if there is no paperwork that explains what decisions have been taken, when and why.

- e. Clear guidance should be provided to public bodies on how to improve existing working practices to support relevant information gathering requirements. For example, equality data on staff should be collected automatically as it is entered into personnel data systems and equality objectives should be included as an integral part of public bodies' business planning.
- f. The Government has decided that it believes that equality impact assessments should not be pursued by public bodies. We believe that the Equality and Human Rights Commission (EHRC) is the proper body with the statutory remit to issue objective guidance on such matters.
- g. The core budget for the EHRC appears to be set. However, we understand that the programme budget has not been committed. We would recommend that funding: a) should support the enforcement of the PSED; b) should support voluntary and community agencies to assist local and regional voluntary and community organisations to understand how best to use the PSED to hold public bodies to account and share good practice; c) should support those leading on equalities in local authorities, perhaps through the LGA, to share best practice in relation to equalities; and d) should support those leading on equalities in government departments to share best practice in relation to equalities.

5 Public procurement

- a. The CRE's detailed guidance on public procurement and supplier diversity helped to inform the development of key initiatives by the GLA group and the Olympics Delivery Authority (ODA). The guidance produced by the EHRC in 2013, is less comprehensive than the earlier guidance published by the CRE. However the EHRC's website indicates that a programme of support and training is being rolled out to support its public procurement work.
- b. It would be helpful if the EHRC also brought together a steering group of organisations representing equality strands and directly involved in promoting supplier diversity, to assess whether more could be learned from the early CRE guidance on public procurement and whether there are different public procurement issues for different groups of people.
- c. This submission clearly identifies the increasing significance of procurement and the Government's commitment to increasing the involvement of Small and Medium Enterprises (SMEs) in public sector procurement. It would be helpful if this review and /or the EHRC could identify best practice in relation to supporting commissioning and commissioners in complying with the PSED. This could also build on the access to finance review undertaken by Department for Communities and Local Government (DCLG), which has sought to improve access to finance for ethnic minority SMEs.
- d. Transport for London (TfL) and the Olympics Delivery Authority undertook ground breaking work around the development of supply chains and promoting supplier diversity in compliance with the old equality duties and current PSED. TfL and the ODA have demonstrated that with will, leadership and appropriate programmes supplier diversity can be promoted and increased. Consideration should be given to how best

these lessons can be extended to other major government departments and spending programmes.

6. Other key recommendations

- a. Addressing institutional discrimination and inequalities associated with race and other protected characteristics takes commitment, evidence, leadership, legislative tools, a long term vision, support and time. The key elements needed are set out below.
- b. Positive and visible leadership from elected and management leaders that focuses on goals and outcomes that will advance equality of opportunity.
- c. Announcements and publications from Government should focus on what public bodies *should* do to meet the Equality Duty not, as in some recent examples, on what they do not need to do.
- d. Decision making must take robust but proportionate account of the likely impact of a decision on the three goals of the PSED.
- e. Public bodies should develop a plan of action to make sure that they have the capacity to implement the PSED effectively. This capacity would usually need to include staff understanding and awareness, up to date information to aid consideration of equality issues and policy and decision making processes that enable equality implications to be considered before decisions are made.
- f. According to EHRC research, the quality of the equality objectives set in April 2012 is variable. Based on these findings, the EHRC might helpfully encourage and/or facilitate the development of some learning sets involving public bodies and key VCS stakeholders to improve practice in this area. This would also assist public bodies in efficiently meeting the requirements of the PSED.
- g. Revised regulations and or guidance should make it clear to public bodies that active engagement with the service users, residents and employees, particularly those from protected groups is essential not an optional extra. This is likely to lead to better quality and more appropriate decision making.
- h. Public bodies should publish clear information to demonstrate how they are using qualitative and quantitative evidence to inform the authority's understanding of the likely equality impacts of policy, service and employment decisions.
- i. Collecting information is not an end in itself but must inform action. Although there are challenges involved in identifying some evidence (such as on the cumulative impact of a series of fiscal and spending decisions) much of the information that public bodies need should be routinely available to public bodies that understand and are in touch with their communities.
- j. Public bodies should be advised to be open and transparent and to publish clear and accessible information about the public body's progress towards the PSED's three goals. Public bodies should discuss with their equalities stakeholders and others the best ways to: make this information available electronically; update said information over time.
- k. The role of inspection bodies such as Ofsted and the Care Quality Commission (CQC) in aiding the enforcement of the PSED should be clarified and strengthened. With that in mind it may be helpful to build on the non statutory guidance published by the Commission for Racial Equality (CRE) in furtherance of the Race Equality Directive (RED).

THE RACE EQUALITY COALITION SUBMISSION TO THE PUBLIC SECTOR EQUALITY DUTY REVIEW (PSED)

1: OVERVIEW

1.1 About the Race Equality Coalition

The Race Equality Coalition (REC) brings together national and regional leading race equality focused voluntary and community organisations - with their networks and a wide range of expertise. Our geographical membership includes organisations from the East of England, London, the Midlands, the North West, the South East, the South West and Yorkshire and Humber (see appendix 1). The individuals representing member organisations include acknowledged leaders and experts in their own right.

Supporters of this submission		
Members of our Coalition	Members of our Coalition	Other supporters
The Afiya Trust	JUST West Yorkshire	brap
Black Minority Ethnic Community Organisations Network	Minority Ethnic Network Eastern Region	Enfield Racial Equality Council
Black South West Network	OLMEC	Every Generation Foundation
BME National	One North West	Haringey Race and Equality Council
Black Training & Enterprise Group	Operation Black Vote	Irish Traveller Movement in Britain
Coalition for Racial Justice UK	Race On the Agenda	
Croydon BME Forum	The Runnymede Trust	
Equanomics UK	Race Equality Foundation	
Friends, Families and Travellers	Voice4Change England	

1.2 About this submission

This submission considers the call for evidence, the review's key themes and issues raised with the Government Equality Office (GEO) officials leading the review. Our conclusions and recommendations identify changes that should ensure better equality outcomes and have been drawn together at the beginning of this document. This submission is divided into four parts and three appendices:

- a. the overview, our expertise and the PSED's importance (part 1);
- b. Stephen Lawrence's legacy, racial inequalities and concerns about this review (part 2);
- c. the impact of government actions, understanding of the PSED and guidance, ensuring legislative compliance, administrative and/or enforcement changes (part 3);
- d. procurement and commissioning (part 4);
- e. the members of the Race Equality Coalition (appendix 1);
- f. the old duties (the Race Equality Duty, the Disability Equality Duty & the Gender Equality Duty), the current PSED and key statutory and non statutory guidance (appendix 2);
- g. Parliament's view of the purpose and planned operation of the PSED (appendix 3).

1.3 Our understanding and experience of the old duties and the current PSED

Our collective knowledge of the PSED, and the evidence presented in this submission, are informed by the fact that members of the Race Equality Coalition have:

- a. a detailed understanding of the purpose and operation of the old Race, Gender and Disability Equality Duties (RED, DED and GED), and current PSED, the old and current specific equality duties (SEDs) and guidance (see appendix 2);
- b. provided briefings, guidance and training to voluntary and community organisations on the old public sector equality duties and the new duties;
- c. made detailed submissions to the parliamentary debates about the development of the PSED, associated regulations and associated guidance;
- d. made submissions to the various consultations conducted by the GEO about the development of the PSED and the new specific equality duties to support the PSED.

1.4 The importance of the PSED

The PSED is an exceptionally important statutory duty because:

- a. the RED and the current PSED are key legacies of Stephen Lawrence and the PSED is key to addressing entrenched racial and other inequalities (see part 2.1);
- b. the PSED largely incorporates the old RED, the PSED makes it obligatory for listed public bodies to properly consider racial equality/inequalities and inequalities associated with other protected characteristics (see appendix 3);
- c. a primary purpose of the RED, the DED, the GED and now the PSED was, and is, to require public bodies to hold up a mirror, question their actions, address institutional discrimination, foster good relations and advance equality of opportunity;
- d. the PSED is the only part of the Equality Act 2010 that requires public bodies to take a proactive approach to equality of opportunity;
- e. the incorporation of the PSED in statute plays an important normative and standard-setting role and means that the PSED is backed up by legal sanctions and remedies.
- f. the PSED should contribute to a realisation of the government's commitment to the equal participation of all citizens in British social and economic life.

It is important to note that there was cross party support in parliament for the PSED in 2010 and 2011 when the PSED and the SEDs were debated (see appendix 3). Like the Equality and Diversity Forum (EDF) our Race Equality Coalition agrees that:

- g. the PSED is neither a luxury nor red tape, but rather a practical tool from modern government, and one that is particularly useful during times of austerity;
- h. the PSED requires public bodies to recognise people's different needs, make the best use of limited resources and achieve better outcomes for all service users;
- i. the PSED is not a panacea for all shortcomings of society, but it is an important lever;
- j. the effective implementation of the duty depends on leadership from the top but skills and knowledge within organisations are equally important;
- k. there is a significant risk that groups of people with protected characteristics will be disproportionately affected when cuts and other difficult choices are being made about the allocation of resources, unless active consideration is given to the PSED's requirements.

2. Stephen Lawrence's legacy, continuing inequalities and our concerns about this review

2.1 Stephen Lawrence's legacy, the PSED and race discrimination and racial inequalities

- a. This review of the PSED falls in the twentieth year after Stephen Lawrence's racist murder. In this memorial year, Stephen's mother, Doreen Lawrence, has reiterated the importance of the PSED as one of Stephen's key legislative legacies. Doreen has also had cause to question the Government's commitment to the PSED and tackling racial inequalities¹.
- b. Stephen Lawrence was murdered on 22nd April 1993. In 1999, the Stephen Lawrence Inquiry concluded that *'the investigation was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers. A failed MPS review failed to expose these inadequacies.'*
- c. Until January 2012, in part as a result of institutional racism, no one had been successfully convicted of Stephen's murder. The Lawrence family has tried to take some comfort from the fact that after 18 years, 2 people have been convicted of Stephen's murder. However, this cannot bring Stephen back to life, nor replace the years lost campaigning for justice. Nor have all of those responsible for Stephen's death been convicted of his murder.
- d. The Lawrence family's experience of the racial inequalities of the criminal justice system has stretched over 20 years and beyond. In 2013, after years of being stopped and searched, Stephen's brother, Stuart Lawrence², finally complained to the Metropolitan Police about years of harassment because of his own experience of unjustified stops and searches.
- e. Unfortunately, the experiences of the Lawrence family are not atypical. According to the Institute of Race Relations (IRR), there have been at least 96 racist murders since Stephen's³. The impact of stop and search continues to disproportionately affect black men and cause profound concerns in BME communities. Stop Watch argues *'that the statistics show that the use of the powers against black people is disproportionate and that this is an indication of unlawful racial discrimination.'*⁴ In 2012, the Guardian⁵ reported that analysis *'shows that black people are now 30 times more likely to be stopped by the police than white people... Researchers say the findings, based on government statistics, represent the worst international record of discrimination involving stop and search.'*
- f. The work of members of the Race Equality Coalition, government reports, research and other independent research provide clear evidence of the extent, persistence and, in some cases, the growth of racial inequalities and racial discrimination. The 2011 NGO CERD⁶ submission to the UN Committee on the Elimination of Racial Discrimination,

¹ <http://www.telegraph.co.uk/active/9754583/Race-not-on-Governments-agenda-says-Doreen-Lawrence.html>

² <http://www.bbc.co.uk/news/uk-england-london-20958573>

³ <http://www.irr.org.uk/news/96-murders-since-stephen-lawrences/>

⁴ <http://www.stop-watch.org/get-informed/research/disproportionate-and-discriminatory-reviewing-the-evidence-on-police-stop-a>

⁵ <http://www.guardian.co.uk/law/2012/jan/14/stop-search-racial-profiling-police>

⁶ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

provided a comprehensive assessment of racial inequalities in Britain and deficiencies in complying with CERD and the RED⁷.

- g. There is extensive evidence of racial inequalities in employment. For example, the employment rate for young black men is running at 50%⁸. Research by the Runnymede Trust identifies that BME female employment is also adversely affected⁹. In relation to education, research by the Office of the Children's Commissioner for England Research found that given *'the large differences in exclusion rates by gender, race, socio-economic group and SEN/disability, schools, school operators, owners and sponsors, local and central government will all need to take account of these new duties[the PSED] with regard to exclusions'*.¹⁰ In the criminal justice system, the EHRC reported in 2010 that the proportion of black people in jail in the UK was almost seven times their share of the population¹¹; separate research by the Runnymede Trust explores this overrepresentation. Research by members of the Race Equality Coalition has also identified serious racial inequalities in health¹², housing¹³ and social care¹⁴.
- h. Key reports have previously indicated how inequalities cost money. The Reach Report¹⁵ on raising the aspirations and attainment of Black boys and young Black men presents a very insightful and perhaps replicable table on calculating the costs of under-achievement of Black boys in the UK, for a single year in 2006 prices (£808 million), and for the next 50 years (£24 billion) if nothing further is done. 'Fair Society, Healthy Lives' (the Marmot Review), sought to propose the most effective evidence-based strategies for reducing health inequalities in England from 2010¹⁶. Marmot estimated that health inequalities cost annual cost of health inequalities is between £36 billion and £40 billion. To the extent that health inequalities are associated with discrimination or failures to promote equality of opportunity, not making progress in dealing with inequalities will cost the tax payer and country.
- i. The 2007 Equalities Review¹⁷ - which informed the Discrimination Law Review¹⁸ and the Equality Act 2010 - and the EHRC's 2010 triennial review¹⁹ provide the most comprehensive national assessments of the extent and nature of racial and other inequalities.

⁷ <http://www.runnymedetrust.org/projects-and-publications/projects/europe/cerd.html>

⁸ <http://www.guardian.co.uk/society/2012/mar/09/half-uk-young-black-men-unemployed>

⁹ <http://www.runnymedetrust.org/projects-and-publications/parliament/appg-2/appg-inquiry.html>

¹⁰ http://www.childrenscommissioner.gov.uk/content/publications/content_561

¹¹ <http://www.guardian.co.uk/society/2010/oct/11/black-prison-population-increase-england> Criminal Justice v. Racial Justice: Minority ethnic overrepresentation in the criminal justice system, the Runnymede Trust, 2012

<http://www.runnymedetrust.org/uploads/publications/pdfs/CriminalJusticeVRacialJustice-2012.pdf>

¹² http://www.raceequalityfoundation.org.uk/extended-search?menu=&term_node_tid_depth=&keys=health%20inequalities%20and%20race

¹³ <http://www.raceequalityfoundation.org.uk/publications/downloads/health-and-housing>

¹⁴ <http://www.guardian.co.uk/social-care-network/2012/jan/18/mental-health-services-racial-inequality> and www.afiya-trust.org/

¹⁵ REACH, an independent report to Government on raising the aspirations and attainment of Black boys and young Black men. August 2007 Department for Communities and Local Government: London. <http://www.communities.gov.uk/documents/communities/pdf/reach-report.pdf>

¹⁶ <http://www.instituteoftheequity.org/projects/fair-society-healthy-lives-the-marmot-review>

¹⁷ The Equalities Review reported in February 2007. <http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/equalitiesreview/>

¹⁸ http://sta.geo.useconnect.co.uk/equality_act_2010/archive-equality_bill/discrimination_law_review_term.aspx

¹⁹ <http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/>

2.2 Concerns about the justification for, and the timing of, the review

- a. The PSED came into force in April 2011 but nevertheless the Government announced the review of the PSED as a result of the Red Tape Challenge (RTC) in May 2012. Our analysis of the RTC responses identifies that respondents who commented were overwhelming supportive of the PSED.
- b. The specific equality duties for Wales came into force in April 2011. However the specific equality duties (SEDs) for England did not come into force until September 2011, with the main compliance requirements being January 2012²⁰ and April 2012²¹.
- c. The specific equality duties for Scotland were only approved at the end of May 2012. It will be difficult to learn any lessons from the comprehensive regulatory approaches adopted for Scotland and Wales. We note that the First Minister of Wales²² also shares these concerns about the timing and nature of this review.
- d. The timing of the review means there is limited evidence of the impact of the PSED on which to draw and there is a real danger of making decisions based on inadequate data. This is not a methodologically sound basis for conducting a research review. Given the opportunity that the different duties in England, Scotland and Wales offer in terms of a natural experiment (and the lack of reference to sociological data on inequality); it is difficult to conclude that the review is grounded in a commitment to accepted standards of evidence collection.
- e. The review is being undertaken against a background of regressive developments in relation to the Equality Act 2010 and Equality Act 2006 as the Government has decided to repeal provisions in both acts (see part 3).

2.3 Concerns about the review's purpose, nature, oversight and engagement

- a. The review's terms of reference state that the purpose of the review is to '*establish whether the Equality Duty in the Equalities Act 2010 is operating as intended.*' However, it is unclear what objective criteria will be used in the review to assess whether the PSED is working as intended. We note that during the parliamentary debates about the purpose of the PSED, in addition to cross party support for the PSED, there was a considerable degree of cross party consensus about the purpose of the PSED and clear statements about the intended operation of both the PSED and the SEDs (see appendix 3). This consensus suggests that the PSED is supported by the constitutional principle of Parliamentary sovereignty.
- b. There is no clear recognition in the terms of reference or the call for evidence that Parliament clearly debated and set out the purpose of the PSED (see appendix 3).
- c. It is difficult to see how a review of the PSED or its effectiveness can reasonably be divorced from the issue of addressing discrimination, in all its manifestations (including institutional) but there is no clear reference in the review to the extent of racial or other inequalities or institutional discrimination. Given the purpose of the PSED to affirm the principle of equal citizenship in practice, and the substantial sociological evidence of inequality on grounds including ethnicity, this is problematic in principle and methodologically suspect.
- d. There is no clear recognition in the review's terms of reference or the call for evidence of the importance of the PSED as a tool to hold public bodies to account (see appendix

²⁰ Annual publication of information.

²¹ Publication of equality objectives every 4 years.

²² http://www.edf.org.uk/blog/wp-content/uploads/2012/12/Outgoing_2.pdf

- 3). This is surprising given the Government's clear and admirable commitment to transparency, accountability and good governance.
- e. We share the views expressed by Mrs Lawrence and Dr. Richard Stone and believe that this review should have been conducted by a parliamentary select committee²³.
 - f. We also agree that this review should have followed best practice in terms of post-legislative reviews. The process of inviting written evidence, then inviting key parties to comment on and be questioned about that evidence in person would have been invaluable.
 - g. Transparency and accountability are enhanced by properly documenting meetings, detailed minutes and publishing evidence sessions and written evidence; we note that these are standard features of inquiries and reviews by parliamentary select committees; such an approach would have been valuable in relation to this review.
 - h. The majority of people on the 'independent' steering group are from the public sector and this mitigates against the concept of independence. In terms of political balance, a parliamentary select committee would have members from at least the 3 main political parties for England and any political or other allegiances would be a matter of public record.
 - i. Given the composition of the independent steering group, the approach to engaging with communities of interest and those who should benefit from the PSED is even more critical.
 - j. Although the principle of engaging with communities and people disadvantaged by discrimination and/or inequalities was most strongly articulated as a statutory requirement in relation to the Disability Equality Duty (DED), requirements around engaging with, consulting and involving those affected by discrimination were explicitly part of the previous specific equality duties and recognised in the EHRC's guidance on the PSED (and affirms government's commitment to the principle of equality).
 - k. We, and other organisations including Gypsy and Traveller organisations, have had to push to get the GEO to engage on the issue of this PSED review. The GEO team which took over responsibility for the PSED review in February/March 2013 organised more roundtables with the voluntary and community sector (VCS) – originally few events were proposed. However, we remain concerned that the methodology should have placed a much higher priority on meaningful engagement with those who are supposed to benefit from the PSED.

3. The impact of government actions, understanding of the PSED and guidance, ensuring compliance legislative, administrative, enforcement or other changes

3.1 Actions taken by Government and their adverse impact on the PSED

- a. It is important to reflect on the approach taken by Government to the implementation of the PSED and whether these actions have adversely affected the implementation of the PSED and/or undermined or destabilised the PSED's implementation.
- b. The Government's decision to reopen the consultation around the SEDs for England in January 2011; this meant that the SEDs for England were not approved until September 2011, 6 months after the PSED came into force.

²³ http://www.voice4change-england.co.uk/webfm_send/174

- c. The SEDs for England for the better performance of the PSED include two key requirements - firstly publishing information annually (starting January or April 2012) and secondly publishing equality objectives (every 4 years from April 2012) – these key requirements came into force 9 and 12 months after the PSED came into force.
- d. The SEDs for England are much less detailed than the SEDs for Wales and Scotland and also much less detailed than the SEDs that supported the RED, GED and DED.
- e. There were SEDs in place to support the PSED in Wales from April 2011²⁴ but there were no SEDs for England until September 2011 and no SEDs for Scotland²⁵ until the late May 2012.
- f. In 2011, the EHRC was prevented from issuing the statutory code of practice to support the implementation of the PSED; technical guidance was not issued until January 2013²⁶.
- g. The Government announced the review of the PSED in May 2012 but there was a prolonged hiatus until late 2012, when the review's terms reference and Steering Group were announced.
- h. The EHRC currently has its own good relations duty under the Equality Act 2006. This duty built on the CRE's old good (race) relations duty. This informed the CRE's approach to the good relations element of the RED and should have informed the EHRC's understanding of the good relations arm of the PSED. The decision to repeal the EHRC's good relations duty has therefore caused some consternation amongst BME VCS organisations as we believe democratic governments should encourage good relations between different ethnic groups.
- i. The PSED review was announced as part of the Red Tape Challenge (RTC) response on equalities²⁷. Following the RTC's commencement, the only changes made to the Equality Acts 2010 or 2006, have been proposals to repeal sections of these acts, including the EHRC's own general equality and good relations duties under the Equality Act 2006²⁸.
- j. The budget available to the EHRC has been cut by Government and the Government has also decided to repeal the general duty placed on the EHRC to advance equality²⁹ - this has led to serious concerns about the EHRC's ability to enforce in relation to the PSED³⁰.
- k. The Government has made high level pronouncements³¹ saying that equality impact assessments should not be undertaken³² and it is unnecessary to gather some equality information. However it is unclear what action the Government thinks *should* be taken to comply with the PSED and issuing guidance in this way undermines the role of the EHRC.
- l. The combined effect of these decisions has been to increase uncertainty in the minds of voluntary and community organisations and public bodies about the Government's commitment to the future of the PSED and equality more generally.

²⁴ The Equality Act 2010, (Statutory Duties) (Wales) Regulations 2011

²⁵ The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

²⁶ <http://www.equalityhumanrights.com/advice-and-guidance/information-for-advisers/equality-act-codes-of-practice/> & <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/technical-guidance/>

²⁷ <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

²⁸ <http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

²⁹ <http://www.parliament.uk/business/news/2013/march/lords-enterprise-and-reg-reform-report-stage-day-2/>

³⁰ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/732/732we06.htm>

³¹ <http://www.politics.co.uk/comment-analysis/2012/11/19/cameron-s-cbi-2012-speech-in-full>

³² <https://www.gov.uk/government/publications/reducing-statutory-burdens-equality-impact-assessments>

3.2 Understanding the guidance issued by the EHRC to support the PSED

- a. In January 2011, the EHRC issued 5 non-statutory guides, based on the draft specific equality duties also published around the same time. The purpose of the guides was to assist public bodies to comply with the PSED. Unfortunately, following publication of the guides, the Government reopened the consultation on the specific equality duties and some of the guidance in these guides was immediately out of date.
- b. Following the approval by Parliament of the SEDs for England in September 2011, the EHRC had to update the five guides to reflect the final SEDs for England. The 5 guides were updated between December 2011 and January 2012.
- c. These guides: a) *'provide an overview of the equality duty, including the general equality duty, the specific duties and who they apply to'*; b) *'cover what public authorities should do to meet the duty'*; and c) explain *'steps that are legally required, as well as recommended actions'*. An essential guide to the PSED was one of the 5 guides.
- d. The updated 2012 Essential Guide to the PSED clearly states that having *'due regard to the aims of the general equality duty requires public authorities to have an adequate evidence base for their decision-making. Collecting and using equality information will enable them to develop a sound evidence base. Case law on the previous equality duties has made clear that public authorities should ensure that they have enough relevant information to hand about equality issues to make informed choices and decisions, and to ensure that this is fully considered before and at the time decisions are taken.'*
- e. The EHRC issued technical guidance on the PSED, instead of a statutory code of practice in January 2013 and it issued guidance on procurement in March 2013 (see part 4).
- f. Some of the EHRC's guidance is high quality, while some is more mediocre. In training public bodies and voluntary and community organisations around the duties, key barriers to using the guidance have proved to be: a) people simply not knowing what guidance is available; b) people having to deal with the fact that guidance they had read was out of date; and c) people being unclear which piece of guidance they should read as there are a number of guidance documents.

We also endorse EDF's comments on this issue.

- g. Good quality support and guidance is central to securing the benefits of the PSED. We are aware of anecdotal evidence that has been cited giving instances of public bodies that have either failed to address their equality obligations effectively or that have mistakenly assumed they need to do things that they do not.
- h. Both ends of the spectrum – authorities who are tying themselves up in knots and those who are not doing what they should – illustrate the need for stronger leadership and better support and guidance. If a public body misdirects itself as to its obligations, the answer is not to change the obligations but to improve awareness and understanding.
- i. In that context, we regret the Government's decision not to enable the EHRC to publish a PSED Statutory Code of Practice. The lack of authoritative guidance on which public bodies have been consulted tends to create burdens for public authorities. It is much more likely that public bodies will, for example, seek more information than they need from potential tenderers in the absence of clear statutory guidance. A concise Code of Practice is likely to be of more help to public authorities (and be more cost effective by reducing staff time) in incorporating the PSED within their working practices than a proliferation of documents from different sources.

- j. We are concerned that some guidance that has been produced, including guidance from government departments, focuses too much on what public bodies do *not* need to do and not enough on what they *do* need to do. Whilst it is helpful to ensure public bodies are clear about the limits of their duties, guidance that is framed largely in negative terms does not promote effective performance and tends to send the message that the PSED is about bureaucratic processes rather than about improving outcomes.

3.3 The role of inspectorates and regulatory bodies

- a. The CRE recognised when the RED came into force that inspectorates and regulatory bodies who were themselves subject to the PSED could play an important role in securing the implementation of the RED. This recognition led the CRE to meet with key inspectorates and regulatory bodies for the public sector and to issue a guidance document called *'The duty to promote race equality: A framework for Inspectorates'*.
- b. Ofsted initially placed a high priority on incorporating compliance with the RED and the other equality duties into its compliance framework; however it is unclear what priority Ofsted now places on compliance with the PSED or how it approaches addressing said compliance in furtherance of its own duty to comply with the PSED.
- c. There are clear limitations on the ability of the EHRC to provide sector specific influence. It would make sense to explore how inspection and regulation could best effectively support compliance with the PSED by public bodies and those that exercise public functions. It should be noted that public bodies that genuinely can demonstrate that they have shown due regard to the PSED are much less likely to be subject to judicial review and much less likely to lose a judicial review case. Compliance with the duties is therefore a cost effective way to avoid the potentially significant cost of judicial review.

4. Procurement and commissioning

4.1 The importance of public sector procurement

- a. The Government accepts that the *'greater inclusion of smaller, local businesses in the procurement process presents a real opportunity for Government purchasers to reduce the risk of project failure through more agile programme and project management to drive innovation through greater competition and choice, and to stimulate growth in the economy by supporting entrepreneurial businesses...The Government has recognised the potential of small and medium enterprises (SMEs), which account for 50% of turnover in the UK economy but only win around 6.5% of procurement contracts, and has set out a plan for increasing this share to 25%.'* ... Studies of procurement across the EU demonstrate that the UK lags significantly behind some other EU countries in terms of its procurement from the SME sector as well as innovative structures for making procurement accessible to SMEs.³³
- b. According to Department for Business Innovation and Skills (BIS), *'the UK public sector spends around £238bn each year on the procurement of goods, works, and services, which accounts, as a share of total spending, for around a third of overall public sector expenditure.'* ... *'Although public sector demand is only around 15% of total UK demand, in certain sectors it accounts for a large proportion or majority of demand (e.g. defence,*

³³ Public Procurement: Briefing 2012: 'Driving a Culture of Innovation and Enterprise with SMEs'
<http://www.nationalprocurementconference.co.uk/wordpress/wp-content/uploads/2011/12/PB-Report-v5.pdf>

*health, transport). Furthermore, even in sectors where the public sector is not necessarily the primary customer, it can still have a significant impact on the activities and behaviours of firms.*³⁴

- c. BIS says that *'Government may have an important role to play in helping to remove barriers to growth, for example where there are skills shortages, underinvestment in innovation, a lack of competition, or problems with access to finance.'*³⁵
- d. In 2012, the BIS announced how it would take steps to strengthen the UK supply chain and the involvement of SME enterprises in the supply chain.
- e. Under the banner *'Buying and managing government goods and services more efficiently and effectively'* the Government announced in February 2013³⁶ that it was taking a number of steps to improve the approach to procurement and supply chains.
- f. Just looking at local government, a 2012³⁷ survey of local authorities by the Federation of Small Business identified *'the hugely important influence of local authority spending decisions. The survey shows an average annual procurement spend for UK councils surveyed of £185 million, meaning there is a significant flow of money from the public to the private, voluntary and community sectors.'* The FSB also noted that *'the outsourcing and commissioning of services continues to increase, the importance of local authority decisions about which businesses will deliver their contracts continues to grow.'*

4.2 The PSED, procurement and supply chains

- a. Whilst these commitments to extending the supply chain to SMEs are laudable and important, references to equality and the significance for BME communities, reducing unemployment in BME communities or other groups, are noticeable by their absence.
- b. If the needs of BME small businesses and entrepreneurs are not considered as part of this strategy, then logically the financial position of BME entrepreneurs and communities are likely to worsen. Furthermore, the gap between BME businesses and non ethnic minority led businesses will only grow. This was recognised by the Deputy Prime Minister in his 2011 Scarman lecture and is currently being recognised by government in the DCLG review of access to finance.
- c. Government departments, including BIS, are subject to the PSED. But the absence of direct references to equality in the main announcements of these strategies, and/references to BME led, women led or organisations led by disabled people – suggests a limited understanding of the scope of the PSED and its importance in reducing economic inequalities.

4.3 The guidance and research on procurement issued by the CRE and EHRC

- a. Research has identified a variety of barriers to small businesses and ethnic minority firms accessing public procurement opportunities³⁸.

³⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32264/12-756-strengthening-supply-chains-public-procurement-tunnelling.pdf

³⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32264/12-756-strengthening-supply-chains-public-procurement-tunnelling.pdf

³⁶ <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively>

³⁷ http://www.fsb.org.uk/policy/rpu/scotland/assets/publi_spec_procurabridjuly2012.pdf

³⁸ (Bates, 2001; Boston, 1999, Ram et al, 2002; Michaelis et al, 2003; Shah and Ram, 2003; BVCA/FM/FSB/CBI, 2008)' [Source: Procurement and supplier diversity in the 2012 Olympics, Research report 6, EHRC. Supplier diversity: A guide for purchasing organisations, CRE 2007.

- b. The importance of public procurement and supplier diversity to promoting /advancing race equality under the RED and PSED was the subject of statutory and non statutory guidance from the CRE and the EHRC (see appendix 2D).
- c. In 2003, the CRE issued detailed guidance on the RED and procurement to both local authorities and other public bodies called public procurement and race equality.
- d. In 2007, the CRE published guidance on supplier diversity that identified other key national and European guidance on supplier diversity and race³⁹.
- e. In 2008, the EHRC published research⁴⁰ on the ODA's approach to equality in public procurement and supplier diversity, including the ODA's focus on ethnic/race diversity in supplier diversity. The experience of the ODA demonstrates that, although challenging, public bodies subject to the public sector equality duties should, and can, take steps to promote supplier diversity and equality in public sector procurement in large scale programmes. It is clear that the ODA drew on the advice of the CRE⁴¹ in developing its supplier diversity strategy and addressing the RED/PSED.
- f. In 2012, the EHRC published the second edition of its Essential Guide to the PSED. This non statutory guidance, sets out clear expectations in relation to public procurement.
- g. In March 2013, the EHRC published 'Buying Better outcomes - Mainstreaming equality considerations in procurement: a guide for public authorities in England'.

4.4 Those involved in procurement and commissioning

- a. It is essential that those who play key roles in commissioning – including developing commissioning strategies, designing contracts, letting contracts, managing contracts and reviewing contracts – address the requirements of the PSED.
- b. In order to address the requirements of the PSED, those involved in commissioning understand the requirements of the PSED.
- c. This means that clear guidance, advice, training and support needs to be available for those in commissioning and contracting on the requirements of the PSED.

4.5 Examples of good practice initiatives around equalities and the RED and/or PSED

- a. In 2002, following the introduction of the RED, a group of councils in the West Midlands councils revamped their common standard for council contracts and racial equality. During the 2000s, the standard was renamed the Common Standard for Equalities in Public Procurement. The Standard's aims include: a) helping contractors meet their obligations for non-discrimination; b) encouraging and acknowledging firms who comply with the Standard; c) sharing good practice; and d) securing contracts that deliver equalities in public procurement.⁴²
- b. In 2006, the Mayor of London adopted a 'Responsible Procurement Policy' to apply across the Greater London Authority (GLA), Transport for London (TfL), the London

³⁹ (see <http://www.supplierdiversityeurope.eu/MyPictures/SDE-CRE-Supplier-Diversity-Guide.pdf>).

⁴⁰ The EHRC's research specifically sought to assess 'current ODA procurement policies and practices and how they comply with the public sector equality duties on gender, race and disability' and to 'draw out the implications for ODA-funded procurement and suggest ways of increasing the involvement of businesses with different characteristics in ODA-funded contracts.'

⁴¹ The CRE published the most detailed guidance of the CRE, DRC and EOC on supplier diversity.

⁴² Birmingham City Council, Coventry City Council, Walsall Metropolitan Borough Council, Sandwell Metropolitan Borough Council, Redditch Borough Council and Wolverhampton City Council. <https://www.wmf-commonstandardforequalities.gov.uk/wmf/portal.nsf/fcontent?readform&docid=SD-BDEX-7DXJD9&contentid=1.002>

Development Agency (LDA), London Fire & Emergency Planning Authority (LFEPA) and the Metropolitan Police Authority (MPA) / Service (MPS), collectively known as the GLA group. In February 2008, the Mayor published an overview of the policy⁴³. The policy covered seven themes: i) encouraging a diverse base of suppliers; ii) promoting fair employment practices; iii) promoting workforce welfare; iv) addressing strategic labour needs and enabling training; v) community benefits; vi) ethical sourcing practices; and vii) promoting greater environmental sustainability. The Mayor also worked with the Olympic agencies to ensure procurement for the 2012 Olympic Games and Paralympic Games took those principles into account, and agreed to take the same approach to the construction of Crossrail.

- c. TfL's responsible procurement programme was designed to respond to relevant European and UK Government legislation and best practice. Implementation of the procurement policy was supported by LDA funded organisations including CompeteFor, Diversity Works For London and the Mayor of London's Green Procurement Code (MoLGPC), additional support and guidance was provided by the pan GLA 'Central Responsible Procurement Team (CRPT). TfL-wide policies and management systems cascaded responsible procurement requirements into individual business units. The requirements were incorporated in local policies and procedures such as the TFL procurement policy and procedures. Specific procurement policies, tools and guidance enabled implementation of requirements in projects and Modal operations throughout TfL. Tools and guidance were supported by managerial objectives, training for procurement staff, category and project analysis and legal support. Requirements were incorporated in procurement projects and business activities using a variety of tools and associated guidance including PQQ and ITT questions, development plans, Supplier Relationship Management techniques and other internal processes. Outputs were monitored within project and contract management processes and collated to enable reporting and to further develop best practice guidance.
- d. In 2013, the Government issued a policy note on procurement. Public Procurement and the Public Sector Equality Duty Information Note 01/13 28 January 2013 was issued to government departments. The purpose of the PPN was to '*remind departments of their legal obligations under the Public Sector Equality Duty (PSED), when conducting their public procurement activities*'... and to provide '*a summary of how the duty can be taken into account when conducting public procurement*'.⁴⁴
- e. In March 2013, the EHRC published guidance to help public authorities in England comply with the Public Sector Equality Duty (PSED) by giving due consideration to equality issues in their procurement processes⁴⁵. 'Buying Better Outcomes' is intended to provide clear advice on what the law requires, together with practical examples, so that public authorities can see what they need, and don't need, to do to comply with the PSED. The EHRC's guidance is intended to identify '*how organisations can take a proportionate approach to shaping and targeting of goods and services, whether it is simple, straightforward compliance with the law or following best practice examples*.'

⁴³ Mayor of London's, Responsible Procurement Report, February 2008

⁴⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80185/PPN_PPN_Procurement_Equality_Jan-13_0.pdf

⁴⁵ <http://www.equalityhumanrights.com/news/2013/march/commission-publishes-guidance-on-public-sector-procurement/>

Appendix 1: Members of the Race Equality Coalition	
The Afiya Trust	<p>The Afiya Trust is a national charity that works to reduce inequalities in health and social care provision for people from racialised communities.</p> <p>As a BME-led organisation with a national remit, and strong links to BME grassroots organisations, the involvement of service users and carers is central to Afiya's work as well as engaging voluntary and statutory organisations in the development and delivery of work programmes covering a broad range of health and social care issues.</p> <p>www.afiya-trust.org/</p>
Black Minority Ethnic Community Organisations Network (BECON)	<p>BECON (Black Minority Ethnic Community Organisations Network) is a region wide organisation for the Black Minority Ethnic voluntary and community sector in the North East of England. BECON provides services to BME communities addressing disadvantage, discrimination, exclusion, inequalities and racism. BECON strives to bring about a more inclusive society promoting equality, diversity, human rights and social justice.</p> <p>http://www.becon.org.uk/</p>
Black South West Network (BSWN)	<p>The Black South West Network (BSWN) is a provider of support services operating primarily in the South West developing National provision, working with civil society organisations in rural and urban communities. The primary focus of the organisation is to facilitate access to information and to empower BME and marginal community organisations as leaders of social action. The vision and mission of the network is to promote and advocate on behalf of BME, other marginal, Voluntary, Civil Society and Community organisation.</p> <p>http://www.bswn.org.uk/about/bswn</p>
BME National	<p>BME National is a collective of over 60 BME housing associations operating within England. It acts under the auspices of the National Housing Federation (NHF) and, as well as collaborating with the Federation to influence national housing policy, it also provides a consultative and promotional platform for BME housing issues.</p> <p>http://bmenational.wordpress.com/about/</p>
Black Training & Enterprise Group (BTEG)	<p>Black Training Enterprise Group's (BTEG's) mission is to end racial inequality. BTEG believes that the contribution of all communities makes a nation, builds dynamic local communities, generates wealth and improves well-being. BTEG champions fairness, challenge discrimination and pioneer innovative solutions to empower BAME communities through education, employment and enterprise. BTEG's activities involve working with Government, business, public services, BAME organisations and the media.</p> <p>http://www.bteg.co.uk/</p>
Coalition for Racial Justice UK (CRJ UK),	<p>The Coalition for Racial Justice UK (CRJ UK) aims to improve the experience of people from Black and Minority Ethnic communities of the criminal justice system by harnessing and representing this experience in order to achieve race equality in criminal justice. CRJ UK also aims to identify the manifestations and causes of racism, discrimination and disproportionality in the criminal justice process and work to raise criminal justice agencies'</p>

Appendix 1: Members of the Race Equality Coalition	
	awareness of racial injustice in their operations. http://www.nbbpsg.org/
Croydon BME Forum	Croydon's BME Forum was established in 2002 in response to the need for a representative body to look specifically at key local issues and their impact on Black and Minority Ethnic (BME) communities. The Forum has three main functions: a) engagement; b) capacity building; and c) strategic race Equality for Croydon. http://www.bmeforum.org/
Equanomics UK	Equanomics UK believes racial injustice is coupled with economic injustice. They aim to establish that tackling economic injustice and poverty can reduce racial inequality in education, criminal justice, employment, health and housing. Equanomics aims to present an economic analysis of discrimination, and change the UK's language and approach to racial and economic equality. http://equanomicsuk.org/
Friends, Families and Travellers (FFT)	Friends, Families and Travellers (FFT) seeks to end discrimination against Gypsies and travelers whatever their ethnicity, culture or background, whether settled or mobile and to protect the right to pursue a nomadic way of life. FFT's overall objective is to work towards a more equitable society where everyone has the right to travel and to stop without constant fear of persecution because of their lifestyle. www.gypsy-traveller.org
JUST West Yorkshire	JUST West Yorkshire promotes racial justice, civil liberties and human rights in the North of England. Projects challenge the diminution of community and youth rights and the inequity and inequality between the North and South through promoting activism and using research, advocacy and campaigning approaches. http://www.justwestyorkshire.info/
Minority Ethnic Network Eastern Region (MENTER)	Minority Ethnic Network Eastern Region (MENTER) is a regional network of Black and Minority Ethnic (BME) voluntary organisations and community groups for the East of England Region, managed by representatives of its membership. MENTER aims to develop the BME sector, promote equalities, particularly race equality and advocacy for the BME Sector and build a strong and representative regional BME network. http://www.menter.org.uk
OLMEC	Olmec was established in 2003 as a response to the entrenched poverty and disadvantage experienced by people living in challenging neighbourhoods. Olmec empowers individuals to take an active role in society and achieve their goals and aspirations. By accessing the services delivered through Olmec, individuals and organisations are able to develop their skills, services and capacity in order to turn around their lives and the lives of others. Our services are bespoke and tailored to the individual or organisation. www.olmec-ec.org.uk/

Appendix 1: Members of the Race Equality Coalition	
One North West	One North West is the regional BME Network working with Black and Minority Ethnic (BME) voluntary and community sector organisations across the region to achieve greater race equality and improved social justice. One North West aims to promote the sustainability of the BME voluntary and community sector and representation of the BME VCS and BME women. http://www.onenorthwest.org.uk/
Operation Black Vote (OBV)	Operation Black Vote's (OBV's) vision is for a fair, just and inclusive democracy - one that offers rights to all and demands responsibility from all. OBV aims to make that vision real through political education, political participation and political representation. http://www.obv.org.uk/
Race On the Agenda (ROTA)	Race on the Agenda (ROTA) is a BAME-led social policy think tank that focuses on race equality and issues affecting Britain's BAME communities, and creates an environment for the equalities third sector to flourish. ROTA works to strengthen the voice of BAME communities through increased civic engagement and participation in society and to provide representation on issues affecting BAME communities and the sector that was set up to serve them. http://www.rota.org.uk/
The Runnymede Trust	Runnymede is an independent race equality think tank. They generate intelligence for a multi-ethnic Britain through research, network building, leading debate, and policy engagement. Their work aims to assist policy-makers, practitioners, and citizens, to reduce the risk of society being blighted by racism and discrimination to the detriment of everyone. http://www.runnymedetrust.org/
Race Equality Foundation (REF)	The Race Equality Foundation (REF) seeks to use evidence to develop interventions that overcome barriers and promote race equality in health, housing and social care. REF explores what is known about discrimination and disadvantage; develop evidenced-based better practice to promote equality and disseminate better practice through educational activities, conferences, written material and websites. http://www.raceequalityfoundation.org.uk/
Voice4Change England.	Voice4Change England is a national advocate for the Black and Minority Ethnic voluntary and community sector (BMS VCS). It works for a stronger and inclusive civil society to meet the needs of BME and other disadvantaged communities. It aims to: Increase the involvement of the BME VCS in decision making; increase awareness of the BME VCS' impact and value and improve the capacity of VCOs to meet the needs of BME and other disadvantaged communities. http://www.voice4change-england.co.uk/

Appendix 2: The Race Equality Duty, the Disability Equality Duty, the Gender Equality Duty and the Public Sector Equality Duty and the regulatory framework for the RED and then the PSED in place up to 5th April 2011 and from 5th April 2011 for England⁴⁶							
Legislation as amended, regulations, statutory codes and guidance – RED, DED, GED and PSED			Applied to⁴⁷		Provisions in force⁴⁸		
A	Public sector equality duties – past and present	The legislation⁴⁹	Listed public bodies	Those exercising public functions	Years	In force	Repealed
1	Race Equality Duty (RED) ⁵⁰	Section 71, Race Relations Act 1976	Yes		2002 - 2011	Until 4/4/11	4/4/11
2	Disability Equality Duty (DED) ⁵¹	Section 49 (A), Disability Discrimination Act 1995		Yes	2005 - 2011	Until 4/4/11	4/4/11
3	Gender Equality Duty (GED) ⁵²	Section 76 (A), Sex Discrimination Act 1975		Yes	2006 - 2011	Until 4/4/11	4/4/11
4	Public sector equality duty (PSED) ⁵³	Section 149, Equality Act 2010	Yes	Yes	2011 to date	From 5/4/11	In force

⁴⁶ Specific equality duties, to support the PSED, were agreed by the devolved administration for Wales (in 2011) and Scotland (in 2012).

⁴⁷ Under the Equality Act 2010, the PSED applies to listed public bodies by virtue of section 149(1). By virtue of sections 149 (2), section 149 (1 a, b and c) also apply to a person/persons that exercise public functions in the exercise of those public functions. By virtue of sections 149 (2) and section 150 (5), those that exercise public functions must ‘*exercise a function of a public nature for the purposes of the Human Rights Act.*’

⁴⁸ The public sector equality duties set out in the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975 as amended were repealed in April 2011 when the PSED came into force after other key provisions had been repealed.

⁴⁹ In each case, references to the primary legislation or acts of parliament should be read as referring to the legislation as amended.

⁵⁰ The RED stated ‘*Every body or other person specified in Schedule 1A shall, in carrying out its functions, have due regard to the need—(a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity and good relations between persons of different racial groups.*’ Race Relations Act 1976 as amended, section 71

⁵¹ The DED stated that ‘*every public authority shall in carrying out its functions have due regard to: a) the need to eliminate discrimination that is unlawful; b) the need to eliminate harassment of disabled persons that is related to their disabilities; c) the need to promote equality of opportunity between disabled persons and other persons; d) the need to take steps to take account of disabled persons’ disabilities, even where that involves treating disabled persons more favourably than other persons; e) promote positive attitudes towards disabled persons; and f) the need to encourage participation by disabled persons in public life.*’

⁵² The GED stated that a public authority shall in carrying out its functions have due regard to the need ‘*to: a) ‘eliminate unlawful discrimination and harassment’; and b) ‘promote equality of opportunity between men and women.*’ Sex Discrimination Act 1975 as amended, section 76A

Appendix 2: The Race Equality Duty, the Disability Equality Duty, the Gender Equality Duty and the Public Sector Equality Duty and the regulatory framework for the RED and then the PSED in place up to 5th April 2011 and from 5th April 2011 for England⁴⁶						
Legislation as amended, regulations, statutory codes and guidance			Aimed at	Years	In force	Repealed
B	Statutory regulations for England⁵⁴	Stat. Inst. or body		Duration	From	To
1	Specific race equality duties	SI. 2001 3458	Listed public bodies	2001 –2011	3/12/01	4/4/11
2	Specific disability equality duties	SI. 2005 No. 2966	Listed public bodies	2005 - 2011	5/12/05	4/4/11
3	Specific gender equality duties	SI. 2006 No. 2930	Listed public bodies	2007 –2011	6/4/07	4/4/11
4	Specific equality duties for England	SI. 2011 No. 2260	Listed public bodies	2011 on	10/9/11	In force
C	Relevant statutory codes of practice (CoPs) for England and relevant EHRC technical guidance⁵⁵					
1	CoP: Duty to promote race equality	SI. 2002 No. 1435	Listed public bodies	2002 - 2011	31/5/02	4/4/11
2	CoP: Duty to promote disability equality	SI. 2005 No. 3340	Listed public bodies	2006 - 2011	5/12/05	4/4/11
3	CoP: Duty to promote gender equality	SI. 2007 No. 741	Listed public bodies	2007 -2011	6/4/07	4/4/11
4	Code of practice on racial equality in employment	SI. 2006 No. 630	All employers	2006 - 2010	6/4/06	6/4/11
5	Code of practice: Services, public functions and associations	SI. 2011 No. 857	All service providers and public bodies	2011 on	6/4/11	In force
6	Equality Act 2010: Technical Guidance on the PSED		Public bodies subject to the PSED	January 2013 on	15/1/13	In place

⁵³ The PSED states that ‘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 persons who do not share it; c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.’

⁵⁴ Separate and much more detailed specific equality duties were issued by the devolved administrations, to support the PSED, for Scotland and Wales after detailed consultation with communities of interest. Previously, to support the RED, DED and GED, the same specific equality duties (regulations) applied to England and Wales and although there were separate specific equality duties (regulations) for Scotland these largely mirrored the regulations for England and Wales. With respect to the PSED, for Scotland the final specific equality duties were more extensive than the initial draft proposals. In England, the final specific equality duties to support the PSED, were much less detailed than originally intended. With respect to the RED, DED and GED although there were separate specific equality duties for Scotland, the duties broadly mirrored those for England.

⁵⁵ Statutory codes of practice were significant because they not only offered practical guidance on the law but were admissible in evidence in a court of law. The EHRC originally intended to issue a statutory code of practice to support the PSED but the Government decided in 2012 that the EHRC should not issue any further statutory codes of practice. On 15/1/13, the EHRC issued technical guidance the PSED in place of a statutory code of practice (see <http://www.equalityhumanrights.com/news/2013/january/commission-publishes-guidance-on-the-public-sector-equality-duty/>).

Appendix 2: The Race Equality Duty, the Disability Equality Duty, the Gender Equality Duty and the Public Sector Equality Duty and the regulatory framework for the RED and then the PSED in place up to 5th April 2011 and from 5th April 2011 for England⁴⁶						
D	Non statutory guidance, reports and research⁵⁶ supporting the RED		Aimed at	Published	Applicable	Availability
1	The duty to promote race equality: A Guide for public authorities(Non-statutory)	CRE: Non statutory guidance	Listed public bodies	2002	31/5/02	Archived April 2011
2	Performance guidelines for government departments	CRE: Guidance leaflet (non statutory)	Listed public bodies	2002	June 2002	Archived April 2011
3	Ethnic monitoring a guide for public authorities ⁵⁷	CRE: Non statutory guidance	Listed public bodies	2002 or 2003	July 2002	Archived April 2011
4	The duty to promote race equality: A framework for Inspectorates	CRE: Non statutory guidance	Listed public bodies	2002 or 2003	July 2002	Archived April 2011
5	Engagement and the equality duty: A guide for public authorities [2 nd edition] ⁵⁸	EHRC: Non statutory guidance	Listed public bodies	2012	19/12/11	Ongoing
6	The essential guide to the public sector equality duty: [2 nd edition] ⁵⁹	EHRC: Non statutory guidance	Listed public bodies	2012 ⁶⁰	January 2012	Ongoing
7	Equality information and the equality duty: A guide for public authorities [2 nd edition] ⁶¹	EHRC: Non statutory guidance	Listed public bodies	2012	19/12/11	Ongoing
8	Publishing equality information: Commitment, engagement and transparency ⁶²	EHRC research report	All bodies subject to the PSED	2012	Published Dec. 2012	N/A research

⁵⁶ The non-statutory guidance referenced is the non statutory guidance published by the CRE or EHRC because of their statutory remits to issue such guidance on equality.

⁵⁷ Still available at http://www.equalityhumanrights.com/uploaded_files/PSD/12_ethnic_monitoring.pdf

⁵⁸ This second edition considered the requirements of the specific equality duties published on 27/6/11 that came into force on 10/9/11. This 2nd edition replaced the first edition published in January 2011.

⁵⁹ Equality information and the equality duty: A guide for public authorities (Revised (second) edition, November 2011. The EHRC has issued this non statutory guidance as part of a series of non statutory guides on how to comply with the PSED. The revised guides were issued at the end of 2011 or beginning of 2012.

⁶⁰ This second edition considered the requirements of the specific equality duties published on 27/6/11 that came into force on 10/9/11. This 2nd edition replaced the first edition published in January 2011.

⁶¹ This second edition considered the requirements of the specific equality duties published on 27/6/11 ; these specific equality duties for England came into force on 10/9/11. This 2nd edition of the non statutory guidance replaced the first edition published in January 2011.

⁶² http://www.equalityhumanrights.com/uploaded_files/PSD/publishing_equality_information_final.pdf

Appendix 2: The Race Equality Duty, the Disability Equality Duty, the Gender Equality Duty and the Public Sector Equality Duty and the regulatory framework for the RED and then the PSED in place up to 5th April 2011 and from 5th April 2011 for England⁴⁶						
E	Guidance on procurement, commissioning and the RED and PSED		Aimed at	Published	Applicable	Availability
1	The duty to promote race equality Race equality and public procurement: A guide for public authorities and contractors	CRE: Non statutory guidance	Public sector, suppliers and others	2003	July 2003 – April 2011	Archived April 2011
2	The duty to promote race equality Public Procurement and Race Equality Guidelines for public authorities	CRE: Non statutory guidance, leaflet	Public sector, suppliers and others	2003	July 2003 – April 2011	Archived April 2011
3	Supplier diversity: A guide for purchasing organisations ⁶³	CRE: Non statutory guidance	Public sector, suppliers and others	2007	2007 – April 2011?	Widely available
4	Supplier diversity: A guide for purchasing organisations: Summary	CRE: Non statutory guidance leaflet	Public sector, suppliers and others	2007	2007 – April 2011?	Widely available
5	Procurement and supplier diversity in the 2012 Olympics ⁶⁴	EHRC research report	Public sector, suppliers and others	2008	Autumn 2008 onwards	N/A research
6	Buying Better outcomes - Mainstreaming equality considerations in procurement: a guide for public authorities in England ⁶⁵	EHRC non statutory guidance	Public sector, suppliers and others	2013	March 2013 onwards	Ongoing

⁶³ Produced by The Centre for Research in Ethnic Minority Entrepreneurship (CREME) De Montfort University, Leicester for the CRE

⁶⁴ 'This report recognises the ODA's efforts to open up business opportunities to small and diverse companies from across the UK and the challenges we face.

Written by the Small Business Research Centre, Kingston University

http://www.equalityhumanrights.com/uploaded_files/research/procurement_in_2012_olympics.pdf

⁶⁵ 'The Equality and Human Rights Commission has produced guidance that explains how public authorities may approach the task of ensuring that they comply with the public sector equality duty (PSED) obligations* at different stages of the procurement cycle and takes you through equality issues that you may need to consider at each stage. Further resources including 4 training modules, summary powerpoint presentations and case studies will be added to this [EHRC] web page in March and April 2013.' <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-procurement/>

Appendix 3: Parliamentary views about the purpose and planned operation of the PSED – the debates in the House of Lords			
Statement	Speaker	Source	
1	The purpose of the equality duty is to oblige public bodies to consider equality issues in respect of all their functions.	Baroness Thornton Labour front bench	Hansard: 27 Jan 2010 Column 1495
2	Public bodies should be required to consider equality issues when they are relevant, and that the weight given to such matters should be proportionate to its relevance to a particular function.	Baroness Thornton Labour front bench	Hansard: 27 Jan 2010 Column 1495
3	The equality duty should place at least the same requirements to be transparent about compliance as well as the current disability duty. It will do so. Our proposals for specific duties, which will support the better performance of the equality duty, include the requirements to report annually on key equality employment data and to publish annually information about progress towards achieving their equality objectives. We propose to require public bodies to demonstrate how they have taken equality into account in the design of key policies and services and what difference that has made to the outcomes in all those areas. Therefore, I ask the noble Baroness to withdraw her amendment.	Baroness Thornton Labour front bench	Hansard :27 Jan 2010 Column 1496
4	Bodies which are genuinely exercising a public function of a particular kind must have regard to the matters in Clause 148(1) ⁶⁶ . If that were not the case, there would be a most regrettable gap because, apart from employment, it would mean that in all the other provision of public services the duty to have regard to the need to eliminate discrimination and to advance equality of opportunity would not apply. That would be regressive and would certainly drive a coach and horses through this part of the duty. Therefore, we hope that the Minister will be able to explain better than I have done why the measure is needed.	Lord Lester of Herne Hill Liberal Democrat front bench	Hansard: 27 Jan 2010: Column 1499
5	Clause 148(2) ⁶⁷ , as drafted, would require bodies that exercise public functions, other than the public authorities listed in Schedule 19, to comply with the equality duty whenever they exercise such public functions. The provisions in the Bill would not require such bodies to comply with the duty when they exercise any of their functions that are not connected to the exercise of a public function.	Baroness Royall of Blaisdon Labour front bench	Hansard: 27 Jan 2010: Column 1499
6	A private body carrying out public functions will not be subject to the duty in respect of any of	Baroness Royall of	Hansard: 27 Jan 2010:

⁶⁶ This became section 149 (1) of the Equality Act 2010

⁶⁷ This became section 149(2) of the Equality Act 2010

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Statement	Speaker	Source	
	its functions of a private nature, such as the employment of staff whose duties are not connected to the exercise of the public function. A private body should retain the right to decide who to employ. However, such a body will need to consider the technical abilities of the people deployed to discharge its public functions and the training that they require to perform their duties. For example, an organisation contracted to manage a prison would need to consider whether the skills of the staff charged with delivering the service or the training that they receive satisfactorily address its requirement to promote equality of opportunity.	Blaisdon Labour front bench	Column 1499
7	The noble Baroness asked about public/private functions and internal/external activities. In simple terms, employment will be caught where integral to the performance of a public function. For example, where a contractor runs a prison it will need to comply with the duty in relation to its employees working in the prison but not those involved in other work such as collecting cash from a bank.	Baroness Royall of Blaisdon Labour front bench	Hansard: 27 Jan 2010 Column 1499
8	We would argue that there ought to be some form of systematic reporting which spans the sector and shows where and how successful outcomes are occurring, and what should be changed in order to make the duty even more effective. As the legislation stands, the public sector equality duty is very vague; we would welcome some more clarity here. Indeed, I hope that the noble Baroness the Chancellor of the Duchy of Lancaster will be able to provide some when she responds to this debate.	Lord Hunt of Wirral Conservative front bench	Hansard: 27 Jan 2010 Column 1502
9	The new equality duty will follow the same structure as the current race, disability and gender duties, with specific duties sitting underneath the general duty to help public bodies to better perform the equality duty. Those specific duties will be introduced through secondary legislation and will include the steps outlined in the policy statement published earlier this week, on 25 January.	Baroness Royall of Blaisdon Labour front bench	Hansard: 27 Jan 2010 Column 1502
10	Noble Lords will see from the document that we want the public bodies that will be subject to the specific duties to report annually on their progress against their equality objectives. We also want public bodies to publish their gender pay gaps and BME and disabled employment rates in such a manner that citizens can track progress and compare public bodies... We believe that secondary legislation is the right place to set out these detailed procedures, since it gives us greater flexibility to change specific requirements if necessary. For example, we may need to make small changes to reporting timescales or the format of the data that we have required	Baroness Royall of Blaisdon Labour front bench	Hansard: 27 Jan 2010 Column 1502 & 1503

Appendix 3: Parliamentary views about the purpose and planned operation of the PSED – the debates in the House of Lords			
Statement	Speaker	Source	
	public bodies to report.		
11	The noble Lord asked whether the process would achieve equality outcomes. The answer is yes. The specific duties will require the setting of equality objectives in the light of evidence, the taking of action towards achieving them and reporting on progress. By these means, we will ensure that the process that we prescribe in the regulations will deliver the outcomes.	Baroness Royall of Blaisdon Labour front bench	Hansard: 27 Jan 2010 Column 1503
12	There is a momentum behind the Bill which we all greatly welcome, as I welcome what the noble Baroness has just said about outcomes.	Lord Hunt of Wirral Conservative front bench	Hansard: 27 Jan 2010 Column 1503
13	From the standpoint of the Cross Benches, perhaps I may say how delighted I am and how wonderful it is that there should be such unanimity and consensus on this issue. I cannot help noting how far we have moved since 1789, when egalit�e seemed to be championed by only one section of society, and that the noble Lord, Lord Hunt, is pressing so hard for tangible outcomes from this, whereby it is not simply window dressing. That is very encouraging.	Lord Harries of Pentregarth Cross bench peer	Hansard: 27 Jan 2010 Column 1503
14	I greatly welcome what the noble and right reverend Lord has said and I thank him. It is important that we make progress in this area. Although he had a different historical vista, when I look back over the 34 years during which I have been in Parliament, we have not made the progress that I had always hoped for. We still have a long way to go. That was said to me by the noble Baroness, Lady Howe of Idlicote, 15 years ago. I am not sure that we have made rapid progress since then. It is good that we are establishing this consensus. I thank the Chancellor of the Duchy of Lancaster very much indeed for the positive response that I have received.	Lord Hunt of Wirral Conservative front bench	Hansard: 27 Jan 2010 : Column 1504
15	The equality duty is to get public bodies to think about the discrimination that individuals may be suffering or may be likely to suffer and then consider whether there is anything that they can or should do to tackle it... Advancing equality of opportunity involves thinking about whether the service you provide is one that everyone is able to make use of, not just those people who fit into a traditional mould. It should mean more sensitive, personalised services from which everyone can benefit. I think we would all agree about that.	Baroness Thornton Labour front bench	Hansard: 27 Jan 2010 Column 1509
16	The objective behind the new equality duty, like the previous race, disability and gender equality duties, is to ensure that consideration of equality forms part of the day-to-day decision-making and operational delivery of public bodies. However, the new duty is	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011 Column 123

Appendix 3: Parliamentary views about the purpose and planned operation of the PSED – the debates in the House of Lords			
Statement		Speaker	Source
	considerably stronger than those previous duties. As well as extending to all nine protected characteristics, it also sets out in primary legislation for the first time what considering the need to advance equality of opportunity involves. Section 149(3) of the Equality Act 2010 makes clear that in particular it involves considering the need to remove or minimise disadvantages suffered by people who share particular protected characteristics, to take steps to meet their particular needs, and to encourage people who share particular protected characteristics to get involved in public life and other activities where their participation is disproportionately low.		
17	The equality duty itself, set out in primary legislation, is the key provision. That is already in place, and, as I have explained, it is stronger and broader than the previous duties. The specific duties do not extend, restrict or change the equality duty in any way. They are simply designed to help public bodies to perform the equality duty better as was the intention behind the specific duties which supported the previous race, disability and gender equality duties.	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011 Column 123
18	However, having commenced the new stronger equality duty, the Government are putting forward a radical new approach for supporting specific duties. In the past, public bodies tended to get bogged down in detailed, bureaucratic, process-driven requirements such as producing vast equality impact assessments that ticked a box but had no impact on the decisions taken. Our approach is different. We want public bodies to focus on delivering real progress on equality and to be transparent about that so that the public can hold them to account. It is a fundamental shift from bureaucratic accountability for filling in the right forms to democratic accountability for delivering equality improvements for service users.	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011 Column 12368
19	In brief, public bodies must ensure that they have the right information to hand about equality issues to make informed choices and decisions and to ensure that this is rigorously considered before and at the time decisions are taken. Case law has also made clear that in some cases it will be necessary to consult relevant parties likely to be affected by a decision, such as local disability groups and women's groups. In order to demonstrate their compliance with the equality duty, public bodies will generally need to publish information about what they have concluded will be the effect of their activities on people with different protected characteristics and the information they considered in making their decisions, including those they have	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011 Column 124

⁶⁸ <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110906-0001.htm>

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Statement		Speaker	Source
	consulted and involved.		
20	The regulations give public bodies flexibility to publish the information that they believe best demonstrates their compliance with the equality duty and which is most useful to their staff and service users in holding them to account for their performance on equality. This means that public bodies will be able to publish the information that is right for their particular circumstances. What is right for a small school will be different from what is right for the Department for Education.	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011: Column 124
21	We have two stipulations. First, public bodies must include information relating to people who share a relevant protected characteristic who are affected by their policies and practices-their service users. For example, we would expect a local authority to have considered how its provision of social housing affects women who have been victims of domestic violence, or disabled people who have particular access requirements. We would expect the local authority to publish information on this, and to explain how it considered it and whether it took action as a result. Secondly, public bodies with 150 or more staff must publish this information in relation to their employees. For example, we would expect a government department to have considered how its policies affect employees with different protected characteristics, and to publish information such as its gender pay gap and the proportions of staff at different levels who are disabled or from ethnic minorities.	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011: Column 124
22	The regulations require public bodies, with the sole exception of schools, to publish information in advance of setting their equality objectives. This is to help to ensure that the public and voluntary and community sector organisations have the opportunity to consider the data that will inform the equality objectives that public bodies set themselves. This is a key element of the Government's policy: to ensure that public bodies are transparent and accountable to the people they serve for delivering real equality improvements that will give people fair chances. I commend these regulations to the House.	Baroness Verma Conservative front bench	Hansard: 6 Sep 2011: Column 125