

Equality Duties and Equality Challenges in Education

Reviewing the public sector equality duty, summer 2013

Insted Consultancy, London

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Law, regard, action and change – introductory notes

1. The law, said Martin Luther King famously, cannot change people's hearts. But it can, he added, restrain the heartless. And it cannot, he might have said further, change people's minds. It can, though, restrain the mindless – can encourage thoughtfulness and due regard for important matters that might not otherwise be considered. It does this by making certain requirements and prohibitions. The hope and the intention are that there will be action and, as a direct consequence of the action, change.
2. The public sector equality duty (PSED) in Britain is significant because it explicitly requires *both* due regard *and* certain specific actions. The due regard and the actions will hopefully, but not necessarily, lead to change, namely to greater equality of outcome. Either way the specific actions are ways of focusing and fashioning due regard, not requirements that are additional.
3. This submission to the PSED review team in April 2013 discusses due regard and specific actions with particular reference to the education systems in Britain, referring primarily to the education system and equality duties in England. Its conclusions are summarised in paragraphs 7–9; its considerations of the leadership responsibilities of local authorities, academy chains and central government are summarised in paragraphs 26–36; its recommendations are in paragraphs 43–47. Finally, there are further brief reflections on the connections and relationships between law, regard, action and change, paragraphs 48–50.

Basis for this evidence

4. The Insted consultancy was founded in 1993 to provide services and resources for government departments, local authorities, voluntary organisations and individual schools and colleges. It works mainly in the education sector and has specialised since 1996 in issues to do with race equality, and with cultural and religious diversity. Since 2006 it has been increasingly concerned with the full range of equality strands subject to legislation. It has worked in all four nations of the UK but this paper is principally about the education sector in England. In recent years it has been invited to contribute papers and presentations at conferences and seminars on equalities in education in Austria, Belgium, China, Czech Republic, France, Germany, Greece, Hungary, Ireland, Israel, Netherlands, Japan, Norway, Poland, Sweden and South Africa. Its website is at www.insted.co.uk.
5. This submission of evidence to the review of the Public Sector Equality Duty is based on:
 - planning and leading discussions, training events and workshops on the Equality Act in the period 2011–12, attended by about 1500 people – headteachers, school governors, local authority personnel, and teaching and administrative staff in schools
 - creating training and briefing materials on the practical implications of the Equality Act in the education sector, 2011–13

- content analysis of equality documentation published by 40 schools in England and Wales in summer 2012, and by six academy chains in March 2013
 - participation as an expert adviser in the inquiries into school exclusions conducted by the Children’s Commissioner for England, 2011–13.
6. Prior to the Equality Act coming onto the statute book, Insted worked extensively in the period 2007–10 with the Department for Education and its predecessors on the creation of single equality schemes in the education sector, and on the principles and practicalities of equality impact analysis. Earlier in the decade it worked with the DfE’s predecessors on fostering good relations in schools by addressing bullying around racism, religion and culture.

Summary of conclusions

7. The PSED review team has requested evidence on the following four questions: how well the equality duty and related guidance are understood; what the costs and benefits are; how organisations are managing legal risk and ensuring compliance; and what changes (including legislative, administrative and enforcement) would ensure better outcomes.
8. Based on the experience summarised in paragraphs 5 and 6 above, the judgements presented in this paper in response to the review team’s call for evidence are as follows.
- **The equality duty and related guidance are not yet well understood in the education sector.**
 - **The potential benefits of complying with the equality duty far outweigh any costs.**
 - **It is too soon to judge with confidence how education providers are managing risk.**
 - **With regard to compliance, a beneficial role may be played by governing bodies, by Ofsted, and by the Office of the Children’s Commissioner.**
 - **There is no short-term need to modify the legislation. It would, however, be helpful to modify slightly the official guidance accompanying the specific duties.**
 - **There is a need for clearer guidance and more helpful support on a range of conceptual and practical matters. The existence and location of guidance and support need to be more effectively publicised; and greater leadership needs to be exercised on these matters by central government, by local authorities, and by academy chains.**
9. Underlying these responses to the review’s four questions, there are the following two fundamental premises:

- **Combining and harmonising the general duties for race, disability and gender, and extending them to several other protected characteristics, was a wise and productive decision, both conceptually and practically.**
- **Simplifying the specific duties in the previous pieces of legislation, and paring them down to just two which are of fundamental importance, was on balance a significant improvement and has the clear potential to lead to improved outcomes.**

The general duty of due regard

10. The general duty of due regard is not new. It has been in effect since 2002 in the case of race and ethnicity, since 2006 in the case of disability, and since 2007 in the case of gender. Its antecedents include the gender mainstreaming agenda which received a major impetus internationally through the World Conference on Women at Beijing in 1995; the development of equality legislation in Northern Ireland from 1993 onwards; and the climate of awareness and advocacy relating to institutional discrimination that developed following the publication of the Stephen Lawrence Inquiry report in 1999. What is relatively new, however, is that since 2008 the concept of due regard has been substantially clarified through case law. There is accordingly much greater clarity now about the kinds of specific duty which are most likely to fashion and focus due regard, and therefore about what the essential content of training and guidance should be.
11. The findings of an Ipsos Mori survey published by the EHRC in 2011 are an accurate summary of the overall level of knowledge in schools of what the law requires:

The vast majority of schools believed that a lot or a little more training or continuing professional development on the equality duties is needed. Only a fifth of schools (20 per cent) believed established teachers have received enough training, with 24 per cent saying senior leaders and 22 per cent saying that new entrants to the profession have received enough. It is believed that new entrants to the teaching profession are significantly more likely to need a lot more training.

... Schools would like better guidance on how to design and deliver training related to the equality duties, how to collect appropriate and relevant evidence, and guidance on the duties generally and what they mean for schools.¹
12. The findings of the EHRC research have more recently been replicated by research conducted for the Children’s Commissioner for England, published in March 2013. It is summarised in Exhibit A.

Exhibit A

Awareness of legislation, recent research

(Extract from 'They Go the Extra Mile', Children's Commissioner, 2013)²

In "*They Never Give Up on You*" [published in 2012] we found that schools' awareness of the requirements of the Equality Act was very low. In some cases there was awareness that children with SEN required extra support and flexibility, but this was not necessarily the case for other protected characteristics. We encountered no explicit reference to the 2010 Equality Duties in schools' decision-making regarding exclusions.

One year on, very little seems to have changed in this regard. Again, in the course of the visits we have undertaken for this report, no school has explicitly mentioned the need to pay attention to equality duties when designing behaviour systems or making decisions on exclusions. We also asked respondents to the NFER's Teacher Voice survey how many of them had been made aware by their school of the equality duties. Barely more than a third (37 per cent) said that they had, while 40 per cent reported that they did not know.

In addition, participants in our focus groups were asked about their knowledge of the equality duties and how they impacted on exclusion decisions. Awareness was mixed. However, there was a general view that even where schools were informed of the requirements, they did not necessarily fully engage with them and there had been little impact on teaching.

Throughout our work on this Inquiry, headteachers, teachers and their organisations have consistently informed us that they would welcome further guidance on equality law. Many are concerned that as things stand they may inadvertently be breaking the law and would welcome advice and guidance on how to make sure that they are not. Others are concerned that they will be penalised by Ofsted for not "doing equality" correctly. Schools have told us that they would welcome clearer guidance on how to deal with equality issues so that they can benchmark whether, and in what ways, they are complying with the law. In general, they do not see the availability and use of such guidance as bureaucratic burden.

Due regard and equality outcomes

13. The purpose of the PSED, in the words of the official explanation currently on the Home Office website, is 'to support good decision-making by ensuring that public authorities understand how different people will be affected by their activities, so that services are appropriate and accessible to all, and meet different people's needs'.³ In the case of the education sector, the provision of appropriate and accessible services may not swiftly and necessarily lead to improved equality outcomes. It may not, to be more specific, lead to a narrowing or closing of gaps in the educational achievement of different groups and communities. The most obvious way of judging the extent to which services are appropriate, however, is to examine the extent to which measures reflecting due regard have been followed, as a matter of measurable fact, by greater equality of outcome.

14. Hard data on equality outcomes is published by the Department for Education, and is summarised for England as a whole in Exhibit B. The tabulations which are the basis for Exhibit B are shown in Appendix A.

Exhibit B

Equality outcomes nationally, 2007–11

The customary way of defining success in the education system is to look at examination results at the end of compulsory education, and specifically at the achievement of five GCSE passes or their equivalents at grades A*–C including mathematics and English. In 2006–07, the proportion of 16-year-olds achieving success, as thus defined, was 45.8 per cent. In 2010–11 it was 58.2 per cent, an overall improvement of 13.6 percentage points.

For pupils from certain backgrounds and heritages, however, the improvement between 2007 and 2011 was greater than 13.6. For pupils of Bangladeshi heritage, for example, the improvement was 18.3 percentage points; for pupils of an African heritage it was 17.1; for pupils of African-Caribbean heritage, 15.4; for pupils of Pakistani heritage, 15.3.

Another way of identifying improvements over the years within certain heritage communities is to compare the success rate for pupils of any one heritage with the national average. In 2007, for example, pupils of Bangladeshi heritage were five percentage points below the national average, but in 2011 they were 1.5 points above – an improvement overall of 6.5 points. The equivalent improvements for pupils of other heritages were 5.3 for pupils of an African heritage, 3 for those of African-Caribbean heritage, and 2.9 for pupils of Pakistani heritage.

The basis for these calculations is shown in Tables 1 and 2 in Appendix A. There is a graphic representation of improvements between 2007 and 2011 in Chart 2 in *GCSE and Equivalent Attainment by Pupil Characteristics for 2011/12*, published on 24 January 2013 at <http://www.education.gov.uk/rsgateway/DB/SFR/s001111/sfr04-2013.pdf>

15. The decade which saw the improvements summarised in Exhibit B included a number of projects and programmes initiated and funded by the Department for Education's predecessors. The programmes aimed specifically and focusedly at raising achievement in certain heritage communities, or else at fostering good relations. They were consciously seen by the Department as a consequence of the race equality duty (RED) which came into effect in 2002, itself influenced by the Stephen Lawrence Inquiry report. They included a programme concerned with the achievement of children of Caribbean and African heritage;⁴ the Minority Ethnic Achievement Project (MEAP) concerned particularly with the education of children from Bangladeshi, Pakistani, Somali or Turkish backgrounds;⁵ and a project concerned with preventing and addressing prejudices amongst children and young people in their relationships with each other.⁶
16. A direct causal connection between these government-funded projects and the improvements in equality outcomes summarised in Exhibit B cannot be demonstrated beyond doubt. Nor can it be demonstrated that the improvements had no other causes, and were not significantly influenced by other policies, including local policies and programmes in various parts of the country. It is

entirely reasonable to hypothesise, however, that resources for the projects would not have been provided and managed with the same legitimacy and commitment if the RED had not been in effect. It can be further hypothesised that if the progress summarised in Exhibit B is to be maintained the duty of due regard, supported by specific duties, needs to be vigorously promoted. This point has been emphasised most recently by the children's commissioner for England.⁷ Examples of unfinished business are indicated later in this paper in Exhibit E (paragraph 29).

Beyond warm words – the specific duties

17. 'The due-regard approach to equality,' declared Lord Ouseley when the exact wording of the new legislation was being debated in the House of Lords in March 2010, 'has got us to where we are now', and the new proposed duty 'takes us no further'.⁸ Lord Ouseley's criticism of the current situation was scathing and vigorous, and is worth quoting here in order to recall why the specific duties are of fundamental importance.

What we have now are volumes of equality strategies, schemes and policies, but not a great many desired and required outcomes that add up to recorded equality results. Yes, there are statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports, all in order to satisfy the requirement to have 'due regard'. Many of our public service authorities will do as much as they have to in order to meet the standard of compliance required ... but that standard of due regard is, in my view, woefully inadequate.

18. In response to Lord Ouseley, Baroness Thornton gave an undertaking on behalf of the Government that the general duty to have due regard would be underpinned by specific duties. Secondary legislation, she explained, would set out what due regard entails in practice. Much more would be required, she indicated, than 'statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports':

The general duty will be underpinned by a number of specific duties to assist better performance of the equality duty. The secondary legislation sets out the detailed steps that a public authority should take to meet the duty, and in our opinion that is the right place to set them out.

19. In due course, after substantial consultation and deliberation, two specific duties were decided on: a) publishing information and b) publishing objectives. These were well explained in ministerial speeches in the House of Commons and the House of Lords, and in an accompanying memorandum. They were not, however, well explained for schools by the Department for Education or the Equality and Human Rights Commission, and the DfE not only failed to provide sufficiently helpful guidance on them but also failed to observe them itself. These matters are discussed below in paragraphs 20-21 in relation to publishing information about compliance and paragraphs 22-25 in relation to publishing measurable objectives.

Information about compliance

20. Ministers explained clearly the purposes of publishing information about a public authority's compliance with the duty to have due regard, namely to show transparently the basis on which a public authority has formulated certain measurable objectives, and to enable public bodies to be held to account. This has been well explained by Ofsted, whose document *Inspecting Equalities* instructs inspectors on what they should look for, in connection with equalities, when considering a school's leadership and management. The briefing serves also, incidentally, to signal clearly to schools what they need to do in order to be judged to be good or outstanding, and to avoid being judged to be inadequate or in need of improvement. Exhibit C shows the kind of topic that is included.⁹

Exhibit C

Due regard – marks of an outstanding school

(Extract from *Inspecting Equalities*, Ofsted, 2012)

- Before introducing important new policies or measures, the school carefully assesses their potential impact on equalities for its current and prospective pupils and parents, positive or negative, and keeps a record of the analysis and judgements which it makes. The data is available for public scrutiny.
- Senior staff and governors know about the relative attainment and progress of different groups of pupils, and monitor their performance and other data relevant to improving outcomes.
- The school tracks and analyses progression information, for example the proportions of pupils who continue education or training or enter employment, and identifies any barriers for particular groups.
- The school's programme for continuing professional development (CPD) is inclusive of all staff and includes equalities matters, both directly and incidentally, and inspectors can identify clear evidence of impact at inspection.
- There are clear procedures for dealing with prejudice-related bullying and incidents, and there is appropriate staff training that equips staff to identify and deal with this effectively.
- There is coverage in the curriculum of equalities issues, particularly with regard to tackling prejudice and promoting community cohesion and understanding diversity.
- Evidence from parents and carers and other stakeholders shows the effectiveness of the school's procedures for consulting and involving parents and carers, and for engaging with local groups and organisations, and these have regard for the concerns and requirements of the Equality Act.
- Students are confident that staff will address all issues of discrimination and prejudice, including the use of derogatory language.
- Questionnaires and focused discussion groups show that all students feel safe from all kinds of bullying, harassment and oppressive behaviour.
- The school can demonstrate positive action on advancing equality and tackling discrimination, for example in a statement of overarching policy, references in the

school improvement plan or self-evaluation documents, the prospectus, routine bulletins and newsletters, and occasional letters to parents and carers.

- Data on inequalities of outcome and participation is used when setting objectives for achievable and measurable improvements.

21. Ministerial speeches in 2011 and the explanatory memorandum about the specific duties indicated that information should be published about a) a public body's service users, and any inequalities amongst them in their take-up of services and in outcomes; b) what a public body has done, and continues to do, as an expression of due regard for the three aims of the duty; and c) from April 2013 onwards the progress it has made in achieving measurable objectives. The Department for Education explained these three points in its guidance for school leaders, but unfortunately did not do so with sufficient clarity.

Measurable objectives

22. A study was made in summer 2012 of 40 documents from schools that were published on the internet between early April and early June, focusing in particular on the specific duty to prepare and publish measurable objectives.
23. The schools were in 28 different local authority areas, of which 11 were shires and 17 metropolitan. Twenty-three were primary and 17 (including a sixth form college, a middle school and an all-through school) were secondary. Their equality documents were found through Google alerts and searches. Some of the documents showed substantial understanding, seriousness and commitment, and indicated that the PSED is likely to be of great benefit when and where it is understood and taken seriously.¹⁰ Other documents were flimsy, perfunctory and superficial and implied that the schools concerned had not grasped what the new legislation expects and requires of them. 'We ran PSED training attended by 111 schools,' writes a local authority adviser. 'However, I have to admit that many of them still went away and set flimsy objectives!' An example of excellent practice, however, is shown in Exhibit D.

Exhibit D

Information and objectives at one school

In accordance with the Equality Act specific duties, a secondary school in Greater London compiled and published a 27-page document in May 2012 about the ways in which it has due regard for equalities, and about the measurable objectives which, in the light of rigorous analysis, it has decided on. The document starts with factual information about the school population. Fifty-seven per cent of the students are of Asian heritage and 30 per cent are of African or African-Caribbean heritage. Thirty-one per cent are from low-income backgrounds, as measured by eligibility for free school meals. Thirty-four per cent have been identified as having special educational needs. Fifty-four per cent are male, and 46 per cent are female.

In relation to disability, ethnicity and gender the document shows compliance with the duty of due regard by asking five questions and answering each at length:

- What are we doing to eliminate discrimination?

- What are we doing to advance equality of opportunity?
- What are we doing to foster good relations?
- What has been the impact of our policies?
- What do we plan to do next?

In the light of this rigorous, open-minded and evidence-based discussion, which involved not only all staff but also key stakeholders from outside the school, the school selected five objectives requiring special attention, as follows:

- to achieve a 40 per cent reduction in the number of fixed termed exclusions of Somali and African-Caribbean pupils over 2012-13 and 2013-14
- to demonstrate, through a survey of Somali and African Caribbean pupils and parents at the end of 2012-13, at least 75 per cent satisfaction with the way in which their aspirations and learning needs are met
- to double the percentage of Yr 8 girls expressing interest in pursuing a career in physics, technology or engineering by the end of 2012-13
- to achieve an increase of 10 per cent in Yr 9 girls choosing ICT as a GCSE option for 2013-14
- to achieve a 40 per cent reduction in prejudice-related behaviour, in relation to homophobia, racism and religious stereotyping over 2012-13 and 2013-14.

It is as yet too early to report on the extent to which the objectives have been achieved. It is already evident, however, that the processes of staff consultation leading to the production of the document, stressing the importance of reducing exclusions within the context of increasing inclusion, have had a very beneficial impact.

24. The best statements of equality objectives by schools have the following features. They:
- are outcome-focused as distinct from focused on processes, systems and procedures – concerned with reducing or removing inequalities in pupils' achievements, for example, rather than on monitoring, staff training, auditing or impact analysis
 - refer to objectives which are clearly specific and measurable, and indicate how progress and success will be measured and evaluated
 - make explicit links and references to the equality information which the school has published and are therefore based on the gathering and analysis of data
 - name the staff who are responsible for ensuring the objectives are pursued and indicate the exact time by which each objective will have been partly or wholly achieved
 - include information about engagement and consultation with stakeholders
 - indicate exactly where and how interested members of the public may obtain further information

- describe, at least in broad outline, what is going to be done to achieve each objective, and in this connection mention any financial implications, and any requirements for staff training
 - are closely integrated with the school improvement plan as a whole.
25. No more than 10 of the 40 schools had produced documents with most of these features. The others tended to confirm Lord Ouseley's grim prediction (cited in paragraph 17 above) that the duty to have due regard would yield nothing but 'statements of intent, declarations, aspirations, commitments, warm words'. They did not appear to understand they are expected to aim for more equal outcomes amongst pupils, not simply changes in school organisation. Clearly there was a need for more effective guidance. advice and training than that which had so far been provided.

Leadership, advice and training

26. In principle or in practice, or in both, guidance and training are provided in the education system by a range of public bodies, including local authorities, academy chains, inspection regimes, the Department for Education and the Equality and Human Rights Commission. They give guidance on good practice not only through the documentation which they publish and the consultancy and training events which they organise but also by example though the way in which they themselves show due regard by fulfilling the specific duties. There are notes on these bodies in the following paragraphs.

Local authorities

27. Several local authorities have arranged training sessions for headteachers and school governors about the requirements of the Equality Act, and have published user-friendly and clear guidance on their website. They include Brent, Buckinghamshire, Cambridgeshire, Cumbria, Dorset, Herefordshire, Hertfordshire, Leicester City, Luton, Northamptonshire, Peterborough, Reading and Somerset. Within greater London they include Barking and Dagenham, Bromley, Ealing, Haringey, Havering, Hounslow, Merton, Islington, Southwark and Westminster. Also regional networks of authorities, including networks in the South West and the West Midlands, have arranged meetings for LA representatives.
28. The best documents produced by local authorities contain the emphases and insights present in the Ofsted briefing for inspectors profiled in Exhibit D above, and stress that objectives must be outcome-focused and measurable, as indicated in paragraph 25.
29. A further and very significant role for local authorities is to take steps such as those mentioned and reflected in Exhibit E. The exhibit shows the text of a letter sent by a director of education in January 2013 to the headteachers and chairs of governors of all schools in the authority. The letter summarises research findings about gaps in achievement between different heritage communities locally, and strongly advises schools to consider including this matter in their formulations of information and objectives in accordance with the Equality Act specific duties.

Initiatives such as this are particularly important and valuable in view of the fact that the national picture, as illustrated in Exhibit B above, is not necessarily replicated in any one local area.

Exhibit E

Priority challenges in one local authority, January 2013

(Note: The name of the authority has been removed, in order to maintain anonymity.)

Please find enclosed a short research briefing prepared by our School Improvement and Inclusion Team. This includes a one page summary of national research on the indicators of educational disadvantage facing Black Caribbean and Mixed Black Caribbean-White heritage students. It also examines the situation here in this authority and highlights that:

Black Caribbean children are one of the highest achieving groups at 5 years old in our schools and settings but their performance at 16 is well below the performance of all pupils.

Mixed Black Caribbean/White pupils start off at a disadvantage at 5 years old and this gap widens through their schooling in this authority.

Black Caribbean and Mixed Black Caribbean-White pupils here make less than average progress between the ages of 7 and 11 and less progress than similar pupils nationally.

Black Caribbean and Mixed Black Caribbean-White pupils here make less than average progress between the ages of 11 and 16 and less progress than similar pupils nationally.

In our primary schools, Black Caribbean pupils are twice as likely as other pupils to be identified as having behavioural, emotional and social difficulties (BESD) and Mixed Black Caribbean-White pupils are three times as likely to be similarly identified.

In our secondary schools, Black Caribbean students are more likely than other students to be identified as having BESD and Mixed Black Caribbean-White students are twice as likely.

Mixed Black Caribbean-White pupils are at least four times as likely to be excluded from our primary and secondary schools than other pupils and more likely to be excluded than similar pupils nationally.

I know you will agree with me that these indicators are truly disturbing.

As a Directorate, we are asking all our services to look particularly carefully at the impact of their work on Black Caribbean and Mixed Black Caribbean-White children and families as part of our Council Equality Objectives.

I am sure that you will want to support our drive for fairness by looking carefully at the outcomes for Black Caribbean and Mixed Black Caribbean pupils in your school, alongside those eligible for free school meals.

Publishing equality information annually is a legal obligation. We would strongly recommend that you publish information relating to the outcomes for Black pupils at your school as part of this equality information. We would also recommend that you consider revising your current equality objectives to include one related to

Black Caribbean and Mixed Black Caribbean. We are in the process of updating our action plan on this issue. In order to ensure that this action plan covers the issues that are important to the authority's schools and would be grateful if you could confirm the action you are planning to take and any support you require.

Yours sincerely
Director of Education

Academy chains

30. All or nearly all schools would benefit from receiving a letter such as the one quoted in Exhibit E – though of course the specific equality issues that would be mentioned would be different in different areas. However, a significant and growing proportion of schools, particularly secondary schools, are no longer part of their local authority's family. It is therefore incumbent on academy chains to provide guidance and advice for their schools, as incidentally was signalled clearly in a recent ministerial speech.¹¹
31. For the purposes of this paper, the websites of six of the largest academy chains in England were visited and studied. All six contained statements about vision, values, objectives and ethos. Only two of them, however, referred to equality as a value, and only one referred to the Equality Act. None of them appeared to be compliant with the Equality Act, for none had published information and objectives on their website.
32. The one academy chain in this small sample which did refer to the Equality Act (though not explicitly) set out five objectives. There was no indication of the data on which they were based, nor of the processes of consultation and deliberation which had informed them. The timings for some of them were remarkably unambitious. They did, however, set a minimum standard that all academy chains should be expected to meet. They are shown in Exhibit F.

Exhibit F

An academy chain's objectives

Objective	Expected outcome
For Summer 2013 and each year after: Narrow the attainment gap between educational attainment of children with Special Educational Needs (SEN) and their peers.	Percentage point difference between pupils with SEN and their peers at GCSE (5A*-C including English and Maths and at the end of KS2) is smaller than the national average.
By 2016: All Governing Body Members and employees will receive adequate training in Equality and Diversity.	Equality Awareness among all Staff and Governing Bodies.
By 2016: To take positive steps to encourage applications for staff posts from people reflective of the diversity of the students and the communities from which they draw.	Increasingly diverse leadership team drawn across the Federation.

Create regular initiatives to include parents for whom English is a second language to become involved in their child's education.	Regular parent group meetings and activities which reach-out to particular communities.
Promote awareness of different religions and cultures among students and staff	Increased tolerance, respect and understanding of different religious groups through spiritual, moral, social and cultural Action Plan produced by December 2012 for action through for 2014

Department for Education

33. The DfE's advice for schools, most recently re-issued in February 2013, is not satisfactory.¹² It begins with a seriously inadequate and misleading summary of the legislation, implying that its sole purpose is to avoid unlawful discrimination and containing no reference to the specific duties. Later in the document it refers to the concept of equality of opportunity, and gives some useful examples. Also it refers briefly to the duty to foster good relations, though without citing the Act's reference to combating prejudice, and it gives some sound examples of measurable and outcome-focused objectives. But the opening declaration that 'schools that were already complying with previous equality legislation should not find major differences in what they need to do' obscures and de-emphasises the later references, and has proved to be extremely unhelpful.
34. The DfE has not itself complied satisfactorily with the specific duties and in this respect has set an extremely bad example to the sector as a whole.¹³ In relation to the duty to publish information it has published a wealth of statistical data likely to be helpful to academic researchers. But it has not provided at national level the kinds of user-friendly analysis, explanation and advice that certain local authorities have provided, as shown in Exhibit E. Its objectives are non-compliant, since they are not specific or measurable. Rather, they fall into the category castigated by Lord Ouseley (see paragraph 17 above): 'statements of intent, declarations, aspirations, commitments, warm words'. Also, some of them are barely relevant, or are not relevant at all, to the requirements of the Equality Act.

Equality and Human Rights Commission

35. It was not until late autumn 2012 that the EHRC published guidance for schools.. The guidance is clearly written and teacher-friendly in its explanations of legal concepts and principles, and it valuably contains many practical and stimulating case studies to bring abstract ideas alive. It does not, alas, contain guidance on the formulation of specific and measurable objectives.
36. In January 2013 the EHRC published *Technical Guidance on the Public Sector Equality Duty*. There are slightly different separate versions for England, Scotland and Wales.¹⁴The document is a clear though technical guide to legal principles and concepts, and there are useful definitions, explanations and discussions of concepts such as due regard, equality of opportunity, fostering good relations,

and measurable objectives. Legal principles and concepts are valuably illustrated through brief case studies relating to real events and rulings, and through hypothetical examples. It is likely to be invaluable for lawyers, advocates and human resources specialists, and also to be of interest and value for the general reader. A customised version for schools, drawn up in close consultation with the DfE and a range of representatives from schools, local authorities, academy chains and third sector organisations, would be invaluable.

Benefits and costs

37. The benefits for schools of compliance with the PSED are that they will provide a better and more focused service for their pupils and local communities, and this will be invaluable for their reputation. There are costs in teacher time, but this is a matter of professionalism, not an optional extra. The Ofsted framework, for example, stresses that schools are required to meet diverse needs and secure good outcomes for all, and that inspectors will evaluate 'the extent to which schools provide an inclusive environment which meets the needs of all pupils, irrespective of age, disability, gender reassignment, race, religion or belief, sex, or sexual orientation.'
38. The overall point was well put by headteachers quoted in the recent report of the children's commissioner for England: inclusion is 'enlightened self-interest, since it 'a means of increasing the school's attainment as least as much as being an end in itself', for:

'Kids learn better when they feel part of the school. Once we can persuade them they are one of us, a lot of the behaviour issues just go away. It doesn't work 100 per cent of the time, but not far off.'¹⁵
39. The costs of compliance are negligible and in any case, as stressed above, are required by basic professionalism and are a matter of self-interest. The costs of non-compliance, however, are potentially substantial. They include low levels of respect and trust in the local community, and the possibility of being judged by Ofsted to be inadequate or in need of improvement.
40. There are analogous benefits and costs for local authorities and academy chains.

Changes and improvements

41. The recommendations outlined below do not require legislative change, though in principle they could be reinforced by statute.
42. The recommendations do, however, require certain administrative changes in the operations of central government, of local authorities, and of academy chains, as outlined below.

Recommendations

Central government

43. Clearer leadership from central government is urgently required. Guidance from the DfE and EHRC has been published, but is in certain respects unsatisfactory, as noted above. It would be valuable if the Department and the Commission were

to cooperate on the production of advice on the PSED (both the general duty and the specific duties), drawing as appropriate on the best practice pioneered by certain local authorities and by Ofsted. The principal topics on which school leaders and governing bodies need authoritative, focused and user-friendly guidance include the following:

- the relationship between the general duty and the specific duties
 - the concept of due regard for schools, as clarified by case law, illustrated with realistic examples
 - the difference between eliminating discrimination on the one hand and advancing equality of opportunity on the other
 - good practice in the publishing of information
 - good practice in the writing of measurable objectives
 - the distinction in schools between equality outcomes and equality processes
 - the relationships and overlaps between fostering good relations, as explained on the face of the Act, and the statutory requirement for schools to provide for pupils' spiritual, moral, social and cultural development, and the duty which schools have to promote community cohesion.
44. In addition, the DfE should make itself compliant with the letter and spirit of the specific duties, and should consider issuing nationally the kind of guidance that is illustrated locally in Exhibit E in this paper (paragraph 29).

Local authorities

45. All local authorities should consider issuing for their schools the kind of letter illustrated as Exhibit E.

Academy chains

46. All academy chains should make themselves compliant with the PSED by publishing information and objectives on their website.
47. All academy chains should consider issuing for their schools the kind of letter illustrated as Exhibit E.

Law, regard, action and change – concluding notes

48. It is tempting to imagine a simple linear process:
- The law requires public bodies to have due regard for equalities,
 - which leads to public bodies having due regard for equalities,
 - which leads to the transparent analysis of information,
 - which leads to the formulation of measurable objectives,

- which leads to certain actions,
 - which lead to measurable equality outcomes.
49. In reality, the processes of implementing the PSED have not always been, and cannot always be, linear. It is not the case that each step in this imagined process leads inevitably to the following step, nor does each step necessarily follow from the previous one. It is also important to bear in mind, of course, that due regard for equalities in public bodies did not commence only after equality legislation came into effect.
50. Reviewing the PSED is therefore complex. This paper has indicated that deliberative review is valuable, however, and that it will hopefully contribute, both directly and indirectly, to increases in due regard, and to improved equality outcomes.
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APPENDIX A

Table 1: Improvements between 2007 and 2011 in the proportions of 16-year-old achieving success at the end of compulsory education, by heritage

Heritage	Success in 2007	Success in 2011	Improvement
Bangladeshi	41.4	59.7	18.3
African	40.8	57.9	17.1
African-Caribbean	33.2	48.6	15.4
Pakistani	37.3	52.6	15.3
Mixed WB/ Afn	42.5	57.6	15.1
Mixed WB/AC	34.1	49.1	15.0
Indian	62.0	74.4	12.4
White British	46.1	58.2	12.1
Mixed W/Asn	58.9	68.1	9.2
<i>All pupils</i>	<i>45.8</i>	<i>58.2</i>	<i>12.4</i>

Notes: The figures in columns 2 and 3 are percentages. The figures in column 4 are percentage points, namely the differences between columns 2 and 3. Abbreviations: AC – African-Caribbean; Afn – African; Asn – Asian (namely, Bangladeshi, Indian or Pakistani); WB – white British.

The national average in 2007 was 45.8 per cent, as shown in the bottom row. The table shows that the communities which were most below this in 2007 are those which had made most progress by 2011 – the Bangladeshi, African, African-Caribbean and Pakistani communities.

Table 2: Changes in success rates at 16+ amongst certain heritage communities when compared with the national average, 2007–2011

Heritage	Difference in 2007	Difference in 2011	Improvement
Bangladeshi	– 5.0	+ 1.5	+ 6.5
African	– 5.0	+ 0.3	+ 5.3
African-Caribbean	– 12.6	– 9.6	+ 3.0
Pakistani	– 8.5	– 5.6	+ 2.9
Mixed WB/Afn	– 3.3	– 0.6	+ 2.7
Mixed WB/AC	– 11.7	– 9.1	+ 2.6
Indian	+ 16.1	+ 16.2	+ 0.1
White British	+ 0.3	0.0	– 0.3
Mixed W/Asn	+ 13.1	+ 9.9	– 3.2

Notes: The figures in columns 2 and 3 are percentage points, and in each row they show the difference between a community's average and the national average. In column 4 the figures are again percentage points, and show the improvement for each community in relation to the national average between 2007 and 2011. For example, pupils of Bangladeshi heritage were five percentage points below the national average in 2007 but 1.5 above in 2011, making an improvement of 6.5 points altogether. The abbreviations in this table are explained in the notes on Table 1.

NOTES AND REFERENCES

- ¹ *The Equality Duties and Schools* by Graham Bukowski and co-authors, EHRC research report 70, 2011
http://www.equalityhumanrights.com/uploaded_files/research/rr70_equality_duties_and_schools.pdf
- ² *They Go The Extra Mile – reducing inequality in school exclusions*, Children’s Commissioner for England, March 2013.
- ³ <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/equality-duty?view=Binary>
- ⁴ Described and discussed briefly in ‘African-Caribbean Students in UK Schools’, an entry in the *International Encyclopedia of Diversity* (Sage Publications 2012), available at <http://www.insted.co.uk/african-caribbean-students.pdf>.
- ⁵ The materials for this project have now been archived at <http://webarchive.nationalarchives.gov.uk/20110302114748/http://nationalstrategies.standards.dcsf.gov.uk/node/245849>.
- ⁶ This was removed from the DfE website following the general election in 2010 but an updated version was posted in 2011 at the Welsh Government’s website, <http://wales.gov.uk/docs/dcells/publications/111007respectingothersen.pdf>. The original English version can still be accessed at <http://www.insted.co.uk/racist-bullying-april11.pdf>.
- ⁷ See note 2 above.
- ⁸ House of Lords, 2 March 2010, moving amendment 46 to clause 148 of the Equality Bill
- ⁹ Ofsted briefing entitled *Inspecting Equalities*, last updated September 2012
<http://www.ofsted.gov.uk/resources/briefings-and-information-for-use-during-inspections-of-maintained-schools-and-academies-january-2011>.
- ¹⁰ For a detailed and very helpful and practical article about equality objectives in the world of education, see ‘Being SMART – developing and writing equality objectives’ by Bill Bolloten, *Race Equality Teaching* vol 30 no 2, spring 2012, pp 38-41.
- ¹¹ *Closing the achievement gap*, speech by David Laws to the Association of School and College Leaders, 5 March 2013
<http://www.education.gov.uk/inthenews/speeches/a00222472/lawsascl>
- ¹² <http://www.education.gov.uk/aboutdfe/advice/f00215460/equality-act-2010-dep>
- ¹³ <http://www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/b00202789/how-the-department-is-meeting-its-equality-commitments>
- ¹⁴ Links are at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>.
- ¹⁵ ‘*They Go The Extra Mile*’ (note 2 above), page 46.