



## Response to the Equality, Human Rights and Civil Justice Committee call for views on the operation of the Public Sector Equality Duty in Scotland

February 2025

### 1. To what extent do you think that listed public authorities understand the terms and the aims of the PSED in Scotland?

The Scottish Women's Budget Group (SWBG), through its Theory to Action project funded by the Equality and Human Rights Fund, has been working with local authorities to support greater use of gender budgeting tools in local decision making in Scotland to reduce inequalities.

As part of this work, SWBG has reviewed how equalities are considered within local authorities' budget processes and how impact assessment processes could be used to support gender budget analysis. Through this work we have found that:

- Equalities aren't always prioritised within systems/processes, which can impact on officers' capacity, knowledge, skills, and attitudes;
- Public authorities collect data, but it is not always used or well enough understood and does not always inform decision making. As such, equalities considerations can be missed. For example, in the development of child poverty plans SIMD and ward level data is routinely used but data disaggregated by protected characteristics is rarely considered;
- While equalities should be a silver thread running through all work and strategic documents this does not always happen in practice. Too often addressing inequality is seen as a nice to do instead of being seen as a core function of the authority;
- Equalities considerations often happen too late in the decision making/budget setting process;
- There is a lack of transparency with equality impact assessments often not being made publicly available;
- Equality Outcome plans are not used as a key driver for decision making within the budget setting process or at an operational or wider strategic level, the focus of these is often on meeting the duty to report as opposed to making the transformational change needed.

There is a lack of understanding about what the duties under PSED mean. In our [budget review of the 32 local authorities budget decisions for 25-26](https://www.swbg.org.uk/content/publications/1736844318_SWBG-LA-Budget-2024-25-Briefing-final.pdf) ([https://www.swbg.org.uk/content/publications/1736844318\\_SWBG-LA-Budget-2024-25-Briefing-final.pdf](https://www.swbg.org.uk/content/publications/1736844318_SWBG-LA-Budget-2024-25-Briefing-final.pdf)) we found that there is a clear misunderstanding about

what the duty to advance equality of opportunity means. The following examples highlight this:

- One local authority stated that proposed changes apply equally to everyone who receives a service which the local authority will continue to charge for; which was understood as having no adverse implications for equalities. This was typical of many local authorities; however, it lacks understanding that increasing charges will impact specific groups differently. Particularly those on low incomes or those who rely on the service to meet daily needs. The lack of demographic data being used in assessments is at the root of statements like this. It means there is a failure to see the different circumstances of those affected by the changes.
- In relation to rents, one local authority wrote 'while tenants within the protected characteristics living in council housing will be affected by the proposal to increase rents, there will be no difference in the treatment of tenants who share a protected characteristic and those who do not.' This is another example of misunderstanding inequality and the need to work to advance equality through budget decisions. It therefore misses an opportunity to mitigate impacts on the most vulnerable within the budget process.
- In an impact assessment on raising childcare charges, a different local authority stated that the current inequality stemmed from some families benefiting from council subsidised childcare whilst others were not. To rectify this, the council proposed raising charges to council-provided services. No data was provided on who would be affected by the increase, if parents who use hours in addition to the 1140 hours of funded Early Learning and Childcare (ELC), or parents who use school aged childcare. Most importantly, this impact assessment showed a poor understanding of equality issues, and the role that public provision of services should play in addressing inequality and poverty.

While the SWBG Theory to Action project has focussed on working with local authorities, it is clear from our engagement with the Scottish Government's budget process that these same issues are prevalent across the public sector. Our review of the [24-25 Scottish Budget \(https://www.swbg.org.uk/content/publications/Analysis-of-Scottish-Budget-24-25.pdf\)](https://www.swbg.org.uk/content/publications/Analysis-of-Scottish-Budget-24-25.pdf) identified similar issues with decisions not being linked to equalities outcomes. The response from SWBG to this committee as part of budget scrutiny highlights continuing issues at the Scottish Government level.

## **2. Is the PSED in Scotland delivering on its aims to improve outcomes for people with protected characteristics?**

No, the impact assessment process which should be a key tool to help deliver improved outcomes is not used in a way which supports good critical analysis of decisions being taken or in a way which leads to improved outcomes for those experiencing inequality.

The lack of understanding about the link between the budget setting process and how this impacts inequality is a key barrier to improving outcomes. The budget is an important tool for addressing inequality, but too often budget decisions are assumed to affect everyone in the same way.

The equality duty should be integral in all decision-making processes and should not be an after-thought, however the process of considering equalities has become a bureaucratic process without real understanding of the purpose they serve and the impact they can have on ensuring good decisions are taken.

The Equality and Human Rights Commission (EHRC) states that a public authority subject to the general equality duty cannot satisfy the general equality duty by justifying a decision after it has been taken. In practice it is normal for decisions to be taken without impact assessments having been undertaken.

The EHRC states that a public authority must consciously consider the need to comply with the general equality duty, not only when a policy is developed and decided upon, but also when it is being implemented. The general equality duty is a continuing one, so public authorities may need to review policies or decisions. However, in practice equality impact assessments are often seen as a one and done.

In our [review of local authority budget papers](#), which included reviewing publicly available impact assessments connect to budget decisions, we identified the following issues with impact assessment processes:

- Lack of demographic data used – leading to difficulty in understanding how many people could be affected by proposals, or which groups could be disproportionately impacted. The lack of data makes it difficult to carry out a substantive analysis of how a policy will impact on inequalities or how inequality impacts on the service/policy area (for example, if those using the services come from particular groups). This means that it is hard to identify appropriate mitigations or to understand how decisions could exacerbate inequality;
- Lack of intersectionality – where it was clear that the proposal would affect a group (i.e. young people) there was little consideration of how other characteristics such as sex or disability intersected due to the lack of disaggregated data being used;
- Lack of consideration of unpaid care – unpaid care and how proposals would impact on levels of unpaid care was not considered within assessments. This meant that women and their disproportionate responsibility for care were invisible;
- Lack of analysis – where evidence was cited about inequalities, it was unclear how this was being used to inform the proposal or how this could impact on the success of the proposal or how realistic the savings suggested were;

- Limited focus on outcomes – there was often little consideration in published papers of how the proposals would impact on the achievement of the councils' priorities or their equality outcomes;
- Little consideration of the longer-term impact of proposals i.e. on educational attainment, or on poverty rates;
- Lack of consideration of how proposals will impact on other service areas or organisations/sectors;
- Lack of consultation – very few assessments had undertaken consultation on the specific proposal with affected groups;
- Based on untested assumptions – assumptions which sat behind some of the mitigations identified had not been tested to confirm this was possible i.e. that another organisation or sector could pick up the demand;
- Not taking account of cumulative impact – assessments were often based on the assumption that all other things would stay the same. For example, there was no consideration of how other proposals could impact or change the current situation;
- Lack of monitoring impact on people – the monitoring identified within assessments often focussed only on budget monitoring and the proposals' impact on delivering a balanced budget. There was no recognition of the need to monitor the impact of the decisions taken on people, other areas of the council and the council's priorities. The lack of demographic data contained within proposals makes it harder to identify what monitoring is required.

Over the last year and a half, we have noticed what seems to be the beginning of a new trend which poses a further barrier to addressing inequality. Cuts to public services and/or policy programmes being explained as a way to drive 'equalities' or how the co-option of language can hide the lack of public investment in services. In Aberdeenshire the papers which set out the justifications behind the closure of Out of School childcare service cited 'inequities in service provision (both in terms of location of settings and the children the service is provided to).' While Glasgow Health and Social Care Partnership justified changes to their criteria for accessing social care using the language of 'Maximising Independence' and 'Trauma Informed Care'.

In the current financial context, how decisions are made on public spending and revenue raising, particularly in relation to tackling inequality, is crucial. It is concerning that through our review of budget documentation the impact of decisions on women appears to be missing.

At a time of financial pressure when difficult choices are being made, it is all the more important that all public authorities consider what, if any, equality impacts their choices will have on different groups and communities, especially those with protected characteristics. Where savings, cuts and charges are made to try and

balance budgets, it is even more important to conduct good quality equalities analysis to aid decision-making and avoid entrenching inequality. It is essential that within this process that the systemic issues that rely on women providing care, including unpaid care, are made visible otherwise as our budget review shows there will continue to be a collective failure to see women and therefore address gender inequality.

### **3. Do you think the Scottish Government's proposed reforms will assist listed authorities in embedding an equalities focus and in turn improve outcomes for people with protected characteristics?**

No, the Scottish Government proposals will make little difference as a lack of accountability on the actions taken by public authorities or a direct link to the budget setting process will remain. The focus will continue to be reporting as opposed to embedding equalities considerations which could make a difference for people and communities.

Without this a recent SWBG project with MECOPP (which undertook a gender budget analysis of Gypsy/Traveller sites - <https://www.swbg.org.uk/content/publications/MECOPP-Report-091224.pdf>) showed despite many reports, inquiries and action plans improvements are not being felt by the women we spoke to in the Gypsy/Traveller community in Scotland. A significant factor in this is that recommendations from these reports, inquiries/ action plans were not followed through within the budgetary process at national or local level and that there is little accountability for delivering improved outcomes.

Without clearly linking the outcomes needed to improve the lives of Gypsy/Travellers to the budget process, and through this identifying investment needed, it is unlikely that the structural and systemic changes needed to address the inequalities experienced by the Gypsy/Traveller community will take place.

The changes proposed to pay gap reporting and inclusive communication will not lead to improvements in implementation or create the conditions which the Scottish Government's research identified was needed for the PSED to be more effective.

While the duty to embed inclusive communication is welcome as our analysis of budget papers highlighted that this information is often communicated poorly. It does not address the fundamental issue that equalities are not considered robustly enough. As such if the quality of equalities analysis is not improved then communicating decisions which embed/entrench inequalities will make little difference to the outcomes those with protected characteristics experience.

The need to report pay gaps without expecting organisations to outline how they will address these means that the introduction of these new duties will have the same flaws as the current gender pay gap reporting. There is a need to place a duty on listed authorities to set out what action they will take to reduce any gaps identified by the data otherwise no meaningful change will be realised.

As part of reforming this duty it is essential to look at how this will be enforced and what sanctions can be used should a listed authority fail to collect data or act on this data.

It is also important that employees who are affected by this duty are supported to be able to address the challenges that might come with it. Listed authorities should be required to report on their grievance and complaints processes and how they have been used and what learning there has been from their use.

**4. What are your views on the Scottish Government's revised approach to assisting listed public authorities to embed inclusive communication?**

**5. How effective do you think the Equality and Human Rights Commission is at regulating public authorities' performance against the PSED?**

There is clear lack of accountability in relation to public authorities' performance against achieving the Public Sector Equality Duties. The EHRC's role in regulating PSED is not robust enough due to them having no role in enforcing and cuts in their funding.

This means it is often left to individuals or groups to use the judicial review process to try and hold authorities to account. The reliance on the civil court places institutional barriers to people claiming their rights under PSED.