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Enhancing the Accessibility of Pedestrian Environments: Critical Reflections on the Role of the Public Sector Equality Duty

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Abstract: The British Equality Act 2010's Public Sector Equality Duty (PSED) aims to mainstream equality into the decision-making of public authorities. Although it has generated substantial critique, it has been the subject of surprisingly few empirical investigations, and existing literature does not address the role of the PSED in enhancing accessibility—either in the specific context of streetscapes or more generally. Here, we present the findings of a doctrinal and qualitative study on this topic. It consists of a critical review of relevant case law and an empirical study in which we interviewed disability campaigners, lawyers, and people working in or for public authorities. Two broad issues emerged from the empirical investigation: involvement and enforcement—on each of which our interviewees identified a range of concerns. These, together with our critique of case law, inform our analysis of the impact and effectiveness of the PSED in the context of streetscape accessibility, and accessibility more broadly. We conclude that, while the PSED (together with other Equality Act duties) is charged with a critical role in embedding equality—and, therefore, accessibility—in public authority decision-making, various factors have severely hampered its ability to deliver. Accessibility too often appears to be subordinated to other policy agendas instead of being embedded within them. There is an urgent need for reform to ensure that accessibility is suitably prioritised—both generally and in the particular context of streetscapes.

Keywords: Public Sector Equality Duty; Equality Act 2010; accessibility; equality; disability; pedestrians; urban environments; involvement; enforcement

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1. Introduction

This article focuses on the British Public Sector Equality Duty (PSED) and how it is being put to work to embed accessibility, with a particular focus on pedestrian environments. We use the term "accessible" here broadly, and in line with the guidance provided by the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) in its General Comment No. 2 (United Nations CRPD Committee 2014, para. 1). As stressed there, in the context of the CRPD (2006), accessibility is a "precondition" for disabled people to "live independently and participate fully and equally in society". The benefits of accessible urban environments, while especially relevant to disabled pedestrians (including wheelchair users), also extend to others—for example, older people, parents or carers, and people with temporary injuries, and even people with heavy luggage. Accordingly,

> "accessibility should be viewed not only in the context of equality and non-discrimination, but also as a way of investing in society and as an integral part of the sustainable development agenda". (para. 4)

The PSED is an example of what are generally termed "equality duties"—duties which are proactive in that they require positive steps to safeguard or enhance equality. The potential of such duties to craft more equal and inclusive societies has been stressed by the European Network of Equality Bodies (Equinet, European Network of Equality Bodies 2021).

Crowley (2016, pp. 8–9), writing for Equinet, identifies three broad types of equality duties in European countries: First, "preventive duties" requiring duty-bearers to take positive steps to prevent discrimination; second, "institutional duties" requiring duty-bearers to establish systems and processes that will promote equality for employees and service-users; third, "mainstreaming duties" requiring public bodies to have "due regard" to the need to promote equality when "legislating, budgeting, regulating, and policy-making". The PSED is an example of a mainstreaming duty, within this third category. Its aim is to bring about institutional change through a reflexive approach to the embedding of equality considerations within public authorities. In the words of Baroness Greengross during the parliamentary debates on the Equality Bill: "The real challenge is to achieve a wholesale shift in attitudes, looking at how to improve our systems and structures in order to give everyone a fair chance. . . . That is why the duty on the public sector is of such importance. The Bill spells out that organisations must look at the evidence and examine their processes, finding ways of delivering for everyone, regardless of race, gender, and the other strands of fairness in which they can live equally".[1]

Explorations of the relationship between legal tools and urban or citizen practices have been, as Valverde (2022, pp. 108–9) notes, underused in the field of Urban Studies—as indeed they have been in the fields of Socio-Legal Studies and Disability Studies. It is such an exploration on which we embark in this article. Rather than focusing on a specific locality, we explore citizen and legal practices relating to urban environments through the experiences and perceptions of key stakeholders from across Britain. Our consideration of these practices focuses on two broad issues, connected with the aims and operation of the PSED: first, involvement in relevant decision-making processes and, second, enforcement. Our decision to use these two broad issues as a way of organising the paper and presenting our data was made in light of, and in response to, the priorities emerging from our analysis of that data.

This investigation contributes to academic literature in two overlapping ways. First, in terms of subject matter, we provide critical insights into the workings of the PSED in the context of accessibility generally, and the accessibility of streetscapes in particular. This is a topic which, whilst important, has not previously been the subject of academic scrutiny. Second, in terms of method, we make an original contribution to the literature on equality mainstreaming duties through an analysis of a wealth of empirical evidence from key stakeholders with a range of different experiences and practical insights. These stakeholder were lawyers with experience of enforcing the duty; people working in or for public authorities, charged with implementing the duty; and disability and accessibility campaigners, with experience of being claimants in relevant enforcement proceedings or working to enhance equality, accessibility, and inclusion in pedestrian environments. As Barrett notes, there is an urgent need for more empirical work on the implementation of the PSED, to inform our understanding of its effectiveness and impact in particular contexts (Barrett 2023, 2024). Besides his work, which focuses on the role of regulators, inspectorates, and ombud offices, useful empirical work has been carried out on the PSED in the contexts of charities challenging funding cuts (Sigafoos 2016) and reviews commissioned by the government or the Equality and Human Rights Commission (Government Equalities Office 2013; Mitchell et al. 2014; Kotecha et al. 2018). In none of these, however, has there been a focus on accessibility which, although not explicitly mentioned in the PSED provisions, is a pre-condition of equality and inclusion for disabled and older people.

The article is divided into four main sections. Section 2 explains our methods. Section 3 introduces the PSED, explaining its relevance to the particular context of pedestrian environments. It also presents our analysis of case law in which attempts have been made to use the duty to challenge relevant types of accessibility barriers. As well as offering valuable insights into the value of the PSED, this analysis provides necessary context for the two empirical sections that follow. Section 4 focuses on issues concerning the "involvement"

[1] Hansard, H.L. Debates Volume 715 (15 December 2009) Col 1435.

of disabled people and others in relevant consultations and decision-making processes. It presents relevant findings and reflective discussion, together with initial contextual information on PSED-related provisions and guidance on involvement. Section 5 takes a similar approach but focuses on enforcement rather than involvement. In Section 6, we present our conclusions.

2. Methods

Our methods consisted of a combination of legal doctrinal methodology (particularly relevant to Section 3) and qualitative empirical research (particularly relevant to Sections 4 and 5). The empirical work entailed data collected via semi-structured interviews between late 2020 and early 2022 as part of the research project—Inclusive Public Space: Law Universality and Difference in the Accessibility of Streets. These interviews explored issues relating to accessible pedestrian environments and their interaction with equality, tort, and criminal law, well beyond the scope of the PSED. In this paper, however, we draw only on the PSED-related part of this data.

Three broad (and overlapping) categories of stakeholders were interviewed: First, eight lawyers with interests in equality, accessibility, or public space. Second, six people with experience of working in public bodies or (in one case) of working with and for them. Third, seven campaigners for greater disability equality and accessibility. These three categories are broad, applying to stakeholders with experience of working in very different capacities in diverse types of organisations. As indicated above, the three broad categories overlapped to some extent, with stakeholders' experiences rarely being neatly confined to just one of them. In all but one instance, however, there was one category or perspective that dominated. In that one exceptional case, the participant is numbered here amongst the public authority stakeholders but is identified hereafter as being both a public authority and a lawyer stakeholder. Further detail about each of the participants is presented in Appendix A below.

The participants were recruited either through direct personal invitations, or through invitations to selected organisations, with a request that any qualified member of staff interested in taking part should contact the research team. Individuals and organisations initially approached were known to members of the research team to have particular experience or interest in enhancing accessibility and equality, either generally or in the specific context of streetscapes. For subsequent recruitment, a snowball method was adopted, whereby already recruited participants helped the research team to identify and make connections with other potential participants possessing relevant experience and expertise (Parker et al. 2019). This was informed by a 'purposeful sampling' approach (Schreier 2018), according to which the research team iteratively reflected on whether there was a need for additional participants, and with what sorts of experience or characteristics, in light of ongoing reviews of the data as it was collected—the aim being to recruit a sufficiently diverse and informed sample of participants to address our key research questions. Although, as indicated above, those questions extended beyond the PSED, the impact and usefulness of the PSED was an important theme that surfaced explicitly or implicitly in all interviews.

All interviews were online and lasted approximately 90 min. They were carried out by team members—Maria Orchard, Ieva Eskytė, Morgan Campbell and Anna Lawson—with two team members conducting each interview. The majority were group-based, involving two or three stakeholders, with groups being arranged according to stakeholder category. In several, however, there was only one interviewee—in order to accommodate that person's preference or availability. Interviews were semi-structured, taking the form of conversations led by participants but supported by topic guides and prompts used by research team members.

Interviews were audio-recorded, transcribed, and pseudonymised before undergoing thematic analysis (Denzin and Lincoln 2017). Initial thematic coding was carried out independently by two team members—Anna Lawson and Maria Orchard—with emerging

themes then being compared and discussed with another team member, Naomi Jacobs, who drew on these coding choices to code the transcripts using Atlas software, version 24 (Blaikie and Priest 2018). Ethical approval was obtained from the University of Leeds Business, Environment and Social Sciences joint Faculty Research Ethics Committee (19-004); and the European Research Council Ethics authority.

3. Legal Basis of the Public Sector Equality Duty and Critical Reflections on Its Use in Case Law on the Accessibility of Streetscapes

3.1. Legislative Base and Accompanying Guidance

The PSED is set out in Section 149 of the Equality Act 2010 (EqA). The EqA (which applies to England, Scotland, and Wales) replaced, strengthened and, to some extent, harmonised a multiplicity of pre-existing non-discrimination legislation, including the Disability Discrimination Act 1995 (DDA). The PSED itself replaces and extends the scope of three broadly equivalent duties previously applicable to race,[2] gender,[3] and disability.[4] Because of similarities between the PSED and its predecessor duties, case law on those earlier duties (critiqued in Section 3.2 below) continues to be of value and relevance.

Section 149 of the EqA requires public authorities, in the exercise of their functions, to have "due regard" to the need to, first, "eliminate discrimination" and any other conduct prohibited by the EqA; second, "advance equality of opportunity" for people with characteristics protected under the EqA, such as disability, age, gender, and race; and third, "foster good relations" between people with and without such characteristics.[5] It thus sets out a general duty to have 'due regard' to these three equality aims in relevant decision-making processes.

The focus of the PSED is process, rather than outcome—its aim being to bring about change in relevant organisations proactively, by embedding equality considerations into general business, rather than by relying on retrospective actions. Nevertheless, breach of the PSED is actionable by way of public law claims for judicial review.[6] Issues of enforcement are discussed further in Section 5 below. At this stage, however, it is important to note that a successful judicial review action generally results in the challenged decision being quashed,[7] with the possibility of additional remedies in exceptional cases (Cowan and Tomlinson 2023). The defendant may well subsequently reach the same decision but, provided it has followed the required process, that decision will no longer be subject to challenge. In the words of Singh J:

> "The Public Sector Equality Duty does not require any particular outcome to be achieved by a public authority; rather, it imposes a procedural duty (and an important one) to have due regard to various matters in the process by which an outcome is reached". (*Hamnett v Essex County Council*, para. 76)[8]

The notion of "due regard" is a flexible one, which operates in a context-specific manner. Drawing on principles developed through case law,[9] guidance issued by the Government Equalities Office (2023b) states that:

> "The level of 'due regard' considered sufficient in any particular context depends on the facts. A proportionate approach should be taken to the resources spent on duty compliance, depending on the circumstances of the case and the seriousness of the potential equality impacts on those with protected characteristics. For

[2] Race Relations Act 1976, s. 71.
[3] Sex Discrimination Act 1975, s. 76A.
[4] Disability Discrimination Act 1995, s. 49A.
[5] EqA, s. 149(1).
[6] EqA, s. 156.
[7] Senior Courts Act 1981, s. 31(1).
[8] [2014] EWHC 246 (Admin).
[9] See, e.g., *R (on the application of Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) and *R (on the application of Coleman) v Barnet LBC* [2012] EWHC 3725 (Admin).

> example, if you were reforming a personal tax or benefit, you would likely have to assess the 3 aims in some depth. But if you were buying office equipment, your assessment may be brief . . . You may exercise functions that have no equality impact, but it may then be useful to note that you took the duty into account and did not consider it relevant".

The PSED's general duty is supplemented by "specific" duties, requiring public authorities to set equality objectives and outcomes. These are imposed by secondary legislation, under Sections 153 and 154 of the EqA. The introduction of these specific duties in Scotland and Wales is a matter for the devolved governments. Consequently, there are differences in the ways the duties have been articulated in England,[10] Wales,[11] and Scotland.[12] Although a detailed explanation of these differences lies beyond the scope of this article, those that are significant to the analysis will be highlighted at appropriate points below. Reference will also be made, where relevant, to the analogous duty created by Section 75 of the Northern Ireland Act 1998.

The PSED, as mentioned above, applies to "public authorities". Guidance on the meaning of this phrase is set out in Section 50 and Schedule 19 of the EqA. In the context of pedestrian environments, particularly important examples of public authorities mentioned in that Schedule include central and devolved government ministers, central and devolved government departments, local government, regional development agencies, national park authorities, and various specific bodies, such as Transport for London. The PSED also applies to persons who exercise public functions, even though they are not themselves public authorities.[13] Such functions include the formulation of policy and delivery of public services.[14] Thus, if local government functions relating to city planning or maintenance were contracted out to a third party, that third party would be required to comply with the PSED when exercising these functions.

3.2. Critical Reflections on PSED-Related Case Law Concerning the Accessibility of Streetscapes

Questions concerning planning and urban design have frequently featured in cases concerning the PSED and its predecessor equality duties. Surprisingly few such cases, however, have focused directly on the accessibility of streets. Several—concerning the potential negative impact on disabled people of the removal of local amenities, such as carparks,[15] shops,[16] and garden centres[17]—have some relevance to pedestrian access. The cases that are more directly relevant to accessibility, however, can helpfully be organised into two broad categories—first, those in which disabled people's access to urban spaces as pedestrians has been restricted due to policies designed to reduce carbon emissions; second, those in which local or national guidance negatively affects accessibility. This categorisation will be used to structure our analysis here.

Turning first to cases concerning decisions to cut carbon emissions, with negative effects on accessibility, the exclusionary impact on disabled people of reduced traffic schemes was challenged in *Hamnett v Essex County Council*.[18] The Council there had prohibited vehicles from using certain streets and removed blue-badge parking spaces (for disabled people) in the centre of Colchester. Although blue-badge parking was provided elsewhere, the disabled claimant—who had mobility impairments—provided convincing evidence that the route between these replacement parking places and important town

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10 Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260).
11 Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (SI 2011/1064).
12 Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (SI 2012/162).
13 EqA, s. 149(2).
14 See *R (JL) v Islington London BC* [2009] EWHC 458 (Admin) para. 114, per Black J; *Pieretti v Enfield London Borough Council* [2011] 2 All ER 642, paras. 25 and 26.
15 *LDRA Limited v Secretary of State for Communities and Local Government* [2016] EWHC 950 (Admin).
16 *Stroud v North West Leicestershire District Council* [2018] EWHC 2886 (Admin).
17 *R (on the application of Coleman) v Barnet LBC* [2012] EWHC 3725 (Admin).
18 [2014] EWHC 246 (Admin).

facilities was too long and physically demanding for herself and other disabled people to walk or wheel. Despite this, the PSED was found not to have been breached because in making these orders, the Council was found to have had due regard to their negative impact on disabled people. Singh J pointed out that the decision the Council had to make was "a difficult one, raising a number of competing interests which had to be balanced" (*Hamnett*, para. 75).

In *R* (*on the application of Goodall*) *v Reading Borough Council*,[19] permission was sought to bring a PSED case to challenge a council's decision, after a trial period, not to restore traffic signals at a pedestrian crossing situated at a four-way road junction—because the absence of such signals was making it particularly difficult for disabled pedestrians to cross. Permission was refused on the grounds that there was no arguable case for breach of the PSED. This was because the Council had taken the disability-related impact of its decision into consideration—for example, by holding an on-site meeting with disabled people. The judge also referred to the fact that the Council had agreed to take measures to mitigate the problem, namely, by retaining a crossing set away from the junction over one of the roads. The claimant understandably argued that this did not sufficiently address their concerns. Nevertheless, it was held that the claim essentially concerned the extent to which the Council had considered the matter, and that this was not a sufficient basis for a PSED action.

Moving now to the second category, relevant cases challenging the impact of national or local guidance have all involved tactile markings and kerb heights. The first of these cases was *Ali v London Borough of Newham*[20]—a case in which the Disability Equality Duty was used to overturn local guidance on tactile paving adopted by Newham Borough Council. The local guidance in question fell short of national guidance, issued by the Department for Transport, as regards the tactile markings to be used for pedestrian crossings without detectable kerb upstands. In finding for the visually impaired claimant, Griffiths J attached considerable weight to the fact that Newham was unable to provide convincing reasons for its decision to depart from national guidance on a matter of particular significance to visually impaired people.

Another successful case was the Northern Irish case of *Re Toner's Application for Judicial Review*.[21] Here, the High Court of Northern Ireland held that there had been a breach of the duty imposed on public authorities by Section 75 of the Northern Ireland Act 1998 to promote equality of opportunity between people who were disabled and those who were not. The case concerned the introduction, by Lisburn City Council, of a new public realm scheme in which kerb heights were lowered from 100–130 mm to 30 mm—a change that had a significant negative effect on the visually impaired claimant who was not able to detect such low kerbs. The lower height of kerbs in the new scheme was not consistent with guidance published by Transport NI (Director of Engineering 2015, p. 2), according to which:

> "For Public Realm Schemes, and in line with best practice, it is recommended that a 'standard' kerb height of 125 mm should be generally used, though this may be reduced to a desirable minimum of 100 mm to suit local site circumstances. Exceptionally, however, where there is a desire to incorporate a lower standard kerb height to that either stipulated here or in DMBR [sic] . . . such as in a public realm scheme where a shared surface street is envisaged, it is recommended that kerb heights should not be less than 60 mm. It is also recommended that these lower kerb heights should only be introduced following meaningful consultation with organisations representing the accessibility needs of local people, particularly those with a disability . . ."

[19] [2016] EWHC 3795 (Admin).
[20] [2012] EWHC 2970 (Admin).
[21] [2017] NIQB 49.

These guidelines were influenced by research commissioned by the Guide Dogs for the Blind Association and carried out by University College London in 2009 (Childs et al. 2009). This found that kerbs of 60 mm, but not 40 mm or lower, were detectable by all the visually impaired participants. It therefore recommended that kerbs should be at least 60 mm in height.

Prior to deciding to introduce the new public realm scheme, with its lowered kerb upstands, Lisbon Council had not assessed the potential impact on disabled people. According to Maguire J, the Section 75 duty obliged councillors to actively consider the potential impact of lowering kerb heights. The fact that an equality officer had reported to them that disabled people had been consulted, and had opportunities to provide feedback, was not sufficient to discharge the duty. In his words:

> "A conscious approach to section 75 was required . . . and officials should have appreciated the need for councillors to receive advice on the equality aspect of the matter now before them, which would have included or be likely to include an analysis of the UCL research and an assessment of the impact of the 30 mm kerbs on the position of blind or partially sighted persons". (*Re Toner*, para. 149)

The low height of kerbs was also the subject matter of the more recent unsuccessful English case of *R* (*on the Application of Leadbetter*) *v Secretary of State for Transport*.[22] In this case, unlike those of *Ali* and *Toner*, it was central government guidance that was being challenged. The visually impaired claimant (supported by leading visual impairment organisations) argued that the government had failed to have "due regard" to the PSED aims when it included, in its 2021 Guidance on the Use of Tactile Paving Surfaces (Department for Transport 2021), a minimum height for kerbs of 25 mm (not requiring additional tactile markings to signify the boundaries between pavements and vehicle routes). This same measure had also been present in the previous 1998 guidance (Department of the Environment, Transport and the Regions 1998). The claimant argued that—in light of the UCL study and a number of other reports and calls for additional evidence—it should not have been perpetuated in the 2021 Guidance, particularly when additional evidence on the point had been commissioned by the government but not yet completed. The problem, she argued, was exacerbated by the fact that the consultation process prior to the adoption of the 2021 Guidance was not sufficiently long or accessible to enable visually impaired people to participate in it effectively (*Leadbetter*, para. 21).

At first instance, Jarman J stated that he "well [understood] why the claimant, and the charities which support her, strongly believe that proper enquiry was not made before maintaining the 25 mm minimum in the Guidance" (*Leadbetter*, para. 54) and that "the fact that the 25 mm minimum kerb height [has] formed part of guidance for 24 years does not, of itself, justify the lack of enquiry in deciding that that figure should be maintained in the Guidance" (*Leadbetter*, para. 50). Nevertheless, the decision to retain the 25 mm figure did not, in his opinion, reach the "high threshold of irrationality" required for the court to order that the relevant Guidance be quashed (*Leadbetter*, para. 54). This aspect of his ruling was upheld by the Court of Appeal.[23]

Interestingly, Jarman J was prepared to issue a declaration that the government had engaged in a "consultation", which—in light of factors including the limited time of the consultation, the refusal of a request for an extension, and the accessibility difficulties it posed for visually impaired people—fell short of common law fairness requirements (*Leadbetter*, paras. 55–62). Questions as to the meaning of "consultation", and the "fairness" of processes that were not fully accessible to disabled people, also lay at the heart of *Secretary of State for Work and Pensions v Eveleigh and Others*.[24] This concerned the effectiveness of the process for engaging disabled people in the drafting of the Disability Strategy (Cabinet Office Disability Unit 2021). While a challenge based on the lack of accessibility of that

[22] [2023] EWHC 210 (Admin).
[23] *R (on the Application of Leadbetter) v Secretary of State for Transport* [2023] EWCA Civ 1496, para. 54.
[24] [2023] EWCA Civ 810.

process succeeded at first instance, it failed in the Court of Appeal because the process was ruled not to amount to a formal "consultation" and therefore not to be subject to common law fairness requirements. Although detailed analysis of questions such as this lie beyond the scope of this article, the extent to which PSED duties drive forward meaningful involvement and engagement with disabled people and those with other protected characteristics in the context of pedestrian environments will be addressed in the next section.

In sum, it is possible to draw two main conclusions from an analysis of cases in which the PSED has been used to challenge public authority decisions on the grounds of their negative impact on streetscape accessibility. First, decisions to introduce measures that reduce accessibility or create new accessibility barriers, in pursuit of green (and presumably other) policy agendas, will not breach the PSED provided that due regard has been given to relevant accessibility-related concerns. As *Hamnett* and *Goodall* demonstrate, this 'due regard' standard will be relatively easy to discharge—simply requiring that serious consideration is given to relevant concerns. Thus, the PSED falls well short of obliging public authorities to embed accessibility into green and other policy agendas. Second, as *Ali* and *Toner* demonstrate, courts have been willing to use the PSED to quash decisions to introduce local streetscape guidance which, for no convincing reason, falls short of accessibility-related standards in national guidance. Where, however, there are concerns that national guidance enshrines standards falling short of good accessible design, as in *Leadbetter*, courts seem to be less willing to allow the PSED to be used in this way.

4. Involvement of Disabled People, the Public Sector Equality Duty, and the Accessibility of Streets

4.1. The Extent to Which the Public Sector Equality Duty Requires Involvement

The general PSED duty—to have due regard to the three equality goals—does not explicitly impose an obligation to consult, engage with, or involve people with protected characteristics in relevant decision-making processes. Nor is any such generally applicable obligation implicit in Section 149 of the EqA.[25] In particular cases, however, decision-makers will be expected to acquire additional evidence about the potential equality-related impact of a proposed course of action and this may, on occasion, require engagement or consultation with relevant groups.[26] Even beyond such instances, involving representative groups of people with relevant characteristics is helpful in maximising the potential effectiveness and impact of relevant initiatives, and in embedding equality in organisational culture, as recognised by the Equality and Human Rights Commission (Abrams et al. 2016, pp. 12–14).

The approach to involvement in the PSED general duty is very similar to that of its predecessor duties—the Race Equality Duty, Disability Equality Duty (DED), and Gender Equality Duty. The specific duty for the DED, however, included a clear obligation to involve disabled people in the development of Disability Equality Schemes.[27] This involvement obligation was described by Caroline Gooding (2009, p. 33), former special adviser to the Disability Rights Commission (DRC), as "a key element of the duty". Nathwani et al. (2007, p. 30) reported particular enthusiasm about the impact of the DED in encouraging the ongoing involvement of disabled people in the work of public authorities—with 72% of respondents indicating that the involvement of disabled people contributed to the duty's successful implementation. Despite this, no such involvement obligation was included in the PSED's specific duties for England,[28] a move criticised by numerous commentators, in-

[25] *R (on the application of Kays) v Secretary of State for Work and Pensions* [2022] EWCA Civ 1593.

[26] See, e.g., the second principle articulated by McCombe LJ in *Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, para. 26—according to which, "If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required".

[27] Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, SI 2966.

[28] Equality Act 2010 (Specific Duties) Regulations 2011 (SI 2011/2260).

cluding Gooding (2009), Hepple (2011), and Conley and Wright (2015). This contrasts with the specific duties for Scotland[29] and Wales,[30] however, which contain duties to involve or engage with people who share relevant protected characteristics (Abrams et al. 2016; Equality and Human Rights Commission 2014). Despite the absence of an involvement requirement in the specific duties for England, it should be stressed that engagement may sometimes be necessary in order to comply with the general duty, as mentioned above, and that the expectation of involvement continues to be an important feature of the PSED.[31] Nor should it be forgotten that the involvement of disabled people is required by Article 4(3) of the CRPD, in particular (Meyers 2016; Sabatello 2014)—a requirement bolstered by other CRPD provisions, including on political participation (Article 29) and national monitoring (Article 33(3)). The UK, as a party to this treaty, is committed to implementing these obligations (Lawson and Series 2018).

4.2. Involvement-Related Reflections of our Stakeholder Participants: Preliminary Explanations

Issues relating to the involvement of disabled people in public authority decision-making concerning the accessibility of city streets were mentioned in all six of our stakeholder group interviews and all seven of our stakeholder individual interviews. For the purposes of this analysis, reference will be made to discussions of involvement, even where explicit reference was not made to the PSED.

Several participants had expertise relating to Scotland and Wales, as well as England. Specific questions about comparisons between the operation of the PSED in the three nations, however, were not asked, nor were such comparisons mentioned by any of the participants. Accordingly, the findings presented below will not include reference to the geographical location or expertise of participants, except when this is included in quotations.

Finally, it should be noted that participants generally seemed to use the terms "involvement" and "engagement" interchangeably. Therefore, for convenience we have used the term "involvement" broadly, so as to cover both. The term "consultation" generally seemed to be used to refer to a more specific interaction—over a particular plan or proposal. This reflects a distinction made by the Equality and Human Rights Commission (EHRC) in its guidance on PSED "involvement" in Scotland (Abrams et al. 2016, para. 11).

Our analysis of the pseudonymised transcripts identified three broad themes relating to involvement—its value, facilitators of effective involvement, and concerns about ineffective involvement. These interconnected themes will each now be discussed in turn.

4.3. Involvement-Related Reflections of Our Stakeholder Participants: Findings

4.3.1. Recognition of the Value of Involvement in the Context of Street Accessibility

The critical importance of involving disabled people, older people, and others in the work of public authorities on issues relating to street accessibility was stressed by many participants. As Hamish (lawyer) observed:

> "Yes . . . Taking what disabled people say seriously and listening—which is, by the way, what Article 4(3) of the convention says . . . It is not what would be nice. It is what should happen. And [was] fought for, for years".

The value and importance of involvement was stressed by several stakeholders working in or for public authorities on issues relating to street design. For example, Gregor (public authority) said:

> "it's the lived experience that's critical. It's the thing that we can't make up or guess. We need to be hearing those voices".

[29] Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (SI 2012/162) (as amended), regulation 4(2).
[30] Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (SI 2011/1064), regulation 5.
[31] *R(LH) v Shropshire Council* [2014] EWCA Civ 404.

Both Gregor and Duncan (public authority) provided concrete examples of instances in which the involvement of older and disabled people's groups had changed and shaped the design of streetscapes, including the installation of alternative arrangements to shared space schemes, seating, and 'Changing Places' toilets.

Felix (public authority) also described the role of lived experience as "absolutely critical", adding that:

> "Even if an organisation was only approaching it from a cynically economic view of the world, which I'm sure not many do, it would still make sense to have lived experience in the mix because effectively you're getting the greatest consultant you could possibly have on that part of the jigsaw".

The economic benefit of effective involvement strategies was also stressed by Orla (public authority), who observed that "it probably ends up costing more money in the long run to go back and retrofit". For this reason, as well as others, she highlighted the importance of working closely with disabled people, noting that:

> "We do hear them, we do listen to them, and we do try and change. Engagement and consultation can slow things down. But if you want to get it right, you really need to do it right".

Orla also highlighted the fact that many of the changes needed were often relatively small, inexpensive, and quickly implementable:

> "So, there's things like a sign is facing this way, but if you turn it that way, more people can access or see it or view it or know where they're going. There's really simple things that can be done to help and enhance people's experience. Policy change doesn't need to cost the earth. And if we just listen to what people are asking and make those small changes, it can make a difference . . ."

Participants from disabled people's organisations also recognised the importance of involvement in this context. For example, Lloyd (campaigner) regarded legal obligations to consult with disabled people as "absolutely key". He, however, like other campaigner/activist stakeholders, expressed concern about inconsistencies in the approach of authorities to involvement, and frustration about processes in which the views of disabled people had not been heard.

4.3.2. Facilitators of Effective Involvement

Stakeholders identified a range of factors they considered important in enhancing the effectiveness of relevant involvement processes. First and foremost was the need for public authorities to recognise the value of involvement. This would necessarily mean not approaching it as an exercise in minimum compliance. In the words of Orla (public authority):

> "So, I think for me it's about . . . not just ticking a box and saying, I've done that. That's what I'm legally bound to do. It's about going beyond that, to think beyond what you're legally bound to do. . . . it is about where can you go beyond your legal duty? . . . Please don't make it just be a tick box exercise".

Similarly, Felix (public authority) said of the PSED:

> "It's good but if it's approached as compliance or tick box rather than leadership culture and purpose then it'll be sub-optimal. So, in short, it's a thoroughly good thing . . . but it needs to become part of everybody's understanding and . . . part of organisations and institutions and individuals' DNA".

Recognition of the value of involvement also necessarily entails creating a space in which public authorities can genuinely listen and, where appropriate, make changes in response to what is being said by disabled people. This was succinctly expressed by Duncan (public authority), who said:

> "I think the most important thing is to listen to the feedback from people . . . disabled people . . . And making sure that their voice is heard".

He added that this has implications for how consultation exercises are conducted, including for how questions are framed:

> "I find a lot of the council's consultations have many leading questions. And I think that's a big problem really. There should be more flexibility for people to put an alternative opinion. So . . . on a cycle lane, the question might be do you think it should be one metre or two metres . . . rather than do you support a cycle lane".

A precondition for hearing the voices of disabled people, recognised by numerous participants, is the accessibility and inclusiveness of involvement processes. This was stressed by Orla (public authority), who said:

> "So, it's not just about a ramp at the front door. It's about . . . how do we engage as many people as possible and have we got BSL signers? Have we got someone who can take a guide dog for a walk so that they can stay for 3 h? Is there a water bowl for the guide dog? Have we sent out information in an easy read format so maybe people with learning difficulties can take part? . . . We really should be designing things for everybody. . . . It's not just about the building that you're having your engagement in. It's about who's coming, how do they get there, how will they be able to give their best and be able to participate without making them feel awkward or different?"

While many of these accessibility-related considerations apply to involvement more broadly, reference was also made to ensuring accessibility in the specific context of consultations about street environments. Duncan (public authority), for example, referred to the use of "tactile modelling" for visually impaired people, and the limitations of its usefulness to in-person meetings. Fletcher (campaigner) highlighted the importance of the role of accessibility consultants in facilitating communication in technical consultation processes:

> "I've been in meetings where it's quite clear that some of the disabled people represented are not clear about what's being discussed. And so, I now, I want to know a little bit of information about who I'm meeting with. For example, if I am meeting with a group who have blind or partially sighted people, then I will slow things down, image describe . . . because quite often, you know, people could turn up and sound really nice but actually have a really awful design, people are almost taking it on trust. And that's not fair".

As well as helping to make information accessible, Fletcher also explained how accessibility professionals play an important role in identifying information that will be particularly relevant to disabled people:

> "I always remember one of the worst examples: I was dragged in at the last minute because the people who were presenting were scared to go and talk to this disability group. And they had a structural engineer who talked about concrete and steel calculations for 20 min. And you think, there's going to be a nice level surface and the bridge is pretty much flat, with a big wide path. That's all they needed to know".

Many of the stakeholders drew attention to the value of engaging with disabled people through a pan-disability approach, rather than liaising separately with people who have different impairment types. Drawing on her experience of consultations on changes to street environments, Orla (public authority) urged that "to speak to people collectively rather than in silos, I think is a really good way of working" and "a more collaborative and more responsive approach—rather than fix it for the wheelchair user, or just fix it for the blind person . . ."

This point was also powerfully made by Gregor (public authority), who said:

> "[S]o, we've worked with one forum that includes lots of people with a variety of needs and what's really special about the way that we work together is that they have already had some of the difficult conversations with one another that have kind of brought issues to the forefront, such as the tactile pavement that a blind person might rely on might be really painful for somebody with rheumatoid arthritis to stand on. And somebody with sight issues might need brighter light whereas somebody with epilepsy might need darker light. There's not one answer. And I think the most powerful thing is when we're working with organisations that take a holistic view of . . . several of their members' needs".

Working inclusively with different representative organisations is likely to require care and sensitivity to the power dynamics across the group. As Daisy (campaigner) said:

> "I think it is also, kind of, negotiating the politics of different charities as well, and organisations, you know, some of the bigger organisations can sometimes . . . monopolise . . . time and . . . sometimes the smaller organisations can be . . . better than actually some of the really large ones".

A number of stakeholders, including Gregor (public authority) and Felix (public authority), expressed the firm view that disabled people who participated in formal involvement processes relating to street design should be paid for their time. In the words of Fletcher (campaigner):

> "Meaningful engagement should come with a budget. We shouldn't be expecting people to give up hours and hours of their time. . . . [V]ery very few people can afford to give up hours and hours . . . And . . . it'd be interesting to look at the demographics of access groups, the ones that do exist. Because as far as I can see, unless you don't work and you can afford to come and meet . . . during the working day, your voice isn't heard".

Payment may well also foster greater opportunities for capacity-building amongst disabled people keen to take part in technical consultation processes. It could thus go some way to addressing a concern raised by Fletcher—about the variation in the capacity of disabled people feeding into relevant consultation processes:

> "I've met with groups who are seriously organised and really understand the technical detail and the debate beyond their own individual needs. But I've also had projects where we've gathered individual disabled people who have no understanding beyond their own [experience], and the difference in feedback, and the weight you can give to the feedback, is very different".

Finally, and more broadly, several participants—including Nina (campaigner), Piers (campaigner), Harrison (public authority), and Orla (public authority)—spoke of the benefits to effective involvement of establishing positive, collaborative ongoing relationships. In the words of Harrison:

> "We very much work in a co-produced way, so looking at how we can shift the power so that citizens of [the city], council employees, companies like bus companies, etc.—anybody that is a stakeholder—has an equal voice and we actually sit down and kind of problem solve this together, rather than work from an us and them perspective".

As Felix (public authority) pointed out, however, considerable care and skill is required in such circumstances—to recognise and mitigate against inequalities in power. In his words:

> "[W]ithout being un-positive, I think there's still a huge gulf in terms of understanding what many many different individuals and organisations are asking for, wanting, and needing, to be able to be empowered to exercise their full citizen rights. . . . If there isn't an appreciation of the power asymmetry between indi-

viduals in a particular situation, you're never going to come out with the right outcome—and what I mean by right outcome is the inclusive outcome".

4.3.3. Concerns about Ineffective Involvement

Several participants spoke of a lack of understanding of the PSED, and its implications for engaging positively with disabled people, amongst relevant public authorities. According to Reginald (public authority and lawyer), for example:

> "In my role as a city councillor, of course, it's been very useful to have that information about the Equality Act . . . Partly because within the local authority context, as seen with many big organisations particularly in the public sector, there's a lot of talk about equalities applying with the Public Sector Equality Duty, but relatively little understanding—in anything more than a fairly generalised and fluffy way, often erroneous, sometimes in a way that undercuts people's rights and sometimes in ways that just overplay it".

Darcie (lawyer) suspected this was a particular problem in the planning context, saying:

> "I think that the big gulf is planning officers know absolutely nothing about the equality duty. In fact, I've seen some of them still referring to the DDA and sort of you know, or in actual fact, I've seen one say something like well planning law trumps discrimination law, for example".

Consequently, she explained:

> "Local plans are developed without any consultation or any effective consultation with disabled people and . . . if you haven't got the right approach set out in the local plan at the point at which it's developed, you can then get really poor decision-making on planning permission".

Similar concerns about planning departments were expressed by Florence (lawyer) and Lottie (lawyer), according to whom: "I think for a long time, planning departments just didn't think the PSED applied to them".

A concrete example of initiatives to increase the regard given to issues of accessibility and disability in planning processes was provided by Duncan (public authority), who said:

> "[T]hings have cropped up again during my time as a Planning chair—when some planning applications were being approved or recommended for approval . . . without the access officer having cast their eye over it. And that was one thing I got introduced, because when we talk about accessibility in planning, it can mean transport connectivity but obviously it can also mean inclusivity as well. So, I tried to draw out a separate section, accessibility transport, accessibility inclusivity, to try and strengthen those Planning papers. . . . What we're trying to do now is . . . some work with all our senior council officers, chair, and equalities board . . . and get that embedded throughout the organisation".

More broadly, Lottie (lawyer) observed that:

> "I think you still have local government departments, for example, highways departments. The sorts of departments that bring in traffic regulation orders but still don't think through how the PSED applies to the work they do. Because they don't see it as a sort of—unlike . . . perhaps in education services, or children's services—they just don't see it as part of what they do".

In some instances, where consultations did happen, it was at too late a stage for meaningful involvement. Lloyd (campaigner), for example, told us about a controversial plan developed by his local authority which, despite energetic protest from disabled people, continued unchanged:

> "They've admitted that it was purely within the design team and two access consultants who drew up the whole plan. . . . I think they actually came to do the presentation thinking we'd all say marvellous, brilliant, absolutely fantastic. And I think they're still shocked that as a broad representative community disability group, every one of us was, was absolutely shocked . . . at that one element that was so clearly a discrimination against some disabled people. . . . If they'd have consulted, we may have avoided that".

Similar points were made by Piers (campaigner) and Nina (campaigner), who said of government departments:

> "I think sometimes they don't tell you what they are doing until they almost want you to sign on the dotted line. So, they are not co-producing the solution with you. They are just sort of telling you what their solution is, which is often wrong".

Other participants commented on the inaccessibility of many of the consultation processes themselves, in the context of street design. Violet (campaigner) highlighted the inaccessibility of information generally available to visually impaired people in such processes:

> "If you go back to the question of street design, it's . . . photographs and diagrams and maps . . . showing where things are going. And there's rarely a clear paragraph description of how this is going to affect such and such a street, and what we're going to do is build a cycle path. You're far more likely to be shown a diagram showing what's going to happen than to get an outline of what is going to be there and what that means in terms of change or what that means in terms of things remaining the same and what it is that might be of concern".

A similar concern was raised by Scarlett (lawyer), who also highlighted the disproportionality between the level of care taken to consult and the potential exclusionary impact of the changes concerned. She said:

> "I live near [a low-traffic neighbourhood] and here the main road has been closed off, not just to cars but also to buses. So, there is no way that anyone could actually get down to and use the high street unless they are able to walk. And that has gone on for a year now, and it is what the council is hoping to do permanently. And the consultation on that, the consultation—I use the term loosely—took the form of one meeting with local people, the information for which was delivered by leaflet through the door. It didn't seem to be available in alternative formats at all. And I think that is replicated across the country".

The fast pace of change in street environments in recent years, and concern about the challenges this poses for carrying out meaningful involvement processes and ensuring accessibility, was a prominent issue in the data. This was a trend linked by stakeholders initially to COVID-19 emergency measures and, more recently, to climate change and the Green Agenda. Thus, Scarlett spoke of "the tolerance that is being given to local authorities, and the way in which they are dealing with their spaces in the context of COVID—which is having really significant implications for disabled people", and Ralph (lawyer) worried that:

> "where spaces are being designed essentially towards an increased trend towards pedestrianisation, and in line with environmental objectives for cleaner air and trying to reduce the amount of traffic, but without due regard to the impact on disabled people who may need access to that particular space. . . . So, my concern on those cases is that . . . it's very easy . . . [for] local authorities to comply with the PSED. They just have to show that they have thought through the issue".

Nina (campaigner) noted a similar concern about the ineffectiveness of the PSED in ensuring the embedding and mainstreaming of accessibility. She reflected that:

> "I suppose we could honestly say the Public Sector Equality Duty has had no impact. . . . So many street changes are just being made now without reference to it at all. . . . Everything feels a bit like it was developed for a different era almost, because—I think, you know—given what is happening around climate change and around the electric vehicles and electric scooters. . . . [T]he next ten years . . . the amount of change . . . it feels like this is the decade of changes to the street environment, but without any solid kind of principles of equality guiding it. . . . It just feels that there is a bit of a vacuum in terms of the equality principles underpinning these changes to the environment".

These reflections are thought-provoking for many reasons. There is clear concern, not just that the PSED is not being applied as well as it should be, but that it is simply not strong enough to challenge the tendency for accessibility and equality to be overshadowed and outpaced by, rather than embedded into, other policy agendas.

4.4. Discussion

A number of points emerging from these findings are worthy of further comment and contextualisation. First, as regards stakeholders' recognition of the importance and value of involvement, the clear affirmation of its importance and value by our participants reflects the centrality of engagement in the ethos behind equality mainstreaming duties. "Consultation and involvement" was identified by the Discrimination Law Review—the Green Paper for the EqA—as the first of four key principles underpinning the effective operation of the PSED (Department for Education and Skills 2007, para. 5.44), and described by Hepple as "[p]erhaps the most important function of positive duties" (Hepple 2014, p. 167) and as one of the three interlocking mechanisms essential to the effective operation of reflexive regulation in the equality context (Hepple 2011)—an issue discussed further in Section 5.4 below. It is noteworthy that, in our study, some of the strongest expressions of the value of involvement were made by stakeholders who worked in public authorities or in policy-making roles. Indeed, several of these stakeholders, e.g., Duncan (public authority), Reginald (public authority and lawyer), and Orla (public authority), also referred to initiatives they were leading, in which the PSED was providing a basis for embedding equality and involvement more firmly within their organisational cultures. This is perhaps unsurprising, considering that the people working in public authorities who chose to take part in our study tended to be people with particularly strong commitments to equality and inclusion—it was people with outstanding reputations in this regard that we invited to participate. The fact that such people are drawing on the PSED to drive positive internal change does not mean that similar initiatives are happening in all public authorities. Nevertheless, the fact that the PSED is proving a useful tool to some public authority staff and elected members, for some initiatives in some organisations, is itself significant. The importance of taking notice of examples of positive practice when evaluating the effectiveness of the PSED was emphasised by Manfredi et al. (2018). Such examples provide pause, and a counterweight, to arguments that the PSED has no value.

None of our participants raised any concerns about the fact that there is now no involvement requirement in the England-specific duties—by contrast with the former specific duties under the DED and the current specific duties for Wales and Scotland. The only mention of this point was made by Nina (a high-profile campaigner and generally well-informed leader in a national disabled people's organisation) who, after the issue had been raised by one of the interviewers, indicated that she had forgotten that the involvement element of the English duty had been removed. The fact that concerns about poor involvement practices were not connected with the weakening of the legal requirements may suggest a general lack of awareness of the change, or even that it is not regarded as important because some element of involvement continues to be required by the general duty. Neither of these options seem likely, however, considering the dismay about this aspect of the England-specific duty expressed by numerous witnesses to the House of Lords Select Committee (House of Lords Select Committee on the Equality Act 2010

and Disability 2016, paras. 354–59). Evidence submitted to that Committee also suggested that the specific duties in Wales and Scotland, which include involvement or engagement obligations, were operating more successfully than the English duties—a point also made in other studies (Kotecha et al. 2018; Barrett 2024). This led the Committee to recommend that the English duties be revised to include similar provisions on involvement and engagement to those in Wales and Scotland (House of Lords Select Committee on the Equality Act 2010 and Disability 2016, paras. 360–61). Regrettably, like many of the other recommendations of that Committee, this recommendation seems destined not to be implemented. This, together with the length of time since the England-specific duties were introduced, may provide the most convincing explanation for our stakeholders' silence on the point. Also relevant might be the realisation that, even if involvement or engagement requirements were incorporated into the England-specific duties, work would still be needed to ensure that such involvement was effective and meaningful—as with the implementation of the current involvement duties in Wales and Scotland. Further, as Mitchell et al. (2014) note, care needs to be taken to recognise and minimise risks of engagement or involvement fatigue.

A link between "citizen participation" and "citizen power" was made by Arnstein who, in her seminal work on the "ladder of participation", said:

> "It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set . . . programs are operated, and benefits . . . are parcelled out. . . . There is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process". (Arnstein 1969, p. 216)

As indicated in the Section 4.3 above, the importance of recognising and addressing power imbalances (between the public authority and consultees, as well as amongst consultees themselves) in consultation and involvement processes was explicitly recognised by Felix (public authority) and, although more implicitly, by Duncan (public authority) and Daisy (campaigner). Such concerns have also been expressed in the literature (Black 2000; Edwards 2001; McCrudden 2007; Fredman 2011; Imrie 2013; Ashiagbor 2015; Manfredi et al. 2018). As Manfredi et al. (2018) note, consultations relating to the delivery of public services are likely to be more challenging in this regard than consultations relating to internal matters, such as employment—where stakeholders can usually be more easily identified. As they say, of public service consultations:

> "Since this function affects a large number of users, it can be more difficult for a local authority to consult all the relevant stakeholders. As a result, there is a risk that only the best organised groups are likely to have their voices heard . . . while those less organised, which possibly include more vulnerable individuals, end up being excluded from the process of consultation". (Manfredi et al. 2018, p. 379)

The EHRC guidance on "involvement", associated with the PSED specific duty in Scotland, includes useful pointers for public authorities to types of stakeholder who might be harder to reach, and therefore generally not heard in relevant involvement and consultation processes (Abrams et al. 2016, pp. 20–21). It also includes helpful ideas about how public authorities might provide something to stakeholders—such as payment for travel and time, or the provision of training in issues within the expertise of the authority—both to encourage them to participate and by way of recognition of the value of their participation. Such guidance seems likely to play a helpful role in recognising and tackling at least some of the challenges associated with power imbalance.

Power dynamics are also affected by the exclusion associated with failures to make aspects of consultation procedures accessible and inclusive of people with different types of impairment. Beyond issues of accessibility and adjustments likely to arise in consultations generally, our participants made it clear that there are significant particularities

involved in making consultations about changes to the built environment fully accessible and inclusive. These involve departing from standard processes for presenting information about proposed changes only in diagrammatic or other visual formats, so that information is also provided textually and perhaps in tactile formats. Beyond the format of information, though, as Fletcher (campaigner) explained, there is often a need for skilled access professionals—who understand both the design technicalities and the potential disability-related implications of proposed changes—to facilitate dialogue and ensure that disabled people are fully informed. The importance of the role of access officers, including in facilitating involvement processes, has also been highlighted by the Women and Equalities Committee, House of Commons (2017, paras. 77–80).

Another issue that surfaced in the data, and which relates to the specific context of the built environment, is the concern that too little 'regard' is being had by public authorities to issues of accessibility in the development of policies, and associated infrastructure changes, motivated by other policy agendas. During the COVID-19 pandemic, for example, established principles of accessibility and consultation were pushed aside in order to permit changes to streetscapes associated with social distancing and open-air eating and drinking (Eskytė et al. 2020; Shakespeare et al. 2021). From that time onward, other rapidly implemented changes (such as the prohibition of driving and parking in town and city centres (*Hamnett v Essex County Council*[32]), the prioritisation of cycle traffic over pedestrians, including in the form of bus-stop bypasses (National Federation of the Blind 2023), and the removal of pedestrian crossings, so that cars do not emit fumes whilst stationary (*R* (*on the application of Goodall*) *v Reading Borough Council*[33]) have been implemented as part of tackling climate change. Responding to emergencies such as COVID-19 and climate change is clearly essential but, as the UN Department of Economic and Social Affairs (DESA) has stressed, sustainable long-term solutions can be achieved only with the "full participation of everyone, including persons with disabilities" (United Nations Department of Economic and Social Affairs 2018). There is concern, however, that such "procedural justice is not generally being afforded to disabled people" (Kosanic et al. 2022; Jodoin et al. 2020). This concern was shared by many of our participants, together with frustration that the PSED was too weak to drive forward necessary change.

In short, achieving involvement that is meaningful, in built environment contexts in particular, is an ongoing challenge—not least because it entails an affirmation of accessibility and equality as social values and an associated commitment to addressing traditional power imbalances (Edwards 2001; Imrie 2013). The challenge is particularly acute because of the longstanding lack of voice for disabled people's organisations in relevant policy and decision-making processes. So fundamental are claims for effective involvement to disabled people's movements around the world that their best-known motto is perhaps "Nothing About Us Without Us" (Charlton 1998). Involvement is key to challenging the paternalistic, medicalised decision-making about the lives of disabled people, by professionals and family members, that have traditionally operated to disempower, marginalise, and oppress people who have (or are deemed to have) physical, cognitive, or other impairments. For disabled people, involvement—provided it is meaningful and not simply a tokenistic gesture, with no real influence over the outcome of decisions—is a stepping-stone to inclusion and freedom to lead one's own life.

5. Enforcement of the Public Sector Equality Duty and Accessible Pedestrian Environments

5.1. How the Public Sector Equality Duty Can Be Enforced

As explained in Section 1 above, the PSED aims to embed equality considerations into the routine workings of public authorities, not by relying solely on a command-and-control model of enforcement, but by way of a more innovative reflexive (McCrudden

[32] [2014] EWHC 246 (Admin).
[33] [2016] EWHC 3795.

2007) or responsive (Hepple et al. 2005) approach. As Hepple (2011, p. 320) explains, reflexive approaches (inspired by the work of scholars such as Teubner (1987)), do "not seek to impose substantive rules" on public authorities "but instead work with the internal dynamics of those [organisations] and co-ordinate them through 'proceduralisation'". He identifies three interlocking mechanisms underpinning models of reflexive regulation (Hepple 2011, pp. 321–22): first, internal scrutiny by the public authority itself; second, the involvement of relevant interest groups, and third, a robust enforcement agency (such as the EHRC) to act as "guardian of the public interest", by providing "assistance, building capabilities, and ultimately sanctions where voluntary methods fail". Together, these mechanisms create a "regulatory pyramid", with dialogue, persuasion, and voluntary agreement at the base, progressing up to sanctions and legal enforcement at the apex. Issues of sanctions and legal enforcement—the focus of this section—are relevant, not simply as a means of compelling compliance when processes associated with lower levels of the pyramid have failed, but as an incentive to and driver of voluntary self-regulation and ongoing compliance.

Turning first to the PSED-related enforcement powers of the EHRC, it may bring judicial review proceedings in respect of alleged breaches of the general duty.[34] It also has the power to assess the extent and manner of a public authority's compliance with both the general equality duty and the specific duties.[35] Where it considers there is non-compliance, it may issue a notice requiring compliance and written feedback on any action, taken or proposed, which is needed to ensure compliance with the relevant duty.[36] An assessment is required prior to the issuing of a compliance notice in respect of the general duty, but not in the case of specific duties.[37] Specific duties can be enforced only by way of a compliance notice—and thus only by the EHRC. While the EHRC has a unique role in the oversight and enforcement of the PSED, budgetary and other restrictions limit the extent to which these powers have been exercised in practice (Women and Equalities Committee, House of Commons 2019, paras. 26 and 43–45).

The PSED's general duty may also be enforced by affected individuals and organisations besides the EHRC. Breaches of this duty are actionable, not by way of private law claims for discrimination, but by way of public law actions for judicial review.[38] Such cases are heard in the High Court and entail a review of the process by which the relevant decision was made. It is not the outcome or content of the decision that is under scrutiny, but the process through which it was made. If successful, a judicial review action generally results in the relevant decision being quashed.[39] It does not result in the award of damages.

Judicial review can be sought by any person or organisation if they have "a sufficient interest" in the decision being challenged.[40] The courts take a flexible approach to whether a sufficient interest exists, considering issues such as the merits of the case, the importance of the issue raised, and the nature of the alleged breach of duty (*R v Secretary of State for Foreign and Commonwealth Affairs*[41]). The fact that organisations as well as individuals are eligible to bring judicial review actions creates opportunities for enforcement by representative organisations, such as disabled people's organisations. This contrasts with the position in discrimination cases, where the enforcement burden falls entirely on individual claimants—an issue that has attracted considerable criticism (e.g., House of Lords Select Committee on the Equality Act 2010 and Disability 2016; Women and Equalities Committee, House of Commons 2017, 2019; Barrett 2019). In practice, however, the limited resources of such

[34] EqA 2006, s. 30(1) and (2).
[35] EqA 2006, s. 31(1) and sch. 2.
[36] EqA 2006, s. 32(2).
[37] EqA 2006, s. 32(1)–(4).
[38] EqA, s. 156.
[39] Senior Courts Act 1981, s. 31(1).
[40] Senior Courts Act 1981, s. 31(3).
[41] [1995] 1 WLR 386, 396–397.

organisations, and the challenges of obtaining legal aid, mean that such representative actions are likely to be extremely rare.

In terms of time limits, there is a narrow window in which judicial review can be sought. In England and Wales, it must be sought "promptly" and no later than three months after the challenged decision was made.[42] The court may, however, extend or shorten this time limit.[43] In Scotland, the timeframe is not quite so rigid: judicial review should usually be sought within three months of the decision, but a longer period may be permitted if considered equitable by the Court.[44]

Civil legal aid is available to individuals with limited financial resources in judicial review cases.[45] It may also be available to organisations with legal personality, but only if an "exceptional case determination" is made by the Director of Legal Aid Casework.[46]

5.2. Enforcement-Related Reflections of Our Stakeholder Participants: Preliminary Explanations

Issues relating to the enforcement of equality law, including the PSED, were discussed in all four of our group interviews and all three of our individual interviews with lawyers and planner-policymakers. In the campaigner interviews, such discussions took place in three of the four individual interviews and one of the two group interviews. Three main themes, connected with enforcement of the PSED, emerged from our thematic analysis of the interview transcripts: first, perspectives on the value of enforcing the PSED; second, barriers to enforcing the PSED; third, the role of the EHRC in enforcing the PSED. These will now be discussed in turn.

5.3. Enforcement-Related Reflections of Our Stakeholder Participants: Findings

5.3.1. The Value of Enforcing the Duty

In the context of street environments, a number of participants observed that bringing an action to enforce the PSED has particular advantages over a discrimination action (e.g., for breach of the anticipatory reasonable adjustment duty under Section 29 of the EqA). For a PSED claim, unlike a reasonable adjustment claim, there is no need for the claimant to have actually experienced a harm or disadvantage in order to bring the case. As Lottie (lawyer) explained:

> "[W]ith judicial review . . . if the local authority announces that it is going to bring in the pedestrianisation scheme and . . . your client knows it is going to negatively affect disabled people, you don't have to wait for it to happen and to see the damage that it will do, before you challenge it. Right? Simply the announcement or the proposal to do it might be enough, might be a sufficient decision . . . So, in that sense . . . you might use it then to stop it before even it happens, or really has a damaging effect".

Several participants—e.g., Ralph (lawyer) and Lottie (lawyer)—recounted experiences of successfully using judicial review of the PSED to overturn public authority decisions, on the basis of failure to have "due regard" to their potential impact on disabled people. Beyond the value for the particular claimant in the particular case, several legal stakeholders highlighted the potential of such actions to achieve systemic change. This point was made by Darcie (lawyer) and Florence (lawyer). In Darcie's words:

> ". . . I think part of why people use the Equality Duty is because it can be a better way to get systemic change. And that if you're bringing a judicial review, you're more likely to have a trial, a reported judgement, or at least somewhere along the line, you're more likely to get policy change. If you're using private law, it quite often . . . turns into—it's just about the money and the specific, very specific

[42] Civil Procedure Rules 1998, r. 54.5.
[43] Civil Procedure Rules 1998, r. 3.1(2)(a).
[44] Court of Session Act 1988, s. 27A.
[45] Legal Aid Sentencing and Punishment of Offenders Act 2012 s. 9; sch. 1, pt. 1, para. 19; pt. 2, para. 18.
[46] Legal Aid Sentencing and Punishment of Offenders Act 2012, sch. 3, paras. 1–3.

changes in relation to that individual's impairment, for example—and you don't get the wider systemic change".

This is an interesting reflection and one which, in light of the fact that the PSED imposes obligations only of process, whereas the anticipatory reasonable adjustment duty imposes obligations of outcome, is somewhat surprising. The following words of Ralph (lawyer), about factors to take into account when considering whether to bring a PSED action, offer a counter perspective:

> "If you are sceptical that the PSED is going to get you over the line, for example, or you think that what is going to happen at some point, is the council will cave because it realises it can undo its decision and take the decision again having filled in a different form . . . Then that is really not going to help your clients that much. Because ultimately that is just a means of nudging the council to do its paperwork better. It's a process-based jurisdiction rather than outcome-based. If, on the other hand, you run those together with private law actions, for example, you might have maybe 100 people affected . . . you also . . . bring a private law action for damages, then the combined effect of approaching it in that sort of pincer style is one which hurts the local authority financially and embarrasses it at the same time. So, you're using the private law action essentially to nudge a change of behaviour . . . that they might not be legally obliged to do through a judicial review".

Interestingly, Ralph here urges the use of the PSED alongside other strategies, such as a discrimination action. The importance of using it as one of several tools, rather than as a single one, was also stressed by other participants, including Barnaby (campaigner) and Reginald (public authority and lawyer). In Reginald's words:

> "So, yeah, law and politics, I mean, they are two tools that you use for general campaigning on social issues and discrimination. They go hand-in-hand. And of course, the key rule about doing a judicial review on some campaign is that it's just pointless doing it unless you've got a good public campaign, local campaign behind it".

Barnaby (campaigner) referred to PSED enforcement as "a useful tactic, amongst other tactics, it is only one way that is meant to deal with situations".

Barnaby also provided examples of the positive impact that, on occasion, resulted from formal threats to enforce the PSED, without actually commencing litigation, saying:

> "It can be useful . . . It can force senior managers . . . to become aware of what is going on . . . To give an example, [organisation name], they were being terrible about giving information about accessibility of their . . . service and attempting to block it. Then when . . . it got through to head office . . . what their own subcontractors or departments were doing . . . they were horrified and sorted it. So sometimes it can bring people together".

Violet (campaigner) also spoke of the benefits of using the PSED to frame communications with a public authority which, in her case, was in the process of making a decision to embark on a scheme regarded by disabled people as disadvantageous to them. She said:

> "Some designs for a key street in the centre of [name of city] were published. And we did a joint response to the plans, which was fairly critical of them, and submitted it to the city council. And then we found that . . . they had not completed reviewing the consultation responses before seeking to take this decision. And we wrote to every councillor on the committee asking what the result of the consultation was, whether there were findings available, had they done an equality impact assessment on the scheme that they very much wanted to get funding for? So, the council was then forced to do an equality impact assessment".

Actions such as those described by Barnaby (campaigner) and Florence (lawyer), which threaten enforcement of the PSED without proceeding to litigation, may well become more common in light of cautionary words about future PSED enforcement actions, such as those spoken by Lottie (lawyer):

> "[T]hat due regard duty is actually reasonably straightforward to discharge if the local authority is properly advised. . . . There was that slew of cases where public claimant lawyers had a good run. But I suspect that is now coming to an end. So, I think there is a need to think a little bit more creatively about claims, other claims that could be brought".

5.3.2. Barriers to Enforcing the Duty

Our participants identified a number of potential barriers for litigants, which may well reduce the number of PSED actions coming to court. This was recognised by Florence (lawyer), who observed of the PSED:

> "I think certainly in Scotland, JRs are as rare as hens' teeth outside immigration law. And so, it's used almost not at all here except by the Equality and Human Rights Commission. Just hardly ever see it. We can go into a hundred reasons why that's the case".

Four main barriers emerged from our interviews: time limits, accessing funding and legal support, last-minute compliance by public authorities, and a lack of judicial familiarity with both the PSED and disability discrimination law.

Turning first to time limits, as mentioned above, the window of time after the relevant decision has been made, in which to bring a judicial review claim, is extremely narrow. The problem is compounded, as Ralph (lawyer) explains, by "the difficulty in identifying when the key decision was taken". He added:

> "[W]e've had cases where the decision may have actually been taken by a cabinet some time before we thought the decision had been taken. That can affect the ability to bring a challenge in time. So, the lack of transparency of information is the problem".

A second concern, raised by many stakeholders, is the difficulty of funding judicial review cases and the connected difficulty of finding a lawyer willing to take on the work. This being said, Darcie considered that it may well be easier to obtain legal aid for a PSED case than for a discrimination case:

> "It's marginally easier to get it for a JR. Partly because there were no specialist . . . legal aid contracts in discrimination law until about two years ago, which meant that a firm like mine, with loads of experience in using the Equality Act, couldn't get a legal aid certificate to bring a private law discrimination claim".

Although legal aid is technically available to suitably qualified claimants for judicial review proceedings, it is by no means easy to obtain. As Lottie (lawyer) observed:

> "legal aid has been so decimated that really it is only available to a very small category of potential claimants".

Similarly, Darcie (lawyer) commented that "legal aid is virtually non-existent. It's really hard for people to access it". A similar point was made by Reginald (public authority and lawyer), who explained how the problem had been exacerbated by cuts to the funding previously made available by the EHRC for equality-related work, and the impact of this on the number of lawyers working in the area. He said:

> "[T]he fact is that there's barely any legal aid. There's practically no funding from the commission anymore or anyone else. But also, there's practically no one to fund".

In this connection, it is interesting to note the experiences of Lloyd (campaigner). After being unsuccessful in accessing legal aid, and unable to find a solicitor willing to act for him in a judicial review claim, he brought an unsuccessful discrimination case as a litigant in person against his local council—his aim being the unselfish one of preventing the installation of an accessibility barrier in his city centre. He commented about the PSED and access to justice:

> "The problem is that disabled people are denied access to it for reasons of funding. . . . I think the example would be that one officer within the council kind of basically mocked us . . . kind of laughingly that clearly if you would have had half a million pound and gone to it through a JR, you probably would have won. And to be honest, [the city council] would have taken you seriously".

A third barrier to the bringing of judicial review cases for breach of the PSED was the fact that cases could potentially collapse at a very late stage if a defendant had 'due regard' to the PSED's three aims. This concern was highlighted by Ralph (lawyer), who illustrated the problem in question by reference to the case of *Rowley v The Cabinet Office*.[47] In this case, Fordham J noted that the Cabinet Office's equality-impact Assessment was "clearly a 'last-minute job', produced in response to judicial review proceedings" (*Rowley*, para. 41). Nevertheless, he acknowledged it to be "a rigorous evaluation which recognises the features of the statutory duty, and which cannot, in any material respect, be said to be a failure of 'due regard'" (*Rowley*, para. 43). Accordingly, the Cabinet Office had discharged its obligations under the PSED and that element of the case against it therefore collapsed. As Ralph noted, this creates considerable risk and uncertainty for those bringing PSED enforcement actions:

> "So, if you are a lawyer running these cases, and you know that . . . remedial work can be done up until the day before trial, then it is quite worrying—because, unless you have got public funding for the challenge, which is increasingly unlikely, then you may find that you assist with the change but don't get paid for it. Which is a problem. The system is generally fairly stacked against you if you actually bring one of these challenges to be fair".

Fourth, a lack of judicial familiarity with the PSED—and with the EqA more broadly—was identified as a potential obstacle to bringing successful actions including the PSED. A number of legal stakeholders echoed Ralph's views (quoted in Section 5.3.1 above) that the limitations of a procedural claim for breach of the PSED might be mitigated in some circumstances (e.g., when challenging inaccessible pedestrian environments) by combining such a claim with one for discrimination. Such combined claims, however, would be heard in the High Court—rather than the County or Sherriff Court, where cases solely based on discrimination would be heard. Not only would this increase costs but, as several participants noted, there was a risk that the case would be heard by a High Court judge familiar with public law principles but unfamiliar with the complexities of the anticipatory reasonable adjustment duty. This concern was well expressed by Olivia (lawyer), referring to the Northern Ireland case of *Re Toner's Application for Judicial Review*:[48]

> "So that was a [judicial review]. And they pleaded . . . the Northern Ireland equivalent . . . of the PSED—but they also used the Section 29 equivalent of the DDA . . . And they won—but they won on the equality impact assessment and their failure to take account of . . . relevant research and stuff. But the judge absolutely hated the Section 29 point. He didn't want to deal with it at all, and it was quite instructive . . . listening to him on it. And in the end, he just said—I will find for you on the equality duty point and then I don't even have to make a decision on the other point . . . I am not going to deal with it. And . . . after watching that, I was just a bit like, you are never going to get it with a JR. . . .

[47] [2021] EWHC 2108 (Admin).
[48] [2017] NIQB 49.

> Even though you can use public law courts for that, they are just not set up to deal with it. Then I think using the County Court would be more effective".

Scarlett (lawyer) also commented on the potential advantages and disadvantages of bringing a claim in the High Court and the County Court, as follows:

> "I think County Courts and the High Court, they have their advantages and their disadvantages. Obviously, the High Court you get a particular type of judgment and a particular type of judge, they are used to dealing with often quite knotty areas of law and there are people who will prefer to take their cases in the High Court particularly because of that and that is understandable. Particularly when you are dealing with a public authority, because they are used to dealing with that. And sometimes if you take a case in the County Court you will get a judgment which may not be particularly robust and that can be difficult because it could be grounds for an appeal. Having said that, you can get very robust decisions in the County Court, and you can get judges who are very bold. And judges who might actually go much further in some respects against a public authority than some High Court judges would be prepared to do because there is a certain amount of deference in a way or a certain amount of built-in latitude for a public authority that you won't get in a County Court necessarily. So, there are advantages and disadvantages . . ."

Olivia (lawyer) went on to point out that the High Court's tendency to focus on the PSED, and not engage with discrimination claims, had unfortunate knock-on effects on the thinking of public authorities:

> "They always just think that their equality obligations are just the PSED . . . and sometimes they are not even bothered about that. But, you know, they just think—if I have got an equality impact assessment and I can show that I have done it, it doesn't really matter that the scheme discriminates. They don't move on to the—oh dear, what do I do about the duty to make reasonable adjustments etcetera. That doesn't sort of enter peoples thinking at all. And I don't know how we get around that, until it is taking a case and it being seen to be a factor".

This reminder of the real-world implications of judicial approaches to the EqA is instructive.

5.3.3. The Role of the EHRC in Enforcing the Duty

Various references were made to the role of the EHRC, as regards enforcement of the PSED. One participant, who had worked in the Commission,[49] observed that much of the EHRC work on the PSED was not court-based—involving, instead, the use of non-court-based enforcement powers or simply nudging or "shoving people as the commission . . . to improve their practice". Alastair (lawyer), who also had experience of working in a commission, confirmed this with particular reference to the built environment context. He explained that, after its Housing Enquiry (Equality and Human Rights Commission 2018), the EHRC had carried out follow-up work that was "particularly focused on improving the performance of the PSED by the Planning Inspectorate". This involved "telling them about what the PSED is and what it means for their work as inspectors". He indicated that there was "quite a bit of pushback, because they thought that their job was to assess the soundness of a plan according to the National Planning Framework and all of their own internal guidance, and that their job was not to assess the PSED compliance". After sustained engagement with the EHRC, however, he said, "they recognised that the PSED compliance of the local authority has to be a component of the soundness that they assess when they are inspecting" and that the engagement resulted in "updated training that the Planning Inspectorate set out for its inspectors". He added that "that felt like quite a good step forward".

[49] We have not used this participant's pseudonym here in order to protect their identity.

This type of engagement by the EHRC clearly has the potential to enhance the effectiveness and impact of the PSED very significantly in the context of street environments. The extent of such impact is, however, difficult to ascertain. Concern about lack of awareness of the PSED amongst planning authorities was expressed by several of our participants, but the extent to which such concern continues following the EHRC's intervention is unclear.

Despite its work on the PSED with the Planning Inspectorate, there was a perception amongst many participants that ideally, the EHRC would be doing more to raise awareness of, and ensure compliance with, the PSED in this context. Lloyd (campaigner) stated that he had "absolute total respect for the work, the staff of the Equality and Human Rights Commission", but went on to say that:

> "[T]he government knew what they were doing when they took a lot of funding out of it. And that's exactly what they were there to do, because there would have been so many JRs against a lot of government policy . . . I think, until the Equality and Human Rights Commission are appropriately funded or have some other means of allowing them to support and enable peer–peer action, then unfortunately, they're not much more use than a chocolate fire guard".

Nina (campaigner) observed of the PSED that "[i]t does feel like something without any teeth", suggesting that one possible explanation might be that:

> "when we had the DRC and the OEC and the Race Equality Council . . . they might have been siloed, but I think they had a more targeted agenda. And the Public Sector Equality Duty covers nine protected characteristics and looking at good relations and all sorts of things. And it almost has become so big that it is sort of, almost become too unfocused to implement".

5.4. Discussion

These findings raise an array of issues, two of which merit particular attention here. First, they raise questions about the extent to which enforcement of the PSED is contributing in practice to the realisation of reflexive regulation in the context of accessible urban environments. Second, they raise questions about the extent to which the PSED is working in harmony with other elements of the EqA—in particular the anticipatory reasonable adjustment duty under Section 29—to ensure accessibility in this context.

An obvious starting point for further reflection on the implications of our enforcement-related findings for the effectiveness of reflexive governance in this context, is the role of the EHRC—the body entrusted with particular responsibility for supporting, monitoring, and enforcing the PSED. The leadership, monitoring, and enforcement roles of such bodies are widely recognised to be pivotal (Gooding 2009; Crowley 2016, p. 45; Kotecha et al. 2018, p. 29). Participants who had worked in the EHRC drew attention to the fact that it carried out substantial PSED-related work outside the courtroom. Such work is unquestionably vital to the widespread implementation of the PSED (Kotecha et al. 2018) and the successful rollout of reflexive governance. There is a danger, however, of such work lacking visibility and therefore not achieving maximum impact. Visibility was a key goal of the DRC's strategy for enforcing the DED—one which Gooding feared would not be foregrounded to the same extent by the EHRC in its PSED-related work (Gooding 2009, pp. 37–39). In 2019, the Women and Equalities Committee stressed the need for greater publicity to be given to the EHRC's enforcement work (Women and Equalities Committee, House of Commons 2019, paras. 27–31, 46–54) because it served the dual purpose of encouraging compliance and deterring breach (para. 53). It is not evident from the material highlighted on the EHRC website, however, that the visibility of its PSED-related enforcement work has increased since 2019.

A significant limitation on the EHRC's ability to engage in court-based enforcement of the PSED is budgetary (Conley and Wright 2015). The scale of these cuts is striking—from GBP 70.3 million in 2007 to GBP 17.1 million in 2022–2023 (Government Equalities Office

2023a, pp. 25–27). They were described as a step backward for reflexive regulation by Hepple (2011) and a threat to the impact of the PSED by O'Brien (2013).

The negative impact of limitations in the EHRC's legal enforcement of the PSED would be less damaging if there were fewer barriers in the way of individuals or organisations bringing judicial enforcement proceedings—barriers by no means unique to the PSED (Lawson and Orchard 2021; Bartlett 2023). The significance of such barriers—particularly the financial deterrents associated with limited and unpredictable access to legal aid funding—was highlighted by our participants in the context of PSED, echoing findings in other PSED research (Sigafoos 2016, pp. 76–77). Partly because of these and other barriers, and despite indications that this type of litigation "may drive improvements in local authority performance, as measured by official indicators" (Sunkin 2015, p. 247), our research suggests that such actions—already scarce in the context of decisions affecting pedestrian accessibility—will become less rather than more common. This said, our data supports findings in earlier work (e.g., Bondy and Sunkin 2009, p. 30; Sigafoos 2016, p. 71) that the PSED often proves influential when used in initial correspondence about the equality-related impact of a public authority decision—without resorting to litigation. There is, however, a risk that the PSED will lose value in such pre-litigation interactions if it becomes understood that, in particular types of dispute, enforcement action is unlikely to be brought or to succeed (O'Cinneide 2003). The stronger this understanding grows, the more stunted Hepple's regulatory pyramid will become, with consequent damaging repercussions for the model of reflexive governance on which the PSED was built.

The case law set out in Section 2 above demonstrates that enforcement proceedings are still being brought against public authorities regarding access barriers in urban environments. It is notable, however, that the only instances in which such cases have succeeded to date concern challenges to local guidance falling short of the accessibility-related requirements in national standards. The fact that accessibility barriers will be built into urban developments driven by other policy agendas (such as climate change) has not yet prevented courts from ruling that the PSED is discharged because 'due regard' has been had to disability equality. This case law does not inspire confidence in the potential of the PSED to foster the depth and breadth of engagement and innovation needed to fully embed accessibility into other policy agendas—and that it is perceived as a necessary and integral element of those agendas, rather than as a separate and rather troublesome policy agenda, which stands in competition with them. The PSED's 'due regard' standard, as Fredman (2011) feared, is of limited value in cases where equality has been considered but outweighed by other policy factors. Expressing regret that this standard had been selected in place of a more action-oriented duty—such as one to take steps or achieve equality outcomes—she observed that the 'due regard' standard risks giving an impression of "fundamental ambivalence as to the importance of equality" and of "deferring to public authorities' view as to what priority equality deserves" (Fredman 2011, p. 418).

Turning now to the related issue of the alignment between the PSED and discrimination actions under the EqA, this issue matters because, as made clear in the data above, navigating points of connection and overlap between them is significant in the development of litigation strategies, and because of the possibility that barriers or weaknesses in the PSED, identified above, might be mitigated by alternative actions for discrimination. In the context of challenges to accessibility barriers in urban environments, the most relevant of the possible discrimination actions is breach of the anticipatory reasonable adjustment duty—which, together with the PSED, is the EqA's primary mechanism for promoting accessibility. It can be used to challenge failures by providers of public functions or services to make reasonable adjustments to the physical features of streetscapes, or to the provisions, criteria, or practices affecting their use and condition. This duty, set out in Sections 20–22 and Schedule 2 of the EqA, applies to providers of public functions by virtue of Section 29(6) and (7) of that Act. It is 'anticipatory' in that it requires duty-bearers to take ongoing steps to monitor all aspects of their operations and proactively take reasonable steps to implement

adjustments to prevent disabled people being subjected to a "substantial disadvantage" in connection with their functions or services.

Although there has been some probing analysis of the relationship between indirect discrimination and the PSED (Fredman 2014), there has been very little of the relationship between the anticipatory reasonable adjustment duty and the PSED. There are obvious synergies, as well as differences, between them, as there were between the DED and the anticipatory reasonable adjustment duty (Lawson 2008, pp. 221–23). Both are proactive in nature, requiring ongoing attention to issues of disability equality and inclusion—the quality which makes them more suited than other EqA tools for promoting accessibility. The anticipatory reasonable adjustment duty, however, is outcome-oriented, unlike the PSED, and the standard it demands—to take 'reasonable' steps to prevent disability-related disadvantage—is undoubtedly more demanding than that of 'due regard'. Disabled people, disappointed with the performance of the PSED in embedding accessibility into urban environments, may therefore be tempted to look instead to the anticipatory reasonable adjustment duty. Frustratingly, however, that duty too is beset with problems of implementation and enforcement (Lawson and Orchard 2021), with the result that it is struggling to find the necessary purchase to drive forward accessibility and inclusion across public services and functions. One of its major limitations (Lawson and Orchard 2021, pp. 313–14) is that, despite the fact that it requires steps to be taken in advance of a particular complaint, it can be enforced through a discrimination action only when a disabled claimant has actually experienced a substantial disadvantage.[50] Early hopes that it might be possible to bypass this requirement through bringing judicial review actions to enforce the duty (Gooding 2013) were dashed by the Court of Appeal in *R* (*on the application of mm and DM*) *v Secretary of State for Work and Pensions*[51] in 2013. Consequently, the anticipatory reasonable adjustment duty cannot be used to challenge and prevent the construction of new accessibility barriers—the reason for the failure of the case brought by one of our participants, Lloyd (campaigner), described above. Such challenges can succeed only when the barrier has been created, possibly at considerable public expense, because it is only then that it will actually disadvantage a disabled person. The PSED, in contrast, can be used to challenge a decision to make changes to the physical environment before those changes have been implemented. As established above, however, there are many reasons why potential claimants might rightly be cautious about embarking on such enforcement action.

6. Conclusions

The social justice concern at the heart of this article is the inclusiveness of streetscapes and the role played by the PSED in ensuring that accessibility is factored into relevant decision-making processes. As is evident from the analysis above, it is a concern which is both extremely timely, considering the need for urban planning to respond to pandemic and climate change emergencies, and significant, given the impact of inaccessible public realms on lives—particularly those of disabled and older pedestrians. This is, in the language of one of our participants, Nina (campaigner), a "decade of change" in the streetscapes of our towns and cities. The PSED, along with the anticipatory reasonable adjustment duty, is a key legal tool that should be operating to embed equality (and, through it, accessibility) into this new era of urban planning and policy-making. There are, however, serious concerns that accessibility is not currently being sufficiently prioritised.

The importance of accessibility was stressed in the Westminster Government's National Disability Strategy. Although many of its accessibility-related commitments relate to websites and technology, others have relevance to pedestrian environments. These include making the UK "the most accessible tourism destination in Europe" (Cabinet Office Disability Unit 2021, pp. 72, 82), tackling "persistent accessibility issues across the transport

[50] EqA, s. 21(3).
[51] [2013] EWHC Civ 1565.

network, including . . . roads" (Cabinet Office Disability Unit 2021, p. 41), and "transforming the accessibility of our towns and high streets" (Cabinet Office Disability Unit 2021, p. 72). This Strategy also includes explicit recognition of the seriousness of the problem of inaccessible urban environments, describing the fact that 31% of disabled people always or often found public space difficult to use as "not only a social injustice but a potentially huge loss to high street businesses" (Cabinet Office Disability Unit 2021, p. 73).

This apparent commitment to accessibility seems at odds with post-EqA governmental measures relating to PSED involvement and enforcement, viewed by participants in our research (as well as by high-profile commentators) as limiting the impact and effectiveness of the PSED. Such measures weaken the power of the PSED to foreground accessibility in relevant decision-making processes—an outcome reinforced and intensified by analogous problems of implementation and enforcement associated with the anticipatory reasonable adjustment duty (Lawson and Orchard 2021). The National Disability Strategy makes no promises to strengthen the EqA and its role in embedding accessibility in public services and functions. It does, however, include some discussion of accessibility-related standards for urban environments—committing, for example, to updating guidance relating to street design, including tactile paving (Cabinet Office Disability Unit 2021, p. 73).

Design guidance and standards have a vital role to play in embedding accessibility into our streetscapes. There is, however, a risk that, if poorly drafted, they will instead create and entrench accessibility barriers. The gravity of this risk is reflected in the recent PSED litigation, discussed in Section 2 above, in which disabled claimants challenged such guidance on the grounds that it failed to have sufficient regard to issues of disability equality. In that litigation, although the PSED provided a basis for challenging local guidance falling short of national standards, it has to date not proved useful in overturning the introduction of national standards—even when doing so risks enhancing disability-related exclusion. There is an urgent need for attention to be paid to the process by which relevant accessibility standards are developed in the UK, particularly as regards consensus-building and the involvement of disabled people and accessibility experts. Lessons may usefully be learned from experience elsewhere, such as in the United States, where the Access Board has recently issued new accessibility standards for pedestrian environments under the Americans with Disabilities Act 1990 and the Architectural Barriers Act 1968 (United States Access Board 2023; Whaley et al. 2024). At present in the UK, however, the PSED—together with other EqA obligations and relevant design standards—is not sufficiently robust or consensus-based to embed accessibility securely into the transformations that are so rapidly reshaping our urban environments.

In short, our study indicates that, for purposes of enhancing the accessibility of urban environments, the effectiveness and impact of the PSED have been limited. Its aim—the mainstreaming and embedding of equality—remains as important and necessary as it ever was. The PSED has undoubtedly made some contribution to achieving this aim—and any such contribution is valuable. It has, however, not delivered on its early promise and the high hopes initially attached to it. There is undoubtedly scope for it to be shaped, operated, monitored, and enforced in ways that will enhance its effectiveness as a tool for embedding accessibility in our urban environments. Such accessibility, however, can never be achieved by the PSED alone. The time is ripe for a considered analysis, drawing on developments elsewhere in the world, of more effective joined-up approaches to law and policy that will more effectively ensure that accessibility is achieved in practice.

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Appendix A

Table A1. Participants' information.

Pseudonym	Stakeholder Category	Description
Alastair	Lawyer	Senior lawyer in a national equality and human rights organisation
Barnaby	Campaigner	Trustee of a national disability rights organisation and equality campaigner
Daisy	Campaigner	Disabled person and accessibility expert working with a range of organisations
Darcie	Lawyer	Senior lawyer in a national human rights organisation
Duncan	Public authority	Elected member of local council
Felix	Public authority	Member of the House of Lords
Fletcher	Campaigner	Accessibility consultant and campaigner
Florence	Lawyer	Senior lawyer in a national equality and human rights organisation
Gregor	Public authority	Representative of a national organisation working on the promotion, design, and implementation of active travel
Hamish	Lawyer	Disability equality and human rights barrister
Harrison	Public authority	Manager at a local council
Lloyd	Campaigner	Senior manager in a local disabled people's organisation
Lottie	Lawyer	Planning and equality barrister
Nina	Campaigner	Senior manager of a national disabled people's organisation
Olivia	Lawyer	Lawyer in a disabled people's organisation
Orla	Public authority	Senior civil servant in Scotland
Piers	Campaigner	Senior manager of a local disabled people's organisation
Ralph	Lawyer	Equality and human rights solicitor in private practice
Reginald	Public authority, Lawyer	Equality solicitor and elected member of a local council
Scarlett	Lawyer	Equality and human rights barrister
Violet	Campaigner	Accessibility expert in a disabled people's organisation

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Race Relations Act 1976.
Senior Courts Act 1981.
Sex Discrimination Act 1975.

Legislation (United States)

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