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DILUTING SUBSTANTIVE EQUALITY: WHY THE UK GOVERNMENT DOESN'T KNOW IF ITS WELFARE REFORMS PROMOTE EQUALITY

Simon Roberts
Associate Professor of Public and Social Policy
School of Sociology and Social Policy
University of Nottingham
UK

Bruce Stafford
Professor of Public Policy
Sociology and Social Policy
University of Nottingham
UK

Katherine Hill
Senior Research Associate
Centre for Research in Social Policy
Loughborough University
UK

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Abstract

The UK Coalition government introduced a raft of welfare reforms between 2010-2015. As part of its response to the financial crisis reforms were designed to cut public expenditure on social security and enhance work incentives. Policy makers are required by legislation to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people. This Public Sector Equality Duty is an evidence-based duty which requires public authorities to assess the likely effects of policy on vulnerable groups. This chapter explores the extent to which the Department for Work and Pensions adequately assessed the equality impacts of key welfare reforms when policy was being formulated. The chapter focuses on the assessment of the impact of reductions to welfare benefits on individuals with protected characteristics - age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, and sexual orientation - including individual and cumulative impacts. It also considers mitigating actions to offset negative impacts and how the collection of evidence on equality impacts was used when formulating policy. The chapter shows that the impacts of the reforms were only systematically assessed by age and gender, and, where data were available, by disability and ethnicity with no attempt to gauge cumulative impacts. There is also evidence of Equality Impact Assessments finding a disproportionate impact on individuals with protected characteristics where no mitigating action was taken.

Introduction

In the UK policy makers are required by the Public Sector Equality Duty (or the Equality Duty), which is set out in the Equality Act 2010, to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The Equality Duty is an evidence-based duty which requires public authorities to assess the likely effects of policy on vulnerable groups. The Equality Duty is an example of adopting a 'substantive equality' approach, because it requires an active approach to promoting equality, as opposed to a more passive 'formal equality' stance towards tackling inequality.

The 2010 election followed the aftershock of a global financial crisis with the UK economy having gone into a deep recession in the second quarter of 2008. The Coalition government of Conservatives and Liberal Democrats took office as the economy had (in the third quarter of 2009) begun to emerge from the recession. Following the election the Government introduced an Emergency Budget in June 2010 and published a Comprehensive Spending Review in October 2010 to launch a programme of unprecedented cuts in public expenditure (Taylor-Gooby & Stoker, 2011). As part of its response the UK Coalition government introduced a raft of welfare reforms between 2010-2015, which were designed to cut public expenditure on social security, as well as enhance work incentives for those of working age. These measures affected mainly non-pensioners in receipt of benefits notably long-term sick and disabled people.

The obligation to monitor the equality impact of these welfare reform policies under the Equality Duty falls primarily on the Department for Work and Pensions (DWP). This chapter explores the extent to which the DWP adequately assessed the equality impacts of these key welfare reforms when policy was being formulated between coming to office in 2010 and 2013. As such it highlights a significant and new finding that whilst legislators developed a substantive egalitarian policy mechanism, practices diluted the ability of Government to pursue substantive equality with respect to welfare reform. The chapter focuses on the assessment of the impact of reductions to welfare benefits on individuals with characteristics that are protected by legislation. It considers the treatment of individual and cumulative impacts, any mitigating actions put in place to offset negative impacts and how the collection of evidence on equality impacts was used, or could be used, to feed into future policy reform and spending decisions.

The chapter is based on an extensive review of secondary published evidence on the welfare measures, including 11 DWP and Department for Communities and Local Government (DCLG) Equality Impact Assessments (EIA), and 16 face-to-face and telephone interviews with senior officials in the DWP and the DCLG (the latter taking over policy responsibility for Council Tax Benefit (CTB) during Spring 2013).

The chapter shows that the impacts of the reforms were only systematically assessed by age and gender, and, where data were available, by disability and ethnicity. Little or no assessment was made for the other protected groups. Moreover, there was no attempt to gauge the cumulative impact of the reforms on the protected groups. There is also evidence of Equality Impact Assessments finding a disproportionate impact of a measure on individuals with protected characteristics where no mitigating action was taken.

The next section outlines the development of equality and non-discrimination legislation in the UK including a brief description of the Equality Act 2010 and the Public Sector Equality Duty. The following section introduces the concept of substantive equality. The various welfare measures that were reviewed as part of the research are then examined in turn. Data issues and the use of comparators in equality impact assessments are discussed before the conclusions are presented.

The development of equality and non-discrimination legislation

Britain began to tackle discrimination in the social sphere during the 1960s. The Race Relations Act 1965, which prohibited direct discrimination in public places such as hotels and public houses, was the first legislation to combat social discrimination. The 1968 Race Relations Act extended the scope to employment, housing, and goods and services. Homosexual acts were partially decriminalised in 1967 in England and Wales, in Scotland in 1980 and in Northern Ireland in 1982. In 1970 the Chronically Sick and Disabled Act required local authorities to register disabled people and publicise services. Discrimination against disabled people was further addressed in subsequent legislation, notably the Disability Discrimination Act 1995. The Equal Pay Act 1970 and Sex Discrimination Act 1975 introduced the notion of indirect or adverse effects that operated in US legislation and provisions allowing positive discrimination which signalled the beginning of the shift from formal to substantive equality (Hepple, 2010). Thus, UK equality law developed piecemeal and was based on distinct characteristics. This approach and body of legislation was widely criticised for being “outdated, fragmented, inconsistent, inadequate, inaccessible, and at times incomprehensible.” (Hepple, 2010, p. 13).

The Equality Act 2010

The Equality Act 2010 became effective on 1 October 2010. The Act covers Great Britain (England, Wales and Scotland), but not Northern Ireland which has devolved powers in this area.

The two main stated objectives of the Equality Act are to:

- Simplify the legislation by removing anomalies and inconsistencies that had developed over time in the existing legislation.
- Strengthen the legislation by extending the protection from discrimination in certain areas and introducing a number of specific new measures.

The Equality Act 2010 consolidated the previous nine pieces of equality legislation based on protected characteristics to create, for the first time in the UK, unified equality legislation. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Public Sector Equality Duty

The Public Sector Equality Duty, which is set out in Section 149 of the Equality Act 2010 and came into force on 5th April 2011, requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. It applies across Great Britain to public bodies specified in the Act, and to any other organisation when it is carrying out a public function. Recent case law has made it clear that public bodies must have due regard to equality, not only in the final policy decision, but in the process leading up to that decision. This means that public bodies need to analyse and understand the potential impact of proposed policies and decisions on the groups with protected characteristics at the formative stages, in advance of the adoption of such policies (HL, 2010, Col 1401).

The Equality Duty requires public authorities to analyse the likely and actual effects of policy and decisions on the relevant groups with protected characteristics. Where there is evidence of an adverse impact on any of these groups, the public authority must consider whether that policy is nevertheless justified in the light of wider aims. Even if it is justified, public authorities should consider whether they should take proportionate steps to mitigate or avoid the adverse impact. It is an evidence-based duty. An assessment of potential or actual adverse impact has to rest, not on opinion, but on analysis of likely outcomes for different groups, based, as far as is possible, on objective data. The assessment of impact on equality may be undertaken with reference to a template known as an Equality Impact Assessment (EIA) to collate and present relevant data and decisions, but this is not a legal requirement and the assessment of impact on equality may take other forms (EHRC, 2012a, p. 8). The DWP and DCLG were subject to this Equality Duty in developing their welfare reforms, and in doing so did produce EIAs.

Substantive equality

Equality is a complex concept. One distinction is between formal (or procedural) equality and substantive equality (Rosenfeld, 1986; Barnard and Hepple, 2000; Hepple, 2010). The Equality Duty is an example of adopting a 'substantive equality' approach, because it requires

an active approach to promoting equality, as opposed to a more passive ‘formal equality’ stance (Hepple, 2010). Formal equality is an Aristotelian legalistic approach using formal rules to ensure equality of treatment – so that everyone should be treated the same. However, distributing things fairly does not take into account differences between people, and so, in terms of the Equality Duty, does not eliminate discrimination, advance equality of opportunity, and foster good relations. Indeed, pursuing formal equality and ignoring individual differences through equal treatment can lead to substantive inequalities because the wider (historical) context is excluded from consideration. Substantive equality is a more nuanced understanding of equality that takes into account the factors that can lead to discrimination and inequalities and is cognisant of differences and diversity. It provides a justification for addressing indirect discrimination. Substantive equality provides equality of opportunity, where necessary, this is achieved by adjusting policies and treating people differently. The Equality Duty, with its focus on people with protected characteristics, places the onus on public authorities to take the initiative to address disadvantage, accommodate difference and facilitate participation. The ‘due regard’ test, is a substantive equality policy tool. Indeed, the British courts have emphasised its non-formal equality credentials (HL, 2010, Col 1401).

Welfare Measures

The various welfare measures that were reviewed as part of the research are discussed in turn below.

Capping household benefit payments from 2013

This Equality Impact Assessment (DWP, 2012a, p. 9-10) outlined the expectation that people’s ‘options’ in response to the policy involve starting work, reducing spending, drawing on other income, or moving to cheaper accommodation. Mitigation involved supporting people to change their work circumstances and the use of Discretionary Housing Payments, which are administered by local authorities, to provide temporary relief for those unable to move immediately.¹ A statement was included outlining the DWP’s commitment to monitoring the impact of the policy and effectiveness of mitigating actions including the experiences and outcomes for individuals with protected characteristics.

Localisation and reducing spending on Council Tax Benefit by ten per cent

The Government determined that one age group, pensioners, was to be protected from the ten per cent cut in funding. As a consequence the burden of funding reductions fell disproportionately upon those of working age.

The DCLG published an EIA for this policy (DCLG, 2012a). The localisation of Council Tax reduction schemes means that each local authority has responsibility for assessing impact on equality for their schemes. Thus, the approach to assessing impact on equality was structurally different to the other measures discussed in this chapter. Nevertheless, DCLG sent local authorities guidance which reminded them of their statutory with respect to vulnerable people in their new Council Tax schemes. Here ‘vulnerable people’ were defined broadly but include people with protected characteristics under the Public Sector Equality Duty (DCLG, 2012b).

In administering their scheme, local authorities were intending to collect administrative data that would record whether a claimant is a pensioner (otherwise they did not have data on age), number of children, disability (if in receipt of an eligible disabled person’s benefit if the scheme takes account of disability), but not on gender, race, religion or belief, sexual orientation, pregnancy and maternity, marriage and civil partnerships or gender re-assignment.

However, DCLG officials believed that the information gathered by local authorities during their day-to-day contacts with claimants, in particular through appeals against decisions, would be the most useful in assessing the impact of local schemes on equality. If appeals show any pattern with reference to the protected characteristics that is when DCLG would expect local authorities to look more closely and conduct a supplementary data gathering exercise to improve their evidence base. DCLG officials would also expect local authorities to look at applications for Discretionary Housing Payments. However, there was no guidance from DCLG that local authorities should be looking at appeals or applications for Discretionary Housing Payments in order to identify possible disproportionate impact on individuals with protected characteristics.

No equality impacts were identified by the EIA. Officials said that this is because the policy is a broad-brush framework beyond which the detail of the schemes would be provided by local authorities. Although it noted that nearly half Council Tax Benefit recipients under 65 live in a household containing someone who is disabled, the EIA did not discuss or analyse impact in terms of (potential) reduction in benefit on individuals with protected characteristics, partly due to data limitations.

Research carried out by the New Policy Institute on behalf of the Equality and Human Rights Commission details the impact of the changes to Council Tax Benefit on those with protected characteristics. NPI used a combination of DWP administration data (August 2012) and household survey data (2011-12 DWP) and highlighted, for example, that lone parent families (predominately women) and people with disabilities stood out as facing the most significant adverse impact (New Policy Institute, 2013).

Time limiting contributory Employment and Support Allowance for those in the Work Related Activity Group to one year

This policy is designed to have an impact on people with a health condition or a disability. There are two types of Employment and Support Allowance:

- Contribution-based Employment and Support Allowance, which is paid on the basis of National Insurance contributions paid in the previous two full tax years.
- Income-related Employment and Support Allowance, which is means-tested for people who are on a low income and have little or no savings.

Following a 'Work Capability Assessment', which is a medical assessment, a claimant may be placed in either the 'Work-Related Activity Group' or the 'Support Group'. If placed in the Work-Related Activity Group she or he must attend regular interviews with an employment adviser with a view to entering or returning to work. A person is placed in the Support Group if their illness or disability severely limits what they can do. People in the Support Group may - but are not required to - attend interviews with an adviser.

The UK government has limited the payment of Contribution-based Employment and Support Allowance to up to one year in some circumstances. Recipients in the Work-Related Activity Group who had already received 365 days of Contribution-based Employment and Support Allowance saw their entitlement end on 30 April 2012. There is no time limit on Contribution-based or any Income-related Employment and Support Allowances for those in the Support Group.

Shortening the getting-ready-for-work period and the time that this benefit can be claimed to one year is designed to move this group of people into work more quickly. The equality impact of this measure was presented in two EIAs (DWP, 2011a; DWP, 2012b). There is some difference in the presentation of statistics in the two documents, for example, the later version gives less detail on the financial impact of the reform, although it does refer to the earlier EIA.

The EIAs examined impacts by age, disability and gender using administrative data. There were no data presented for the other protected characteristics. Officials believed that there would be no difference by, for example, religion or belief or sexual orientation. Unlike the other equality impact assessments considered in this study, disability has been broken down by type (for example, by musculoskeletal and mental health / behavioural). Nonetheless, the comparators used for gauging impact are based on the caseload for Employment and Support Allowance.

The assessment finds that the equality impacts tend to reflect the composition of the caseload. It finds that losses are higher for some groups, notably, women and people aged 50 plus, where a lower proportion would be eligible for Income-related Employment Support Allowance. However, no mitigating actions were identified for women or the older age group.

A further source of evidence used in the assessment was what other people or groups were claiming about the equality impact. For example, DWP listened to comments and suggestions from disability and other groups and took on board comments that identified a gap in their evidence or an unintended consequence.

Housing Benefit/Local Housing Allowance reforms

This policy area covers a number of welfare measures that help low-income households with their rents. This includes:

- Increasing the age threshold from 25 to 35 for the Shared Accommodation Rate in Housing Benefit paid as Local Housing Allowance (LHA). (LHA is paid to people with accommodation in the private rented sector.)
- Changes to LHA arrangements and Housing Benefit criteria – this includes various measures (caps and limits) that reduce amounts available to claimants.
- Uprating LHA by the Consumer Prices Index, which effectively cuts increases in LHA because of the index used.

DWP used two main sources of data to assess impact on equality: administrative data which allowed analysts to model impacts with some precision, but did not contain data on all of the protected characteristics; and the Family Resources Survey which has household data on disability and ethnicity, but sample sizes limited the analysis that can be conducted.

In addition, DWP talked to key housing campaign groups including Shelter, Crisis, and housing associations when fine-tuning and implementing the policies.

The EIAs (DWP, 2010; 2011b; 2011c) all used comparators from the Housing Benefit/Local Housing Allowance caseload, rather than from the wider benefit caseload or the whole population (see discussion below). Impacts are provided for age, disability, ethnicity and gender – data gaps mean that evidence is not available for the other protected groups. The ethnicity analysis was based on a dichotomous variable (White vs. British and Minority Ethnic), and so any diversity in effects within these groups was not available for analysis. More detailed analysis was not available because local authorities did not collect the data.

The EIA did show the extent of monetary loss in benefit to some recipients across some of these measures. However, the average loss was not always broken down by protected characteristics.

Limiting for three years annual increases in some working-age benefits to one per cent

DWP officials said that in assessing the impact of this policy their analysts mainly worked with Family Resources Survey data and the Policy Simulation Model rather than administrative data because they needed to know peoples' household circumstances and income data, which were not available in the DWP's administrative datasets.

DWP conducted two impact assessments for this measure (DWP, 2013a; 2013b). The assessments identified a bigger impact on women (because they not only received more of their income from benefits but may also receive two or three benefits), ethnic minorities, disabled people and by age. Officials expected to revisit the impact on equality periodically. Whilst it was known that ethnic groups are disproportionately affected by the measure, it was argued that it is not possible to introduce mitigation on ethnic grounds.

DWP officials said that whilst it was known who had been impacted and how much they had lost out there was no intention to mitigate the loss to these groups as the objective of this policy was to save public expenditure.

In contrast to other equality assessments considered in this chapter, DWP officials said that the appropriate comparator when assessing impact on equality is the whole population. (Issues concerning the choice of the comparator are discussed below.)

Whilst there is a lot of overlap between people receiving different benefits, officials said that there was no method to identify cumulative impacts because the Treasury had the only model that combines all tax and benefit changes together, but this did not break down by protected characteristics because of the data sources used.

Implementing Universal Credit

DWP officials said that equality information was used throughout the policy making process for developing Universal Credit. Universal Credit is a new benefit replacing several social assistance benefits and tax credits (wage supplements). When the policy proposal was first being formulated the policy team looked at who it was going to affect. The DWP's analysis used the Policy Simulation Model that draws on the Family Resources Survey data to model what the world would look like under the new policy regime of Universal Credit. This enabled the identification of gainers and losers.

DWP officials expected Universal Credit to affect different groups in different ways; for example, for disabled people there would be an income distribution shift towards the most severely disabled people. This was part of the policy objective. Officials acknowledged that there were less predictable behavioural effects of the policy, and that more information was required. Non-official analyses of the impact of Universal Credit confirm the complex nature of who gains and loses from Universal Credit. They also confirm that less severely disabled claimants will experience cuts in their benefit, as will working lone parents and the second earners in couples (Browne, Hood & Joyce 2016, p. 232). The last two have a gendered dimension as lone parents and second earners tend to be female. Similarly, groups over-

represented in the Universal Credit caseload, such as disabled people and members of the black and minority ethnic community (see, for instance, Sandhu, 2016, p. 4-6), will be subject to the structural shortcomings of its design (for example, the necessity of claiming online) that are problematic for many low-income households.

The EIAs (DWP, 2011d; 2012c), which updated an earlier assessment following policy changes, identified concerns that the reform would have an adverse impact upon disabled people. Although the summary of the impact assessment on disabled people highlights a reduction in the rate of poverty and the easing of barriers to work, the more detailed analysis does show that disabled people are disadvantaged. For instance, disabled people would incur an average £1 per week loss compared to a £5 per week gain for non-disabled people. DWP officials did not think that the EIA had significantly changed the policy.

Data issues

Fulfilment of the Equality Duty requires policymakers to make decisions using comprehensive and robust data. Unfortunately, this was not the case for the welfare reforms considered in this chapter. The main source of data used by the DWP for equality impact assessment and monitoring was its departmental administrative data. These data were augmented by survey data (notably, the Family Resources Survey), qualitative data and secondary sources. There were, however, serious data gaps that limited the extent to which DWP could conduct (detailed) equality impact assessments and monitoring. There was a lack of data on most protected characteristics notably gender reassignment, sexual orientation, religion or belief, marriage and civil partnership, and pregnancy and maternity.

DWP acknowledged that the challenge was to get good data on all groups with protected characteristics. Officials said that this might involve coordinating data collection across different policies. However, DWP appeared to be making relatively slow progress in meeting these data gaps on protected groups. At the time the fieldwork was conducted, DWP was still thinking about how to approach this challenge. For example, with reference to gender reassignments, the relatively small numbers in the (claimant) population meant that statistics for the group could not be derived from existing datasets. DWP, while alert to the problem, did not have any specific proposals for gathering non-statistical survey evidence on this group. The approach was reactive – DWP would not gather data unless prompted.

In assessing the impact on disabled people, the DWP was confronted by data based on different legal and administrative definitions, which could make assessments problematic. For instance, data from the Households Below Average Incomes defines disability as: ‘... having any long-standing illness, disability or infirmity that leads to a significant difficulty with one or more areas of the individual’s life.’

DWP (2012d, p. 30). However, this definition does not capture everyone covered under the Equality Act 2010 definition; for example, someone at the early stages of the onset of dementia, where the effect on a person’s life was not yet substantial, would be excluded. This is because under the Equality Act a person is defined as ‘disabled’ if they have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on their ability to undertake normal daily activities. In addition, the Act specifically excludes certain serious and long-standing conditions such as hay fever and those misusing alcohol and drugs.

Administrative data

Respondents stated that DWP has a range of very good quality administrative data, most of which is benefits data for individuals. Administrative data are readily available to monitor equality on an on-going basis and sample sizes are not an issue because no sampling is involved – all recipients on the caseload are included in analyses. A number of the DWP's EIAs reviewed here used administrative data to assess the impact of welfare reforms on individuals with protected characteristics. However, administrative data is collected for a different purpose - to assess entitlement to benefits. There was good administrative data on age and gender because this information was operationally necessary. There was less data on ethnicity (although there was some customer information system data which could include ethnic origin) and disability (except where operationally necessary); while administrative data on the other protected characteristics was almost non-existent. At the time of this research DWP publicly acknowledged that there were gaps in its data for particular protected characteristics:

‘With the exception of gender and age the Department has not routinely collected certain data on all of the groups covered by the new public sector duty taking effect from 6 April 2011. As a result we cannot use existing administrative data to identify the impacts of individual [reform] ... measures on some of these groups.

The Department is currently exploring what information it can collect on the additional protected characteristics of sexual orientation, religion or belief, marriage and civil partnership, and pregnancy and maternity.’ (DWP, 2011e, p. 1-2)

DWP considered that questions about ethnic origin, disability (except where operationally relevant), faith, sexual orientation or gender reassignment may be too sensitive to ask in an administrative context as they were not relevant to conditions of entitlement to benefit. Therefore, administrative data were not available to monitor equality impact on all protected characteristics.

Survey data

Data on groups that were not monitored by routine administrative data were collected through surveys.

DWP officials recognised that the sample social surveys that it regularly conducts (for instance, the Family Resources Survey (FRS)), research and evaluation surveys (that may be conducted only once) and customer satisfaction surveys can include questions on diversity. Surveys may be used to ask more ‘intrusive’ questions so providing more robust measures of, for example, disability as defined in the Equality Act and about, say, sexual orientation. However, surveys can be expensive to administer, especially to achieve sample sizes for some protected characteristics (such as gender reassignment) that allow any sub-group analyses.

On occasions a ‘booster sample’ could be drawn for some groups, for example specific age bands or ethnic minorities in order to ensure sufficient numbers for analytical purposes. However, this is not possible if the groups are not identified in the sample frame, normally DWP’s administrative data. Drawing booster samples also adds to the costs of surveys.

Family Resources Survey

Several of the EIAs draw upon data from the FRS. The survey, which was first conducted in 1992, is representative of private households in the UK; in 2010/11 – the latest version available at the time of the study’s fieldwork – surveyed 25,356 households (DWP, 2012e, p. 140). The survey provides information on incomes, benefit receipt, savings and investments, tenure, carers and employment.

However, FRS data did not cover all the protected characteristics. Data were available for analysis by age, disability, ethnicity and gender. For instance, the ‘... Family Resources Survey does allow us to look at the prevalence of EA (Equality Act 2010) disability amongst private renters.’ (DWP, 2011b, p. 7). For the 2011 survey, data on religion or belief and sexual orientation were collected, and was due to become publically available in 2013 (DWP, 2012f, p. 7). Small sample sizes meant that DWP did not have good information on ethnicity, sexual orientation and gender reassignment. On sexual orientation a low response rate was an issue, rather than sample size. DWP officials thought that gender reassignment would be considered too sensitive an issue to be addressed in a general household survey such as the FRS, whose main focus is incomes. In addition, the sample size would probably be insufficient to be useful for analytical purposes. Pregnancy and maternity may be identifiable through data on respondents’ benefit payments and/or reasons for not working to some extent. But this would only be partial information. Again, it was believed that in a general household survey it was probably too sensitive an issue to ask females if they are actually pregnant at the time of the interview.

The use of comparators in equality impact assessments

To demonstrate whether a policy discriminates it is necessary to identify a comparator:

Unfavourable treatment will be relevant to making a determination of discrimination where it is unfavourable by comparison to someone in a similar situation. ... Therefore a ‘comparator’ is needed: that is, a person in materially similar circumstances, with the main difference between the two persons being the ‘protected ground’. (European Union Agency for Fundamental Rights, 2011, p. 23).

Equality impact assessments, of necessity, involve making a comparison between the outcomes of a policy for a particular protected group with a comparator group – for instance, outcomes for disabled people are compared with those for non-disabled people – in order to test for discrimination. There are two key issues that made the equality assessment of the reforms problematic: inconsistent use of comparators for similar policies and whether a ‘fair’ comparator was used.

DWP did not appear to be consistent in its use of comparators. Choice of comparator can be difficult as some policies are targeted at specific populations, whilst others affect practically the whole of a benefit caseload. For example, the measure to increase the age threshold for the LHA Shared Accommodation Rate only affects those aged 25-34. This EIA drew on a wide range of comparators – both within the LHA caseload (people affected, all LHA claimants, current room entitlement and living arrangements, benefit type and duration of claim) as well as comparing some characteristics with all Housing Benefit claimants, and private renters generally. On some dimensions it also compared the affected age group with younger (already covered by the measure) and older age groups, which was drawn on in the assessment to highlight similarities between claimants already covered and those about to be affected by the policy. Another EIA, up-rating LHA by the CPI, only drew comparisons between those affected (the overall LHA caseload) and the Housing Benefit caseload as a whole. Again, the relevance of such a comparator is sometimes unclear, for example, in the case of age it was pointed out that there was a smaller proportion of 60+ year old LHA claimants affected (20 per cent) than for the Housing Benefit caseload as a whole (39 per cent); similarly 50 per cent of those affected by the measure had a disability compared to 66 per cent on Housing Benefit caseload as a whole. However, in both cases the percentage difference is

explained by more older and disabled claimants living in social sector housing compared to the private rented sector, which suggests quite different circumstances of these groups.

More generally, there is an issue about whether the appropriate comparator should be: a) the relevant benefit caseload, b) the overall population in receipt of (working age) benefits, c) the general population as a whole, or d) more than one of these. Often the comparator was the benefit caseload relevant to the policy measure under consideration. However, where individuals with a particular protected characteristic are, say, over-represented in a caseload then the comparison might not show any evidence of discrimination, but a comparator for a more widely defined population might reveal concerns about possible discrimination. For example, data in the EIA for house size criteria in the social rented sector showed that more women (51 per cent) than men (24 per cent) were affected by the policy. However, it concludes that there is no differential impact or equality issue, as these figures were a reflection of gender distribution within the Housing Benefit caseload as a whole. But if the comparator was the UK population it would be apparent that women were more adversely affected by the policy than men.

Conclusions

DWP recognised that there were deficiencies with its data coverage for some of the protected characteristics. It had data for age and gender, and to some extent for disability and ethnicity. However, there was a lack of robust data on gender reassignment, sexual orientation, religion or belief, marriage and civil partnership, and pregnancy and maternity. In order to have due regard to the aims of the general Equality Duty, they would need to have proportionate but robust evidence to show how their policies and decisions impact or potentially impact on people with different protected characteristics. Without collecting and using equality information it is unlikely that they would be able to do so. This could make them open to legal challenge by relevant parties, or potential enforcement action by the Equality and Human Rights Commission. The challenge facing DWP is to collect high quality, proportionate data on all protected characteristics. Meeting the challenge may involve using, for example, booster samples in social surveys, qualitative research and service user engagement. Whilst the need for more extensive and better quality data was acknowledged, it was not apparent during the fieldwork for this study that DWP had identified a way forward.

Equality assessment and monitoring entails making a comparison with a non-protected group. Often the equality impact analysis involved comparing those individuals with protected characteristics affected with the relevant benefit caseload. However, comparing the affected protected group with the caseload is potentially misleading. Such a comparison is likely to show no difference in impacts where individuals with protected characteristics have a significant presence in the caseload. But from a different perspective, a concern with wider social and economic inequalities, a comparison with either the entire benefit population or the population as a whole might be more appropriate and might indicate differences that should lead to policy re-design and/or mitigating actions. None of the assessments provided a justification for the comparators adopted.

There was some evidence of DWP introducing mitigating measures to offset disproportionate impacts of policy on individuals with protected characteristics. There was also evidence of DWP responding to concerns raised by representative groups. However, there was evidence of where disproportionate impact on individuals with protected characteristics had been found and no mitigating action had been taken. Whatever the rationale for not taking

a mitigating measure where a disproportionate adverse impact has been identified it should be clearly stated. Only through being transparent can public bodies demonstrate that they are fulfilling the Public Sector Equality Duty and shape policy decisions that are fair to all.

DWP officials acknowledged that because there is a lot of overlap between people receiving different benefits, they anticipated that some people with protected characteristics would lose multiple times as a result of the policy to time limit for three years increases in some working-age benefits to one per cent. Whilst the Welfare Reform assessment of impacts (DWP, 2011f) discussed the issue of cumulative impacts there had not been any cumulative impact assessments published at the time the fieldwork was carried out. At the time the study was conducted, DWP had no statistical model that would enable it to model the combined effects of policies on individuals with protected characteristics. However, DWP could synthesise the evidence on equality impacts and come to an informed judgement about the cumulative effect of policies on individuals with protected characteristics.

In terms of substantive equality, the research findings illustrate that whilst the legal framework might engender substantive equality, the practice of assessing the equality impact of reforms can, and here does, dilute legislators' intentions. Substantive equality cannot be made real if there are data deficiencies, queries over the comparisons made and no cumulative impact assessment.

Moreover, there is an important question of how to assess policies that are intended to impact disproportionately on individuals with protected characteristics. For example, DWP officials said that there was no intention to mitigate the loss to disabled people as a consequence of the policy to time limit Contributory Employment and Support Allowance for those in the Work Related Activity Group to one year because this policy was designed to have an impact on disabled people. The objective of the policy was to save public expenditure. There is here a tension between policy objectives – between austerity via welfare reform and promoting equality. If a commitment to a fair and diverse society is an aim, it does not matter whether welfare reforms deliberately or unintentionally impact disproportionately against a protected group - the policy should be modified to reduce disproportionate disadvantage as far as possible. If, however, welfare reform objectives are given the same or a higher weighting than equality and fairness aims, then policy makers are signalling that disproportionate policy outcomes for (some) people with protected characteristics are acceptable. Nonetheless, the general nature of the Equality Duty would suggest that equality objectives and evidence should inform and shape welfare policies with appropriate mitigations.

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ⁱ DHPs can be awarded, in addition to any social security benefits, when a local authority considers that a claimant needs additional financial assistance with their housing costs. The regulations give very broad discretion. However, the budget for DHPs is cash limited.