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High Hopes? The Gender Equality Duty and its Impact on Responses to Gender-based Violence

Abstract

From 2007 until 2011, legislation in the form of the Gender Equality Duty (GED) required public bodies in Britain to take gender equality into consideration in all their policies and services. This article traces the development and implementation of the GED in Scotland, following a period of constitutional reform. It outlines its scope and focuses on its perceived potential as a policy tool for driving practical and cultural change in the way public bodies, particularly those responsible for the delivery of criminal justice, respond to gender-based violence. In so doing, it highlights the distinctive approach taken to gender-based violence in Scotland, and argues that despite some evidence of mainstreaming, the real potential for change afforded by the (short-lived) GED was never fully realised.

Key words: gender; justice; equality; gender equality duty; gender-based violence

Introduction

A raft of anti-discrimination legislative reforms, including the Race Equality Duty 2001, the Disability Equality Duty 2006, and the Gender Equality Duty (GED) introduced in 2007 under the Equality Act 2006, were aimed at driving social change. All were superseded by the all-encompassing Equality Act 2010 which introduced a single Equality Duty. The focus here is on the short-lived GED, which imposed a general duty, and specific gender duties on public bodiesⁱ, requiring them to promote equality of opportunity between men and women, and prohibit discrimination on the basis of gender in the exercise of public functions. The general duty stated that public authorities shall have due regard to the need to: (a) eliminate unlawful discrimination and harassment, and; (b) promote equality of opportunity between men and women. The specific duties were a means of meeting the general duty, and entailed the gathering and use of information on how policies and practices affect gender equality in the workforce and the delivery of services; the setting of gender equality objectives; taking action to achieve those objectives, and; a comprehensive assessment of the gender impact of all policies and practices on both men and women. Meeting the GED requirements essentially required institutional and cultural change within the estimated 45,000 public sector authorities, who were rendered accountable through a requirement to publish gender equality schemes identifying their priorities and objectives to further gender equality. There were statutory codes of practice for England and Wales, and for Scotland, and specific guidance for particular sectors (e.g. criminal justice; health; education). Responsibility for enforcement lay with the Equal Opportunities Commission (EOC) until its powers were transferred to the Equalities and Human Rights Commission (EHRC). The GED was described as “the biggest change in sex equality legislation in 30 years, since the introduction of the Sex Discrimination Act 1975” (EOC, Scotland, 2007) but whereas the earlier Act relied on a reactive approach by individuals to take legal action to challenge discrimination the GED attempted to spearhead a proactive approach, placing responsibility on public bodies to think *strategically* about gender equality and anticipating where improvements were required. Importantly, it meant re-thinking policy ends.

Informed development of mechanisms to analyse the potential effects of policy requires an understanding of the structurally unequal power relations between women and men, the processes which (re)produce inequality, and a normative element necessary to decide whether a certain

outcome is likely to perpetuate inequality. Fundamentally, the GED imposed a statutory obligation to adopt a substantive equality - or outcome-based - approach to addressing gender inequality, recognising that formal equality is insufficient to ensure that women and men enjoy the same rights and opportunities. These limitations are acknowledged in the interpretation of the idea of non-discrimination provided by the Committee on the Elimination of Discrimination against Women (CEDAW), where Articles 1 to 5 and 24 together indicate that state parties under CEDAWⁱⁱ are required to go beyond a formal interpretation of equal treatment to improve the *de facto* situation of women, and address the persistence of gender-based stereotypes that adversely affect them. This means taking into account the ways in which women are different from men, and ensuring that differences are acknowledged and responded to by measures toward achieving equality.

In its requirement for policies to meet ‘the different needs of women and men’, the GED held transformative promise, not only in relation to organisational and professional spheres, but also in private spheres. The aim of this article is to explore the implementation of the GED in Scotland, with its particular state architecture of multi-level governance and its reconfigured political institutions and processes which followed political devolution (Mooney and Scott 2005; Cairney 2008). We do this through a particular focus on the impact of the GED on responses to gender-based violence. Adopting an applied feminist empirical perspective, we draw on a larger study which explored the GED as a driver for reform in criminal justice responses to gender-based violence (Burman et al 2010)ⁱⁱⁱ. This research entailed analysis of relevant documentation, with reference to levels of stakeholder consultation, the setting of objectives, and the production of equality schemes positioning gender-based violence as an equality issue, and a set of semi-structured interviews with 22 representatives from a range of Scottish statutory agencies, local and central government and service providers, followed by an inter-sectoral roundtable discussion. Participants were purposively selected (Bryman 2012) on the basis of: involvement in the GED’s implementation within their organisation (policy officials; equality and diversity officers); specific professional experience of the impact of the GED on provision of services, or; front-line work (women’s organisations; victim-survivor services). Interviews focused on knowledge and views on policy and/or practice concerning the GED and gender-based violence; ‘best practice’ examples, and; the identification of any difficulties in implementation.

The article is in four main sections. The first considers the promise of the GED as a driver for change. In the second, we discuss Scotland’s distinctive approach to gender-based violence. As Mooney and Wright (2009) observe, devolution reveals previously unacknowledged differences between UK jurisdictions in relation to the experience of social problems and the organisation of policy responses to them. Whilst acknowledging gender-based violence has been subject to policy and legislative attention in all UK jurisdictions, we argue that devolution provided an important context for the emergence of a distinctive Scottish policy approach to gender-based violence, and this in turn had significance for the implementation and impact of the GED in this area. Decentralised and devolved polities offer scope and opportunities for policy communities to influence the policy process (Mazur 2002; Haussman et al 2010). In Scotland, devolution led to more participatory political and institutional formations (Keating et al 2003; Keating 2010; Mooney and Wright 2009). Importantly, it provided opportunities for the strengthening of existing feminist partnerships and allowed women’s policy communities to more meaningfully engage with specific policy domains (Mackay 2010a; 2010b). State actors and the women’s sector worked both in greater proximity and through more open and inclusive processes: a notable result was a national partnership approach based on gendered understandings of violence (Breitenbach and McKay 2001). Thus, there was a fertile landscape for the introduction of the GED, particularly since tackling gender-based violence was positioned as a Ministerial priority area for the advancement of

equality. In the third section, we draw on empirical research to discuss the GED's implementation, and assess its impact as a driver for change in responses to gender-based violence^{iv}. We conclude by arguing that, despite favourable conditions in Scotland, the GED had varying levels of success in achieving its ambitious goals. In particular, the opportunities it provided for highlighting the links between gender-based violence and gender inequality and for spearheading wider cultural change were not fully realized.

The promise of the GED

The GED was seen as a means to: "...generate policy-making that is sensitive to gender, services that meet the different needs of women and men, employment practices that challenge occupational segregation and remove the barriers to women reaching their potential, and procurement practice that promotes equality" (EOC 2006b). Gender mainstreaming was endorsed as the official policy approach to gender equality in the European Union in the Amsterdam Treaty 1997. Mainstreaming equality overcomes many of the flaws associated with reactive, complaints-led models by placing equality considerations at the centre of all policies and decision-making. Under New Labour, the concept of mainstreaming equality gained increasing recognition at different levels of government and formed an integral part of the 'modernising' programme. As Rees (2005) observes, this reflected a shift in equal opportunities from an 'add on' to considering it as an integral part of the policy process. As in the EU, New Labour's approach to mainstreaming began with a focus on gender mainstreaming, appearing as part of its gender policy. Yet, the concept is generally considered underdeveloped and unsystematic (Daly 2005; Rees 2005) such that, in Britain, it has been difficult to discern the mainstreaming of gendered perspectives into general policy-making (Squires and Wickham-Jones, 2004). In its provision of a regulatory framework, the GED was seen to offer an opportunity for gender to be considered in policy-making in a way that the mainstreaming agenda had not previously achieved (EOC 2006b; Miller 2009).

Gender-based violence, committed predominantly by men against women, is widespread and a persistent form of gender inequality. Manifested in multiple, interrelated and recurring forms (Kelly 1987; 1994; Hanmer et al 1999) and experienced in public and private settings, such violence cuts across divisions of ethnicity, class, religion, age, sexuality, culture and geographic region (Fried 2003). Only a small proportion of the violence that affects the lives of women are reported, but it is estimated that 3 million women across the UK experience rape and sexual assault, domestic violence, sexual harassment, forced marriage, trafficking, or other forms of violence each year (Fawcett Society 2009). Although surveys vary considerably, estimates for lifetime prevalence of abuse by a partner or ex-partner tend to cluster together, with most studies suggesting that one in four adult women will experience physical violence by a partner in their life times (Walby 2004). The 2009/10 British Crime Survey shows that seven per cent of women aged 16 to 59 were victims of domestic violence in the previous twelve months (Flatley et al 2010). In Scotland in 2009/10 the police recorded 51,926 incidents of domestic abuse, of which 82 per cent involved a female victim and 57 per cent involved repeat victimisation (Scottish Government, 2011). There is widespread international recognition that women experience gender-specific forms of violence, stemming from an interaction of interpersonal, institutional, and structural factors underpinned by institutionalised power relations between women and men, and that such violence is both a cause and a consequence of gender inequalities (European Commission 2010). Framing violence as gender-based, that is, violence directed against a woman because she is a woman, or which affects women disproportionately, highlights the need to situate it within the context of women's (and girl's) status in society, taking into account norms, social structures and gender roles, which greatly influence vulnerability to violence (see, for example, Kelly 1987; Fried 2003). Integrating a gender equality perspective into efforts to recognize, prevent and respond to such

violence therefore means addressing its causes, and understanding its far reaching effects (WHO 2004; European Commission 2010).

For the EOC (later the EHRC) and those working with victim-survivors, the GED was perceived as having real potential to transform policy, by facilitating national action plans to develop strategies to inform and coordinate legislative measures, policy, training and research (EOC 2007; EHRC 2007). For some time, an objective of feminist organisations across Britain has been the development of an integrated government strategy which highlights the interconnectedness between different forms of gender-based violence (Corston Report 2007; Dustin 2006). The GED was envisaged as a tool to achieve this, and for improving collaboration across criminal justice bodies, housing, health and social services, thus leading to more holistic provision (Fawcett Society 2009).

The obligation placed on public bodies to consult with users and stakeholders opened opportunities for the exertion of influence by policy communities and interest groups, providing scope for the instrumental operation of the duty. In what, arguably, might be seen as a form of ‘moral entrepreneurship’ (Becker 1963), women’s organisations used the GED as a means to encourage social and political scrutiny of public bodies’ work, challenging them to operationalise the GED in ways which addressed their own strategic aims and priorities. Numerous examples were identified of how it could assist their work, ranging from improved access to services; directing more focus on the needs of service users; and more effective targeting of resources (EOC 2007a, 2007b; End Violence Against Women 2009). Robust data on gender-based violence has long been found wanting (Breitenbach 2006; Breitenbach and Wasoff 2007) and, given the requirement for information in order to identify need, set objectives and plan services, the GED was seen as a means of improving data collection. Given the focus on improved identification of gender-based violence, it was considered a valuable device for strengthening awareness-raising and prevention work (Respect 2007), and as a mechanism to ensure that local authorities consider the differential impact of funding decisions on gender equality in considering the implications of cuts to the funding of women’s services and the effect this may have on equality outcomes (EOC 2007a; EHRC 2007) – particularly pertinent as Britain moved into an era of austerity and cutbacks began to bite more forcefully into the delivery of local services.

Scotland’s distinctive approach to gender-based violence

The conditions prevailing in Scotland are important for understanding the GED’s implementation. For some time, Scotland’s autonomous women’s sector have worked to tackle structural discrimination, by inserting a feminist influence into institutions, policies and practices in a range of areas, and encouraging responsiveness to women’s concerns (Christianson and Greenan 2001; McKie and Hearn 2004; Mackay 2010). A notable example was the Zero Tolerance campaign of the 1990’s which contributed both to empowering women as members of the feminist partnership that emerged around the policy initiative, and as otherwise powerless victims of violence (Mackay 1996). Devolution injected a new impetus and new prospects, substantiating arguments made elsewhere that decentralised and devolved polities offer women’s policy communities opportunities to influence policy processes to a greater extent (Mazur 2002; Hausman et al 2010). The sector successfully mobilised to achieve what Mackay (2010) terms ‘feminist constitutional activism’ in the devolution process, which saw the adoption of equal opportunities as one of the key principles of the new Scottish Parliament; the creation of equality policy machinery in government and an equal opportunities committee; a commitment to gender equality mainstreaming, and; the greater participation of women’s organisations in a more inclusive style of policy making. Yet, despite a stated political commitment to target violence against women,

government action in the decades prior to devolution was piecemeal, with little coordination between national (Scottish) and local levels (Henderson 1998). Throughout the 1990's, women's organisations lobbied for an integrated multi-agency approach and, in 1998 the Scottish Executive published a consultative plan which called for action plans across government (Henderson 1998). Following devolution (and partly based on the need to meet international obligations) an action plan was published situating domestic abuse as a national priority with three key objectives of: *prevention* of risk of violence, *protection* of victims and potential victims, and *provision* of services (Scottish Executive 2001). The previous year a National Strategy to Address Domestic Abuse (Scottish Executive 2000a) placed a requirement on local authorities and health boards to establish local partnerships and established a National Group to monitor implementation of the strategy. An initial expenditure plan of £18.3m was attached to the Strategy (Scottish Executive 2000a) and extended as it was rolled out; around £32m was committed to support work. At this crucial time of nation-building, domestic abuse provided a nucleus for collaboration and coalition building in the broad arenas of social and health policies, and also in evolving agendas on inequalities in health and poverty (Breitenbach and McKay 2001). An activist and autonomous women's sector, combined with the election of supportive members of Parliament, coalesced to form a national partnership approach firmly based on gendered notions of violence (Breitenbach and McKay 2001).

The term 'domestic abuse' was adopted by the Scottish Labour government, women's groups and service organisations, for three key reasons: first that it allows for a stronger association between the gender-specific nature of men's violence in intimate relationships and the myriad ways in which this can be manifest; second, that it better represents the combination of psychological and physical dimensions of violence and; third, in an effort to broaden the focus from physical abuse to the on-going manipulation of power in intimate relationships (Scottish Executive 2000; 2002). Drawing from the UN Declaration on the Elimination of Violence Against Women (1993) a broad definition was adopted which recognised that domestic abuse can include physical, sexual, mental and emotional abuse and other types of controlling behavior. Tackling such violence was stated as a prerequisite to reducing gender inequality in Scotland (Scottish Executive 2002). This represented a clear divergence from England and Wales where, although a main focus was also on implementing measures based on prevention, protection and justice and the provision of support for victims, in formulating policy, New Labour defined domestic violence in a gender-neutral way (Matczak et al 2011).

In 2002, the Scottish Parliament announced a widened remit for the National Group to include all forms of violence against women (Greenan 2004) and the Scottish Executive issued 'Preventing Domestic Abuse: a National Strategy' incorporating awareness-raising, education, training, services and legislation, where it was stressed that all prevention work should flow from an analysis which reflects its gendered nature, and which recognises the links between all forms of men's violence against women (Scottish Executive 2003:7). Essentially this drew the various forms of gender-based violence into a unified policy area. By the end of 2003, which saw a Labour/Liberal Democrat coalition in Scotland, there were a range of policies and national strategies in place, concerning criminal justice health, housing, educational and social care services in which the government's commitment to addressing the needs of women experiencing domestic abuse were explicitly stated. In all of these the underlying premise was clear: violence against women is gender-based, and a cause and consequence of gender inequality. In recognition of these developments, Scotland has been acknowledged as being at the international forefront of policy in this area (Coy and Kelly 2009; McKie and Hearn 2004).

The Scottish Executive also ring-fenced funding to sustain operational capacity for rape crisis centres and, in 2006, funded a sexual assault referral centre in Glasgow, with funding split between ministerial portfolios – Justice, Communities and Health – reflecting a recognition of the cross cutting nature of sexual violence (Brindley and Burman 2011). In response to longstanding criticisms about the investigation and prosecution of rape (Chambers and Millar 1983; 1986) the police and the prosecution service, known as the Crown Office and Procurator Fiscal Service (COPFS), initiated reforms within their own structures, which included the training of specialist officers, joint investigative protocols (ACPOS 2004) and a wide ranging review of procedures, which resulted in 50 recommendations for change, including guidance for investigating and prosecuting serious sexual offences; specialised training, and certification for prosecutors; a comprehensive information pack for those who have been raped, and; the provision of better information to victims (COPFS 2006). In 2004, a review was initiated of the Scots law of rape, considered overly narrow and in need of reform. There were legislative attempts at restricting the use of sexual history and character evidence in rape trials (although limited in effectiveness, see Burman et al 2005; 2007) and the introduction of special measures to assist complainers in giving their evidence.

Driving change?

There is no doubt that, post-devolution, significant advances in tackling gender-based violence had been made. By 2007, when the GED was introduced, domestic abuse was squarely positioned within national policy frameworks as a gender equality issue. Statutory criminal justice bodies were expressing strong commitments to tackle rape and domestic abuse, and there were ring-fenced resources for the delivery of services. As one interviewee stated ‘the things which distinguish [Scottish Government] in its approach to this, is the profile which is being given to each of the areas, the fact that things have been taken forward.... on-going work around domestic abuse.... thinking around violence against women, and the partnership approach, both internal and external to government, where the notion of agencies working together to achieve change has been an important feature of the development of thinking and also the development of delivery.’ [14, central government]. However, considerably less attention and resources were directed towards trafficking, forced marriage and female genital mutilation (Kelly and Regan, 2001). The conviction rates for rape were unacceptably low, along with high rates of attrition (Lovett and Kelly 2009; Daly and Bouhours 2010). Domestic abuse remained widespread and difficult to prosecute. Services remained patchy, particularly in rural areas (Coy et al 2007), and gaps persisted in terms of the effective implementation of policy.

National and local structures

Gender-based violence demands a multidimensional policy approach, integrating legislative and preventive action, protection of victim-survivors, support and reintegration services, as well as responses to perpetrators. Responsibility cuts across (local and national) government sectors, including criminal justice, healthcare, education, social services and employment. Implementation of the GED was led by the Equality Unit, which produced guidance; developed an equality impact assessment tool, and; delivered briefing sessions (Scottish Government 2008a). There was an early pledge to continue to ensure support for victim-survivors, and develop a strategic approach, building on the existing National Strategy; to continue to work closely with service providers; raise awareness through campaigns and; develop preventative work with men (Scottish Government 2008a).

The cornerstone of the national framework, ‘Safer lives, changed lives: a shared approach to tackling violence against women’ (Scottish Government 2009), reiterates gender-based violence as

a cause and consequence of gender inequality, and provides guiding principles for multi-agency partnership working (Scottish Government 2009). The capacity to create and maintain partnerships between different actors and institutional levels is particularly relevant for the effectiveness of the actions implemented. Devolution altered the political landscape at a local level in Scotland; it impacted on the relationship between the various tiers of government, allowed opportunity for central and local government to work in greater proximity, and encouraged a more consensual, inclusive style of politics (Cairney 2008). With central government providing strategic lead, decentralisation empowers and responsabilises local authorities to identify and respond to priority needs. There has been an increase of governance ‘architecture’ (McAra 2007) with new institutions established at local level, through the creation of multi-agency, area-based partnerships, where much work tackling gender-based violence takes place.

The EHRC guidance emphasised the key leadership role to be played by local authorities in ensuring that actions to promote gender equality across sectors are strategic and ‘joined up’, with existing cross-sector partnership arrangements as the mechanism for driving effective and integrated action (EOC 2007b; EHRC 2010). While the nature of arrangements varies, there are partnerships and/or training consortia in all local authorities, generally comprised of statutory (police; housing; social work; community services; local NHS boards) and voluntary organisations. Whilst recognizing that a seat at the partnership table does not translate into equal power, interviewees from women’s organisations reported that these arrangements had “gone some way to reducing the barriers” [6, service provider] faced in being able to influence local priorities, although there was concern about the relative scarcity of consultation taking place. As one interviewee stated “there is a balance to be struck with regard to organisations taking on the GED and making it their own but the difficulty is in the ‘how to’ do this. We should not be developing policies without thinking through how we could do this.” [4, local government]. Another noted: “enough hasn’t yet been done on using the GED as the way to push the debate ...” [21, women’s sector].

Significant variation was found in the extent to which tackling gender-based violence was explicitly identified as part of a broader equality agenda, both in available documentation, and in interviews where it was considered that policy statements about gender-based violence that incorporate gender equality principles were more a feature of national frameworks, and less so ‘on the ground’. Although some local authorities made the links clear in their reporting structures, these were the exception rather than the rule, implying a need for stronger articulation of the relationship. For example, the situation of domestic abuse as a community safety concern, included within community safety initiatives, has resulted in improved accessibility to services and the appointment of specialist coordinators to oversee the implementation of local policies, but specific links to gender equality have tended to be absent. Whilst most interviewees were able to identify relevant GED-led policies in relation to gender equality (although several were unaware that these were not the same as equal opportunities policies), these were mostly workplace and employment policies. Arguably, this separation affects the establishment of working arrangements and protocols between and within organisations, resulting in more limited identification of gender-based violence as an equality issue, and to work in the area being less visible. In this regard, the promise of arrangements which heralded an outcome-focused, non-ring fenced approach to policy and service delivery, whilst providing a framework to support more integrated working and provision across different forms of gender-based violence and ensuring incorporation of gender equality principles appears not to have delivered as much as hoped. Interviewees suggested that it was ‘more top level awareness, rather than at the coal-face’ that was needed [4, local government] and that working arrangements, practices and protocols were “worthless without training to take it

forward as intended” [14, central government] indicating the need for more robust monitoring, review and reporting processes.

Further legislative and policy reform

The momentum of legislative and policy reform continued with the implementation of the recommendations of the COPFS review of rape (COPFS 2006) which introduced radical changes to the prosecution of sexual offences, with a shift towards specialization and; in 2009, the establishment of a national Sexual Crimes Unit as a means of improving the conviction rate. A review of police procedures led to the revision of guidance on the investigation of sexual assault, the establishment of an intelligence database, and a standard reporting protocol with COPFS (ACPOS 2008). The comprehensive review of the law of rape, initiated in 2004, culminated in the Sexual Offences (Scotland) Act 2009 which introduced a wider definition of rape and a statutory clarification of consent, marking radical changes to the legal framework. Legal and policy reform, without social and cultural change, is insufficient to address gender-based violence (Walklate 2008). According to Mazur (2002) a key factor in determining feminist policy success in this area is prevailing cultural attitudes, yet a significant minority of the Scottish population blame women for abuse perpetrated against them (ICM 2005; TNS 2007) and gendered stereotypes of female sexuality infuse legal reasoning and practice (Burman et al 2007). As one interviewee said: ‘legislative change, although welcome, will not on its own lead to improved conviction rates for rape. How will women have greater protection from crimes of sexual violence without sustained challenge to widely held public attitudes to rape.’ [21, women’s sector].

Practice, services and support

When the GED was first introduced, concerns were raised that a misunderstanding of equality as requiring same treatment for men and women could lead to a re-direction of funds away from designated women-only services to support services for men, particularly at the local authority level, and that women-only services (such as Women’s Aid refuges) would have to include provision for men (EOC 2007). These fears have to be read partly in the context of a constrained funding environment; although research documenting the uneven distribution of specialised services across Britain had earlier raised this issue and called for long-term funding strategies to ensure sustainability (Coy et al 2007). This research commended Scotland (and in particular Glasgow City Council) as a good example of strategic investment in frontline specialised support services for rape and domestic abuse, and praised its commitment to enhancing capacity and diversity of provision (Coy et al 2007). Undoubtedly, the government commitment to develop a strategic approach, and the willingness to ring fence funding for service provision has been crucial. However, services for ethnic minorities remain under-resourced, and that aimed at other forms of gender- based violence are less evident.

Improving data?

Little impact was made in addressing the inadequacies of statistical data (Breitenbach 2006; Breitenbach and Wasoff 2007) and that on women affected by forced marriage, honour based violence and FGM (Glasgow City Council 2005). There have been no national prevalence studies of gender-based violence in Scotland, despite calls from the UN and Council of Europe reiterating the need for baseline measures that establish the scale of the problem (Lovett and Kelly 2009); although importantly in 2008/09 an additional self-completion questionnaire was introduced to the Scottish Crime and Justice Survey in order to broaden its existing scope to include experiences of stalking and harassment, partner abuse and sexual victimisation. Data collected by COPFS on gender of victims and persons prosecuted is not routinely publicly available and may only be accessed by requests, which are frequently denied. Whilst the Scottish Government and other statutory bodies planned some developments - more detailed analysis, regular reporting and

reporting on specific issues - this has been slow to emerge, and in some circumstances has worsened (Brindley and Burman 2011). A recent review of data sources on gender-based violence revealed inconsistent data collection and recording across key criminal justice agencies; a lack of any overarching agreement or protocol for the sharing of data; a lack of clarity over what is and what should be recorded, and; a lack of sufficient resources to gather, collate and provide data (Carnochan, 2012). Available data therefore remains largely insufficient to provide robust estimates of prevalence, for bench-marking the progress of initiatives, or for informing service provision.

Transparency, accountability and compliance

Whilst, for central and local government interviewees, implementing the specific duties was perceived as an overly bureaucratic means towards compliance, there was nevertheless general agreement that gender equality schemes were essential for providing a framework, a set of objectives and a focus for action. Around half considered the specific duties a lever for change in policy and service development within their organisations; in particular, the requirements for systematic review and objective setting had led to greater transparency and accountability, more so if there was strong leadership from senior staff. But there was no clear consensus on this issue. Others were disappointed at the practical application of the GED, particularly at the local level, and attributed this to a lack of common principles, and the constrained financial environment which has seen the loss of equalities staff. Documentary analysis confirmed that publication of gender equality schemes was slow in development and inconsistent across organisations. Disappointingly, few examples of schemes and action plans were found, even after three years post-introduction. Those that did exist contained limited discussion of gender-based violence as a gender equality issue; which was typically situated as a community safety problem. Whilst there were model schemes (such as the NHS Gender Equality Strategy, singled out because of its clarity and transparency, and because it was carried out in close consultation with employees, experts, and service users), these were the exception. Subsequent research on local authority gender equality schemes undertaken by Scottish Women's Aid found that of the 32 local authorities in Scotland, two thirds (21) of the schemes made reference to domestic abuse from their analysis of local information, which was mainly incidents recorded by the police, whilst 11 contained no reference at all to any forms of gender-based violence (SWA 2010).

Gender impact assessments as methods for public bodies and their partners to identify potential risks of inequalities were considered valuable, and most effective for embedding an understanding of diverse needs into planning actions when carried out at the formative stage of policy formulation and service review processes, rather at the end of a process of implementation. Yet, again, few such assessments had actually been carried out: "only the most conscientious organisations initiate assessments" [21, women's sector]. Those available were primarily focused on collecting information about women, without an informed analysis of need, or on plotting processes, rather than assessing substantive outcome. This suggests "a tick box mentality, with no real focus on outcomes or analysis" [12, police], deeply concerning considering that the specific duties were designed to create balance between process and outcomes and address the problem of other equality duties that were considered too process-driven. Although conceivably allowing for the formation of a crude base-line, against which progress can be monitored, mechanistic impact assessments, or simply 'ticking the boxes', falls far short of a rigorous and informed gender analysis, and is a poor proxy for the mainstreaming of gender equality within core business.

Although detailed discussion is beyond the scope of this article, the scarcity of published gender equality schemes raise interesting questions about compliance in discharging the duty. Formal enforcement of the equalities duties resided with the EHRC, through recourse to compliance

notices, or by judicial review. Yet there was a lack of clarity over what counts as non-compliance, the means of redress and enforcement, and the responsibilities of the regulatory body that were never fully resolved. There were no reviews in Scotland, as occurred in England in a case involving Southhall Black Sisters, a specialist provider of services to black and minority women^v. In practice, there was a reliance on self-regulation by public bodies, with the (resource-constrained) EHRC providing the ‘lightest of touch’ monitoring (Hood et al 1999). However, given that audit and inspectorate bodies were also encouraged to play a role in monitoring performance against the duties by ensuring that the GED becomes an integral part of the inspection process, built into their inspection regimes (but not specifically mainstreamed in their assessment criteria) and informing their judgments on what constitutes ‘good performance’, suggests an incipient form of meta-regulation (Braithwaite, 2005). So, whilst: “The GED is a useful tool to hold statutory bodies to account” [1, women’s sector], there was no concerted, collaborative effort to do so in Scotland. At one level this is understandable: women’s organisations are resource poor, and the financial climate exacerbated an already fragile funding situation. Whilst the women’s sector are powerful actors in terms of elevating gender-based violence to the level of policy discussion, and sensitising public bodies to use the GED as a ‘force for good’, they are perhaps not powerful enough to see the issue through to effective practice.

Success or failure?

The GED was intended as a tool for mainstreaming gender equality. Experience has shown this to be a difficult task, dependant on political will, resource commitment, mobilised networks and expertise (Rees 2005; Stevens 2007). Creating and maintaining a system which is premised on a level of gender awareness that informs equality of outcomes requires focus, consistency and hard work at every stage of the policy-making cycle, from early stage strategising to implementation, taking into account different needs, so that equality of outcomes are assured. There is no conclusive evidence to suggest that women have benefited from any gender mainstreaming initiatives in Britain. This is partly due to inconsistent political commitment, the problematic conceptualisation of gender mainstreaming, policy and cultural impediments and the under-representation of women at policy formulation levels (see, for example Miller 2009). But if one takes as elements of successful mainstreaming effective structures and leadership at national level; developing a shared understanding and vision; involving a wide range of stakeholders, and; integrating gender equality standards and objectives into legislation and routine organisational procedures (Rees 2005) then there is cause for cautious optimism in Scotland. We conclude however, that it is primarily devolution which is responsible for the trajectory of policy and legislative change in relation to gender-based violence in Scotland, in the sense of integrating women’s concerns into mainstream political agendas. Devolution led to new principles and accountability mechanisms, more gender balance in political institutions and significant new opportunities for women’s groups to shape and inform the policy and legislative process. The prevailing approach to gender-based violence was strategic, more holistic than in other UK jurisdictions, with a greater emphasis on core service provision and, most significantly, premised on an understanding of gender equality. This rendered Scotland particularly receptive to the GED, which in turn accelerated the progress of legal and policy reform. That said, the research also suggests that the GED’s scope for driving institutional and cultural change in relation to gender-based violence was hampered by low levels of awareness of the duty and its underlying principles; a variable understanding by public bodies of what meaningful ‘gender equality’ is and how it might be achieved and, in particular, how the GED as a means of addressing structural gender inequalities might be used to better tackle gender-based violence. The bureaucratic and cultural shifts required to support deep and sustainable change of this magnitude are immense.

This is not to argue that the GED should be considered merely a form of ‘symbolic’ legislation in the sense that, despite its ambitious objectives, it was doomed to be ineffective; nor cast as deceptive in that it was never intended to genuinely fill the purposes pursued (Carson 1974; Hawkins 2003). The story is more complex, as we have tried to show, and the variable implementation of the GED and its impact on gender-based violence must be seen within the broader context of prevailing political, social and economic conditions in Scotland, with its multi-level governance structure and its unique position in relation to gender-based violence, as much as the mechanisms for accountability and (dis)incentives for compliance embedded within the GED’s regulatory structure. It is simply not possible to estimate the *level* of change achieved, given the momentum of activity already in train and in the recognition that effects can take (considerable) time to fully manifest. But, taken together, the developments that followed the GED contributed to increased commitment and understanding, supported changes to policy as well as planning and operational procedures in some organisations, and enhanced some service provision. The end result is that gender-based violence has been framed, albeit somewhat patchily, as an issue of social justice, understood as rooted in unequal gendered power relations, and recognised as undermining the capacity and opportunity for women to exercise full economic, social, political and cultural citizenship. How far these positive outcomes may persist in the face of prevailing financial pressures remains to be seen.

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ⁱ In Britain, a public body is an organisation which carries out a public function, such as health, transport, criminal justice and education bodies, the police, the armed forces and central and local government

ⁱⁱ CEDAW at <http://www.womenstreaty.org/>

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^v *Kaur and Shah v London Borough of Ealing* [2008] EWHC 2062 (Admin).