**6th July 2021 Public Law Project**

AMELIE GODFREY: Morning everyone welcome to the first session of this year's public disco I will give it a minute for people to file into the room then we will go ahead and get started. Okay it looks like numbers are stabilising if anybody comes in later they will miss my scintillating housekeeping announcement bea few quick things these sessions are being recorded and the recording are made available on our management system either end of the week or early next week please keep an eye out for that e-mail secondly if anybody experiences technical difficulties please feel free to drop me or my colleagues a private chat I will trouble shoot it for you. If you have any questions we request you put them in the Q and A box rather than the chatbox we like to keep the chatbox separate for other issues. I will hand over to Jo Hickman director who will get us started.   
JO HICKMAN: Thanks alley hi everyone morning a real good morning to Public Law Project public discourse. I know I have been told we are welcoming many return visitors to the conference as speakers and guests that's great to hear if this your first Public Law Project event thanks for joining us it's good to have you with us in terms of practicalities we are able to offer full Speech To Text facilities throughout the conference Franny is with us now and recordings are available afterwards my usual thanks to everyone who has given so generously of time and energy and expertise to make the event happen with us particular thanks to our sponsors our partners friends at Matrix Chambers, so the programme over the next 3 days gets right into some of most pressing equalities issues of the day this morning exploration of Public Sector Equality Duty and evidencing race discrimination tomorrow we grapple with retained EU law and equality rights and discrimination in the benefits system Thursday we have algorithms data discrimination other status cases under Article 13 with frank conversation with Jolie Brierly and journalist and commentator Emily Phillips it's a pretty good 3 things it's PLP’s third public discourse conference and as we start the confusing process of emerging from the pandemic it feels more relevant than ever COVID exacerbated and highlighted inequalities across the public sphere from education disability to employment welfare and housing Local Authorities under unprecedented pressures struggling to meet statutory duties 21st June cliff edge resulted in the exposure of thousands FEU nationals (....as read....) that deliberate hostilities of immigration control 1 year on from the murder of George Floyd there is widespread dissatisfaction with UK Government's approach to acknowledging and tackling racial discrimination and all the meanwhile subtle impact of algorithmic decision-making are re-shaping the administrative state, so as well as offering a forum to explore many challenges ahead to discuss ways we might work together to meet them this conference is also an important opportunity to celebrate equality as fundamental to the rule of law and it's a rare pleasure and it's a privilege be able to convene a group of speakers delegates alike who share these values so deeply the conference offers us all an opportunity not just to deepen our knowledge and understanding and also to take advantage for the opportunities for collaboration and connection with each other. So this past year at PLP we have reflected our organisational commitment to tackling discrimination with specific focus appropriately I think on race, and some of our work is internal and has included examination and audit of employment practises workplace culture education and training, and whilst we are proud rightly I think of the existing culture of inclusivity at PLP there is much for us to do better set ourselves targets to improve diversity of our team including our Board of Trustees (....as read....) ways we share power and the ways we give voice to lived experience and we also wanted to look at how we can better fan manifest that commitment externally fun reason race evidence evidencing race discrimination and the place of law in tackling or framing that discrimination features so prominently in the programme 1 thing that will help us if you are able to tell us what you think compared with in-person events we have found virtual events light on feedback if you can bear to fill out another virtual form at any point in the week we would appreciate it if you can't speak to one of us we can't get it right without feedback from all of you so now enough from me time for the first session kicking off with a an absolute highlight Halima Begum director of Runnymede Trust one of the UK's leading equality think-tanks is joining us with Ayesha Christie on the role of law in framing race.   
AYESHA CHRISTIE: Thank you very much Jo for having us here Halima it's great to have an opportunity to discuss race issues and the law with you and there are a number of topics we are hoping to discuss this morning I will jump in with my first question as Jo's already touched upon over the last year there has been a lot of focus on systemic and institutional racism in the UK and abroad I am interested to hear what issues you think require particular attention from lawyers.   
DR HALIMA BEGUM: Thank you Jo thank you Ayesha and for everybody joining us to be involved with this conversation it's really great. So to the question I wanted to answer this question Ayesha by coming back for a moment on COVID it's quite easy to go back to Black Lives Matter or the killing of George Floyd COVID I think everybody went through that together in this same way and came out really differently so if you look at COVID most of us most of the time believe we don't live in a racist society, nevertheless the disproportionate out comfort for COVID were worse for black and minority ethnic people and that is not because anybody deliberately went out to be racist and not because the globally infection disease discriminated overtly so I think in COVID you see racialised outcomes disproportionate and indirect of a certain policy or impact and it makes us question I believe the basis of the law when it comes to discrimination and trying doing stand Public Sector Equality Duty whether as a direct event we can claim direct discrimination and see it visible and can prove it it's heart to prove most people understand what direct discrimination is fewer people understand what indirect discrimination is it's what MacPherson tried to bring to the fore to the legal field almost 19 years ago now, and I don't think it was until the onset of COVID people really began to understand what the indirect effects of a policy could be and what a definition of institutional racism could be so the definition of institutional racism isn't someone goes out to be overtly racist it means a policy has a disproportionate impact on certain groups and advantages the majority group in this case the majority white population of the UK, that it's a definition of indirect institutional racism I suppose if you look at COVID we didn't go out to be racist the disease itself doesn't discriminate nevertheless we have the outcome we did for those who work in the public space in social justice the question becomes not why it's happening but how can we reverse this and stop this and the question isn't to deny or accept whether Institutional racism exists the question is what we can do about reversing disproportionate outcome so for lawyers in this group and this audience I suppose if you have ever found it quite hard to talk about Independent Living institutional racism or systemic racism this year's probably been the year in which a broader public understanding of systemic racism and institutional racism coming together to allow the legal profession to take the challenge on more robustly I hope it's becoming easier.   
AYESHA CHRISTIE: I think that's right we are all having conversations about indirect institutional racism in this country what we have not seen yet is translation of that through to public law challenges I mean we see a lot of successful employment law race discrimination cases and recently a few high profile claims that have hit the headlines for example claim against General Medical Council recently settled claim against Ministry of Justice and we see fewer public law race discrimination cases what do you see as being the biggest challenges to bringing systemic race discrimination cases as opposed to individual private claims.   
DR HALIMA BEGUM: I think the biggest challenge must be the lack of understanding around what systemic and institutional racism is it's taking collective responsibility for an outcome and when an institution becomes culpable or responsible it's quite a tough judgement I believe as opposed to saying an individual mate a wrong choice the therefore there is a legal redress for it with an individual situation you can almost say that was the bad apple in the system and what we have dealt with it. Looking at the wider institutional case for racism it's much harder I think the idea that an entire institution could be responsible for a racialised outcome is pretty hard it's a difficult home truth then there is an issue around suppose we do accept disproportionate out comfort are unacceptable and there is collective responsibility for reversing that where is the grey space between what's a legal issue and what is public issue for government and Parliament to resolve for example what you find with individual cases it's straightforward case of litigation somebody gets taken to court there is an outcome and with public law cases there is an issue around public interest collective out outcomes who is responsible ultimately is it a big issue and if you look at for example if I don't know how many are aware Runnymede trust is currently involve in a public law case with Good Law Project around hiring of high profile public appointments to the handling of COVID Dido Harding for example and we were involved in the legal challenge on the basis that this was indirect discrimination because if you happen to recruit people on the basis of people in your own image and social set indirect outcome is you won't recruit people who look like me for example and that's a direct contravening of 2010 Equalities Act now obviously there is a case to be made for whether that is a legal case and another case whether Parliament should have broader interest in this we felt it important to make the case around indirect discrimination around hiring of public appointments precisely because it so difficult we want to broaden public understanding why it's so important on why people didn't understand why cronyism would lead to indirect discrimination when it comes to hiring I want to use a real example of a current case being heard in the high court around this point.   
AYESHA CHRISTIE: Interesting example I mean what you say around the extent to which it's the role of the courts to look at the issues or whether it's something for Parliament and for me it brings to mind the case heard in the Court of Appeal last year that brought by JCWI challenging the right to rent scheme which is many of you will know is one of the measures forming part of the governments hostile environment which imposes civil and criminal penalties on landlords who rent properties to persons who don't have leave to remain in the UK what was interesting about the case whilst Court of Appeal agreed the scheme did cause some discrimination on grounds of nationality or perceived nationality landlords were discriminating against people who had a right to rent but didn't have English passports or British sounding names notwithstanding that the scheme was held to be lawful because courts impose high threshold to establish illegality and systemic challenges it was found to be operating proportionately discrimination wasn't sanctioned directly under the scheme Secretary of State was found not to be responsible for it occurring it was a case of landlords choosing not to comply with equality law it's interesting in the case the court did give very considerable deference to Parliaments view as to whether adverse discriminatory impact was outweighed by what was considered the public, benefits and I mean that it's in my view it it's very problematic and to simple expect individuals to bring claims of their own private claimants of their own in the County Court it was something the court relied upon as forming part of the justification for not interfering essentially with the scheme notwithstanding the discrimination I mean what is your view on the courts placing the onus back on the individual to bring claims.   
DR HALIMA BEGUM: On that particular situation it would be pretty unfair I think to put the onus back on the individual who presumably lacks resources is a victim of the hostile environment and wouldn't have material or financial means to bring a claim even with all the support Legal Aid and the refugee support organisations available I think even if that was possible mental stress of an individual having to prove a case in public law I think is confide exhausting really for the County Court to bounce that back is abdicational responsibility I think it would have been better if the courts and the government teams were to think about how it is to resolve the issue rather than kick it off into the long grass it would seem coming back to the question around the higher legal threshold the higher the threshold the harder it is for individuals experiencing discrimination to get discourse to justice the higher the threshold harder it becomes to access law it's even more the case for indirect cases of discrimination and adverse impact we are already saying we said in 1968 or was it 65 it's difficult to prove direct racism never mind indirect now saying in 2020 we need higher thresholds to be persuaded on indirect racism almost 60 years actually after the Race Relations Amendments that's pretty hard going for those of us who work in race relations. Not only that if you were then to ask the government to balance public interest verses public law depending on the political will of government of the day public interest can mean different things particularly when it comes to immigration and hostile environment public interest shouldn't be the defining factor of the law if you look at public interest in the case of say I will pick a controversial emotive subject like ...erm... child safeguarding, obviously if you ask the public there would be a resounding set of zero tolerance of anything that hurts children as there should be but immigration cases I don't think you should rely on the public interest case to define a point of law, so I think that was probable not the right call for the County Court in this case.   
AYESHA CHRISTIE: I will move on to a slightly different topic I wanted to cover with you today, concerning ethnic diversity in the judiciary and the importance of this for the development of discrimination law and race issues and I was looking at data published from 2020 to get an idea of the lack of diversity (laughter) and looking back to the 2011 census we know 14% of the population of England and Wales is ethnic minority likely to be a higher figure now we have no ethnic minority judges in the Supreme Court 1 in the Court of Appeal and 4 in the High Court and that comprises 4% and only 8% of all court judges are from an ethnic minority background I am interested to hear how you think this lack of diversity impacts on race discrimination law and the.   
DR HALIMA BEGUM: Absolutely so first point of a lack of representation is that it stops the pipeline of talent right thinking of the legal profession broadening talent making sure we have access to the best talent it's obviously a problem the bigger problem is the impact on race relations law so though you quoted 2020 figure what I am always astounded by when I come across figures David Lammy's on disproportionate of black and minority ethnic people who to gaol 9 times more likely than white counterparts suggests something around practise of sentencing woefully inadequate might be linked to the discretion of the judge who will rule on a sentence now that is a space where people need to be more representative of the communities where they are serving sentences for if you have no relationship or no affinity or empathy with the communities you are then sentencing it is likely I don't like this concept of unconscious bias I think there are different ways to describe that but it's likely likelihood of empathy and unconscious bias may play a role at disproportionate rates I would have a worry and concern around lack of diversity in County Courts County Courts or other courts that has possibly disproportionate link to the number of black and minority ethnic people being sentenced at different proportionate rate it affects integrity of the legal work on the 1 level it's bad because we want to be more representative and show how we relate to the 14% senses fundamentally there is work around anti-racism I am more worried about and by that I mean t the lack of adequate representation and leadership has disproportionate impact on sentencing possible and we need to think about that as well as the lack of representation and to my understanding we have made progress on sentencing but not enough and if you look at all we have to do is look at the states to know we don't want to be in the same kind of situation as America when it comes to incarcerating young black and minority ethnic people in this country.  
AYESHA CHRISTIE: Absolutely I think t the problem you have highlighted in respect to sentencing in the Magistrates Courts and Crown Courts I think it is reflective of problems we have at the appellant level and looking and race discrimination 1 case that comes to mind I found particularly troubling is Supreme Court's decision a few years ago in the case of Roberts you might be aware of the case the Halima it was a challenge to the police's power under section 60 of the criminal justice and (....as read....) stopped and searches, and in that case court found power was compatible with article 8 of the European Convention on Human Rights various safeguard including legal prohibitions on race discrimination and they were sufficient to protect against arbitrariness the courts at various levels repeatedly refused permission to produce statistics on the disproportionate use of the power on black people and secondly in the Supreme Court’s judgment whilst court expressed concern black and minority ethnic should not be disproportionately targeted it placed stereotypes it stated many gangs involved in violent crime composed of young people from black and minority ethnic communities and went on to say it was black and minority ethnic communities benefit most from the use of suspicion of stop and search powers treating black communities as a homogenous group associated with gang violence it was for me troubling and missed opportunity for the courts to consider disproportionate impact of police powers on black people and I mean we see recent figures show that black people are 9 times more like to be stopped and searched than white people but for me it was particularly concerning this comment came from the Supreme Court.   
DR HALIMA BEGUM: So here is another example I suppose of an opinion offered in a legal court you will know this better than I it sounds like it's into the legal opinion the Supreme Court provided and shouldn't have had the place in court of law whether useful and beneficial for black and minority ethnic opportunities it's probably place of black and minority ethnic communities to give a view if it's useful or not our evidence tells us disproportionate stop and such of our communities is not helpful to black and minority ethnic communities so I think yes less said the better on that point but to the point around use of effective data collection I we have been campaigning for a better data collection at stop and search levels we believe that will bring about more accountability of the police officers performing stop and such functions without an ability to look at the trends and patterns around who it is being stopped it's difficult for individual officer to take responsibility I think most officers probably benefit from it as opposed to minority ethnic communities benefiting from the approach I think officers benefit from this and professionalism in their approach that it's missing now probable I wouldn't always ask for more data collection in every situation in in this situation it brings about better accountability so why not? The other statistic worries me of the numbers of people that are stopped and searched it's only 1% ends up with a convict conviction it's like current electoral integrity view imposed in Parliament people worried about ID fraud for example and concerns around asking people to produce photo ID bits 1% so why would you change laws and legislation of a country to a statistical aberration that doesn't reflect need or scale of the challenge in this country. So that suggests it public interest or political interest inference guiding legal cases we need to empower our law courts to be more robust and independent and stick to the law rather than be worried about public interest cases in this case it's certainly doesn't benefit black and minority ethnic communities to be stopped and searched we know that.   
AYESHA CHRISTIE: Absolutely I think what you say on data gathering in some instances is so important it's public law brings or attempting to bring systemic challenges it's so important to have the evidence and often in circumstances where the government doesn't themselves collect t the statistical evidence or disputes statistical evidence relied upon by an individual or MTO bringing a claim it's difficult to get that off the ground before we wrap up I wanted to ask you what issue would you like to see challenged over the coming year.   
DR HALIMA BEGUM: I think we need to go back to looking at not an issue as such but trying to get some ...erm... like a greater commitment from the law courts and the legal professions to demonstrate how the concept of institutional racism could be legally defined so my understanding of the Public Sector Equality Duty as it lapsed in the case of the Windrush decisions in the Home Office was that the equalities watchdog found that the Windrush decisions were scandalous yes mainly because they didn't uphold the penned had they Public Sector Equality Duty and had they complied (...as read...) observe on whether this was institutionally racist they said concept of institutional racism can't be defined legally if it can't be defined legally it couldn't exist in the law courts as a process it really caught us off guard forgive me I am not I a legal expert and was fairly young in 2019 I thought a precedent had been set within McPherson and the work around institutional racism and the how the law courts deal with it apparently not it's fundamental I think to furthering the case of systemic racism and what we do about it I bring us back to the issue of stop and such and the police the reason it matters so much is that last time I checked I was anti-racist to the core it's in my DNA it's how I was bought up if I were to join one of the institutions Metropolitan Police and a policy on racial profiling Matrix was in order for me to do well in the police force incentives are for me to follow those policies otherwise I am rogue best anti-racist in the police force ends up implementing racist policies which have indirect outcomes on our black and minority ethnic communities that system is inappropriate for the best anti-racist we need to grapple with institutional racism make it real and practical so people understand devastating impacts on how to deal with it if we were to make progress on this front all our jobs are easier as you can hear I am saying I can be best anti-racist I make mistakes as an individual if the system and my profession is skewed institutionally towards disproportionate outcomes that are racist my best intent is not good enough.   
AYESHA CHRISTIE: Great to hear your views we could talk all morning I am afraid we are out of time now it may be some of the issues you touched upon in respect of institutional racism and PSED may be addressed by some of the speakers on T some of the interesting sessions happening over the next day or two thank you very much I will pass back I to you now Jo.   
JO HICKMAN: I will resist I have scribbled down questions I will resist in terms of time Amelie were you suggesting we have a quick comfort break before next session it shows where the real control is.   
AMELIE GODFREY: No I was suggesting 2 or 3 minute comfort break to allow everyone to stretch their legs we have a question that's come through for the opening chat in the Q and A box Halima would you prefer to take it or go straight to comfort break?   
JO HICKMAN: Looking at that as a punters from an organisation the that has we are not PLP is not a law firm we employ practising lawyers question is leaving a paragraph saying we encourage black and minority ethnic clients to apply enough I think our conclusion is no it plainly isn't and all sorts of things that organisations can and should do in terms of more affirmative action in terms of getting earlier than that, there is straightforward (inaudible) have a genuine understanding PLP is a progressive organisation do we have a genuine understanding no are we working to address that and making a difference in terms of our practises.   
DR HALIMA BEGUM: Good answer Jo (laughter)   
AMELIE GODFREY: I was going to rather graciously interject and say let's take a 2 minute comfort break and reconvene at 9.36 for state of play on the PCP DED.   
JO HICKMAN: Thank you so much great really interesting.   
DR HALIMA BEGUM: Good luck with rest of conference I would like to stay I can't it sounds like the right conference based on the last 2 years.   
JO HICKMAN: Hopefully catch up soon.   
DR HALIMA BEGUM: Definitely speak to you soon Jo Ayesha thank you bye.  
AMELIE GODFREY: I have 38 by my watch Ade we can pick back up whenever our wonderful panellists are ready.   
NEW SPEAKER: I will check in to see if all the panellists are ready then hand to PLPs chair Elizabeth Prochaska.   
ELIZABETH PROCHASKA: Welcome everybody those who were present at the last session will have heard PSED mentioned a couple of times and interesting reflections and from the speakers one of the points that was made that I found particularly interesting from my own perspective as the former legal director at Equality and Human Rights Commission was around the Equality and Human Rights Commission's failure to accept institutional racism as the legal concept that's something perhaps some of our speakers can pick up on but the PSED from my perspective both as litigator and when working at Equality and Human Rights Commission is such a fascinating tool with such potential but I think it's fair to say I think all the speakers agree today it's perhaps hasn't met the ambitions it was the initial Parliamentary intentions when first created and that there is definitely more that can be done with it so I am looking forward to hearing from 4 brilliant speakers on recent developments on PSED and the first Nicola Braganza a barrister at Garden Court specialises in public and human rights and equality law and Nicola was recently involved in a PSED challenge to ministry of Defence handling of sexual violence cases in armed forces and (....as read....) namier Barack's cases then Megan Goulding at Liberty legal human rights NGO then John Halford public law solicitor at Bindmans and John brought one of the first PSED cases on race and disability and planning public transport school admission policies and voting requirements and finally Svetlana Kotova works at Inclusion London responsible for policy justice and campaigns 4 fantastic speakers I will hang over to Nicola first to talk about recent PSED cases.   
NICOLA BRAGANZA: Thank you very much Elizabeth and Public Law Project for inviting me to speak about PSED which as Elizabeth says it's fascinating and so much more we can do you with it thank you those are my s slides, so I am going to talk about recent cases and trends and I am also going to, be speaking a little to the Equality and Human Rights Commission report following from what Dr Begum was saying and Elizabeth as well on the Windrush generation and home offices hostile environment policies and extent were they were found in clear breach of the PSED my overview next slide please so what I have taken from the cases I am going to take you through are 7 particular points I think are of real importance first is as you will know I am sure highly familiar with it's always fact sensitive when you bring the challenge second point don't challenge but not too late third (...as read...) decision of Terani no extra (....as read....) assessment so this going to be the equality impact assessment to be rigorous and conscientious 5th curing the beach is permissible and the cases on that are a number of housing cases 6 no need for duplication and specifically education case on that I take you to 7th in my view most importance and this is of course is brilliant Bridges case that is to remember that the PSED is this is what it is meant to be integral important part of the mechanisms to meet aims of anti-discrimination legislation 8th point as to what difference the PSED compliance would make and John will speak to that next slide starting with fact sensitive the importance of the challenge being determined on the individual facts of the case and I have referred too recent case came out a week or so of Sofia Sheikh and lamb about the in which Mr Justice Kerr in her judgement reminded that due regard the question of whether your public authority in question had due regard was fact sensitive that duty because that's what PSED is solely a procedural duty as to what can be called duty to have regard to what can be called the equality objectives it's not performance of the duty itself the facts next slide please, thank you very much, so the facts in Sofia Sheikh miss Sheakh (sic) was disabled and heavily reliant on her car and challenge bought to orders in low traffic neighbourhoods with aim of promoting walking and cycling discouraging use of cars other motor vehicles, and the challenge in respect of the PSED was that there was an insufficient regard to the need advance equality of opportunity. The claimants Miss Sheakh relied on setting out all the barracking setting out principles for and Equality Impact Assessment it either didn't exist or inadequate Lambeth relied on 2 cases hollow and herly, hollow emphasizing what emphasises due regard depends on the sights and herly ultimately it's for the decision-maker to decide what weight to be given. Next slide please and the claimant unsuccessful and the fact sensitivity element in the case was that due to the Coronavirus epidemic and resulting (....as read....) leisurely approach, to take radical and almost immediate measures that's the fact sensitive 1 next slide please. The second point don't challenge too early but equally don't challenge too late there is a judgement came out yesterday you see it at the bottom of the slide it's a little blurred because of the logo there, which was DK all about backdated claim on Child Tax Credit and referred specifically to Moore and what Moore says about delay and the time at which a challenge is to be brought so in Moore first instance Mr Justice Swift dismissed the challenge it concerned difference in treatment between maternity allowance and statutory maternity payment when collating amount of Universal Credit and permission in respect to the PSED was refused on the basis that it was bought out of time the claimants argued that time ran from the date of the breach, the Court of Appeal rejected the argument saying the challenge was to the progress of the decision-making which led to the Universal Credit regulations 2013 and held that this is not one of the so-called person specific categories identified at badmis where the challenge is directed to the process the correct approach is within 3 months of the breach alleged to make (....as read....) time. So that was a case where the claimants came too late to their challenge and the next slide please is 1 too early, so this was the 3m ...erm... EU settlement scheme, and the requirement by the Home Office for in respect of its policy for digital owning proof immigration status and Mr Justice Lyndon held it was premature because the policy was not to be implemented until first July 21 until then immigration status to be verified by physical evidence overall scheme subject to modification and importantly in bold at the end of the slide because until first July it continues to be permissible until then it is open to the defendant to discharge additional duty under section 149 (....as read....) in relation to this aspect of the scheme that 1 was too early next slide please, thank you Terani I mentioned earlier slide is cut off on that 1 that was an issue about whether there was an extra territorial reach reaching the Court of Appeal, and the issue there was concerned vulnerable persons resettlement scheme so and whether the PSED had a territorial application the facts in that case were that the appellants were Palestinian refugees (....as read....) appealed against dismissal JR of the scheme and its materially identical replacement the UK resettlement scheme I am sorry the slide is slightly cut off and the scheme applied only to refugees referred by (...as read...) registered with UNRWA and UNHCR had no mandate (....as read....) to establish the scheme had been a breach next slide please went to Court of Appeal appeal dismissed cross appeal aloud and held that the real question is whether the duty extended to having due regard to promoting equality (....as read....) outside the UK. There was nothing in the express words of 1491 B suggesting Parliament intended to extend territorial reach outside UK and in addition to that public authority to have regard to equality needs of those if it had to have regards to the equality needs of those (....as read....) influence that was not implicit in the statutory scheme and make it incoherent judge's criticisms of (...as read...) because they had not been consideration of the normal presumption against extra territoriality next slide please I have 2 watch this space we will hear from the brilliant Jolie Brierly founder of motherhood plan also known as Pregnant and Screwed a challenge at first instance unsuccessful was brought about self-employment Income Support scheme and that was in respect of it being indirectly discriminatory to self-employed women who had taken leave due to maternity or pregnancy and based on the calculation of formula of the average trading profits relating to the previous 3 years 2016 to 19 and the claimants argued there was no Equality Impact Assessment before deciding that approach it was found that there was no PSED breach but there is an appeal pending next slide please

And specifically Mrs Justice Whipple found that the duty again was procedural not a duty to achieve any particular result which is always the difficulty with PSED and changes it into or emphasize the extent to which it's a paper tiger rather than having real teeth, in terms of it not determining the actual result and then Mr Justice Whipple held a court should not go further (...as read...) referring to BMA and Secretary of State of Health and social care and she found that there had been regard for the complied of women recently on maternity leave another watch this space next slide please, so this was successful, and that this was on its facts concerned London street space plan a decision came out in January this year, and again in respect of management traffic management orders held Meyer of London and transport for London failed to have regard to relevant considerations (...as read...) and that there had been no regard to the fact that potentially the scheme had adverse impacts on people with protected characteristics.

Next slide please. This is really important whilst it is a procedural duty it was emphasised again there is the need for a conscientious rigorous conscientious assessment not what we find in later cases again repeatedly referred to it's simple perfunctory or non-existent, next slide, curing the breach 5th point Taylor and Slough then approving 3 other particular cases I share on the next slide in respect of possession proceedings failing to take account of the claimants disabled status and it was held there that the importance of prospective (....as read....) actions. It was possible to cure the breach next slide please. The possibility of a breach at an early stage could be cured approving 3 cases I mentioned before Barnsley Powell and Ford subject to this rigorous assessment required to take place that the public authority complied with the duty in substance and rigour and an open mind. Next slide please.

No duplication needed is my 6th point education case of Redbridge ZK and Redbridge found the Local Authority had not acted I legally or I rationally in adopting a decentralized (...as read...) for the LA then to also have regard to the PSED it's covered in the specific section under which it carries out its decision-making so be aware of that.

Next slide please I am going to speak very briefly I am conscious of time to the report of the Commission on the Home Office's hostile environment policies as they applied to the Windrush's generation and this resulted following from the gross injustices and Windrush's lessons learned review Equality and Human Rights Commission used enforcement powers to consider whether Home Office complied and found in its very in my view damning report it plainly had not. Next slide please.

Those the findings within the report I summarized them there, that there was insufficient evidence of the Home Office having due regard (...as read...) you will know about the immigration exemptions in respect of the P said and colour is not exempted, the Home Office did not comply with the PSED in understanding impact on Windrush generation and descendants the experiences were foreseeable and avoidable negative equality impacts repeatedly ignored particularly damningly I don't know whether that can be slightly scrolled up my slide or reduced in size particularly when they were seen as a barrier to implementing hostile environment policies I mean it pretty much sets out every criticism in terms of what you should not do when applying PSED every possible breach there is next slide please, Ken I don't know is it possible to reduce the font or size of the slide. Limited engagement, so the report also found thank you thank you very much (laughter) found limited engagement so I am now on the next slide, thank you, oh dear thank you to my slide handler I hope you can all see those points.   
AMELIE GODFREY: Very quickly Nicola sorry when the slides get circulated with final version of the delegate pack I will minimize the font so they sit on the page more easily.   
NICOLA BRAGANZA: Yes breaches clear breaches and the recommendations of the report limited engagement with stakeholders, too focused on groups that would help so essentially in my view a biased approach and a closed mind approach equality impacts considered too late exceptions to PSED interpreted too broadly incorrectly every aspect lack of organisation wide commitment, and those words again perfunctory and insufficient in their response next slide thank you I am nearly there, so going forward again in my view pretty basic and you expect Home Office to be applying this but clearly a strong need for this to be highlighted to Home Office again prioritise act early (...as read...) make sure ministers consider detailed equality information review Equality Impact Assessments and be transparent I think you can apply these in more wider contexts as well I will end so it's not all too depressing on Bridges it's so brilliant highlights certain Bridges points set out within it so facts I am sure you are familiar concern the South Wales Police and the use on a trial bases of automated facial recognition technology idea to capture images see if it matches police watch lists if they don't delete the images it was held that first of all in terms of the discrimination aspect of it not in accordance with the law it was a binary question it either is or isn't also in breach of the Data Protection Act and importantly for our purpose breach of the PSED because reasonable steps had not been taken to investigate technology specifically on racial and gender bias next slide please and what does the PSED require so as Amelie said thank you you will get if you want to use slides they will be laid out it's all more legible essentially for your purposes bringing challenges you might be defending challenges you have to give thought to potential impact which may appear neutral very much fits face it's how it impacts.

What if there is no evidence so if that argument is run well that falls short in terms of that being whole point to take reasonable steps to make inquiries even if there is no evidence before it it's putting the cart before the horse you have to make inquiries to identify what the risks are next slide please, . Trial process the argument was we were piloting this so to the extent we are piloting we are compliant with PSED no answer. It's important if anything on the trial process, before during the course of the trial (...as read...) information. Finally this is my final big point which I think should introduce next slide final slide introduce and conclude all submissions because it is so crucial what is the PSED all about albeit it's procedural it is a provision which has to be seen and treated and applied as an integral important part of the mechanisms for ensuring fulfilment of the aims of anti-discrimination legislation lip service will not do. Thank you very much I will hand over to my fellow speakers now. Thank you for the slides.   
ELIZABETH PROCHASKA: Thank you so much Nicola that was great Megan will talk in more detail on Bridges later on. And I think that last point the quote from Arden in Elias is so important when thinking of the PSED and I often feel that public law litigators can sometimes treat PSED almost as a free-standing free roaming obligation that is not really connected to discrimination context I think it's a challenge for all of us to try and really excavate routes of the PSED to make sure it's a real part of discrimination legislation and thinking how we can bring discrimination claims alongside PSED to bulk it up I think John will speak next on his experience of litigating said and what can go wrong over to you John.   
JOHN HALFORD: Thank you very much Elizabeth, so, I am going to pick up exactly where Nicola left off and if we can jump to the next slide please, so here is what lady justice Arden said in Elias case 15 years ago it is the clear purpose of section 71 that was the predecessor to section 14 9 of the Equality Act to require public bodies to whom that provision applies (...as read...) then this and I will pick up on this theme later it is not possible to take the view that the Secretary of State's non-compliance (....as read....) future.   
 Now, we have come a long way Bridges is a really important re-affirmation of those key principles but there is other authority suggests that other judges are taking a different and rather more sceptical view of the PSED and that that is playing out in their decisions and most of my tall is going to be about how that is happening at the moment and what can be done about it proactively by lawyers acting for claimants in PSED cases or sometimes even more importantly lawyers advising those who might have a PSED case down the line but need to take proactive steps to prompt the public authority to discharge its duties then enforce them if necessary can I have the next slide please. So jumping forward to so jumping forward to 2021 it's an extra extract from a transcript of the proceedings in a case that I did which was all about a group of EU nationals who could not vote in the 2019 European Parliamentary elections because UK's fairly Byzantine voting registration and then declaration of intent to vote in the UK requirements made it extremely difficult for people to do that, and the electoral Commission estimated that only about 40% or so of registered EU national voters actually were able to vote in those elections so we brought a challenge on various bases saying voting rights were frustrated and 1 aspect of the challenge was based on the PSED and this is what Lord Justice Lewis had to say during the course of argument, I won't attempt his accent people will be relieved to know we know from the case law (...as read...) ground 4 only" no surprises in learning that the court subsequently went on to dismiss that claim on all bases including Public Sector Equality Duty only there is quite a gulf between Bridges and Elias on the 1 hand and ...erm... a decision like this can I have the next slide please, so I am going to briefly touch on 7 problems that are manifestations of this judicial lack of enthusiasm for Public Sector Equality Duty and in certain contexts and in certain factual circumstances and all of them pop up from sorry all of them pop up from time to time in different cases and different guises some are older cases they are selected to make the point but these same principles come up in much more recent cases first problem problem 1 decision-maker not alerted you might think it's a strange problem for those bringing a PSED case to have because isn't this a duty that always falls on public bodies not on members of the public well in general that is right but the courts are often a bit sceptical about PSED cases brought when at the time the decision was being made and made, nobody mentioned there might be an equality problem and another one of my cases Bailey and others verses Brent Council a library closures case was a manifestation of that and what happened in this case was the Local Authority decided to close a number of libraries in Brent and it did undertake an Equality Impact Assessment which was quite sophisticated but what they had missed was to look at a very simple issue which was to compare the demographics of each part of Brent where a library was situated with the proposals for closing particular libraries in each of those areas and if you did that what immediately became apparent was that most of the libraries that were going to be closed in Brent were in communities that to be those were Asian people predominantly lived or where there was a they were a significant minority and inevitably closure of the libraries would have a particular impact on Asian people in Brent, but that had not been identified either by Brent or by the anti-library closure campaign at the time as a specific issue and the court was very sceptical about it and felt it was a clever point that had been raised by lawyers and weren't willing to allow the claim on that basis as you can see I think it was Lord Justice Pill says the council was not plainly confronted either on behalf of the (...as read...) exist and a similar problem pooped more recently in the housing possession context in the Powell case what to do about that problem next slide please. Firstly early advice is very helpful, of course it is far from easy to secure particularly for disadvantaged communities but if advice is available then putting public authority on notice there is a risk of discrimination as part of consultation exercise or otherwise is really helpful and if that isn't done when the claim is brought you must at least be ready to demonstrate in evidence how the issue demanding due regard ought to have been pretty obvious to the decision-maker next slide problem 2 challenge brought too late I will touch on it briefly Nicola talked about delay cases as well fairly obviously courts are going to be sceptical about cases bought right to the end of the 3 month period which was the case in compromise agreements limited litigation that was an attempt to challenge a cap on the compensatory award in unfair dismissal cases when regulations that impose the cap were imposed for most of 3 months and tens of thousands of people had already been affected and another recent not terrifically helpful case on timing S verses Scottish Ministers and this is a COVID case so context doesn't help either but this was a challenge to arrangements for halting trials for serious sexual offences and the CC claim was brought more than 3 months after those decisions were made the complainant said the breach is ongoing (....as read....) were mad. What to do about that problem? Next slide please.

So being proactive is really important as with first problem making representations ahead then following through with litigation, keeping in mind judicial review can be targeted at decisions to introduce legislation it's often when PSED grounds first arise so government produces a response to consultation response saying we are going to do this is generally the time to go for a challenge, and then the final Equality Impact Assessment will often be published at the same time and a good remedy for these sort of timing problems is to reach agreement on timing about the claim with the proposed defendant not every defendant will do that but some will and the issues eliminated from the litigation and lastly to issue promptly it's still the case even if promptness requirement is removed with Judicial review forms that the government it's talking about next slide please.

Problem 3 functions not targeted so this is a very new problem and it may develop significantly because there are now 3 cases on it and they are all in my view anyway pretty regressive cases so the problems hinted at in the 3m voting case I mentioned earlier so when the court came to give its judgement it said well we are not sure and even having heard submissions still not sure what functions are said to have engaged the Public Sector Equality Duty and at what point in time there was a failure to meet it and they said the evidence is that after June 2016 which is following the Brexit referendum no-one was actively considering (....as read....) exercise of a function. In other words the inactivity on the part of the government even though it was aware from 2014 there was a serious disenfranchisement problem somehow immunised it against considering equality issues, next slide please.

What to do about that? Well firstly it's important today identify what functions the public authority is discharging and how the PSED relates to them when preparing the case you may get a judge is interested in these sorts of issues set them out in the letter (....as read....) outset. Because next slide please, in the Adiatu case the court went 1 step further saying not only was there an issue about targeting the function but when the function was identified in the course of pleadings and submissions in fact in the view of the court the PSED did not apply to it, this was a case that was about the statutory furlough scheme and the court was faced with arguments the scheme was discriminatory on various basis bases an also a PSED breach because it had not been exercised when the furlough regulations were laid before Parliament and that was accepted by the government and nor had the PSED been thought about when the government considered alternatives to the particular furlough scheme that they had in mind and so the claim failed on those 2 bases Z well as other bases. My view is that this case may well be wrongly decided next slide please, and that is because Parliament did think about which functions should not be subject to PSED very carefully when it was first enacted in the Race Relations Amendment Act and later on Equality Act 2010 and if you look at the exclusion section of the 2010 act you will see a list of various statutory functions which the PSED is expressly disapplied from including some immigration functions and other things, and so it seem to me that just as a matter of statutory construction if Parliament had meant there to be exemptions based on the particular nature of the functions being exercised it would have put them in the act in the first place anyway it's a first instance decision not appealed so far as I am aware that argument will need to be ventilated another day in the meantime for reasons identified in relation to problem 3 it's really important to identify and target functions accurately and explain how explain how you consider them to be ones where the PSED is engaged next slide please, problem 5 challenge to broad or ambitious this is a recurring problem where and I mean it's a difficult 1 to think about we all want to use PSED as a tool to bring about social change and focus of decision-makers on equality issues but sometimes the court believe that what is being asked for is too ambitious so Fawcett Society it's a good example it's only refusal of submission decision I don't think it carries weight or I it's even reported in that case the society argued although there had been Equality Impact Assessments done for certain elements of the national budget what had not been done was to look at cumulative effects of the different budgetary decisions being made by the Lord Chancellor and see how taken together they impacted adversely on gender and had quite good evidence of that and the court felt it was quite ...erm... a far too ambitious exercise to attempt in the context of litigation and it dismissed the claim said that the individual budgetary impact assessments were enough. Next slide please.

So really the remedies there are identify a narrower target (...as read...) Elizabeth mentioned that earlier on if you have a Public Sector Equality Duty and case which combines a conventional discrimination challenge albeit bought through medium of public law with PSED argument those cases tend to be stronger and be ready to demonstrate on the fact having due regard could well have led through different decision. Unrealistic standard for compliance this is another very common issue where the public authority has done an Equality Impact Assessment of some kind and the court thinks actually they have done enough what is being asked for is a council of perfection and South Kent clinical commissioning group it's a good example of it and Mrs Justice farbey says there short answer to (....as read....) next slide please. So the remedies for this problem are again proactive and I think one of the most important things is to look at the standard that the public body actually sets for itself when it comes to PSED compliance so if you scrutinize own policies and impact assessment templates and its statements of commitment and its annual equality reports you will often find really good stuff that the public authority fails to live up and to that it's a very good way of demonstrating that the standard that you are criticizing public authority for not adhering to is 1 it considered unrealistic in the first place also have a look at the codes and guidance issued by Equality and Human Rights Commission (....as read....) diocese and Menevia case was about school transport in Wales where the Local Authority had decided that it was a good idea to abolish free school transport for most schools but preserve it for Welsh language schools and when the demographics of the affected schools were analysed it emerged that faith schools that typically had a far higher proportion of black and minority ethnic than most schools in Wales and certainly much more than the Welsh language schools were going to be significantly adversely affected and that had been drawn to the attention of the decision-makers beforehand and they had not grappled with it so what we said was you had these statistics and publish bulletins of them every quarter showing demographics in each school you could have simply looked at the affected schools that were going to suffer on account of the cut compared them with schools that were not going to suffer you would have immediately seen who was going to face the brunt of it and it was the black, Asian and minority ethnic pupils black and minority ethnic pupils and the court agreed. Next slide please problem 7 is compliance would make no difference I think it's the biggest problem probably I am running out of time I will deal with it quickly in the 3m case as I said court didn't like the argument held that the issue of PSED compliance was academic and brushed it aside on that basis in any event hinted that if it had not been academic they would have probably refused a remedy anyway under section (....as read....) we are about a million miles away from Bridges and Elias here it's not a unique problem though next slide please, this issue arose in the Blundell case which was all about a policy of making deductions from Universal Credit to pay off criminal fines Mr Justice Kerr again says that timely performance of PSED it was accepted by the government there had not been any PSED discharge just as the case in the 3m case timely performance of (...as read...) different.

And so relief was therefore refused and the court in the Luton sorry it's cut off at the bottom it will be on the slides you get Luton and dudander case said same thing what to do about this next slide please first thing to bear in mind is to go back to the case law on why declarations of non-compliance with mandatory legal duties are important and why the courts should be reluctant to withhold declaratory relief under section 312 A when doing so involves making suppositions about what the defendant would have done if it had discharged it's legal duties and the best authority for that it's plan B earth case it emphasises how important it is for courts not to (....as read....) rule of law next slide please, and lastly avoiding this problem makes no difference in the view of the court be ready to identify precisely how having due regard at proper time could have led to a (....as read....) that was one of the major problems we had in the 3m case because of the pandemic and various other things ADR was amptet the case ended up being heard a couple of years after the problem and the court was clearly influenced by that look at the old and recent case law (...as read...) mentioned bridges already. C and Secretary of State for justice the court said it was just completely inappropriate for there to be ex post facto attempt to discharge the duty and use it as an excuse for not doing it at the right time and lastly and importantly don't give up because many of the leading cases decided on appeal (....as read....) t examples of that are the JFS case Supreme Court level where Mr Justice Mumby as he then was gave a declaration there was a (....as read....) Supreme Court and Harris case first planning case again PSED given short shrift by Mr Justice Lynne dome at first instance found to fundamentally flaw the decision, by Lord Justice Pill in the Court of Appeal thank you very much.   
ELIZABETH PROCHASKA: Thank you very much John that was fascinating, and I am going and to hand over now to Megan Goulding who will talk in more detail about the Bridges case we have already heard a little about I for 1 am interested in hearing Megan's perspective as the solicitor involved thank you.   
MEG GOULDING: Thanks Elizabeth hopefully people can hear and see me, thanks for the wonderful introduction from Nicola who kindly and John who kindly introduced this case as PSED success story and very accurately set out already some of the courts findings hopefully I can still be interesting for you and speak in a little more detail about what the Court of Appeal found and try and draw out some of the implications for practitioners, as Elizabeth said I was solicitor for ed in this judicial review, and next slide please. Thank you. So by way of background we have heard a fair bit of this from Nicola South Wales Police began trialling live facial recognition in May 2017 and deployed it now around 70 times not to our knowledge since the Bridges judgement in the Court of Appeal, although I say that is overt use of live facial recognition it's quite possible it is being deployed covertly without our knowledge for those who don't know what live facial recognition is it works by extracting from CCTV feed images of people's faces as they walk past CCTV cameras and then it extracts and uses their facial biometrics to then compare them to a watch list of images, so ed was himself scanned twice firstly in December 2017 when he popped out for lunch from work on a High Street in Cardiff, and secondly at a peaceful anti-arms fair protest again Cardiff in 2018 ed brought his Judicial Review on 3 grounds claimed South Wales' use of live facial recognition was incompatible with right to privacy for all people scanned by the cameras secondly it breached data protection legislation and thirdly for our purposes most important breached PSED, so in terms of the PSED what ed claimed was that South Wales Police never had due regard to the need to eliminate discrimination on the grounds of race and sex which might arise in their use of live facial recognition, now for those that don't know studies show that there are higher rates of misidentification for people of colour and women, by facial recognition and it's worth saying there are also good studies showing higher rates of misidentification of other groups too such as disabled people and trans people and the focus in Bridges was on race and gender bias, and these higher rates of misidentification it's well known are caused by the data set of phases used to train the facial recognition technology not having sufficiently high numbers O or variety of facial images of people of colour or women or disabled or trans people, now this problem of in-built bias is well-known it was well-known back when the trial was getting off the ground South Wales Police's trial was getting off the ground despite that South Wales Police didn't get access to any information from the private company manufacturing their technology about the demographic composition of their training data set and also failed to carry out any sufficiently robust testing them shelves of the in-built bias in their technology. They had done an Equality Impact Assessment it was possibly one of the worst ones I had ever seen it dismissed out of hand potential for discrimination showed fundamental misunderstanding of how the technology works by adjudicating they weren't looking for women and weren't looking for people of colour that obviously wasn't the point.

September 2019 divisional court dismissed Ed's claim on all grounds in terms of the PSED the court found that the police when the trial commenced had not known nor in the courts mind should they have known or recognised that the tech they were using might discriminate thankfully, August 2020 the Court of Appeal allowed Ed's appeal on all grounds including that the Divisional Court was wrong to hold South Wales Police had complied with PSED and surprising for us the police did not appeal the court of appeal's judgement so that judgement stands it's that judgement we will delve into a bit now so next slide please thank you.

The ultimate conclusion of the Court of Appeal on the PSED is the quote there on the right-hand side in the red text box South Wales Police have never sought to satisfy themselves (....as read....) there are 3 key points I wanted to root out from the Court of Appeal's reasoning and the first is on this slide here the court found public authorities cannot rely on a lack of evidence or information in order to discharge the PSED. This point was made in 2 interesting ways by the Court of Appeal the first was they found the Divisional Court was wrong to be persuaded by the fact that when the trial started there was no evidence before South Wales Police their tech may have a gender or racial bias in the court of appeal's words as Nicola put it rightly to put the cart before the horse and the purpose of the PSED according to the Court of Appeal as opposed to the negative obligations and in the Equality Act to avoid discrimination is to ensure that a public authority doesn't inadvertently overlook information it should take into account PSED requires public authorities to take steps to make inquiries and ascertain information that might not yet be known to them, so what South Wales Police should have done is gone out and gathered information on whether their tech discriminated and not relied on the fact that they didn't know that it did discriminate.

The second way this first point was made by the court in them finding South Wales Police couldn't rely on the fact that the manufacturer of their technology wouldn't reveal demographic composition of their training data set and Court of Appeal did show an understanding as to why manufacturers wouldn't want to reveal this kind of information for confidentiality commercial purposes and nevertheless found South Wales Police should have thought to satisfy themselves tech wasn't bias that they were using so they couldn't rely on broad reassurances by the manufacturer about the data set including those set in witness statement to the court said don't worry we use sufficiently high numbers of images of women or people of colour and didn't give exact figures or detail I suppose in this sense Court of Appeal confirmed what we already know to be the space in helpfully emphatic terms PSED (....as read....) not delegable to private companies supplying you with the technology next slide please second interesting point Court of Appeal made in its reasoning is as Nicola already helpfully set out PSED requirements for trials are no less stringent and so before Divisional Court South Wales Police argued it would continue to review events through the course of the trial against PSED criteria in section 149, the Divisional Court accepted that as correct approach in the context of a trial but thankfully the Court of Appeal rejected categorically the approach and they said the PSED does not differ.

Getting to whether something is a trial process or not in fact if anything it it's more important that, during a trial public authorities take great care to gather relevant information in order to conform to the P said and avoid discrimination and I thought it was particularly interesting what Nicola set out in the case of hollow about what the PSED requires depends on the stage of decision making even if it is the case thankfully here we have confirmation you can't escape your PSED obligations by conducting a trial.

And the third key point in the PSED reasoning of the Court of Appeal they found the PSED requires proper process now I think it's particularly in testing because as the other speakers that have already rightly pointed out PSED is thought to be somewhat limited because it's a matter of process not to come here we see the police trying to rely on what they thought to be the substantive outcome to justify failure of process and court rejects that saying it's no it's still very important you meet this higher standard of proper process so what happens what happened in reaching its decision the Divisional Court emphasised significance of what it called a human fail-safe ie 2 police officers will check any potential match alert bath system of facial recognition system before any action is taken and the Court of Appeal on the other handheld this human fail-safe was insufficient to discharge PSED and pointed out firstly humans make mistakes in the context of identification, and more importantly the human fail-safe is not material to PSED as a matter of principle because PSED is duty of process not substance and the proper process was not follow and bias was not investigated next slide please.

So what conclusions can we draw from the court of appeal's findings as John said don't give up it might be one of those examples had we not appealed the PSED judgement part of the judgement of the Divisional Court would have stood and it would have been a loss, and I think it is also notable PSED section of the Court of Appeal judgement campaigns with a really robust defence of the historical continuing importance of the PSED especially Court of Appeal notes in the context of the enduring public concern around the relationship between the police and communities of colour, I think particularly useful observation of the Court of Appeal is this point even when manufacturers refuse to release information public authorities must still investigate bias and I think this finding will I hope have a knock on effect on other public use of privately manufactured technology which surely will only increase, it will result either in manufacturers feeling they have to release more information about training data sets and such, or probably more likely public authorities have to step up to the mark and have to more rigorously test their own technologies either way hopefully technology will be better exposed and better mitigated before it gets rolled out, also significant I think is that the Court of Appeal rejected South Wales Police's claims they had complied with PSED so as we have heard they dismissed reliance on the human fail-safe also dismissed chair own statistical analysis they had done of the in-built bias which was recounted in a witness statement to the court and the court was quite direct it criticized analysis as being off point looking at the wrong data and being non-expert, and this important I think because it shows the courts won't just accept public authorities claims of having complied with PSED out of hand but will apply a careful scrutiny to those claims which in turn of course bolsters the PSED, and finally coffers it's a huge relief that the PSED requirements have been confirmed to apply during trials I think it's particularly important as we see an increasing tendency of public authorities to term what is actually just deployment of a technology as a trial, it's notable that in South Wales Police's case there was no end date for the trial it had gone on for years no objective criteria by which they were assessing the trial it was deployment in all but name and relying on the name of a trial to avoid their legal obligations, next slide please, so s just final thoughts for practitioners that I hope are helpful and ed relied on expert evidence in his Judicial Review this was useful possibly critical in getting the court to reach its PSED findings it's something for others to consider in future PSED claims and ed put in 2 expert reports from an expert in biometric technologies suit how facial recognition works in facial recognition works in general and the specific issue of how bias can be in-built to a system from the training data debt and expert explained to the court why South Wales Police own purported analysis was into the proper analysis and the court sighted the 2 expert reports several times in reaching its PSED conclusions, secondly and the other speakers have done well in explaining this already there are limits of course as we call know to the PSED being a matter of process so we wait now to see post court of appeal judgement how the police tried to comply myth PSED if they wanted to deploy live facial recognition again there is a fear of course they will tick enough boxes to satisfy a court on the PSED but to leave open the possibility of discriminatory impact of facial recognition and so it might be important for us to think about future challenges to live facial recognition not being based on beaches of the PSED but instead being based on breaches of the negative obligations in the Equality Act not to directly or indirectly discriminate those of us doing wider campaigning or advocacy work around the issue of facial recognition might think campaign to produce (...as read...) so public authorities have to get certain information from private manufacturers about their training data sets and so on or alternatively or in addition requirement that public authorities have to publish their testing their bias testing to allow for independent verification, just a flag for those interested I appreciate I am getting a bit niche on facial recognition draft guidance on facial recognition on the use of live facial recognition by police forces has been published post Bridges by college of (inaudible) to the Bridges judgement in its content in terms of the PSED it does mention the potential bias in facial recognition technology which of course is going on further than the South Wales Police were prepared to do, and it does mention need to comply with PSED but worryingly there is no practical guidance in the guidance on how police should conduct their testing, nor is there a recommendation for third party testing or verification of police testing, and there is also no acknowledgement t that the PSED applies not just to the technology which of course we have been discussing today because that is the subject of Bridges judgement but lots of other elements of facial recognition choice of which images to put on a watchlist decisions on where to deploy technology and which communities to deploy so we wait of course to see when the guidance is published it remains in the form it it's now in draft if it does it may lessen slightly impact of the Bridges Court of Appeal judgement if police that have free rein to determine and run their own testing of bias for PSED compliance we wait and see thank you very much.   
ELIZABETH PROCHASKA: Thanks so much Meg that was really interesting deep dive into the Bridges case with a lot of relevant lessons for other PSED claims I am conscious of time we have 15 minutes left for Svetlana can we go over nothing else is scheduled at 11 I am conscious some participants have to leave is it possible to go on a little bit.   
AMELIE GODFREY: Yes we can if necessary.   
ELIZABETH PROCHASKA: If people have questions perhaps you can put them in the Q and A at this point can I ask panellists to answer in writing in the Q and A box themselves if they can over to you Svetlana.   
SVETLANA KOTOVA: I will try to whiz through maybe we will finish in time next so thanks for having me on, I am Svetlana work at Inclusion London we are deaf and disabled people's organisations run and controlled by disabled people and majority of staff at all levels including senior staff disabled people and campaign for equality and inclusion of disabled people nationally and London wise and also support many smaller local groups of disabled people in their campaigns and we come at disability from a social model point of view disabled by society not by our impairment it's why we are disabled people not people with disabilities so I will talk a little how we use Public Sector Equality Duty and in campaigning I know it's been said a lot and it has been quoted from all the judgements about the purpose of PSED essentially it is a proactive duty and the purpose is to mainstream equality considerations and decision making unfortunately from our experience it is and from I am sure everybody here experience it's not seen like that that is where the problem lies so in our now in our campaigning what we try and do is try and sell this idea to public bodies that they can make better decisions if they comply with Public Sector Equality Duty and so also obviously it's been again voted (inaudible) duty effectively and the third point is that to us especially in campaigning context it's quite a political duty so if you manage to get a very good data showing negative impact of potential decision on a group that share protected characteristics then decision-maker reads this and understands all this awful consequences that decisions he is going to have then still goes ahead and makes those decisions well in campaigning context you can make it quite political especially if for example we are talking of Local Authorities Wynn Burrows could fire back and we as campaigners try and hold those politicians who make those decisions accountable can I have next slide please so what we see on the ground with PSED first of all of course it's seen as a or mainly as a when we need to comply myth it to mitigate against risks of unreasonable challenges and it's probably one of our it's our work that we need to do to really educate public bodies on benefits of PSED and how it is not just to make their life harder it's about making better decisions and then we see very poor awareness and it it's shocking actually quite shocking we have to sometimes stand Equality and Human Rights Commission guidance on Public Sector Equality Duty and to Local Authorities for example to tell them no it's not only on big decisions it's about many decisions they make some time not only decisions they consult on but decisions they don't consult on and so on so it it's again yes shocking we have to do this work so we also see a lot of bad data used and we when we have a campaign especially local campaign to oppose for example cuts to social care budgets or changes that cuts to packages people have or overall so then we would look at Equality Impact Assessments and what we see it's very very poor evidence for that and obviously if we see that we try an raise this concerns early on and treat duty of inquiry talked about a lot but we also see a very yes lot of superficial effective Equality Impact Assessments and what we also see is groups share protected characteristics are taken as a big group so for example with those low traffic neighbourhoods Equality Impact Assessments Local Authorities did them wrote mainly something along the lines well disabled people also need clean air of course and active travel and safer streets and benefit from this without necessarily considering there are some people who will be negatively impacted by these decisions and we also encountered sometimes though is very strange situations where public bodies say we have not made a decision yet when in actual fact they did and it gets them off the hook and next slide please so what we do? Of course whether how much we can influence these compliance with PSED and use it in campaign depends how much you know about decisions obviously if there is a consultation you know about it and can go full on but many decisions that have still quite a big impact on people's lives are made without consultation so and that is another thing which we are trying to push to see where for example Local Authorities should consult and what decisions they should and shouldn't consult on but if we know about the decision we encourage groups and us to do first of all we ask about compliance with Public Sector Equality Duty and shockingly we have to ask it from government departments as well as from Local Authorities and sometimes well we have seen it last year for example how there was lack of Equality Impact Assessments for so many measures that government bought under Coronavirus act, and also well some if it's a consultation process usually it's quite easy to get this and quite easy to push public body to do this if they have not yet and if it's not sometimes we make freedom of information requests which again it's really shocking it has to be that way and also pushing duty of inquiry again questioning data and getting so had some examples where Local Authorities engaged more and listened to people or even asked for additional data from organisations so that was quite good and the better negative impact is spelt out in Equality Impact Assessments to ask the more chances we have to push for some mitigating measures of course it does a lot of it depends how determined is decision-maker to make the decision they will make and again it shouldn't be like this from Public Sector Equality Duty and perspectives but sometimes it feels like they just do good Equality Impact Assessment not to be challenged sometimes genuine attempt to try and make decision better so we use process to try and push as much of mitigating measures as possible and also because duty is ongoing we often go back and question so after decision has been implemented for example charging for social care policy was changed that has huge negative impact we can go back and ask us to ask to reassess I don't know from legal point of view whether failure to do this may be challenged but in campaigning it works, next slide, so I wanted to give an example of this campaign a long time ago because it was bracking Secretary of State for work and pensions knows grew from campaign on opposing government's decision to close Independent Living Fund and decision has consequences on people now Independent Living Fund was a programme that nationally administered fund gave disabled people with high support needs money to employ their support it was very flexible scheme it allowed people effectively to spend money on support they need to live a life it's not just about being clean and fed and that in 2010 government announced intention to close this then in 2012 published consultation and in early 2014 announced that closure, and obviously they were ...erm..., first legal challenge High Court went to Court of Appeal Court of Appeal said there was no evidence of conscientious consideration of negative impact these decisions going to have on disabled people who use this fund because mainly the decision was presented as we just change Local Authorities we will manage this and people effectively people's experience will be relatively the same when we know now it is not and we believe that so and then of course government lost in the Court of Appeal and went back and complied and published new Equality Impact Assessment and made same decision again to close the fund and it was closed and so that is a lesson for us I suppose that yes Public Sector Equality Duty and is good but it is better if public bodies comply with it at the beginning if they make a decision they want to make they will unfortunately find a way to comply. So, but this challenge helped us to really get publicity to the issue it is still government did a review later on and the government allocated money to Local Authorities and some them actually protected people's support so there were some mitigation achieved on the back of this challenge must be not directly as an outcome that of legal challenge decision but still were some I suppose good outcomes on the side of it but of course overall this was a devastating outcome because Independent Living Fund was closed next slide please here are some considerations based on this so first is we always have this problem do we push on I think John talked about this really well the problem is in some ways is easily solved always think should we, we know they are not complying with PSED should we push them to do it or wait until they make really bad decision and challenge them in court. So we now mostly go for trying to push them to comply because it is not actually as easy to set up a challenge in court and sometimes even if you have the people ready it is still not as easy as it might seem we get we try and take legal advice early on and sometimes get lawyers to follow decision-making process makes it easier to find flaws in the process our experience again if public body wants to make bad decision we remand t them about Public Sector Equality Duty and they do something to more or less tick a box and potentially good lawyers still find a way to challenge it I know it sounds a bit over-simplistic we and as said before we came across situations were arguments were dismissed we didn't raise this the Public Sector Equality Duty and the negative impact during the consultation process we do it now.

We learned that whatever legal action we take it should go hand in hand with campaigning so it it's politically toxic to go back comply with PSED and make same decision which is going to have a hugely negative impact and as I said our experience shows we really need to do a lot of work to promote the benefits of PSED and actually and educate and shift this mindset of ticking box mitigating legal risks that this is a tool that helps everybody to make good decisions it's trying to move from being on opposite sides to some common ground so I think that is it from me. Yes these are our contact details if you want to follow us Elizabeth over to you.   
ELIZABETH PROCHASKA: Thank you very much Svetlana that was really interesting perspective from a campaigning perspective I think it it's easy some time for lawyers to work in their silos not to appreciate the full campaign that it's needed to run alongside pieces of litigation that was refreshing to hear thank you I can see in our Q and A box we don't have general PSED questions 1 on bridges which perhaps Megan can answer but otherwise we don't have any other PSED questions I think we can wrap up only a few minutes over with a really big thank you to all of our panellists this morning for all of those perspectives on the PSED. Over to you Amelie.   
AMELIE GODFREY: Great thank you very much Elizabeth huge thank you to Nicola John Svetlana and Megan for their fantastic really interesting talks this morning we are picking back up this afternoon at 2 with evidencing and litigating race discrimination and look forward to seeing you then thank you very much and see you later.   
NICOLA BRAGANZA: Thank you very much bye (laughter)