

2020 Public Services Trust
at the RSA

Equality, Cohesion
and Public Services



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A report prepared for the
Commission on 2020
Public Services

About the 2020 Public Services Trust

The 2020 Public Services Trust is a registered charity (no. 1124095), based at the RSA. It is not aligned with any political party and operates with independence and impartiality. The Trust exists to stimulate deeper understanding of the challenges facing public services in the medium term. Through research, inquiry and discourse, it aims to develop rigorous and practical solutions, capable of sustaining support across all political parties.

In December 2008, the Trust launched a major new **Commission on 2020 Public Services**, chaired by Sir Andrew Foster, to recommend the characteristics of a new public services settlement appropriate for the future needs and aspirations of citizens, and the best practical arrangements for its implementation.

This report is a research input requested by and prepared for the Commission. The recommendations submitted herein may or may not be adopted, either wholly or in part, by the Commission in its final report. The views expressed in this report are those of the authors and do not represent the opinion of the Trust or the Commission.

For more information on the Trust and its Commission, please visit www.2020pst.org.

To share your views on the Commission's ideas, please visit www.your2020.org.

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Foreword

When the Commission on 2020 Public Services was established it set itself a bold challenge: to rethink public services. What do we want them to achieve for ourselves and others? How can they best achieve these ends? And how should we evaluate their success? What was immediately clear is that questions of equality and cohesion are integral to these discussions, not bolt-ons. Disadvantaged and marginalised groups must not be left behind in the process of reform. They are the reason for it. Expanding the real opportunities they have to live lives they value, taking responsibility for themselves and others must be the litmus test of success.

Over the past twenty years, public services have often been in the forefront of action to identify and challenge inequality. This report looks at some of the changes to policy and practice, as well as their achievements. Yet the report also looks at where, from the citizen's point of view, too little has changed. Inequality remains entrenched, and the pressures on social cohesion have not been sufficiently reduced.

We believe that the direction of reform advocated by the Commission could move us forward on both fronts, more efficiently, more democratically and more sustainably than current arrangements. Our vision of a society of active citizens, taking responsibility for their own lives, and those of others, offers most promise to those who face significant disadvantage.

This report lays out the scale of the challenge, and in particular, looks at the adjustments and protections that will need to be incorporated into reform to ensure that its risks do not fall disproportionately on those least able to bear them, wherever they live.

Working in the Commission has been an invigorating experience. Orthodoxies and easy assumptions have been challenged at every turn, and its mix of backgrounds, talents and views has generated fascinating new ideas.

We hope that this report proves similarly stimulating. It offers a candid analysis of the scale of the challenges we face, while offering a way forward towards meeting them. It provides a platform for the development of services that will enable disadvantaged groups and communities to play active decision-making roles as citizens in their communities.



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Commission leads for Equality and Cohesion Project

Introduction

Paul Buddery, Research Manager, 2020 Public Services Trust

(i) Equality, Cohesion and our Welfare State

The Beveridge welfare state was developed with the explicit intention of reducing inequalities, and in the belief that it would foster what we would now call social cohesion. Attitudes to inequality and cohesion have changed, just as the concepts themselves have evolved, multiplied and been contested. But the public still believe that public services have a critical role to play to in enabling all citizens to lead full lives as part of a society bound by a sense of belonging. Any programme of reform that now seeks to move ‘Beyond Beveridge’¹ – as proposed by the Commission on 2020 Public Services – must show how it can satisfy these enduring aspirations.

Public services before Beveridge were a patchwork. For the most part, they operated on a voluntary or contributory basis, with mutual societies providing opportunities for individuals to buy private insurance or to access capital, while local authorities used local taxation to provide services and basic utilities. As a result, the quality and availability of services varied widely, to the particular detriment of the poorest and most vulnerable. In place of this variation, Beveridge offered services delivering to common standards, available on the basis of need and funded through general taxation – what has come to be termed universalism. It would ensure that ‘all citizens without distinction of status or class [would be] offered the best standards available in relation to a certain agreed range of social services.’ (quoted in Alldritt *et al.* (2009): 12-13). In other words, Beveridge offered equality of access based on need. This founding principle was so popular, and was embraced so rapidly and widely across the political spectrum that supporters could credibly claim that it had rebalanced the political equilibrium decisively towards egalitarianism. Shared experiences and a common interest would generate the social solidarity which would strengthen society while guaranteeing the durability of the settlement

itself. Richard Titmuss emphasised the importance of bringing all sections of society to the same table through universalism rather than selectivity, as ‘services for the poor will always be poor services.’ (quoted in Horton and Gregory 2009: xxxi).

However, the evidence that our public service arrangements have, in general, fostered social solidarity is elusive. In part, this is due to the difficulty of tracing causation or accounting for counterfactuals in such a multi-layered, diversely determined area. Even where we have evidence from attitudinal research, the messages are mixed. The 2009 Citizenship Survey asked what factors would encourage people from different backgrounds to mix well together, and found the largest single factor was ‘Going to work, school or college together’ (41 per cent); but also found that ‘Going to the same health services, post office’ seemed to be cohesion-inducing to very few – just 7 per cent (DCLG (2010a): 61). Qualitative and quantitative evidence gathered for this report reveals splits and ambivalence. Many citizens do view public services as a practical expression of shared concerns and values – and take great pride in this; but many are also very particular about where they draw the boundaries of solidarity, and which of their fellow service users they regard with suspicion or even hostility on the grounds that they are in some way undeserving (Ipsos MORI (2010a & b)). Services in which citizens enjoy a universal interest may at the same time be services marked by uncomfortable distributional competition.

Just as fundamentally, equal access to universal services has not translated into equal – or even similar – outcomes for all those using the services (Le Grand 1982). In general, the social advantages and disadvantages that citizens bring to services are reproduced in the outcomes they enjoy, so that, for example, poor children benefit less from their schooling than their affluent peers. Our settlement has focussed on the fair distribution of entitlements, which although a necessary condition for a more equal society, is clearly not sufficient, underplaying as it does the challenges of converting entitlements into valuable outcomes.

The simple point to underline at the outset is that despite its considerable achievements, Beveridge’s universalist model has not delivered equality or cohesion to the extent that many of its adherents have hoped. Making good on these ambitions requires a different way of thinking, one that takes into account the variety of ways in which citizens engage with services, and the full range of their needs and capabilities.

(ii) A New Society

The Beveridge settlement incorporates a number of assumptions about who we are and how we live that no longer hold true. Today's citizens follow less predictable employment paths, form less predictable and stable household arrangements, are less deferential to professional direction, and are considerably more mobile than their predecessors (Esping-Andersen 1999; Trajectory 2009). Economic, technological, social and cultural changes have recast post-war Britain into a less homogeneous society, leaving us more diverse and more ready to see diversity of identity, need and aspiration; and more ready to acknowledge this diversity in policy responses. These changes have reshaped the social risks that we expect our welfare regime to guard against, and have to some extent altered the profile of the groups at particular risk of experiencing disadvantage – though membership of the lower social classes remains a key risk factor, in much the same way as it was in Beveridge's time. New attitudes or behaviours mean that some issues previously under-acknowledged as social risks – for example, female underemployment – are now generally considered to be substantive social risks that welfare regimes should tackle in order to minimise unacceptable inequalities. In other cases, demographic shifts have changed the scale of equalities challenges, most obviously in Britain's transition from being a country which at the end of World War II had an ethnic minority population of less than 100,000, to becoming one of Europe's most multi-ethnic societies today.

The welfare state and the age of mass immigration to Britain were born side by side: 1948 saw the establishment of the National Health Service and the arrival of the Empire Windrush at Tilbury docks. These new citizens – and resident workers, and overseas students – have been fundamentally important to the way we have run and paid for the welfare state. In many cases they have provided the backbone of the public service workforce. Their comparative youth has helped keep the country's dependency ratio within levels affordable levels. Yet as consumers of public services their experiences have been mixed at best, and more often unsatisfactory in that they and their children have experienced life chances that have been systematically inferior to those of ethnic majority citizens. The social risks of unemployment, low pay, poor health, and criminal victimisation, for example, have weighed unequally on this growing section of society; the inequalities they face have become entrenched.

Looking forward, the pace of social change is likely to throw up new challenges for services used to dealing with relatively stable populations. 73 per cent of the country's population growth in the 1990s was due to minority ethnic groups. Where immigration to inner urban areas is being accompanied by decreasing white populations, concentrations of diversity are becoming much more pronounced (Lupton and Power 2004). Such 'super diversity' areas are marked by diversity not only of national origin, but residency status, language, household composition and educational qualifications (Rutter and Latorre in Hills *et al.* 2009: 202; Vertovec 2006). The types of inequality affecting people in these areas are likely to be essentially the same 'bread and butter issues' (Barrow Cadbury Trust 2007) of poverty, poor housing, unemployment and poorly paid employment affecting more well-established poor communities – but the service strategies and competences required to address them effectively in their particular context will need to be highly adaptable and variegated.

(iii) New Models of Public Services

Of course, public services have not stood still while society has changed around them. The first chapter of this report describes just how active, innovative and committed services have been in tackling both old and new inequalities. Yet inequalities remain stubbornly wide across the board. For example, the mortality gap between men and women in the least deprived communities and those in average communities has actually increased over the last ten years, despite a government target to cut it by 10 per cent (Marmott 2010).

The Commission proposes a new vision for public services which brings together valued personal and social outcomes with individual autonomy and reciprocity.

2020 public services help us to achieve – for ourselves and each other – things that we value and cannot achieve on our own. They help us become the people we want to be, living within a society we want to be part of.

2020 public services put us in control of our own lives. They make us more secure today and more confident about tomorrow, encouraging us to take responsibility for ourselves and for others.

(Commission on 2020 Public Services 2010: 7)

Realising this vision for all citizens will require system-change, not incremental reform. Despite innovation at the margins, our system remains essentially monolithic, misaligned. It responds to problems statically, tending to react to immediate need, rather than tackling underlying problems by recognising and supporting individuals' capacities. Most standards are set centrally, and the primary lines of accountability and responsibility for many locally delivered services run upwards to departments and ministers, not downwards to citizens. Citizens are in most cases neither encouraged nor enabled to see exactly where their public service investment is being directed, so are in a weak position from which to scrutinise decisions and drive change.

Transforming this situation will require three fundamental and interdependent shifts in the way we conceive of and provide public services: moving from social security to social productivity; redirecting power from the centre to the citizen; and reconnecting finance with purposes. What do these mean? And in particular, what would they mean for equality and social cohesion? Focussing on a particular service area where reform is already moving in the direction suggested by the three shifts may help to shed some light.

Social care services for people with disabilities have changed more in the last ten years than arguably any other area of service provision. Though one driver has been the challenge of adapting to a larger population of need, as medical advances and an ageing population have swelled the number of those with disabilities (Pillai 2007), the most significant driver has been a determination to make good on disabled people's right to equality: 'By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life, and will be respected and included as equal members of society' (PMSU 2005: 12). Though this vision is now a government vision, its roots – and the roots of the reforms which have unfolded – are firmly in grass roots activism. The disability rights movement has been highly critical of traditional public policy, including services specifically for those with disabilities. It has argued that post-war welfare, for all its benign intent, has failed to recognise the autonomy, dignity or aspirations of disabled people, and has located problems and responses individually where they should more properly have been located collectively or institutionally. People with disabilities have been measured and characterised through what they lack, rather than what they possess.

In effect, activists have been diagnosing the most negative aspects of public services based on social security: 'done to', top-down services, designed and dispensed by professional keepers of knowledge, with the aim of meeting

current need. Such arrangements can redistribute resources – and usefully so – but they do little to respect or develop citizens’ capacities. In contrast, what the Commission describes as services based on social productivity are built on respect for citizen agency. Here, the citizen is actively involved in setting priorities for his or her service, defining policy solutions, collaborating with the service or with other citizens to create outcomes that they value. The Commission’s call for a culture shift from social security to social productivity strongly echoes a core demand of the disability rights movement: nothing about us without us.

Once the culture shift occurs, other shifts, such as moving power away from the centre and reconnecting finance with purposes, flow logically. Personalisation in social care has in many cases moved commissioning away from central or local government, and placed it directly in the hands of the citizen who actually consumes the service. In part, this is because of the promise of greater efficiency: the citizen-commissioner is likely to be the person most expert in understanding his or her own needs, with the strongest interest in meeting them effectively, so is likely to extract best value from any resource selected. At least as importantly, this reform is citizen empowerment with a strong equality imperative. It gives practical effect to the substantive freedoms promised in the Government’s 2025 vision of ‘full opportunities and choices to improve [disabled people’s] quality of life’. Information, advice and brokerage are available to support choices genuinely tailored to the individual’s circumstances and preferences. This support can be provided by user-led organisations, encouraging citizens to problem-solve collaboratively, not just individually (Morris 2006).

Devolution of power to the citizen forces services away from the siloed, hierarchical and departmental practices of assessment, planning and delivery that although intelligible in a command and control model, make it extremely difficult for citizens to have a clear view of the financial, and other, resources available to them. Local authorities are no longer primarily service providers in terms of social care services for disabled citizens, but strategic ‘place shapers’, facilitating the development of a plurality of services and pathways to support.

What do these specific changes imply for the possibilities of reform set out by the Commission – reforms that would be much broader in scope than personalisation alone? Chapters one and two look in more detail at how personalisation in practice has impacted on equality and cohesion. The picture that emerges is one of

limitations as well as gains, risks as well as potential. Broader opportunities, greater variation and a larger role for individual agency may actually amplify inequalities in some cases at the same time as complicating important issues of public accountability and public consent. Qualitative research for this report has brought out some of these anxieties: personalisation's benefits falling to the most confident and able, rather than the most vulnerable; individual funding arrangements being opaque to the outside world and therefore liable to arouse suspicion (Ipsos MORI 2010b). It is possible that this suspicion is an early sign of ebbing trust and rising individualism which could ultimately prove highly damaging to welfare's reciprocal roots (Taylor-Gooby 2009).

None of these problems can be ignored. If shifting towards social productivity, de-centralisation and financial transparency in the case of social care and disability raises difficult problems and dilemmas, moving towards these across the whole range of public services is hardly likely to be less problematic, and highly likely to require checks and safeguards. Yet despite this, the direction of travel is sound. Fragile trust, outsider suspicion and accrual of most benefit to the most advantaged are problems within the current settlement, not new problems that would arise from reform. A reformed system would be dynamically and democratically better placed to work through these and other challenges because the principles proposed by the Commission are compatible with a more profound engagement with equality and social empowerment than has proved possible under the existing settlement. They factor in – indeed depend upon – the equal right of all citizens to live self-directed lives, making choices they value and have reason to value. The plurality of solutions and preferences they envisage make them better suited to today's increasingly diverse society than a top-down model that focuses on apportioning fixed resources.

(iv) Widening ambitions, mixed returns and a capability approach for the future

This report looks back and forward: it describes how public services' equality and cohesion aims and approaches have changed, and considers the evidence of how effectively these aims have been met. It then looks at whether a human rights approach could offer a richer account of the ultimate purposes of public action, an instrument through which progress can be tracked, and a tool with which citizens could challenge inadequate services.

Chapter one by Zubaida Haque explains how and why equality and cohesion obligations on public services have changed in recent years, in particular how they have expanded from negative to positive equality duties. She goes on to offer a typology of the strategies, tools and resources that have been deployed across the system in order to meet its aims. In doing so, she makes clear that many performance accountabilities currently face upwards – from locally delivered services up to central government through funding arrangements, or up to national inspectorates. Other resources and sources of innovation have been developed out of voluntary sector practice, or strong professional leadership. Finally, she looks at how much progress has been made, particularly in service areas where government has introduced major reform such as education and social care, with a particular focus on racial inequalities. Haque argues that the pluralisation of provision is unlikely to reduce inequalities unless allied to safeguards and determined positive action.

In chapter two Peter Taylor-Gooby looks in more detail at how inequalities related to socio-economic background have been affected by changes to education and social care, as well as policy changes in health and early years provision. He finds evidence of modest progress, which appears to have resulted from a combination of top-down and bottom-up interventions. He is cautious about attributing progress to empowerment and choice policies by themselves, pointing out that they have been introduced alongside significant extra resources and targeted programmes. What is fairly clear from large, targeted investments is that they can have a significant impact on inequalities, at least in the short term, but progress tends to falter as many of those in most need are missed. While recognising the value of reforms that make socially disadvantaged groups more attractive and capable market actors, Taylor-Gooby warns that this transformation may actually erode the cultural values of trust and reciprocity that underpin welfare. The reduction of inequalities requires the hard, but fundamentally straightforward decision to raise more resources from better off groups and direct them to those who are less advantaged.

Chapter three makes the case for drawing on the capability approach and rights-based approaches more generally to develop a new model for public services. Polly Vizard explains that the capability approach considers whether citizens have substantive freedom and opportunities to live a life they would value and chose, through access to central and valuable capabilities such as health, life, and

participation, influence and voice. The Equalities and Human Rights Commission has developed an Equality Measurement Framework (EMF) which disaggregates capabilities by groups at particular risk of experiencing inequalities, and considers how each group fares against them. Crucially, the EMF records not only outcomes (what people are actually doing and being), but treatment (discrimination, dignity and respect) and autonomy (empowerment, choice and control). Vizard suggests that the EMF can provide a powerful informational base to promote and guide reform, and that new, codified rights to information or outcomes may provide important new sources of 'bottom-up' pressure for improvement.

Endnotes

- 1 Commission on 2020 Public Services, 2010

1

The Changing Landscape of Equalities, Cohesion, Human Rights and Public Services

Zubaida Haque

(i) The Historical Background

This section shows how the nature and importance of equality and social cohesion have changed enormously in the last few decades. It discusses the social, demographic and technological changes that have influenced the way we perceive 'community', the underpinnings of 'social capital' and some of the threats and challenges that still remain to social cohesion.

Within the context of equality it highlights how there is a greater recognition of the different dimensions of inequalities and social groups, and discuss some of the key 'triggers' and 'drivers' influencing these changes. It illustrates how the perception of equality has moved from 'negative discrimination' to 'positive equality duties', and illustrates how the Single Equality Duty not only introduces a new way of conceptualising equality (through ten 'valuable freedoms') but also a way of ultimately measuring progress in equality.

Social Cohesion

There has been a long-term and substantial shift in the way our society is made up and in the ways we connect with each other. We have a more ethnically diverse society (Parekh Report 2000; COIC 2007), an ageing population (ONS 2007), changes in family structure and households (Strategy Unit, 2008), greater population churn (Audit Commission 2007) and a plethora of ways of communicating and

connecting through the internet (Strategy Unit 2008). All of these dynamics have led to a changing sense of community.

Sociologists and anthropologists (Bourdieu 1986; Coleman 1990; Putnam, 2000) have attempted to make sense of these new forms of interactions, and how they link with well-being and human resources. This has become known as the ‘social capital’ dimension of social cohesion – better described as the “networks, norms, and trust that enable participants to act together more effectively to pursue shared objectives” (Baron *et al.* 2000). Social networks in this context are considered important because they are perceived as a powerful ‘asset’ that benefits both individuals and communities (Putnam 2000). And ‘high social capital’ – defined in the context of social trust and associational networks – has been strongly correlated to lower crime rates (Halpern 2005), improved child welfare, greater levels of income equality (Wilkinson and Pickett 2009) and even reduced political corruption and tax evasion (Putnam 2004).

Government attempts to foster social capital have not only been prompted by a positive desire to foster these social benefits. In addition, moments of social upheaval (e.g. Brixton riots, 1981; Oldham, Burnley and Bradford riots in 2001), conflicts and terrorist threats (e.g. 2001 and 2005) have also prompted Government to intervene in an area that previously they had adopted very few strategies in.

Up to 2001, Britain did not have an overt ‘social or community cohesion’ policy. Instead, between the 1960s to 2000 Britain had a ‘race relations’ policy where there was a statutory duty (reinforced by the Race Relations Amendment Act, 2000) for local authorities and other key bodies to promote ‘good relations’ between people of different racial backgrounds. But the 2001 disturbances in northern towns, and the terrorist events in September 2001, led to a dramatic shift in terminology, with a much greater emphasis on ‘cohesion’ (Metropolis World Bulletin 2007). Both the Cattle Review, and the Oldham Independent Review concluded that a much broader ‘community cohesion’ strategy was required, because residential segregation had meant that communities were experiencing significant tensions (e.g. around the allocation of social housing for different groups)¹ – leading ‘parallel lives’ without any ‘meaningful interactions’ (Cattle Review 2001).

Since then, the Government has sought to promote ‘community cohesion’ which is defined as “what must happen in all communities to enable different groups of people to get on well together.” This included the vision of people from different backgrounds having similar life opportunities, sharing a future vision and sense of

belonging and valuing diversity (DCLG 2006). But events between early 2000 and 2007 – namely opening up UK borders to new migrants from A8 countries (May 2004) and the terrorist attacks in July 2005 meant that a further government-led inquiry (COIC 2007) introduced even more policies around cohesion, arguing that cohesion should be understood in a ‘local context and delivered locally’; reflect the ‘changing patterns of migration’; emphasize the importance of rights and responsibilities, and trust in political institutions; and focus on *what binds communities together* rather than their differences (DCLG 2008:10). Thus the definition of ‘cohesion’ had changed again, this time with greater emphasis on ‘citizenship’, ‘community empowerment’ and ‘integration’ (COIC 2007).

Around the same time (2007), the Government introduced a Public Service Agreement (PSA) on cohesion – ‘building cohesive, empowered and active communities’ (Box 1.0). PSA 21 would enable public authorities, for the first time, to measure the level of cohesion in society, and also be held accountable on this measure.

Box 1.0: PSA 21 – Building cohesive, empowered and active communities

The central PSA 21 target on cohesion is measured through the following indicators:

- The percentage of people who believe people from different backgrounds get on well together in their local area
- The percentage of people who have meaningful interactions with people from different backgrounds
- The percentage of people who feel that they belong to their neighbourhood
- The percentage of people who feel they can influence decisions in their locality
- A thriving third sector (promoting participation in formal volunteering)
- The percentage of people who participate in culture or sport

Source: PSA Delivery Agreement 21 (2007), HM Treasury

In the last decade social, demographic and technological changes have continued to change the ways we live with each other and how we interact together. The growth in popularity of the far-right British National Party (from the election of two BNP councillors in Burnley to two British National Party MEPs in 2009), and the increasing evidence of socio-economic polarity in British society (OECD 2008;

Wilkinson and Pickett 2009; National Equality Panel 2010) have been important challenges to cohesion between groups². The income inequality gap (between the top tenth percentile and the bottom tenth percentile of the income distribution) is a particular issue as it has increased over the last three decades³ – despite the Labour Government’s attempt to minimise the disparities between the groups (e.g. through raising minimum wages, introducing working tax credits, tackling pensioner and child poverty issues and introducing the Child Poverty Act). This is important because research has shown that income inequality is highly associated with lower levels of trust amongst members in society, poorer levels of health (and life expectancy), lower levels of educational attainment and higher rates of imprisonment.⁴

More importantly, poverty and deprivation in itself has been shown to undermine cohesion – irrespective of the level of ethnic diversity in an area.⁵ This was reinforced by the 2005 Citizenship Survey which showed that 88 per cent of people in the *least deprived* areas agreed that people from different backgrounds got on well together – in contrast to 69 per cent in the *most deprived* areas. But a major constraint in cohesion is a shift in public opinion about income inequality which shows that whilst the public do not accept large inequalities in income (Accenture Citizen Experience Survey 2009), this concern has been declining over the years⁶, and has even become more ‘conditional’ in some respects (Barnfield and Horton 2009; British Social Attitudes 2010).

Changing levels of personal and family mobility (due to rising prosperity), as well as improved digital communication links are also loosening geographical ties and leading to a changing sense of community (Strategy Unit 2008). The greater utilisation of the internet is particularly noteworthy because of the increasing number of ways that we are able to ‘network’ and communicate with each other outside of the usual geographical boundaries. It is difficult to estimate the impact of the rise of social interaction sites such as MySpace, Facebook, Gumtree etc but internet network groups such as Netmums, Timebank are a huge support and resource for groups within and between neighbourhoods (Strategy Unit 2008). So as well as evidence indicating a decline in social cohesion (e.g. rise of BNP, urban riots, decline in empathy for the least well off), we are also seeing the rise of new sources of interaction and belonging – geographically and through the web (virtual networks). This poses significant challenges to the control of the state in terms of developing and maintaining a ‘socially cohesive society’ (COIC 2007). And there is some concern by critics that despite the broad interpretation of ‘cohesion’ offered in government documents (COIC 2007; DCLG 2008), in practice cohesion is ‘tilted firmly in the direction of inclusivity and assimilation’ (Zetter *et al.* 2006:5).

Equality

In the 1940s most forms of inequality – race, gender, age, sexual orientation, disability – were accepted as part of British culture – rarely openly discussed and even less openly challenged (Thane *et al.* 2007). Since then, the landscape in equality and human rights has changed beyond recognition. We now have a ‘comprehensive and coherent legislative framework’ to address discrimination and disadvantage and an ‘independent institutional framework that can spearhead and regulate the process of change’ (Hills *et al.* 2009: 294).

The first ‘modern’ equality law dates back to the Race Relations Act 1965 which prohibited discrimination on the grounds of race, colour, ethnic or national origins in ‘public places’ (e.g. hotels, restaurants, bars, cinemas). But many critics felt that this statute was limited in scope as it did not cover housing, employment or public services⁷, and focused entirely on ‘direct discrimination’. The 1970 Equal Pay Act, the 1975 Sex Discrimination Act along with the Race Relations Act 1976, however, had a much bigger impact on the equality roadmap because it introduced the notions of ‘individual redress’ and ‘indirect discrimination’ (Box 1.1) – if someone was underpaid, overcharged or denied a service simply because of their physical characteristics, they could pursue justice in a civil court.⁸

Box 1.1: The Inheritance

Legislation:

1970 Equal Pay Act – Prohibition of discrimination between men and women in their terms of employment

1975 Sex Discrimination Act - Prohibition of discrimination on the grounds of sex in employment, training, education, the provision of goods, facilities, services and premises, and by public authorities.

1976 Race Relations Act – (incorporating the 1965/1968 Race Relations Acts) Prohibition of discrimination on the grounds of race, colour, nationality and national and ethnic origin in employment, the provision of goods, facilities, services and premises, in education and by public authorities.

1995 Disability Discrimination Act – Prohibition of discrimination on the grounds of disability in employment, the provision of goods, facilities and services, and the disposal and management of premises; also includes provisions covering education and transport. Includes a duty of ‘reasonable adjustment’ covering goods, facilities and services and employment. The National Disability Council was also set up as part of this Act.

Source: Hills, Sefton and Stewart, 2009:295

In the last two decades Parliament has extended these rights to age, disability, religion or belief, sexual orientation and on the grounds of transgender characteristics. The Disability Discrimination Act – introduced under a Conservative administration in 1995, and amended under the Labour administration in 2005 – illustrates how many measures have gone forward with a degree of cross-party support.

The triggers and drivers in equality (in both public attitudes and public policy changes) have been numerous. Some changes have been triggered by high-profile social and political events (e.g. the 2001 disturbances in northern England); others prompted by the action of strong pressure groups and membership groups (e.g. Stonewall, Help the Aged, UNISON); and many attitudinal changes have followed after strong legislation and public policy. There have also been a series of commissions and reviews – some led by the third sector (e.g. the Parekh Commission on Multi-Ethnic Britain, 2000), and others government-sponsored, such as, the Stephen Lawrence Inquiry (1999), the Oldham Independent Review (2001), the Community Cohesion Review (2001), Women and Work Commission (2006), the Leitch review of Skills (2006) and the Discrimination Law Review (2007).

The main triggers and drivers towards greater equality have been:

- Labour market needs and demand for skills – because of an ageing society, changes in the structure of family and family life, globalisation, technological changes and the need for higher-skilled groups etc. (Strategy Unit 2003; Women and Work Commission 2006).
- EU directives and European courts have prompted Government action (e.g. Race Equality Directive 2000/43/EC; Employment Equality Directive 2000/78/EC); Equal Opportunities Commission and other campaigners used the European Courts to lead action on equal pay and equal treatment in Britain.
- Broad social change leading to shifts in public attitudes. The pace of this change has varied across the horizontal groups – age, disability, race, gender, sexuality – with, for example, a much slower acceptance of age discrimination, and Gypsy and Traveller discrimination than gender and race discrimination (Thane *et al.* 2007).
- Campaigning and lobbying by voluntary organisations and different groups of people – e.g. older people, women, ethnic minority groups, Gypsies and Travellers etc (Equality Review 2007). Voluntary groups have become more professional, more research-focused and more media-savvy since the 1960s (Thane *et al.* 2007).

Despite these enormous (statute) changes to the 'equality landscape', inequalities between groups persisted in the public and private realm. Women continued to be under-paid compared to their male counterparts (Women and Work Commission 2006), some ethnic minority groups experienced significantly higher rates of unemployment and inactivity (Strategy Unit 2003) and disabled groups of working age were significantly less likely to be in employment compared to non-disabled groups (Equalities Review 2007). Moreover, 'redress' rested on the individual victim to demonstrate (negative) discrimination thus ignoring the important role that public bodies and institutions played in discrimination and disadvantage.

The beginning of this Century thus marked, arguably, the most radical change in the 'equality landscape' – the introduction of 'public sector duties' (first introduced through the Race Relations Amendment Act, 2000). This was a significant departure from previous equality statutes because it placed the emphasis on 'public bodies and institutions' to address issues around inequality (rather than individuals seeking redress), and it required bodies to consider the impact of their policies, choices and procedures – proactively rather than reactively – on different groups of people. Initially, the duties focused on different racial groups, but since 2000, the public sector duties have been extended to disability and gender. Currently, the duties (Race Relations Amendment Act, 2000; Disability Discrimination Act 2005; Equality Act, 2006) state that public bodies must have 'due regard' to the need to:

- Promote equality of opportunity between groups e.g. disabled and non-disabled
- Prohibit discrimination that is unlawful
- Promote good relations between people from different groups (race, gender and disability)

In addition, the Government introduced a new duty – the Single Equality Duty (2008), which forms part of the Equality Act (Box 1.2). This duty extends to all the equality strands (namely race, disability, gender, transgender, religion/belief, age and sexual orientation) and it will come into force in April 2011. It will replace the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality Regulations on religion or belief, sexual orientation and age, a large proportion of the Equality Act 2006, as well as other *ad hoc* pieces of legislation. And

more importantly, the Equality Act introduces a new duty – the socio-economic duty – which will mean that all public bodies will need to assess their policies and structures in terms of the intended, and unintended impact that they will have on different socio-economic groups. This last duty is significant because it is about reducing inequalities of outcome that may arise from socio-economic disadvantage (GEO 2010).

Box 1.2: Key measures of the Single Equality Act

- 1 Introducing a new public sector duty to consider reducing socio-economic inequalities;
- 2 Putting a new Equality Duty on public bodies;
- 3 Using public procurement to improve equality;
- 4 Banning age discrimination outside the workplace;
- 5 Introducing gender pay reports in 2013 if employers with over 250 employees do not take action by then;
- 6 Extending the scope to use positive action;
- 7 Strengthening the powers of employment tribunals;
- 8 Protecting carers from discrimination;
- 9 Offering new mothers stronger protection when breastfeeding;
- 10 Banning discrimination in private clubs; and
- 11 Strengthening protection from discrimination for disabled people.

Source: The Equality Act, 2010

Whilst there were extraordinary steps in the equality framework, significant anomalies were developing between the progress of statute law and the watchdogs that were policing the laws – because whilst equality statutes covered a large number of equality strands, the equality watchdogs themselves – the Commission for Race Equality, the Equal Opportunities Commission and the Disability Rights Commission – remained single strand bodies. More importantly, whilst legislation covered the newly acknowledged equality areas of age, religion and belief, the equality watchdogs remained limited to race, gender and disability. And there was no single body that had responsibility for inspecting the Human Rights Act 1998 – which was viewed as the bedrock of

equality laws. The Equality and Human Rights Commission (EHRC) was thus established October 2007 (coming out of the Equality Act 2006) and was given the overarching mandate to protect and promote human rights and to combat inequalities and discrimination based on a gender, ethnicity, disability, age, religion, belief, transgender and sexual orientation.

As well as extending and consolidating equalities legislation, and introducing a new institutional framework to oversee them, the new Single Equality Act (2008) saw the emergence of a broader definition of equality. Drawing heavily on the work of Amartya Sen (for example, see Sen 1990) it redefined equality in terms of ‘substantive freedoms’ – the ‘central and valuable things in life that people can do and be’ (Equalities Review 2007).

This new ‘capability’ way of thinking about equality is considered a more inclusive and multidimensional concept than previous equality definitions, which had focused predominantly on notions of unequal treatment, unequal opportunities or unequal outcomes. In addition, the ‘capability’ or ‘substantive freedom’ concept is argued to be more overarching because it covers all aspects of inequality, including – significantly – autonomy (i.e. choice and control), participation, influence and voice. It also recognises the important difference between meeting the needs of individuals and groups and addressing some of the underlying barriers to their development and life chances. In chapter three of this report, Polly Vizard describes the capability approach in more detail, and its use by the EHRC in discharging its legal duty to monitor and evaluate progress towards equality, particularly by its use of an Equality Measurement Framework.

(ii) Delivering on Equality and Social Cohesion

Reducing inequality and increasing community cohesion have been clear public policy objectives for successive governments. The previous section has described the legal changes that have reshaped the ‘equality landscape’ to further these objectives. But it is important to note that alongside these measures a plethora of statutory enforcement, guidance and inspection mechanisms have been introduced. Alongside them, centrally-determined performance and accountability mechanisms have been used to focus on equality and cohesion objectives. And feeding into these changes, local or third sector innovations have offered public services new ways of tackling inequality and enhancing cohesion.

Central Performance Targets and Monitoring

The priority that the Labour Government placed on tackling disadvantage and inequality was reflected in national floor-level targets (e.g. 30 per cent of pupils in schools achieving 5 A*-C grades at GCSE including English and Maths) and government-led Public Service Agreements (PSAs) that were introduced in 1998. PSAs reflect where government spending will focus on and are linked to indicators to measure progress. Each PSA is also underpinned by delivery agreements about how the PSA will be achieved and who will be responsible for its delivery. Examples of PSAs focusing on 'narrowing gaps' are set out in Box 2.0, and it is worthwhile noting that some of the recent PSAs in 2007 (e.g. PSA 11 and 15) became more extensive in scope and more specific than the ones in 2004.⁹ Some commentators have been critical of those PSAs that are perceived as demonstrating a 'direction of change' (i.e. narrowing gaps) as opposed to setting specific targets to reduce gaps (such as the child poverty PSAs).¹⁰

Box 2.0: Examples of Public Service Agreements to tackle disadvantage and discrimination

- PSA 8: Narrowing the gap between the employment rates of the following disadvantaged groups and the overall rate: disabled people, lone parents, ethnic minorities, people aged 50 and over, those with no qualifications and those living in the most deprived priority wards.
- PSA 9: Halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020.
- PSA 11: Narrow the gap in educational attainment between children from low income and disadvantaged backgrounds and their peers.
- PSA 15: Address the disadvantage that individuals experience because of their race, age, gender, disability, sexual orientation and religion or belief.
- PSA 18: Reduce health inequalities by 10% by 2010.

Source: http://www.hm-treasury.gov.uk/pbr_csr07_psaopportunity.htm

The Labour Government placed a strong policy emphasis on maintaining 'community cohesion' as reflected in the investment of £50 million over three years

in the 2007/08 Spending Review. In addition to this, it introduced community cohesion best value performance indicators for local authorities. Public Service Agreement 21 (building cohesive communities), ushered in specialist integration and cohesion teams as well as other practical cohesion measures. From 2005, the Government also attempted to measure the level of cohesion in society through the Citizenship Surveys (Box 2.1).

Box 2.1: The PSA 21 target on cohesion is measured in several ways (see Box 1.0), including through the question

“To what extent do you agree or disagree that this local area (within 15-20 minutes walking distance) is a place where people from different local backgrounds get on well together?”

<http://www.communities.gov.uk/corporate/about/howwework/publicserviceagreements/publicserviceagreements200508/psa-notes/psa-target10/>

Guidance

Statutory guidance is issued directly by Government or relevant public bodies, such as the Equality and Human Rights Commission (EHRC) which has a duty to disseminate guidance on the legal requirements to meet public sector duties on gender, race and disability equality. One example of this is the guidance published by the EHRC on ‘promoting good relations’ (see Box 2.2) which is part of public bodies’ duty under the Race Relations Act (1976). The Government also issues

Box 2.2: Promoting good relations – a case study

A county council received funding to produce a video, made by young Travellers working with non-Travellers. The project used drama as a way to communicate between people, educate them about different cultures, improve relations between different communities, and encourage Travellers to become more involved in working with local authorities to improve services. The video project was managed by Travellers, and copies were sent to families across the county.

Source: EHRC (Advice and Guidance, Public Sector Duties). www.equalityhumanrights.com

non-statutory guidance (alongside other agencies, such as the Improvement and Development Agency) which public bodies are expected to take account of. Numerous guidance documents have been produced in relation to new migrants (e.g. Guidance on Translation, ESOL etc.). Non-statutory guidance takes many forms, but often disseminates examples of best practice.

Self-Assessment and Monitoring Tools

The Equality Impact Assessment (EIA) is a ‘monitoring and evaluation tool’ designed to help public authorities meet their public sector duty requirements including promoting equality. Under EIAs all public authorities are encouraged to identify the impact (and unintended impacts) of their policies on the equality groups, and identify opportunities to promote equality (see Box 2.3).

Box 2.3: Equality Impact Assessments in practice

A local authority identified employment segregation within its environmental health inspection teams. Female and ethnic minority staff were employed almost exclusively in back-room roles, rather than frontline inspection roles. The local authority introduced an assisted training programme for the back-room employees and improved access to externally validated professional qualifications. This resulted in more participation in inspection grades for female and ethnic minority staff.

Source: EHRC (2009): Equality Impact Assessment Guidance

Other monitoring and evaluation tools – such as the Equality Framework for Local Government (Box 2.4) – have also been developed by organisations representing local authorities to help councils ‘benchmark’ their success in meeting the needs of diverse groups and in promoting equality.

Box 2.4: The Equality Framework for Local Government

The Equality Framework for Local Government (EFLG) has helped authorities to mainstream equality since 2001. Since 2007, the Framework uses the wider definition of equality (based on ‘substantive freedom’ and equal life chances) used in the ‘Equalities Review’ (2007). The definition of equality in the Framework is very close to the way inequality and vulnerability is defined by the Audit Commission and other inspectorates for the purposes of the CAA.

Within the Equality Framework the five performance areas for local authorities to self-assess themselves are:

- Knowing your communities and equality mapping
- Place shaping, leadership, partnership and organisational commitment
- Community engagement and satisfaction
- Responsive services and customer care
- A modern and diverse workforce.

And local authorities are recommended to benchmark their performance against three levels: level 1 (developing); level 2 (achieving) and level 3 (excellent).

Source: Improvement and Development Agency, 2010. www.idea.gov.uk

Inspection

The joint inspectorates such as the Audit Commission, the Healthcare Commission, the Commission for Social Care Inspection, Ofsted, HM Inspectorate of Prisons are required to carry out equality impact assessments of Comprehensive Area Assessment (CAA)¹¹. The CAA will assess how well communities are being served by the local public services, and CAA teams will look for evidence on how well public services are meeting the needs of diverse groups within the communities (including outcomes for different groups) and will inspect against the Local Government Performance Framework.

Box 2.5: Disability group consultation for Comprehensive Area Assessment (Audit Commission Response)

A theme running through all aspects of the CAA framework and guidance is the consideration of how well local partners know and meet the needs of groups and individuals who are subject to disadvantage and discrimination. This specifically includes disabled people. The joint inspectorates will consider how well local services are meeting the needs of disabled people and whether disabled people are consulted on and involved in the design of services. We will report clearly where their needs are not being met or we have concerns about them being met in future.

Where we find that the Local Strategic Partnership (LSP) has little or no information about service needs or outcomes for disabled people within their area then we will conclude that the LSP has not placed sufficient focus on improving services to meet the needs of these groups and individuals.

Training for the CAA Leads has included engagement and involvement of disabled people. The suggestions for issues to consider and questions to ask identified by disabled people has formed the basis for this training. Further guidance will be developed to assist the area teams.

Source: Audit Commission 2009 (Comprehensive Area Assessment)

Local Innovation

Local authorities have attempted to protect and promote equality and cohesion principles in numerous innovative ways. Some local authorities, for instance, have attempted to bring about greater equality in their workforce (partly in recognition that their staff should reflect local diversity). This has been a particular aim in Blackburn and Tower Hamlets (Box 2.6).

Box 2.6: Local authorities increasing the diversity of staff in local services

In Blackburn, the Workforce Representation Sub-group on the Local Strategic Partnership (LSP) is seeking to achieve a more representative workforce within both the council and partners. Their work is closely integrated into the overall community cohesion agenda in Blackburn, with both the Workforce Representation and Community Cohesion Groups forming part of the People and Communities Forum. The LSP has established a baseline and targets for increasing employment of underrepresented groups within the council and partners. A job application support programme, offering guidance interviews and assistance with job search, has been put in place to support progress towards employment targets. Advertisements for the guidance interviews offered by the Information and Advice Guidance Team have been placed in the council newsletter and *Asian Image* and contact cards for the Guidance Team have been inserted into application forms. This has been accompanied by a poster campaign advertising the service. The reach of this service has been clearly monitored.

Source: DCLG 2007: 47

Other local public services have met their public duties by identifying particular groups at risk of experiencing poor outcomes, and have used dedicated organisational capacity to engage with representative service users to introduce improvements (Box 2.7).

Box 2.7: Welsh hospital trust improving access to wards for deaf people

Access to hospital paediatric and maternity wards relied on verbal communication via an intercom which was identified as a barrier for deaf service users. There was no way to alert ward staff that a visitor or service user may be deaf or require assistance. To find a solution the equalities department at the Trust brought together deaf users, ward and estates staff and the intercom design company.

Deaf users were fully supportive of the need for ward security and worked to enable staff and designers to understand the barriers to communication. The designers were able to test a number of ideas and they came up with a range of solutions to improve communication. For example, illuminated assistance buttons and a text box with access instructions. In addition, the users commented on the poor general signage for the intercoms and advised on better pictorial signage.

Source: EHRC website: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/resources/case-studies-of-how-organisations-are-using-the-duties/>

Local authorities have played a strong role in ‘place shaping’ – promoting the feeling of belonging to local areas, strengthening notions of citizenship and celebrating values of diversity. They have had significant autonomy in implementing some aspects of central government’s cohesion agenda (Box 2.8).

Box 2.8: Case study of Citizenship Ceremonies

Brent Council’s approach to Citizenship Ceremonies and its combination of solemnity, warmth, welcome, friendliness and celebration of diversity has been recognised widely as best practice. Brent also leads the way in innovative changes to the ceremony and was the first local authority to hold a ceremony in a school. The link between the Citizenship curriculum in schools and the acquisition of British nationality and what that means to new citizens is a very powerful and practical demonstration for the young people participating. We are also, in conjunction with

Advisory Board on Naturalisation and Integration, piloting the concept of business involvement in ceremonies. The idea is that Chief Executives and senior directors of large employers should play an active role in welcoming new citizens to the area in which they operate.

Submission to the Commission from Brent Council

Source: Commission on Integration and Cohesion, 2007:63

Third Sector Involvement and Private Partnerships

Moreover, it is not only the public sector which has developed innovative ways of addressing issues around equality and social cohesion. There are, for example, cases of the third sector taking a lead role in helping public sector organisations to address professional staff issues around equality and diversity (Box 2.9).

Box 2.9: Professional training in equality and diversity

The Black Leadership Initiative is the Professional Development Training service of the Network for Black Professionals and is now supported by the Learning and Skills Improvement Service (LSIS). Its remit is to implement practical activities and programmes that would improve the career development for Black staff.

In 2002, the Commission for Black Staff in FE report established that Black¹² staff were significantly under-represented at all levels in colleges – particularly at senior management level, and many had reported experience of racism and racial harassment at some time in their career. The Black Leadership Initiative (BLI) programme offered a range of development methods, including mentoring, secondment, work shadowing, and professional development workshops which have had a major impact in raising aspirations and building confidence.

The long-term objectives of the BLI were to:

- To build capacity, provide skills and experience
- To raise aspirations amongst BME staff
- To enhance the profile of BME staff
- To create networking opportunities
- To increase the number of BME senior managers in the FE sector
- To promote race equality

A subsequent Learning and Skills Council Evaluation found that respondents had:

- Increased in confidence, become more assertive, and had greater aspirations
- Acquired new skills and clarified future career goals.
- Were inspired and motivated.
- Prepared for interviews and were more aware of potential job opportunities.
- Enhanced strategies for career planning.

Source: Network for Black Professionals <http://www.nbp.org.uk/>

Faith-based voluntary organisations –through visible partnerships – have also played a strong role in supporting local social cohesion – particularly during times of heightened tension. This was the role played by the Tower Hamlets’ Interfaith Forum in the aftermath of the London terrorist bombings in July 2005 (Box 2.10).

Box 2.10: The role of faith voluntary organizations in promoting social cohesion

The Tower Hamlets Inter Faith Forum (THIFF) arose primarily from a tour of the borough taken by the Lambeth Bishops Conference in the late 1990s. The bishops wished to see what the Church could do about some of the social issues prevalent in the area. This was coupled with an invitation from the council and local police to over 100 local faith representatives to meet and discuss current concerns.

There is no formal structure to the organisation apart from the chair, although representatives from all faiths are regularly involved. The primary aim of the forum is to bring together people of different faiths who live or work in the borough closer in understanding and respecting each other’s viewpoints. There are no overarching long-term objectives, rather the forum wanted to mark out a number of low-key small steps projects which it was felt would go some way to bringing people together more effectively.

For example, one of the small initiatives developed by the forum was to produce an interfaith calendar, which represented and explained a little about all the different faith festivals throughout the year, which was felt to be a small step towards addressing the issue of faiths being fragmented by showing the similarities between why and how people celebrate. These were then distributed to schools, offices and other public places throughout the borough.

Source: DCLG 2007: 141

There are also several examples of public-private sector partnerships helping disadvantaged groups (e.g. in the Oakland Centre in Birmingham a group of local entrepreneurs have come together to make a significant impact on youth work)¹² and many organisations (funded by their own memberships) have worked with the private sector to improve employment opportunities (Box 2.11).

Box 2.11: Race for Opportunity – Morgan Stanley Case Study

“Early Access Programme”

This case study profiles a new series of complimentary initiatives - titled ‘early access’ – that have been developed over the last two years to target ethnic minority students at each stage of their development from ages 12 - 18. It has also provided scholarships for university aged ethnic minority students. Highlights include Summer Schools for year 11 students, an achievement conference for year 10 & 11 students and a work experience week for year 12 and 13 students. This was complimented by sponsoring B-Live, an online service to support students of all ages through personal, vocational and educational development. By nurturing young people, this organisation has been able to support, inspire and raise the aspirations of the future workforce.

Impact:

- Approximately 150 ethnic minority students have participated in and been directly impacted by the programmes.
- Five recipients have been selected for the 2008 diversity scholarships - three for the ethnic minority scholarship and two for the female scholarship. Recipients will receive £2,000 per annum for the three-year duration of their degree (£6,000 in total) plus a mentor from the firm, and a guaranteed interview for Morgan Stanley’s Spring Insight programme.
- Employees from the organisation’s ethnic minority networks have actively engaged as volunteers and supported various activities.

http://www.bitc.org.uk/workplace/diversity_and_inclusion/race/case_studies/index.html

And finally, there are examples of national innovation, where for instance, the Government have attempted to address issues around inequality using the help of successful entrepreneurs in the private sector. So, recently, the central-led Race

Online 2012 (Box 2.12) has been set up to help 4 million socially and digitally excluded people to get online by the 2012 Olympics. This was to address the issue of, at least 4 million people from disadvantaged backgrounds, having never accessed the internet – despite the fact that the internet is considered as an important tool for everyday life.

Box 2.13: Race Online 2012

Race Online 2012 campaign objectives are to challenge central and local government and partners in the private and charity sectors to work together to ensure that:

- All low-income families with children who want it will have home access to the internet by 2012
- All unemployment adults who want it will have personal access to the internet, an email account, and the ICT skills to find vacancies and to apply for jobs online by 2012
- Internet use by those over 65 is at least 50% by 2011, 60% by 2012, and that older people at risk of social exclusion can benefit from the internet as part of mainstream health and social care provision.

Source: <http://raceonline2012.org/>

(iii) What Has Been Achieved?

This section looks at the impact of some of the measures taken to reduce inequality and promote social cohesion, primarily with reference to education, early years and social care services. It is not a comprehensive assessment of outcomes across all groups, but an attempt to assess some of the evidence on outcomes between groups,¹⁴ and to draw out some key lessons.

Social cohesion achievements – general

Although there has been a plethora of activity in promoting social and community cohesion (by government and other bodies) it is difficult to attribute any positive effects to any particular programmes as there have been no national evaluations. Surveys (Citizenship Survey 2009) have shown that there is a strong sense of ‘cohesion’ (at least locally) although it has not changed substantially in the last few years. So, for instance:

- In April-Dec 2008, 83 per cent of people perceived their community as cohesive (people from different backgrounds getting on well with each other). This has increased since 2003.
- 81 per cent of people are mixing socially, at least once a month with people from other ethnic and faith backgrounds. Unchanged since 2007 (Citizenship Survey 2009).

It is worth noting, however, that the strong sense of belonging to local neighbourhoods in surveys,¹⁵ appears to be more strongly influenced by issues around street safety, access to local services, how clean the neighbourhood is and what opportunities there are for young people rather than any particular government policy.¹⁶

Despite generally stable levels of perceived cohesion within communities, several indicators suggest that there has been some decline in how empowered people from different communities feel, and greater differences in civic participation levels between groups and in treatment and perception of others:

- In 2007/08, a third of black, Asian and ethnic minority groups felt that they were treated worse than other races by at least one of eight public service organisations.¹⁷
- In 2009, a smaller percentage of people (35 per cent) felt they could influence decisions in their local area compared to the percentages in the previous year (38 per cent) and 2001 (44 per cent).¹⁸
- Levels of civic participation have decreased (slightly) since 2001¹⁹
- Immigration is still high up (top 5) amongst public concerns²⁰
- According to the public, refugees/asylum seekers and ethnic minorities are still identified as those most likely to experience prejudice and discrimination in Britain²¹
- And social mobility has not changed substantially (and in fact declined in the UK for children born between 1958 and 1970).²²

This may suggest that social cohesion policies have not been as successful as other (equality) policies although it is difficult to assess the success of cohesion policies generally (DCLG 2007).

Social cohesion achievements – education

The degree to which educational reforms have or have not reduced inequalities associated with social background or group characteristics is discussed below. One important argument to consider at the outset, however, is that education is

not simply about raising academic standards, but also about promoting certain public values. This message is manifested clearly through the number of public sector duties that apply to education and through the transmission of other social, cultural and civic values, including ones around community cohesion. After the Home Office published its Community Cohesion standards for schools in 2004, Fiona MacTaggart, a Minister at the Home Office, stated, ‘Schools are critical to creating cohesive communities. They can promote respect for diversity and positive relations between pupils of all backgrounds’ (Weekes-Bernard 2007).²³

The following highlight some of the equality and community cohesion duties that schools have a legal duty to abide by:

- Race Equality duty to promote ‘good race relations’ (RRAA 2000)
- Disability Equality legislation 2006 & 2007 (DDA 2005)
- Monitoring implementation of schemes and equality impact assessments
- Recording racist incidents (RRAA 2000)
- Community Cohesion duties (Education & Inspections Act 2006)

Despite these extensive public duties to promote equality and social cohesion in the context of schools, there is a great deal of evidence to suggest that the present educational system in England is ethnically-segregated. Research by The Runnymede Trust (Weekes-Bernard 2007) argues that ‘choice of schools and diversity of provision’ are not necessarily benefitting poorer ethnic minority groups (e.g. Somalis, Bangladeshis and Pakistanis) as these groups are – wittingly or unwittingly – not making choices that result in better performing schools. This is because these ethnic minority groups are more likely to choose local schools (or single-sex schools) for reasons of convenience, faith and lack of access to transport. And even the more aspiring ethnic minority lower and middle income groups, are not attending ‘academically selective schools’ because of the complexity of the admissions’ process and because of the ‘locality factor’ (Weekes-Bernard 2007:60). The problem is that whilst this may be the result of giving people choices (i.e. choice will be used differently by different ethnic and socio-economic groups), it is also likely to have the effect of exacerbating segregation (and creating a two-tier system) by enabling parents to avoid schools with high concentrations of BME pupils (Weekes-Bernard 2007:11).

This is a major issue as recent studies have shown that pupils of Bangladeshi and Pakistani origin are more likely to cluster in schools with a majority population of the same ethnic group. Although such racial segregation does not appear to negatively impact on test scores in England, Burgess *et al.* (2008) conclude that “the fact that our results suggest that levels of segregation do not impact – either positively or negatively – on test score outcomes adds weight to the call for increasing integration of different ethnic groups in school in order to increase the potential for improved social cohesion” (2008: 17). Other research has reinforced these findings showing that pupils benefit from attending diverse primary schools where friendships can bridge ethnic and religious differences (Breugel 2006). These results demonstrate how education can, and does, have a wider role (i.e. promoting good social relations between different groups) than merely being about raising educational standards. It is worth noting, however, that a House of Commons Select Committee Report on ‘Social Cohesion (2003-04)’ highlighted that, at present, the pupil population in many schools in England do not reflect their locality, so do not help to promote social cohesion (2003-04: paragraph 49).

Equality achievements – targeted and area-based programmes

A large number of the Labour Government programmes since 1997 were dedicated to reducing economic inequality and addressing social exclusion. The introduction of the National Minimum Wage and the tax credit system helped to raise the income levels of particular groups (e.g. women) and to reduce the number of children and pensioners living in poverty (Marmot Review 2010). The evidence shows that intervention brought about some significant achievements. For instance:

- Income differences were narrowed (excluding the top and bottom deciles)²⁴
- Child and pensioner poverty was reduced in relative terms between 1997 and 2006/7²⁵

There was also a reduction in the disparities between poor areas and other areas in the context of education, employment and crime.²⁶ It appears that this was achieved in large part through targeted programmes – focussing on particular areas or groups. Major examples of area-based programmes are the New Deal programmes (e.g. for disabled people, for lone parents, for people age 50+) which have helped disadvantaged groups get back into employment, and Sure Start which was initially targeted at disadvantaged communities, and has increased the availability of childcare, health and family support services in these areas.

There is evidence to show that focused action and resources on particular groups and areas can significantly improve outcomes for those involved. (Box 3.0). Sure Start Children's Centres, which aim to support young children and their families through integrated education, childcare, healthcare and family support services, have been particularly successful in addressing barriers to key children's services in disadvantaged areas. A National Audit Office (NAO) Memorandum to the Children, Schools and Families Select Committee (December 2009) showed that the gap in development between deprived children and children in better off areas has improved due to Sure Start Centres. The NAO report showed that since 2008 the proportion of children achieving a 'good level of development' increased by three percentage points, and the gap between the lowest achievers and the average decreased by two percentage points (NAO 2009).

Box 3.0: Narrowing gaps – the impact of Sure Start Children's Centres

An evaluation carried out by the NESS Research team at Birkbeck University compared nearly 6,000 three-year-olds on Sure Start local programmes with nearly 2,000 children of the same age and similar background who were not getting help, found that in five out of 14 outcomes, the Sure Start children were doing better than the others. This was a significant improvement on the first evaluation of Sure Start which showed that while children in deprived areas benefitted somewhat from the Sure Start programme, those who were in the worst circumstances (e.g. neither parent in employment, teenage mothers etc.) manifested more behavioural and social problems than before.

- Parents of three-year-old children showed less negative parenting while providing their children with a better home learning environment.
- Three-year-old children in Sure start areas had better social development with higher levels of positive social behaviour and independence compared to children in similar areas without Sure Start programmes.
- Three-year-old children in Sure Start areas had higher immunisation rates and fewer accidental injuries than children in similar areas not attending Sure Start centres.
- Families living in Sure Start areas were more likely to access health, social and family-related services than those living elsewhere.

Source: NESS Research Team and Leyland (2008)

Ofsted inspections (surveying 20 Centres in six local authorities) supported these findings showing that Sure Start Children's Services were providing effective integration of services for children and families, with some 98 per cent of the childcare in centres being judged to be 'good' or 'outstanding' (Ofsted 2009). Ofsted also found that where Sure Start Children Centres did manage to engage and support vulnerable families, the outcomes were considered very positive. Professor Melhuish, from Birkbeck University, concludes that the better results for Sure Start Children's Centres are likely to be the result of better organised and more effective services as Sure Start Children Centres have matured over time (Belsky and Melhuish 2007).

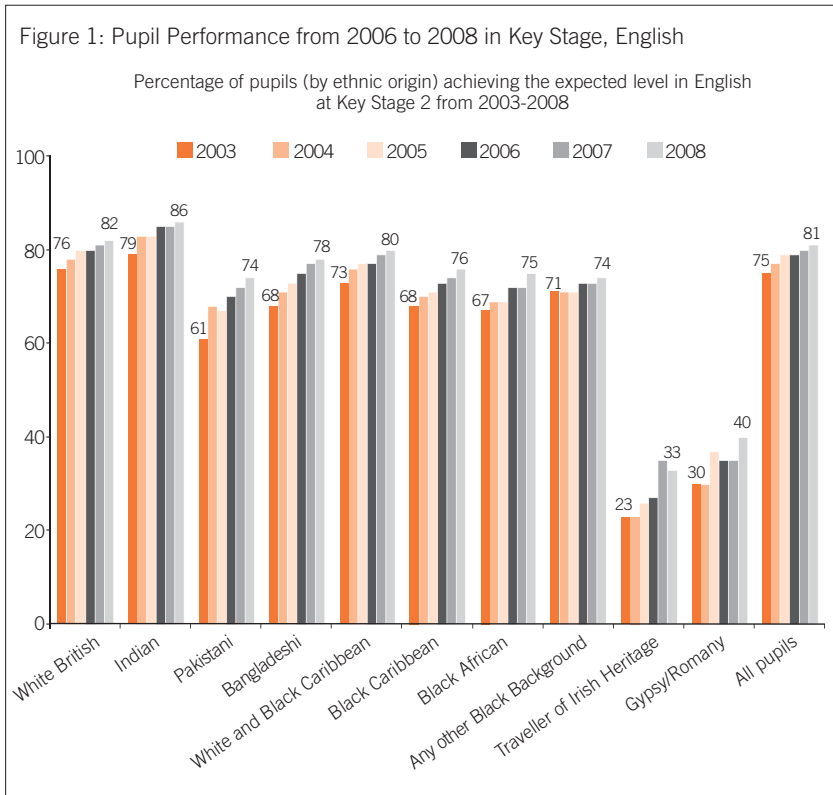
Equality achievements – education

Public sector reforms in education have been underway since the 1970s, gaining pace in the 1980s and then being pursued vigorously by the Labour Government since 1997. The two decades have seen the introduction of new monitoring arrangements (Ofsted set up in 1992), floor and national targets in primary and secondary schools (Education Reform Act 1988 onwards), and a significant expansion of school types (e.g. specialist, faith and academies). This has been sustained by substantial increases in spending – from 4.7 per cent in 1996/7 to 5.6 per cent by 2010/11.²⁷ The purposes of the reforms in education were four-fold (Bradley and Taylor 2008):

- To improve performance of schools through greater competition for pupils
- To Improve efficiency of schools through direct funding (schools are now responsible for approx. 90 per cent of recurrent expenditure)
- To Increase transparency and accountability
- To encourage private funding into state education (where private funders could contribute to new academy schools)

Whilst we are seeing improvements in academic performances across all ethnic minority groups (see Figure 1), these improvements are not shared by all the groups. Figure 1 clearly shows that whilst performance in a core subject (English) at the end of primary school stage have increased for all groups, the performance of Black, Pakistani, Bangladeshi, Irish and Gypsy Roma groups are still of concern. Moreover, this pattern does not change in secondary schools, and by the age of 16, Black Caribbean, Black African and Pakistani pupils (despite closing the gap with other pupils) are performing well below the average attainment of other pupils (DCSF

2009). The achievement levels of pupils from Irish and Gypsy/Roma backgrounds are particularly poor, with 10.4 and 9.8 per cent of pupils, respectively, achieving 5 or more A*-C grades GCSEs or equivalent in Maths and English in 2009 (DCSF 2009). And research has shown that the experience of black boys in school is still a major issue because whilst socio-economic status is a strong predictor in attainment, African and Black Caribbean boys from better-off backgrounds are performing worse than White boys from a similar background (Strand 2008).



Evidence from recent government reports also suggests that the public sector has been unable to make a significant dent in reducing the impact of social background as social class still has a much more profound impact on life chances than *almost* any other factor, including race or ethnic background (DCLG 2010b). So for instance, GCSE results show that pupils who are eligible for free school meals are less than half

as likely to get 5 or more GCSEs at A*-C grades compared to their peers who do not receive free school meals (Leman 2008) – and this is the case even amongst ethnic minority pupils (Haque and Bell 2001). The impact of social background is reflected across the socio-economic spectrum (see Table 1.0).

Table 1.0: Achievement at GCSE and equivalent for pupils at the end of Key Stage 4 by IDACI²⁸ decile of pupil residence: Year 2007/08 Provisional.

IDACI decile	Number of pupils at the end of Key Stage 4	Percentage achieving 5+ A*-C	Percentage achieving 5+ A*-C including English and Maths
England			
0 - 10 % most deprived	68,541	48.5	29.4
10 - 20 %	65,231	50.4	31.9
20 - 30 %	61,329	54.0	36.6
30 - 40 %	58,912	58.2	41.5
40 - 50 %	58,123	62.8	46.7
50 - 60 %	56,760	67.3	51.9
60 - 70 %	56,675	70.7	56.0
70 - 80 %	56,312	74.2	60.3
80 - 90 %	56,590	76.8	63.8
90 - 100 % least deprived	55,001	81.9	70.0

Source: DCSF data, 2009

Targetted programmes in education have included the London Challenge and Education Action Zones. Evidence that the Government's Excellence in Cities (EiC) programme has improved outcomes of children in deprived secondary schools with better impacts on more disadvantaged schools is particularly strong (Box 3.1). The EiC programme has provided additional resources and guidance for secondary schools in disadvantaged areas since 1999.²⁹

Choice in education has been expanded in the belief that it drives up standards. In the context of improvement in school performances there is some research which suggests that there are indeed some increases in performance (but only in particular schools running their own admission's system or characterised by more autonomous structures).³¹ On the other hand, there is also a great deal of evidence to suggest that choice and diversity in provision is being implemented at the expense of widening inequalities (e.g. Fiske and Ladd, 2000; Gibbons *et al.* 2006).

Box 3.1: Improving outcomes in deprived areas – Excellence in Cities programme

The National Foundation of Educational Research (NFER) undertook a second evaluation of the EiC programme comparing the outcomes of children attending EiC schools with a similar group of children outside the EiC programme between 2002 and 2006. The evaluation found:

- The rate of improvement in EiC schools is higher than other LEA-maintained schools. The average EiC pupil was more likely to attain 5+ A*-C grades than the average pupil in a non-EiC school, by 3.4 percentage points.
- EiC schools seem to reduce the negative impact of deprivation on pupil attainment. EiC pupils make more progress than similar pupils in non-EiC schools as the level of deprivation increases.
- There is also a noticeable improvement in attendance in EiC schools – by the equivalent of one day per pupil.³⁰

Initial assessments suggested that EiC was potentially cost-effective, with very positive outcomes for £120 per pupil on average for each year.

Source: DCSF 2007b

In a large scale study assessing the patterns of school choice and performances of 200,000 pupils in 2400 primary schools in London, Gibbons *et al.* (2006) show that greater competition between primary schools *does not* boost performance (partly because parents choose their local schools at primary level), although there is evidence of increased performances amongst faith schools and secondary schools in densely-populated urban areas. More specifically, Gibbons *et al.*'s research shows that greater competition between schools actually increases inequality with high-ability and low-ability pupils separated by schools that face more competition. Gibbons *et al.* thus conclude that performance may increase in the most popular primary schools, but will come at the expense of greater social polarisation between schools. Conversely, others have argued that such social polarisation cannot be attributed to increased 'school competition' and is perhaps more a result of increasing changes in population characteristics and residential segregation (Gorard *et al.* 2001).

Choice is also an issue because research has shown that unless there is ample supply, good suppliers (e.g. good schools; good hospitals etc.) become rapidly oversubscribed and ‘cream-skimming’ (e.g. in terms of ability) becomes the norm (Fiske and Ladd 2000; Bradley and Taylor 2008). This is increasingly evident in the research on school choice, with some researchers arguing that it is not ‘parental choice’ that is being practised but ‘selection by schools (selecting high performing or high ability pupils)’.³² More importantly, there are suggestions that this ‘constrained supply’ has led to increasing segregation by social class, ethnic groups and high and poor achieving schools (Tomlinson 1997; Burgess 2006; Weekes-Bernard 2007).

Finally, it is worth noting that beyond secondary education, significant problems of inequality are still to be overcome. Research shows that there is an ‘ethnic penalty’ in degree attainment (Equality Challenge Unit and HEA 2008) and that the discrimination continues in the labour market (Cabinet Office 2003). So although Black, Asian and minority ethnic employment has generally increased in recent years, the gaps for some groups still remain high: 18 per cent of Black Caribbean men are unemployed compared to five per cent of White men and 65 per cent of Pakistani and 66 per cent of Bangladeshi women have the highest economic inactivity rates³³. More recent statistics show that Muslim men are more than twice as likely to be unemployed as Christian men (Equalities Review 2007).

In addition, whilst girls are attaining much better results than boys in schools and in universities (DCSF 2009) this success is not reflected once women enter the labour market. And the effect on their wages once they become mothers and/or part-time is particularly startling (with 17.2 per cent pay gap between men and women in full-time work and 35.6 per cent pay gap in part-time work).³⁴

Equality and cohesion achievements – Social Care

The Government’s increasing emphasis on choice has also been reflected in health and social care services (DoH 2005; DoH 2006). New legislation³⁵ has placed a statutory duty on all care managers to offer service users and carers payments as an option after assessment of their needs. Greater control has been passed over to the individual in the form of these Direct Payments (as part of self-directed support) where individuals are given set amount of funds by which they can purchase the care they need. The objective has been to shift the emphasis

from individuals (e.g. elderly or disabled) being seen as ‘passive recipients of care’ to one in which they actively ‘design and control’ their care around their own needs and preferences (In Control 2008). It is based on the principle of enabling ‘independent living’ – so that where people have the capacity, they should be allowed to have more control of resources (allocated to them) and make decisions about their own personal and social care. The Department of Health state that these reforms are about placing ‘choice, independence and dignity’ at the heart of service delivery (DoH 2007).

Currently, individuals are allowed to purchase their own care in several ways – with or without advice (IPC 2009):

- Purchase informal care (friend, neighbour, relative etc.) from their own resources
- If they have had an assessment from the local authority (and found eligible for services) they can use their personal budget to purchase community care services
- They can ask the local authority to purchase services on their behalf using all or part of their personal budget allowance³⁶.

An evaluation of ‘self-directed support’ (i.e. direct payments, personal budgets and individual budgets)³⁷ across 200 people in 17 local authorities revealed that the majority of recipients of ‘self-directed support’ reported improvements in the quality of their lives. These improvements included spending time with the people they liked, taking part in and contributing to their local community, increased choice and control over their own lives and improvements in their personal dignity (In Control 2008:24). However, the evaluation also found that these improvements were more apparent amongst those individuals with learning difficulties (compared to the elderly), and amongst those who had family and friends helping them with their planning.

So, whilst self-directed support can be argued to have promoted greater equality amongst individuals (defined in terms of ‘capability’ to live your life in the way you value), there are concerns that self-directed support may not equally benefit all groups, and may even further empower those who are better able to get the services that they require (either because they are better informed or through the help of more articulate family or friends). These views are reinforced by research which has shown that ‘personal budgets’ are highly complicated to manage (a service

user essentially becomes an employer if they hire Personal Assistants to care of their needs) and that black and ethnic minority (BME) service users are losing out in the direct payments scheme (SCIE 2006). Some of the issues highlighted are: confusion over the meaning of 'independent meaning'; service users not being aware how to access important information about personal budgets; difficulties in recruiting Personal Assistants who meet the cultural, linguistic and religious requirements of BME users; a shortage of appropriate advocacy and support services and insufficient funds for some of the local schemes (SCIE 2006: 10).

The use of personal budgets may also raise issues about 'fairness' and challenge certain notions of social cohesion. For instance, there have been examples of people spending some of their budget on a holiday or a season ticket to watch football regularly with friends so that they can give their main carer a break (Demos 2008:46). In both these cases, the users could argue that these arrangements contribute to their personal plans (which the local authority needs to approve), provide an alternative to respite care from the local authority and give their main carers (usually a relative), a break. Whilst these arguments are important to take note of (because essentially people are defining for themselves what their care should be), it is also important to recognise that people's means to achieve their own goals may be so diverse and controversial, that it may undermine social cohesion (when defined in the context of appropriate treatment to achieve equal outcomes).

(iv) Risks, Safeguards and Opportunities

This section summarises the lessons to be learnt from what has been attempted and achieved to date. It acknowledges the scale and complexity of the challenges facing public services, while asserting that further progress is possible. The risks of pluralised, choice-based models will need to be mitigated through targeted measures if their potential benefits are to be realised.

Many of the factors that determine life chances may not be under Government's direct control and may not even be susceptible to indirect influences e.g. genetics, early upbringing, parenting skills, aspirations etc. Across OECD countries, the strong impact of social background on education, health and other aspects of life are clearly apparent (OECD PISA 2003). But, on the other hand, we have made significant progress in reducing inequalities over the last 20-30 years in Britain, and international evidence shows us quite clearly that some countries do better than others in weakening the link between social background and health,

education, crime outcomes etc (Wilkinson and Pickett 2009). So although we need to be realistic about the scale of the challenge in reducing inequalities and social polarisation, we know the gaps between groups are not completely intractable.

The impact of ‘choice’ reforms in education and social care, has highlighted a major issue of ‘inequality of autonomy’ between people, in terms of the ‘capabilities’ they are given to make decisions that affect their lives. The reality appears to be that people in disadvantaged circumstances do not have as much ‘choice’ and ‘control’ as others to make decisions about their lives and their future. Le Grand suggests that one way of connecting this link between ‘choice’ and ‘equality’ is to provide people with accessible and user-friendly information or some sort of ‘advisor/referral’ worker. In either case, the objective would be to connect users to the right services, help them make informed decisions, book appointments etc and generally help people to navigate the system (Le Grand 2006:705). But research has shown that choice can also be affected by travel costs, taking time off work etc and this can discourage groups from accessing particular services (SCIE 2006; Weekes-Bernard 2007). These considerations clearly need to be taken account of.

Examples in education and social care in this chapter quite clearly show us that the principles of choice, equity, personalisation – without an infrastructure of support and advice for those who need it – will tend to benefit the better-off and the better-informed who are able to navigate a complex system by themselves and in their favour (House of Commons Public Administration Select Committee 2005). This is incongruent with the principles of both equality and social cohesion in the context of public value and public services.

Research into ‘what works’ with improving the connections between disadvantaged groups and public sector institutions (e.g. Spencer *et al.* 2005) has highlighted the importance of raising the awareness of front-line staff (e.g. in relation to changing eligibility criteria of different groups; language support services), hiring specialist staff (e.g. interpreters to improve access and understanding of services), improving outreach by key service providers (e.g. health and police), capacity-building with third sector organisations, collating specific data on disadvantaged groups and, where it applies, implementing more thoroughly statutory duties to promote equality (e.g. race, gender and disability at present) and equality of opportunity.

More broadly, the evidence raises issues about some of the tensions and gaps that exist in the context of public services (and quasi-market reforms) and equality and social cohesion principles. Some of these tensions may be resolved by the

provision of 'advisors' or a 'referral' service for those who need help with navigating a complex system of choice, but other gaps will require more extensive safeguards within public services. One size will not fit all, so planning and implementation will need to be guided by high quality needs analysis, more detailed baseline data on key differences between groups and ongoing monitoring.³⁸ In ensuring the best possible fit between services and diverse citizens, the value of greater participation by those who use the services in the design and implementation of services cannot be ignored (NAO 2004).

Mainstreaming has also been shown to be an effective way of incorporating equality and social (community) cohesion into public services. Evaluators have noted that explicitly incorporating equality (race, gender etc.) objectives from the outset into project or programme objectives invariably benefits the groups that you are focusing on.³⁹ But, we need to be cautious as there are also examples of mainstreaming degenerating into tokenism when equality objectives have not been prioritised in programme objectives, job descriptions and performance reviews.⁴⁰

The risk of tokenism has been shown in evaluations of the impact of public sector duties on local authorities, where results have been mixed. For instance, a study focusing on the implementation of race equality duties (under the Race Relations Amendment Act) on 32 councils in Scotland (Audit Scotland 2008) found that whilst most councils had developed race equality policies and undertaken a range of initiatives, there was little evidence to show that these measures had had any significant impact on local ethnic minority communities. Their key findings were⁴¹:

- Despite considerable corporate activity and initiatives, councils have limited evidence of the impact of the race equality duty on service delivery.
- Minority ethnic communities say there is scope for councils to make more impact in applying the race equality duty.
- Councils find the race equality duty challenging and have so far focused on compliance, policies and processes.
- Councils do not consistently prioritise and report on race equality, or provide sufficient training for councillors and staff.
- Councils lack full and robust information about minority ethnic communities and their needs

Finally, public service strategies and resources need to be appropriate to the complexity, depth and dynamic nature of inequality, and the variety of pressures that draw communities together or push them apart. Empirical research shows that tailored action and personalised support are still required to help the ‘hardest to reach’ groups to find work and to access key services.⁴² Research also repeatedly shows that problems relating to deprivation and disadvantage are closely linked (e.g. low levels of educational achievement lead to higher unemployment, child poverty issues, poorer health etc.);⁴³ which means that disadvantaged groups and communities will require resources that go beyond individual organisations – because the public sector ‘pursues wider objectives in the interests of communities at large and joins things up in a way that is impossible for separate, small, locally based units’.⁴⁴ These are challenges of co-ordination, and also challenges of scale. Hills *et al.* (2009) argue that the Labour Government have not made as much impact as they expected because the changes have been small in relation to the scale of the problems and the momentum for progress has significantly slowed down in the last couple of years (Hills *et al.* 2009: 358).

Endnotes

- 1 See also Hudson *et al.*, 2007 for evidence of tensions between groups over housing and jobs.
- 2 The Citizenship Survey has shown a small increase in the proportion of people in England who think that people from different backgrounds in their area get on well together, from 80 per cent in 2003 to 84 per cent in 2008-9 (DCLG, 2010a).
- 3 Most of the increase occurred to the 1980s (see NEP Report, January 2010).
- 4 Layard, 2003; Wilkinson and Pickett, 2009; OECD PISA, 2003.
- 5 Oldham Independent Review, 2001; Lawrence and Heath, 2008; Hudson *et al.*, 2007
- 6 Only 38 per cent of people now think the Government should redistribute income from the better-off to the least well-off – down from 51 per cent in 1994.
- 7 http://news.bbc.co.uk/onthisday/hi/dates/stories/december/8/newsid_4457000/4457112.stm
- 8 <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2059995>
- 9 <http://www.poverty.org.uk/summary/psa.shtml>
- 10 Hills *et al.*, 2009: 356
- 11 The CAA was introduced in April 2009 and replaced the Comprehensive Performance Assessment (CPA).
- 12 Black includes members of the African, African Caribbean, Asian and other visible minority ethnic communities who may face racism.
- 13 See Commission on Integration and Cohesion, 2007:53
- 14 see for example, the National Equality Panel Report, 2010
- 15 Citizenship Survey, 2007 and 2009
- 16 Citizenship Survey, 2005

- 17 Citizenship Survey, 2007/08
- 18 Citizenship Survey, 2009
- 19 *Ibid*
- 20 Ipsos MORI, September 2009
- 21 Ipsos MORI, 2006
- 22 Blanden and Machin, 2007
- 23 http://press.homeoffice.gov.uk/press-releases/Building_Cohesion_in_schools.html
- 24 Hills, Sefton and Stewart, 2009
- 25 *Ibid*
- 26 *Ibid*
- 27 DCSF, 2007
- 28 IDACI – Income Deprivation Affecting Children Index
- 29 Since April 2006, EIC has been mainstreamed and now forms part of the School Development Grant.
- 30 Kendall *et al.*, 2005
- 31 Gibbons *et al.*, 2006
- 32 Bradley and Taylor, 2008
- 33 Labour Force Survey, four quarter averages to first quarter 2007, Great Britain
- 34 TUC, 2008
- 35 Community Care Direct Payments Act 1996 and Health and Social Care Act 2001
- 36 You can receive Direct Payments from a Personal or Individual Budget.
- 37 A personal budget is a sum of money allocated to an individual needing personal assistance and support services in a social care context. Individual budgets are similar to personal budgets, but allow individuals access to wider funding streams beyond those for personal assistance services.
- 38 Turning Point and Dr Foster Intelligence, 2007
- 39 Hunt, 2004
- 40 *Ibid*
- 41 Source: Audit Scotland, 2008:1
- 42 E.g. Labour Force Survey, 2006
- 43 Strategy Unit, 2008
- 44 Coles, Cooper and Raynsford, 2004: 20

2

What are the Implications of Public Service Reform for Societal Inequality?

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(i) Summary

A major theme in public service reform is user empowerment through greater opportunities for choice between alternative providers. This raises major challenges for policy-makers since income inequalities have grown rapidly in recent years and better-off people have greater choice across most areas of life. Can reformers achieve more equal outcomes by giving more choice to everyone?

This chapter considers health and social care, education and early years provision, chosen because they are all high-profile policy areas with substantial reform programmes and because they offer examples of empowerment reforms through choice in more or less competitive markets. Much of the reform programme has had insufficient time to achieve its full impact and available evidence is inconclusive. Despite obvious problems of adverse selection by providers and differences in the capacity of users to make effective choices, the outcomes indicate modest progress in advancing equality. Where empowerment programmes are linked to extra resources targeted on more vulnerable groups or areas in the context of good information, a functioning market and support in decision-making, they appear to have a positive effect. However the achievements of the reform programme are limited. It is hard to make much headway in advancing more equal outcomes in an unequal society unless more money is directed toward poorer groups.

(ii) Responsiveness, Cost-Efficiency and Equality in a More Unequal Society

For much of the post-war period public services in the UK were delivered by central (cash benefits, medical services) or local government (education, personal social services, social housing). They were financed chiefly through centralised taxation with some local government support. The legal framework specified entitlements and access, with considerable opportunities for variations in provision in the locally administered services. Central interventions in the organisation and structure of locally-administered services, particularly education, became prominent from the 1960s onwards. More recently there have been moves to decentralise budgetary responsibility to provider agencies and directly to service users to advance choice and competition.

The main drivers of change (Alldritt 2009; Driver and Martel 2006; Powell 2002) have been:

- Demand by service users for greater empowerment, accountability and responsiveness, sufficiently widespread and powerful to be recognised across all the main political parties as a central feature in manifesto programmes and elsewhere (HM Government 2009; Le Grand 2003: 163);
- The need to contain pressures to increase spending, exacerbated by global competitiveness (Commission on Social Justice 1994), declining public sector productivity (Simpson 2007), anticipated increases in the cost of pensions and health and social care for elderly people (HM Treasury 2009a) and (more immediately) the cost of borrowing to finance the banking industry;
- Concerns about fairness in access, standards and the capacity for innovation in existing provision (PMSU, 2006).

Various policy innovations have followed, pursued with greater or less vigour at different times and influenced by the commitments of different governments to public spending, gathering pace from the late 1980s onwards. They may be grouped under six headings:

- Stronger Treasury control over budgets across all areas, locally and centrally administered;
- Decentralisation of provision to a range of agencies (individual schools, Health Trusts, the Benefits Agency), typically operating in competition

- Intensification of monitoring, through regulation, inspection and publication of levels of achievement;
- Development of new methods of promoting innovation and setting standards, through targets, specific initiatives and programmes, and targeted payments;
- Greater involvement of service users, through choice between providing agencies, better access to information on standards, in some areas opportunities for voice;
- In relation to cash benefits, explicit systems to mobilise those of working age into paid work, through conditions on entitlement and measures to support bottom end wages.

These developments reflect shifts in the context in which government operates: declining deference and greater individual self-confidence leading to querulous citizens (Giddens 1994); the move towards a more networked society as a result of the use of ICT and more diverse and globalised power structures (Stoker 2006); the decline of traditional political structures (most importantly in a class-based labour movement) and growing diversity in life-styles, needs and demands (Jessop 2002); and trends in government to a 'hollowing out' (Rhodes 1997), to risk management (Hood 2010) and to a New Public Management (Flynn 2005). The UK is often seen as unusually centralised in government structures but at the forefront of the above trends so that the pressures for change are particularly acute (Esping-Andersen 1999).

The reform programmes have been extensively discussed (for example, Le Grand 2003, 2008). In relation to inequality the main debates concern conflicts between empowerment and equality. Middle class service users are often seen as more successful in gaining access to services. Their greater resources allow them to seek out the best providers and their cultural capital makes them both more attractive and more able to press home their demands (Titmuss 1958). The risk is that user empowerment allows these differences full play.

Issues of equality have become more prominent as the 1997 New Labour Government focused attention on poverty and social exclusion (Mandelson 1997; NPI, 2010; Equalities Review 2007). Analyses of the dispersion of market incomes in the UK show a substantial increase in the share received by lower income groups during the 1970s, followed by a sharp decline in the 1980s. The relative shares of those on higher incomes grew during the 1980s and more slowly in the 1990s. For those at the very top the increase has continued into the 21st century and probably

still does, while inequalities appear to have roughly stabilised for most of distribution (Atkinson 2007: 49; Hills *et al.* 24). Wealth appears even more highly concentrated at the top (NEP 2010: 12). The move by the UK from a European to more US pattern of income distribution is attributed to a number of factors including the impact of changes in labour process, more intense competition in relation to mobile jobs and for their impact on household living standards and changes in household structure (Freeman 1995; Bardhan *et al.* 2006). Attempts to decompose the impact of different factors indicate that access to employment has been the most important factor followed by household structure (Brewer, Muriel and Wren-Lewis, 2009, Table 24). This reflects the relative success of the 1997 Labour Government's policies in containing poverty among families with children and in supplementing incomes among lower income pensions (Hills *et al.* 2009: 44). In addition the gradual and slowing trend to a decline in the gender earnings gap (McKnight, in Hills *et al.* 2009, Figure 5.13) has reduced inequality (Brewer *et al.* 2009: 76).

Future trends in this area are uncertain. There is no indication that returns at the top end will fall in more competitive and globalised markets. In the immediate future, higher unemployment will increase bottom end inequality. Unless the policies that cut benefits for those out of work are mitigated this will lead to an increase in inequality between working and workless households. The trend to reduction in poverty among families without access to employment came to an end in 2004-5 and is unlikely to resume without further increases in benefits (Sefton *et al.* in Hills *et al.* 2009: 44). Whether the 2007 pension reforms will be sufficient to maintain the improving trend (resulting mainly from increases in the basic pension and means-tested supplementation) for this group appears uncertain. Much depends on the new Personal Accounts, although the gap between incomes for lower-income earners and a substantial group among the better-off may diminish as occupational schemes are cut back (Evandrou and Falkingham in Hills *et al.* 2009: 176). Improvements in equality and poverty reductions are patchy and highly dependent on targeted state spending in a time of austerity.

The emphasis on the empowerment of consumers, cost-efficiency and fair access alongside a 'fanning out' of market inequalities, mitigated chiefly by targeted benefit policies, raises issues for public service reform. Middle class groups have always done relatively well out of the welfare state. Public service reforms that give greater power to service users risk exacerbating the inequality between advantaged and more vulnerable groups.

(iii) Directions in Reform

The objectives outlined above have been pursued through a range of methods. The main directions in recent reform and the logic that underlies them are well-summarised in a recent PMSU paper (2006). This emphasizes four approaches:

- Top down performance management (Targets, regulation, inspection and where necessary intervention)
- Users shaping the services from below (greater choice between providing agencies, funding following the user, , more opportunities to exercise voice)
- Market incentives to promote efficiency and quality (through competition, contestability or bench-marking against other providers and commissioning)
- Improving capability (better leadership, developing the workforce and improving organisational co-operation)

Examples of the first are the Comprehensive Spending Review Targets for waiting lists, morbidity and inequalities in health, and targets for Key Stage test outcomes in education; the NICE evidence-based regulation of drugs and guidelines on treatment and the National Curriculum guidelines; inspection by Monitor or Ofsted and the Cancer Strategy and literacy and numeracy hours. For the second, the Patient Choice and Open Enrolment programmes, fund-holding by GP and PCT and Age-Weighted Pupil Units, the Link and its successor schemes and the move towards a greater role for parents and, through the Academy, Trust and Faith Schools programmes, business, religious groups and NGOs in school governance. Co-payment, typically through partial state contribution for a paid-for service is rare in the NHS and statutory age education, but is a feature of Academies and in means-testing for social care support, in the Attendance Allowance and more recently in Direct Payments for personal care, which may be privately supplemented, in student finance subsidies and in the contribution of Tax Credit to child care costs.

Market incentives are extensively discussed (for example, Le Grand 2008) as a central feature of New Public Management, for example through competition between various NHS Trusts and Independent Diagnosis and Treatment Centres, through the impact of choice of school, enhanced by a greater range of specialist and faith schools and Academies, and through Compulsory Competitive Tendering and Best Value in local government. Capability improvements include measures to enhance training (the NHS and Schools leadership colleges), improvements to pay

and aspirations about status in health care, education and (to a lesser extent) social services to enhance recruitment and retention, and more emphasis on networking between professionals and agencies, for example in the National Cancer Strategy and in sharing expertise and resources between schools.

The reform programme has been sustained by substantial increases in spending, particularly in health and social care (from 5.3 to 7.9 per cent of GDP between 1997-8 and 2008-9) and education (4.5 to 5.8 per cent, HM Treasury 2009b, Table 4.4). More recent policy discussion (for example, Cabinet Office 2008) places greater stress on fairness and less on top-down performance management. The number of targets in Comprehensive Spending Review has been sharply reduced and there is more attention to direct citizen empowerment. Market-centred rather than democratising aspects of empowerment predominate: choice trumps voice (Pierre 2009, Le Grand 2008). This conflicts with calls for a new localism (Alldritt 2009; Mulgan 2003) and for democratic reform (Stoker 2006; Lister 2003).

(iv) Implications for Inequality

The reforms cover a broad range of activities. The services involved account for more than a fifth of national product and touch the lives of the vast majority of citizens to a greater or lesser extent. The above discussion indicates continuity in trends with an enormous variety of policies and reforms reflecting the general themes of responsiveness, cost-efficiency and fair access.

Consideration of the impact of reform on inequality is hampered by difficulties in disentangling evidence of change along a number of dimensions and in establishing a causal link between particular aspects of the new policies and changes in outcomes. The problems are exacerbated by the fact that policies operate in the context of entrenched assumptions, working practices and patterns of behaviour, for example in changing relationships among professional staff or in raising aspirations about available career paths among young people, so that their impact can only be realistically assessed in longer term reviews. We will review developments in education, health care, early learning and individual budgeting in social care. These areas are chosen because they differ along three related dimensions that are prominent in debates about reform: provider control over access, transparency of need and user control over budgets.

In health care professional control over decisions about the need for treatment and their capacity to influence how and where it is provided are seen as crucial to

inequalities of outcome (Klein 2006). In education, the over-subscription of more attractive schools allows providers to exercise a bias towards students who are more attractive to teach, often the middle class (Ball 2008). In early years provision and social care, however, there is substantial informal provision with a growing range of alternative providers, enabling (*prima facie*) a wider range of user choice. Reforms in health care give budgetary control to professionals in PCTs to commission much treatment, although patient choice in non-urgent services increasingly influences allocation. Open enrolment in education with cash following the student is effectively a voucher system whose application is limited by the availability of places in sought-after schools, as in the allocation of the child care component of Tax Credit. Individual budgeting supported by personal advice in social care gives the user immediate choice in directing the resources available where they want them to go.

Health care

A substantial body of evidence (Townsend *et al.*, 1972; Drever and Whitehead 1997; Marmot 2010) has demonstrated that, while the long-term trends in health and longevity are positive, inequalities between social groups in life expectancy, infant and child mortality and in other areas is widening (see Sassi in Hills *et al.* 2009: 135). For example, life expectancy at birth increased by 5 per cent for women from social class 1 between 1972 and 1996, but only 3 per cent for those from class 5. For men the gap is between a 6 per cent and a 4 per cent increase. Marmot shows that this remains true whether social differences are measured between regions, by poverty, by level of education or by the deprivation of the area in which people live (Marmot 2010, Figures 2, 3, 7 and 10).

The 1997 government's policies included an increase in spending overall on health care and a substantial number of targets imposed in Comprehensive Spending Review, including waiting lists and waiting times and death rates from cardiovascular disease and cancer. The main strategies to address social inequalities were area-based, initially through *Health Action Zones*. This later developed into the identification of the fifth of local authorities and primary care trusts with highest social deprivation and lowest performance on health indicators as 'Spearhead' authorities, with extra resources, specific targets and careful monitoring. This strategy has limitations since the majority of deprived people do not live in deprived areas, but has advantages in terms of practicalities in targeting, managing a viable policy through existing institutions and in testing reform programmes.

The overall strategy succeeded in relation to a number of targets: the objective of ending waiting times longer than three months for outpatients was effectively achieved by the end of 2005. For inpatients, waiting times for almost all cases fell below six months by early 2006. Overall mortality from heart disease, stroke and related illness had fallen from 141 per 100,000 (under 75) in 1995-7 to 75 by 2006-8 and from cancers also from 141 to 114 over the same period. Targets for reducing the maximum wait in accident and emergency to four hours, ensuring access to a GP within 48 hours and choice in booking targets have also all been met (Propper *et al.* 2008). Smoking, teenage conceptions and deaths from suicide (which in fact initially rose) have fallen but not at the rate required to meet the target (HM Treasury, 2007; DoH 2009).

These developments are in general positive, although improvements in health outcomes follow established trends so it is difficult to demonstrate how far they are due to specific policies (Hills and Stewart, 2005: 333; King's Fund 2007: 4-5). However, progress in relation to inequality targets is partial. The inequality gap between the Spearhead areas and the population as a whole had fallen from 37 to 23 per cent for heart disease and strokes and from 21 to 18.6 per cent for cancer between 1995-7 and 2006-8, actually achieving the 2010 target, despite a slight increase in the last year in the latter figure (DoH 2009: 51 and 52). However, the gap in infant mortality between the lowest socio-economic groups and the rest of the population has widened, as has the gap in life expectancy between Spearhead areas and the rest of England (DoH 2006). The gap increased by 7 per cent for men and 14 per cent for women between 1995-7 and 2006-8 (DoH 2009: 14). Sassi also examines trends in life expectancy across all local authorities and shows that the trend to greater inequality by socio-economic group may have stabilised and actually be narrowing towards the end of the period (in Hills *et al.* 2009, Figure 7.4). He uses a different data source, the Health Survey for England, to show that class gaps for self-reported poor health, cardio-vascular disease and poor psycho-social health appear to be widening between the early 1990s and 2005 (2009: 145-9).

The overall picture in relation to inequalities is 'disappointing' (Sassi in Hills *et al.* 2009: 155) while real achievements in health care for the population as a whole must be acknowledged. However, given the negative trend in relation to inequalities for the previous three decades, modest and partial improvements may be judged less harshly. Health care reforms involved the use of budgetary decentralisation, including private for profit and not for profit Intermediate Diagnosis and Treatment

Centres, targets and monitoring in the context of extra resources. The main policies directed at achieving greater responsiveness were market and choice centred, to do with the patient's right to choose between a range of clinics and trusts for non-urgent treatment. There has been some attention to engagement through Patient and Public Involvement, Local Involvement Networks and other schemes and the inclusion of lay members in Trusts although there is no evidence that this has a major effect on outcomes. It is difficult to divide improvements in equality between the centralised resource, target and monitoring and empowerment policies.

Evidence on the impact of patient choice and empowerment is fairly limited and comes mainly from the US, where care is typically managed through Health Maintenance Organisations, contracted for a fixed fee by the insurer and with strong incentives to compete on price and quality. A review of evidence by Burgess and colleagues (2005) points to two main effects: competition tends to improve quality where prices are high, but reduce it where they are low (as for example for Medicare patients). Studies of the UK health care market also indicate differentiation between different types of patients. Under the internal market between 1991 and 1997, two types of purchasers existed: fund-holding GPs and District Health Authorities. Both negotiated price reductions, but GPs tended to gain shorter waiting times and a service generally more responsive to patients' wishes and possibly of higher quality (Burgess *et al.* 2005: 27-9). District Health Authorities appear also to be influenced by a concern to maintain incomes for existing facilities. The limited evidence available indicates that hospitals did not appear to avoid more difficult patients although they had economic incentives to do so.

Patient choice appears to lead to wider choice of hospital and to more severely ill patients attending more modern and better-equipped hospitals, possibly improving outcomes. However information both on the quality of hospital and on one's own condition and prognosis (as indicated by education level) is also associated with exercising the choice to attend a more distant facility, providing suggestive evidence of a class inequality effect. A further study of waiting times for elective surgery between 1997 and 2007 shows no indication of any rise in inequality and possible evidence of a fall, although it is impossible to attribute this to any one element in the new policies (Cooper *et al.* 2009)

While evidence is sparse, it seems that the details of the design of choice systems are crucial. Choice can improve outcomes, but needs to be exercised in the context of good information and not to be distorted by differences in payment

for treatment, which the NHS avoids. How far cultural differences in confidence and assertiveness and informational inequalities can be overcome in NHS reform is at present unclear. Taken as a whole, the reform package of recent years has achieved modest gains in equality.

Education

Education was the top priority in the 1997 Labour manifesto. The move to budgetary decentralisation, wider choice of school and greater diversity of provision that had developed since the late 1980s were vigorously pursued in the context of increases in resources and the expansion of provision in the early years, above compulsory school leaving age and in higher education. New monitoring arrangements (Ofsted) were established and targets for attainment were set. While parents and other groups were involved in the governance of a greater variety of schools the main mechanisms for empowerment were to do with open enrolment and the operation of competitive forces.

The specific policies to address inequalities included area-based policies (*Education Action Zones*, the *Excellence in Cities* initiatives and a range of targeted grants and interventions. In addition the trend to a more holistic approach to children's needs that culminated in *Every Child Matters* (DfES 2003) promoted the inclusion of disadvantaged groups. The premium paid to local education authorities in respect of children entitled to free school meals rose rapidly between 2003/4 and 2006/7 at about 13 per cent a year above the increases in the basic allowance although some authorities do not pass the full amount into the schools teaching those children (Sibieta *et al.* 2008).

In general, these policies have again achieved real but modest improvements, difficult to disentangle from existing trends. The rate of increase in GCSE A-C grades was about one per cent a year, the same as under the previous government, with real gains at the primary level, slightly below the Government's targets. There is some indication that the rate of improvement at the secondary level has increased since 2004-5, suggesting that improvements at the primary level are now feeding through (Lupton *et al.* in Hills *et al.* 2009: 77). This has been particularly striking in the most deprived schools. In schools where a third or more of children receive free school meals, the proportion of children attaining 5 or more A-C GCSEs has risen from about 20 to about 40 per cent between 1999 and 2005 (Lupton *et al.* Figure 4.3). Sharp improvements are also evident in *Excellence in Cities* schools.

When the focus moves from schools with high proportions of deprived children to the children themselves outcomes are less impressive, possibly because the policies targeted by area miss many deprived individuals. The achievement gap between those receiving and not receiving free meals on the five GCSE measure fell from 31 to 27 percentage points between 2002 and 2007 (Lupton *et al.* 2009, Table 4.2).

Strategies to expand participation for 16-19 year olds, including means-tested Educational Maintenance Allowances (EMAs) and changes to the curriculum, and in higher education, strong incentives for universities to offer more places, targeted support for those from poorer areas and means-tested support for students have enjoyed some success. There is evidence that EMAs encourage poorer school students to stay on, although the overall increase in education for 16-19 year olds has been limited, (Lupton *et al.* 2009: 82; Middleton *et al.* 2005). Participation in higher education has also improved from 39 per cent of the age group in 1999/00 to 43 per cent by 2007-8 (DIUS 2009) and the percentage of entrants from the lower socio-economic groups has increased from 28.5 to 29.5 per cent between 2003-4 and 2007-8, with a corresponding increase in entrants from state schools (HESA 2010, see Lupton *et al.* 2009 table 4.4).

The conflicts between empowerment and equality are well-established in educational research. When parents are able to choose between competing providers, more middle class parents appear to exercise choice more advantageously and over a wider range (Ball 2008). Research in London in the 1990s showed that middle class children are more likely to exercise effect choice over a greater number of schools, travelling further to school than their working class counterparts (Gewirth *et al.* 1995). A detailed analysis of school choice for 2001/2 showed that only about half of all pupils attend their nearest available school. Again, 'as the quality of the local school is lower, children from affluent families are less likely to go there' (Burgess *et al.* 2006: 14). This indicates that the system at that time, consisting of open enrolment moderated by local authority or governors' (in the case of Trust and Foundation schools) decisions about school access and the number of places to be available was not working effectively to advance equality. However it is also established that neighbourhood schooling leads to choice by estate agent with one study showing a 20 per cent house price premium in a popular school's catchment area (Leech and Campos 2003). Arguably greater diversity and autonomy in provision may facilitate choice by those on lower incomes to operate more effectively.

More recently evidence has emerged ‘that faith schools have more advantaged intakes than their surrounding area, (Allen and West 2007) and that more able pupils do better than less able pupils in specialist schools (Levacic and Jenkins (2004), quoted in Lupton 2009: 74). More recent work for the Sutton Trust shows that ‘faith schools have more affluent intakes than the average for the areas in which they are located’ (Asthana 2010). Partly this is a matter of finance, suggesting support for travel for less advantaged children. However cultural factors and pupil selection by over-subscribed schools both play a role, suggesting that stringent monitoring of selection or allocation of places by lot would also be helpful. The point is reinforced by more recent work indicating that parents from very different social classes have markedly similar preferences in education, prioritising high academic standards (Allen and Burgess 2010). ‘The big driver of differential access to better schools is the quality of schools nearby to where the families live’ (Burgess et al. 2009: 33).

Similar factors operate in higher education. Working class students were roughly one and three quarter times more likely to attend lower status post 1992 universities in 2006-7 and the gap had not narrowed since 2002-3 (Lupton 2009: 86; UCAS 2008).

Issues of class advantage have been established as a major feature of education for a considerable period. The evidence of improvements in equality alongside indications of adverse selection as schooling becomes more diverse suggest that it is possible to go some way in countering opportunities for middle class people to use their cultural capital and resources to get a better choice of school. Empowerment through choice need not necessarily increase inequalities if top-down resourcing, quality and inspection policies are pursued vigorously. Further progress in equality may require stronger policies to counter middle class advantage.

Early years

The strategy to expand and improve the quality of child care was part of range of programmes with two goals: to address issues of child poverty and deprivation and to enable parents (especially mothers and single parents) to participate in paid work. The National Childcare Strategy from 1998 is of interest because it is an innovative policy (no previous government had taken responsibility for making childcare available) and because it sought to expand responsiveness and accountability primarily through market choice. For providers the strategy facilitated the development of new nurseries through funding and business loans. For users, the Childcare Tax Credit subsidised

up to 70 per cent of costs for those on low incomes. In addition, government funded the first 12.5 (later 15) hours of care for three and four year olds for all, introduced Ofsted inspection of providers and established Sure Start programmes in the poorest fifth of wards. These integrated and supplemented existing services to provide support and care with a strong local element in management and consultation and later developed into a national programme to provide locally managed Children's Centres. Stewart (in Hills *et al.* 2009 Table 3.1) estimates that funding for care and provision for under fives more than doubled from 0.21 to 0.47 per cent of GDP between 1997-98 and 2006-7, while cash benefits in respect of children rose from 1.76 to 2.31 per cent, about half of the money allocated through income related-entitlement at the beginning of the period and two-thirds by the end.

These initiatives achieved a massive expansion in child care places, from some 230 to 595 thousand between 1991 and 2007, the majority in day nurseries. Child-minder provision remained roughly constant (DCSF 2008). It is unclear whether this level satisfies effective demand (Hakim *et al.* 2008). In relation to equality considerations, the proportion of households reporting that they were deterred from using childcare by cost fell from 31 to 22 per cent between 1999 and 2007 (Kazimirski *et al.* 2007). Take-up of the childcare element of Tax Credit has improved from 23 per cent of those eligible in 2004 to 30 per cent in 2008 (Stewart, 2009: 63). One reason for low take-up may be that the element covers up to 80 per cent of costs. The requirement to fund a proportion may be a disincentive. Free places for 3 and 4 year olds have had a high take-up suggesting that child care as such is valued. There is some indication of a slow improvement in overall quality as measured by inspection results and qualification levels (Stewart 2009: 65). The link between class and attainment remains obdurate: for the cohort born in 1970 high social class groups with low initial test scores had overtaken low social class groups with high test scores by age 7 and the same is true for those born thirty years later (Hills 2009). Assessment of the impact of the early years strategy on such entrenched issues may be premature.

It is difficult to find evidence of the use of middle class cultural capital in relation to access to early years provision. Since there was no commitment to a national service, middle class financial advantage previously led to superior access to child care in a more or less free market. The 1997 government's programme effectively extended access to day nursery provision although there does appear to be a cash constraint for those unable to top-up costs from the Tax Credit subsidy.

The early years strategy has succeeded in expanding the number of providers rapidly without damaging quality through a combination of centralised resources, local involvement and individual empowerment. It has had some effect in promoting greater equality in access, limited by cost considerations. One issue is that the area-based intervention of Sure Start led to a national programme unlike health care and education where area targeting was less of a test-bed for system-wide innovations.

Social care and individual budgets

A further innovation, designed to enhance responsiveness and individual control, is personal budgeting in social care. This system replaces means-tested subsidy for access to local authority or privately-provided services. It simply allocates the relevant resources to entitled individuals in respect of their needs so that they may choose how to spend them, with or without advice. This approach has been trialled in social care with positive results in terms of quality of life, personalisation of services and cost savings (Glendenning *et al.* 2008; Hatton *et al.* 2008; Glasby *et al.* 2009). It is currently being rolled out nationally and the principle extended to other areas of provision (HM Government 2009). It is difficult to provide a satisfactory assessment at this stage. The overview of trials in a number of authorities suggest real advantages, both in user satisfaction and in cost-efficiency. There is no clear evidence on the impact on social inequality, although it is suggested that access to individual budgets decided on assessment of need will provide a more transparent way of ensuring that resources are allocated fairly and have potential for extension to health care and elsewhere in public services (Glasby *et al.* 2009).

A review of studies in the UK and overseas (including Germany, where social insurance-based payments towards social care needs have been available for some time) points to 'emerging international evidence that self-directed care can lead to health gains and consequent efficiency gains' (SCIE 2009). However it also points out that 'brokerage and support is needed' to assist vulnerable people in accessing services and that 'the infrastructure is not yet sufficiently well-developed in the UK'. Personal assistants are typically low paid and poorly qualified. A review of evidence on studies of patient preferences for decision-making found that younger and more middle class users were more likely to welcome this than older and less well-educated people (Coulter 2002). However attitude survey evidence indicates that most people and particularly working class people want more choice in public services, although they are much less inclined to support competitive markets and

the inclusion of diverse, private and public providers (Curtice and Health 2009). The level of enthusiasm is unclear, and the choice and empowerment desired by users may differ from that promoted by reformers. This perspective is supported by indications that consumerist reforms may actually undermine long-term trust because providers may be seen as committed more to competitive success than the interests of the patient (Taylor-Gooby 2009). These considerations suggest that the successful development to this approach requires support for individual budget-holders and a more substantial market providing effective choice between providers of adequate quality. This will require investment which may balance the savings of up to 15 per cent identified in pilots.

A further point is the risk of fraud when public money is spent by a great diversity of relatively naïve users. An earlier experiment in the area of adult training, Individual Learning Accounts, was closed prematurely due to concerns about widespread fraud by course providers (BIS 2001). Perhaps more important are the substantial uncertainties about the extent to which state resources will cover the needs of users, so that the financial burden of topping up Care Accounts may fall disproportionately on lower income groups, and this is a particular concern at a time of austerity. The SCIE report simply states that ‘reliable evidence on long-term care costs is not yet available’ (SCIE 2009).

(v) Public Service Reforms and Inequality

This brief review suggests that, while the reforms have enjoyed some success in improving overall outcomes, achievements in narrowing the gap between the most advantaged and disadvantaged groups have been partial. Progress toward greater equality is limited in health care, more marked in education, probably real in early years provision and at present uncertain in individual budgeting in social care. There are strong indications that reliance on area-based initiatives in the first two areas weakened potential outcomes. However the area-based Sure Start programme does appear to have provided a good basis for the development of Children’s Centres and other initiatives. As the programme is rolled out nationally, the problem of resourcing a larger number of Children’s Centres becomes more pressing. Just as progress towards the child poverty targets has slowed since 2004 because government is no longer increasing resources for Tax Credits, progress towards equality targets in health care and education has been limited because government has not developed beyond area targeted policies.

Three points may be made:

- The modest success achieved appears to depend on the combination of top-down and bottom-up interventions. It is difficult to attribute any progress toward equality to the operation of empowerment and choice policies independently from extra resources, inspections and targeted programmes. This point is of particular relevance at a time of austerity when part of the case for empowerment is linked to concerns about weak productivity increases and public spending 'burdens'. Choice is predicated on the availability of a wide range of providers of with assured minimum standards and accessibility and policies to develop and sustain this.
- Consideration needs to be given to mechanisms which will counter inequalities in resources and cultural capital, for example in travelling to desirable schools and clinics, in gaining access to and assessing relevant information or in ensuring that users from all backgrounds are equally attractive to providers.
- The reforms discussed above have gone some way in this direction but in none of them are the problems of privilege for particular groups in an open choice system entirely resolved. This is particularly evident in education, where the supply of places in the most desirable schools has proved hard to expand. Current approaches address the issue by seeking to improve information, support in decisions and access for disadvantaged groups. Policies to restrict the play of cultural and cash resources by for example banning private travel to facilities, using lottery allocation for over-subscribed resources or preventing providers from accessing information that has a bearing on user class background, might advance equality. These seem unlikely to gain support in a liberal society.

Empowerment through choice can contribute to mitigating inequality, but only as part of a policy package which includes intrusive and expensive government interventions. Policies that make the poor more equal as market actors are attractive in a market society. This review of recent evidence indicates that such equality will not extend to more equal outcomes unless it includes the hard decisions involved in raising more resources from better off groups and directing them towards those who are less advantaged.

3

Towards a New Model of Public Services: Capability and Rights-Based Approaches

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The Commission on 2020 Public Services has called for the development of a new model for public services in 21st century Britain. A model of this type is necessary to reflect long-term changes in expectations, technology, demographic trends, economic and structural change, as well as the adjustments that are necessary to address more recent financial pressures. The new model of public services will address these challenges and set out a new paradigm for thinking about the fundamental purposes and modes of delivery of public services for future generations. This chapter scopes out the role that (1) the capability approach and (2) rights-based approaches (including the idea of human rights) can play in the development of a new model of public services of this type. The chapter is a think-piece and its primary purpose is to provide conceptual and theoretical foundations for the work of the Commission.

(i) What is the Capability Approach?

The capability approach (CA) has been pioneered by the Nobel Prize winning economist Professor Amartya Sen and others as a freedom-focussed framework for evaluating the position of individuals and groups in terms of their real freedoms and opportunities – the central and valuable things in life that they can actually *do* and *be*. The approach is being increasingly applied in academia and beyond both as a new moral framework (for thinking about equality and inequality, rights and

responsibilities, human rights, and social justice) and as a new freedom-focused framework for economic analysis (focussing on the expansion of central and valuable capabilities, and their equitable advancement in overall processes of development and growth). Internationally, the capability approach is now playing a major role in focussing political and economic agendas on concern with the real freedom and opportunity that people have to live a life that they value (and would choose). In the British context, the capability approach is also moving up the agenda. The role that the capability approach can play in the development of a new paradigm in political and economic thought, and as a major alternative to both libertarianism on the one hand, and 'statism' on the other, is increasingly recognised on both the left and the right of the political spectrum.

CA as an information base for evaluating the position of individuals and groups

The capability approach can be viewed first and foremost as an informational base for evaluating the position of individuals and groups. The central and overarching idea that the position of individuals and groups should be evaluated in terms of their real freedoms and opportunities (such as the capability to avoid premature mortality, to be well nourished, to be healthy, to enjoy good health and education, to live in physical and legal security and to participate in political and other activities) rather than alternative informational bases (such as income, resources, utility, happiness, wellbeing, negative liberty and Rawlsian 'primary goods') under-pins Sen's research agenda in ethics and economics (Box 1.0). The application of the CA as an information base for evaluating the position of individuals and groups results in a number of key contrasts and distinctions with other major paradigms in ethics and economics:

- **Contrast with 'resourcism'**. The information base of 'resourcism' focuses on income and wealth, and, more broadly conceived, other resources such as access to public goods and public service entitlements. The capability-based critique highlights the focus of 'resourcism' on instrumental "means" (resources or inputs) rather than intrinsically valuable "ends" (real freedoms and opportunities). For example, a disabled person might need additional or different resources to a non-disabled person to achieve the same standards of living. The CA aims to overcome these limitations by focussing directly on the central and valuable things in life that people can actually *do* and *be*.

Box 1.0: CA as an informational base for evaluating the position of individuals and groups

Perspective	Focal variable
Capability approach	Real freedoms and opportunities (central and valuable things in life that people can actually <i>do</i> and <i>be</i>)
Resourcism	Income, wealth and resources (including service entitlements)
Rawslian justice	Primary goods
Subjective wellbeing	Utility / desire and preference fulfilment / happiness / etc
Libertarianism	Negative liberty (understood as coercion, or immunity from intentional interference by others)
“Achieved functionings”	Realized attainments (central and valuable things in life that people are actually <i>doing</i> and <i>being</i>)

- Contrast with Rawlsian ‘primary goods’.** The capability-based critique of Rawlsian ‘primary goods’ (characterised by Sen as “all-purpose means”) is similar to that discussed in the context of ‘resourcism’. Focussing on primary goods entails concentrating on *means* rather than *ends*. An identical allocation of primary goods – like an identical resource allocation – can be associated with systematic inequalities in the capabilities ‘space’.
- Contrast with libertarianism.** The information base of libertarianism equates negative liberty with the absence of coercion (or immunity from intentional interference by others). The CA is based on an explicit rejection of this information base for evaluating how well individuals and groups are doing in life – and the restrictive characterisation of rights and responsibilities to which it gives rise. The CA provides a framework for moving beyond the ‘immunity from intentional interference’ perspective and for evaluating socio-economic arrangements – including the impact of market outcomes and of public action – in terms of the *substantive* position of individuals and groups.
- Contrast with ‘subjective wellbeing’.** The capability-based critique suggests that the metrics of utility and happiness fail to take account of the impact of adaptive expectations on their subjective evaluation of their own position and

on their actual behaviour and choices. This includes, for example, the impact that living in poverty or in conditions of entrenched discrimination, or being the victim of long-term interpersonal violence, or having only limited information about possibilities or alternatives in life, can have on individual expectations, behaviour and choice. Consider, for example, a woman who reports being ‘happy’ notwithstanding being the victim of repeat episodes of domestic violence. In evaluating how well the woman’s life is doing, the CA makes analytical space for evaluating her real freedom and opportunity to be free from domestic violence (rather than relying on the informational base of utility and / or happiness).

- **Contrast with ‘achieved functionings’.** The information base of ‘achieved functionings’ evaluates the position of individuals and groups in terms of their actual achievements (health status, whether they are employed or not etc) but fails to capture and reflect the value of personal freedom in bringing these achievements. Consider the position of two older people Ethel and Marie who are resident in private care institutions A and B. In institution A, residents are able to choose their leisure activities from a range of good options and Ethel chooses to play bingo. In institution B, residents are not given a choice of leisure activities and all residents including Marie are taken to play bingo. The ‘achieved functioning’ perspective suggests *equality* in the respective positions of Ethel and Marie (since both play bingo). In contrast, the informational base of capabilities broadens the analysis to capture and reflect the value of individual freedom and the freedom to choose – suggesting an *inequality* in the central and valuable things in life that Ethel and Marie can do and be¹.

Applications of the CA as a moral framework

These contrasts and distinctions mean that the capability approach has important advantages as a moral framework for thinking about ideas such as equality and inequality, rights and responsibilities, human rights, and social justice.

- **Equality and inequality.** Following Sen’s Tanner Lecture on Human Values, the concept of capability has been widely proposed as providing a possible solution to the question: *Equality of What?* (or, on a related theme, *Inequality of What?*). The focus on capability rather than the other variables discussed in the literature (such as income, resources, utility, happiness, wellbeing, negative liberty and Rawlsian ‘primary goods’) enables concerns such as differences

in needs, underlying barriers and constraints (including underlying social, economic, cultural and institutional factors), social and cultural norms, adaptive expectations, and actual behavior and choices, to be given a greater role in the conceptualisation of equality and inequality.

- **Rights and responsibilities.** The CA is also increasingly applied as a basis for thinking about rights and responsibilities, with “[m]inimal demands of well-being (in the form of basic functionings, e.g. not to be hungry), and of well-being freedom (in the form of minimal capabilities, e.g. having the means of avoiding hunger)” being viewed as rights that “command attention and call for support” (Sen 1985a: 217; 1985b). The need to distinguish between the formal recognition of rights and the exercise of rights, and for the specification of rights and responsibilities to take account of “complex inter-dependences” and actual behaviour and choices (e.g. prohibition of smoking to avoid the outcome of passive smoking), have been other important themes (e.g. Sen 2002: 428-430).
- **Human rights.** At the international level, the development of the capability approach has also had an important impact on thinking about human rights. Sen’s position suggests that capability-deprivations that meet a threshold of “importance” can be characterised using the language of human rights. This provides a framework for the elucidation of a broad class of human rights concerns, covering, for example, basic medical care as well as civil and political rights (Sen 2004, 2005, 2009: 367-8).
- **Social justice.** The CA also has an important application as a framework for thinking about social justice. The capability concept provides a basis for characterising the goods that should be fairly allocated according to some distributional rule. This characterisation has important implications for thinking about public policy, with capabilities rather than other focal variables (such as income and wealth, resources broadly conceived, primary goods and subjective wellbeing) viewed as the relevant public policy targets².

CA as an economic framework

Sen’s research agenda has also explored how the CA can be taken forward as a new freedom-focused framework for theoretical and empirical economics. The capability-based critique has focused attention on the limitations of standard frameworks that have in the past been widely applied. Income-focused approaches concentrate on instrumentally valuable *means* (such as income and resources) but neglect the intrinsic

value of capabilities (the real freedom and opportunity that people have to live lives that they value and would choose). Utility-focussed approaches focus on *ends* but characterise these in terms of the utility metric. Sen's research agenda has analysed the ways in which these limitations feed through into conceptual, technical and empirical results; and includes far-reaching proposals for introducing new capability-focused concerns into theoretical and empirical economics. A key concern has been the ways in which key capabilities such as education and health can be conceptualised as forms of human capital and as engines of growth and development. As well as providing theoretical underpinnings for this idea, the capability approach provides a significant body of empirical evidence on the role that the expansion of capabilities can play in increasing the productive capacity of individuals, groups and nations³. Internationally, the CA has had an impact on the conceptualisation and measurement of socio-economic progress. Indicators that focus exclusively on income and wealth are increasingly viewed as an inadequate information base for a range of evaluative purposes. This is reflected in the UNDP's Human Development Index, the Sarkozy Commission on non-GDP measures of economic performance and social progress, national level initiatives in European countries such as Germany, and countless initiatives on measuring the quality of life, wellbeing, and poverty in the development context⁴.

The CA and the role of the State

A key theme in Sen's work is that both freedoms and capabilities can be viewed as social commitments with the state playing a key role. The core idea provides a potentially important and new basis for re-visiting and re-conceptualising the role of the state in contemporary democracies. According to the CA, a key aspect of human freedom relates to the substantive opportunity that a person has to live a life that they value and choose (and has reasons to value and choose) and social and economic arrangements (including the role of private markets and state provision) ought to be evaluated and judged from this perspective. Internationally, this core idea is being used to challenge both market-focused and state-focused thinking and traditions on both the right and the left of the political spectrum. The capability approach emphasises empirical evidence rather than *a priori* positions and suggests that in the final analysis, the role of both private markets and state provision should be evaluated in terms of their impact on valuable human ends. Again, the empirical literature on the capability approach provides a key evidence base here, establishing the role of both private markets and public action in protecting and promoting capabilities, and the various forms that public

action can assume. This includes public action to make private markets more efficient; public action to make private markets fairer; and public action to supplement state provision. The broad range of policy levers that are available to Governments concerned with the protection and promotion of capabilities – ranging from direct state provision to public action to protect and promote capabilities through the recognition of human rights and public action to change social norms, attitudes and behaviour – is another central and recurring theme⁵ (e.g. Sen 1999a; Drèze and Sen 1989, 2002).

Caveats, qualifications and clarifications

Sen's most recent contributions raise a number of issues that the 2020 Commission should be aware of. The position set out in Sen (2009) highlights the inescapably diverse and plural nature of justice and the difficulties involved in arriving at a "unique impartial resolution" of the perfectly just society. Given these difficulties, Sen suggests that there are good reasons, both theoretical and practical, to focus on the elimination of "agreed injustices that can be remedied" rather than on the development and implementation of a "complete" or "perfect" model of justice (the "transcendental" approach). The extent to which the concept of capability can provide foundations for moral concerns such as equality and inequality, rights and responsibilities, human rights and social justice is also limited and qualified. These concepts also involve broader considerations than capability alone (including considerations such as process, negative freedom, effort / labour, talents, ownership and distribution)⁶. There is also a warning that the application of the CA as an information base for evaluating the position of individuals and groups does not, on its own, specify how this information should be used or require adherence to any particular set of policies⁷. Finally, the theoretical and pragmatic informational constraints that can limit the application of the CA in practice are also discussed.

The 2020 Commission has asked whether, in the light of these considerations, Sen's framework is intelligible as a basis for thinking about the elimination of inequality (rather than as a basis for thinking about the promotion of equality). My answer is that, building on the ideas above, capability equality should not be viewed as an exclusive or absolute target of public policy, or the only consideration in claims of justice. The *Idea of Justice* also provides a critique of idealist / utopian traditions that, according to Sen, make the "best the enemy of the good". However, in my view, the CA provides an important basis for thinking about the promotion of equality as well as the elimination of inequality post the *Idea of Justice*. Sen's position, correctly understood, is that

capability equality is a “significant” and “weighty” element of a plural equality concept that also incorporates, for example, procedural and distributive elements. Hence equality of capability is a key concern whilst not necessarily ‘trumping’ all other “weighty considerations ... with which it might be in conflict”.

It should also be noted that the position set out in Sen (2009) and many other works is that the application of capabilities as an information base can be combined with a number of different distributional rules. Building on this approach, it would be open to the Commission to apply the CA in combination with an emphasis on the promotion of equality, the elimination of inequality, or the achievement of minimum standards. Ultimately, therefore, the Commission’s positioning on this issue will need to take account of supplementary concerns. For example, is the new model of public services about high quality public services that are relevant to all or (or at least the majority), or is it about the provision of minimum basics to the most disadvantaged? The capability approach, I would argue, can provide a meaningful framework for elucidating and characterising both of these concerns.

(ii) Model for ‘Operationalising’ the CA in the British context

The discussion so far has provided an introduction and overview to the capability approach as a moral framework, an economic framework and a framework for thinking about the role of the state in contemporary democracies. This current section moves on to discuss how the capability approach is being developed and applied as an informational base for evaluating the position of individuals and groups in England, Scotland and Wales.

Equality Measurement Framework for evaluating the position of individuals and groups in England, Scotland and Wales

In the British context, the capability approach provides a potentially rich foundation for transcending old-style debates about equality and inequality that focus on opportunities (narrowly construed, without evaluation of the range of quality of options, the role of expectations and of other constraints and barriers) and outcomes (with no value attributed to personal freedom, choice or diversity). Another advantage is the clear emphasis on equality and inequality as multidimensional phenomenon, relating not only to variations in income and wealth, but extending over a range of critical areas of life such as education and learning, health, physical and legal security, personal identity and participation⁸.

In 2007, the Final Report of the Equalities Review, Fairness and Freedom, recommended the use of an equality concept with theoretical origins in the capability approach. The use of an Equality Measurement Framework that evaluates the position of individuals and groups in terms of 10 domains of central and valuable capabilities was also recommended for use by public bodies and by the Equality and Human Rights Commission (EHRC) to inform its triennial *State of the Nation* Report (Equalities Review 2007: 110 and Annex A). The EHRC has subsequently been working with the Government Equalities Office and the devolved administrations to develop an Equality Measurement Framework of this type that will be used to discharge the statutory responsibility of the Commission to report on national progress towards equality and human rights, including by developing indicators and monitoring progress and change (EHRC 2009a).

The core building-blocks of the Equality Measurement Framework are summarised in Box 2.0.⁹

Box 2.0: Equality Measurement Framework Conceptual Grid: Core building blocks

Focus on substantive freedom (or capabilities, the central and valuable things in life that people can actually *do* and *be*)

Evaluation of 3 aspects of the position of individuals/groups

- (i) Outcomes (what people are actually doing and being)
- (ii) Treatment (discrimination, dignity and respect)
- (iii) Autonomy (empowerment, choice and control)

Capability list (10 domains, derived from int. human rights framework/deliberative consultation)

- Life
- Physical security
- Health
- Education and learning
- Standard of living
- Productive and valued activities
- Participation, influence, voice
- Individual, family and social life
- Identity, expression, self-respect
- Legal security

Disaggregation characteristics (gender, transgender, ethnicity, disability, sexual orientation, age, religion/belief, social class etc.)

Source: Alkire *et al.* 2007

In detail, the core building blocks of the Equality Measurement Framework are:

- **Focus on substantive freedom.** The first building-block is the focus on substantive freedom (or capabilities, the central things in life that people can actually *do* and *be*). This provides a theoretical anchoring in the capability approach and clarifies the focus of the Framework on real freedoms and opportunities rather than other focal variables (such as income, resources, opportunities narrowly construed, subject wellbeing or happiness etc).
- **Outcomes, treatment and autonomy.** The second building-block is that the capability approach is 'operationalised' in terms of three aspects of the position of individuals and groups – their outcomes (what they are actually doing and being, such as their health status, or whether they are employed or not); process or treatment (whether they experience discrimination, and whether they are treated with dignity and respect) and autonomy (empowerment, choice and control). For example, if we are concerned with equality and human rights position of older people, the Framework would focus attention on their outcomes (the health status of older people), their treatment (whether they experience discrimination in health care, and whether they are treated with dignity and respect) and autonomy (whether older people are empowered to influence critical decisions about their health care, and whether they experience choice and control).
- **Capability list covering 10 domains.** The third building-block is the capability list covering ten domains of real freedom and opportunity (Life; Health; Physical Security; Legal Security; Education and Learning; Standard of Living; Productive and Valued Activities; Individual, Family and Social Life; Identity, Expression and Self-respect, and Participation, Influence and Voice). There has been extensive discussion in the academic literature on how to arrive at a list of this type, with Sen emphasising the importance of democratic deliberation and debate, while others focus on philosophical derivation and participation. The EHRC Equality Measurement Framework makes use of a list of the critical areas of life, in terms of which the position of individuals and groups is evaluated. Developing and agreeing a list of central and valuable freedoms and opportunities for adults has been a two-stage process. First, the international human rights framework was used to draw up a core list of what those central and valuable freedoms might be. Second, this list was supplemented and refined through a process of

deliberative consultation – a programme of workshops and interviews with the general public and with individuals and groups at high risk of discrimination and disadvantage. The detailed capability lists that have been developed for adults and children and young people are reported in Alkire (2009) and Burchardt *et al.* (2009).

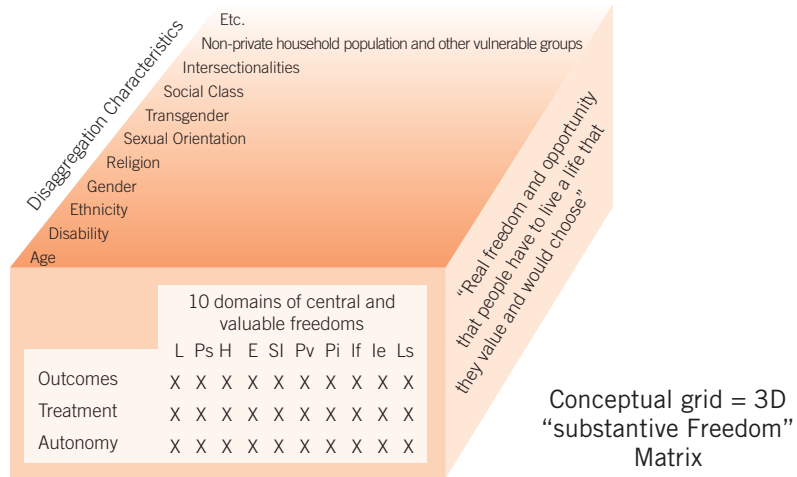
- **Systematic disaggregation.** The fourth building-block is the list of systematic disaggregation characteristics (age, disability, gender, transgender, ethnicity, religion and belief, sexual orientation) and social class. The first seven of these reflect the statutory responsibilities and concerns of the EHRC in the Equality Act 2006. Additional disaggregation characteristics such as the non-private household population (e.g. individuals resident in public or private institutions, or the homeless), family type, asylum / refugee status can also be used with the Framework, as can combinations of characteristics to identify intersectional group concerns (such as being an Asian woman, or an older man with learning difficulties). This building-block orientates the Framework away from a concern with ‘averages’ and ensures adequate focus on the position of different population sub-groups.

The conceptual grid (or 3D “Substantive Freedom” Matrix) set out in Box 2.1 brings these four building blocks together. A key objective of the EHRC has been to populate this Matrix with an agreed set of indicators that map onto the three aspects (outcomes, treatment and autonomy) and provide an evidence base on the central and valuable freedoms opportunities achieved by individuals and groups in England, Scotland and Wales. The emphasis so far has been on reporting on the position of individuals and groups within each domain and across domains using a system of ‘spotlight indicators’ drawing on a range of existing social survey and administrative data (e.g. police recorded crime data and data from Inspectorates and audit bodies) and highlighting data gaps where necessary. Other measurement options such as the development of single source survey modules and the use of composite measures are available and are widely discussed in the literature. See, for example, Alkire *et al.* (2009 Chapter 14).

In 2007, a specialist consultation was undertaken in order to reach maximum possible agreement on a set of 50 spotlight indicators and associated measures for adults for England, Scotland and Wales (reported in Alkire *et al.* 2009).

Underlying sources for this exercise included both national general population surveys and administrative statistics. As well as providing an important evidence base, this exercise has important implications in terms of establishing the ways in which *existing* data systems that are already in place can be applied to track the capabilities of individuals and groups. In addition, a number of key data gaps in national statistics (such as those around the monitoring of elder abuse) were identified. A specialist consultation to agree a similar set of 50 indicators and associated measures for children and young people has just been completed (Tsang and Vizard forthcoming).

Box 2.1: Monitoring high level “results”: A capability-based conceptual grid



Inequality in 10 Domains

- L Life
- Ps Physical security
- H Health
- E Education
- SI Standard of living
- Pv Productive and valued activities
- Pi Participation, influence and voice
- If Individual, family and social life
- le Identity, expression and self-respect
- Ls Legal security

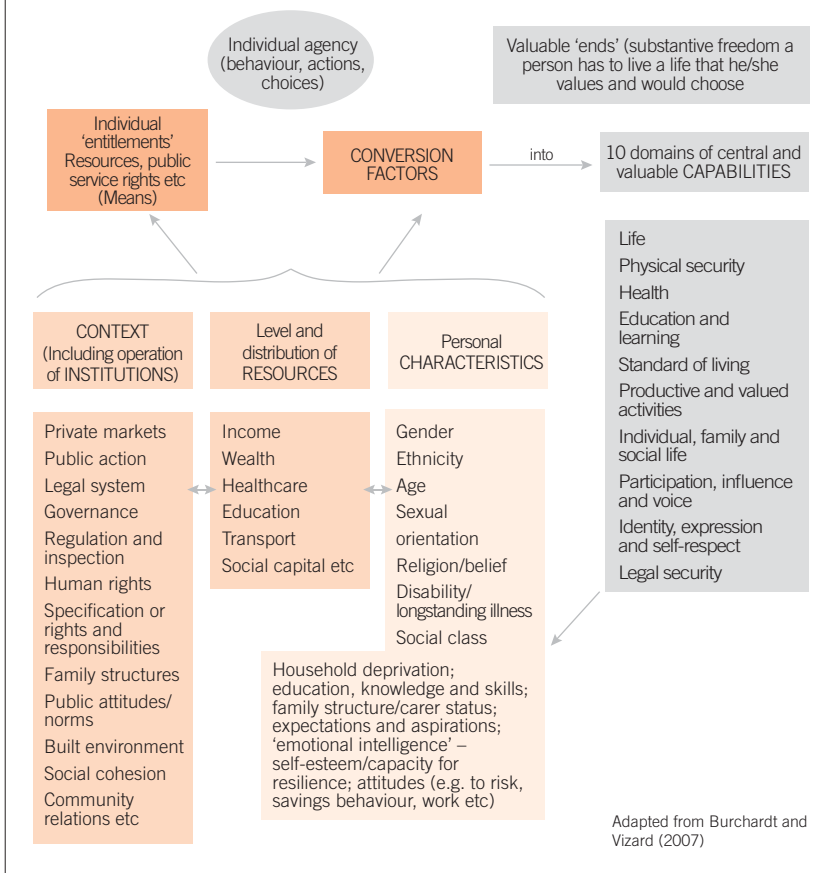
Source: Alkire *et al.* 2009

Analytical model of ‘capability production’

As well as being used as a basis for equality and human rights monitoring, the capability list set out in the previous section can be embedded in an analytical model for thinking about underlying causes and public policy. A model of this type (adapted from Burchardt and Vizard 2007) is set out in Box 2.2. Key issues to note are:

- The model captures and highlights how “valuable ends” (in the form of the 10 capabilities specified in the capability list defined in Box 2.1) depend on personal characteristics such as gender, age, ethnicity, sexual orientation, religion and belief, disability and longstanding illness and social class; resources (income, wealth, public service entitlements etc) and contextual variables (legal environment, specification of rights and responsibilities, social norms, public attitudes etc).
- The model captures and highlights a feedback mechanism whereby a person’s capabilities in one period function as an input into their capabilities in the second period. In this way, capabilities are viewed as both intrinsically valuable (as final ‘ends’) and instrumentally valuable (as forms of human capital). The feedback mechanism also introduces a dynamic/life-span element into the model, whereby capabilities accumulate as a form of human capital over time.
- The feedback mechanism allows for the accumulation of human capital and the interaction between capabilities across domains, with the possibility of capability achievement in one domain being an input for achievement in another domain. For example, the capability to achieve an adequate standard of living may be instrumental for the capability to achieve health, and education and learning may be instrumental for the capability to achieve an adequate standard of living.
- The model captures and highlights how capabilities are co-produced by private individuals, groups, communities and private market institutions. Capabilities are modelled not only as a function of the outcome of public services, but also as the result of a broad range of activities and interactions involving private markets, public services, individuals, civil society bodies and entities.
- The model captures and highlights the role of individual agency (behaviour, choices and actions) in transforming individual entitlements (the goods and services that are within a person’s reach, including, for example, service entitlements) into ‘valuable ends’ (or ‘functionings’).

Box 2.2: Model of capability production



(iii) Applications of the CA in the Development of the New Model for Public Services

How can the Commission on 2020 Public Services build on the capability approach and the model for 'operationalising' it in the British context discussed in the previous section. This section identifies five entry-points for thinking about the role of the capability approach in the development of a new model for public services which are of particular import for the work of the Commission. These

are: specifying the ultimate purposes and ends of public action; consensus building around the need for public action / what the State should do; CA as a framework for highlighting key public policy concerns; thinking about individual behaviour and personal responsibility; and CA as an 'end-focussed' information base: applications in public services regulation, inspection and performance management.

Specifying the ends (or ultimate purposes) of public services

First, the capability approach provides an appropriate conceptual space for specifying the ends (or 'ultimate purposes') of public services in terms of valuable capabilities such as life, physical and legal security, health, education and learning etc. The Commission on 2020 Public Services has focussed attention on the need to re-define the ultimate purposes of public services to reflect contemporary conditions and concerns. The Beveridge settlement addressed the five "Evil Giants" of Want, Disease, Ignorance, Squalor and Idleness. Alldritt *et al.* (2009: 13) describe the three contours of the Beveridge settlement in the following terms:

- 1 State as guarantor of universal access to services of the highest quality, based on need not ability to pay;
- 2 Services mostly funded by general taxation;
- 3 Services delivered primarily by the State itself.

The CA provides a framework for specifying the terms of a new contemporary settlement that puts the real opportunity that people have to live as they value and would choose (and have reasons to value and choose) at the heart of public services regulation and delivery. Capability language provides a pragmatic language for specifying the 'ends' or ultimate purposes of public services in terms of objectives such as the standard of living, health, physical and legal security, education and learning, participation – rather than alternative focal variables discussed in the academic literature (resources, utility / happiness, negative liberty, primary goods etc) and / or the technical language of market failure. It has leverage in providing both a moral and an economic framework for public services in 21st century Britain.

- **Moral framework for public services.** A key advantage is to capture the ends (or ultimate purposes) of public services in terms of a set of real freedoms and opportunities. This approach avoids the paternalism associated with welfarist paradigms and makes expanding people's real freedoms and opportunities the strategic objective of public service. The focus on capabilities implies that public policy addresses variations in needs and situations in a systematic way, takes account of underlying barriers and constraints. It means that public policy targets equal (or less unequal) capability rather than identical resources or income.
- **Economic framework for public services.** Another key advantage is to highlight the role of public action in expanding human capital and enhancing productive capacity and growth. The role of social and economic arrangements in protecting and promoting capability expansion is a critical factor here – and the capability framework highlights how public action can play a pivotal role.

A capability list setting out critical areas of real opportunity such as the one discussed in Section 2 will be required to 'operationalise' this approach. The breadth of a capability list of this type will be critical for ensuring adequate reach and coverage in specifying the ends of public services. For example, the capability list set out in Section 2 covers capabilities such as life, physical and legal security alongside education and learning, health and the standard of living. This ensures that deprivations in central and valuable capabilities such as homicide against children, domestic homicide, domestic and sexual violence, and child abuse and maltreatment are all covered by the framework. Similarly, the capability for productive and valued activities in the capability list set out in Section 2 recognises the value of a range of component elements including leisure and voluntary activities and care as well as paid employment. Issues of work / life balance and spending time caring for children are, for example, components of this domain.

Consensus-building around the need for public action and what the State should do

Second, the capability approach can provide the 2020 Commission with a framework for consensus-building around the role of the state. It can establish the underlying reasons for public action, and help to map out the overall contours of what the state should do. As discussed in section 1, a key theme in Sen's work is that both freedoms and capabilities can be viewed as social commitments with

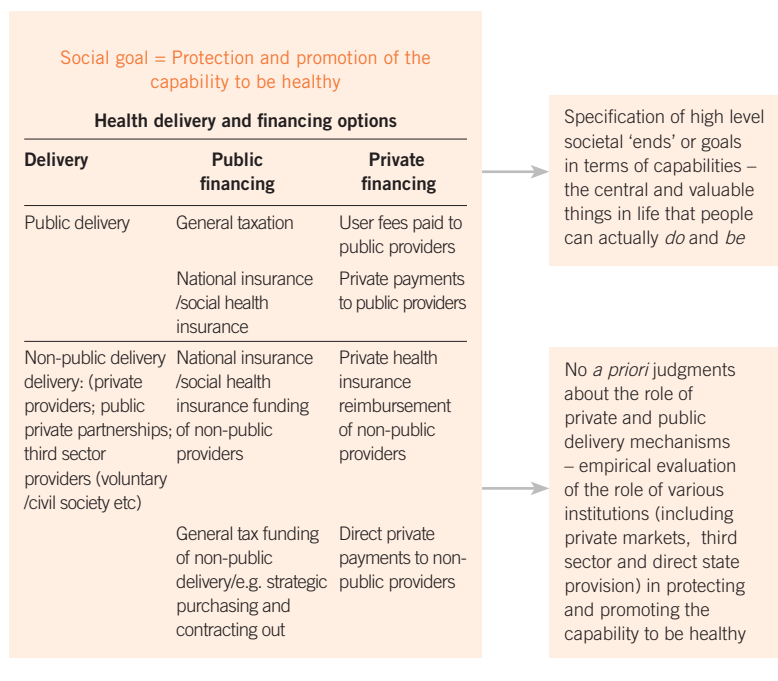
the state playing a key role. This core idea can help to transcend old-style debates about market-focused and state-focused thinking, with a new emphasis on the instrumental role of both private markets and state provision and their impact on valuable human ‘ends’ (in the form of the 10 central and valuable capabilities highlighted in Box 2.2).

In the capability framework, public action has a critical role in the protection and promotion of central and valuable capabilities, both at a moment in time, and in terms of ensuring the achievement and equitable advancement of substantive freedoms and opportunities of this type in overall processes of economic growth. However, as the analytical model in Box 2.2 highlights, private markets are also a key determinant of capabilities. Further, the role of the State in the CA is much broader than that of ‘direct provider’. Public action to protect and promote capabilities, includes, for example, (1) public action to make private markets more efficient; (2) public action to make private markets fairer; (3) public action to supplement state provision (see Box 3.0).

Box 3.0: The role of the state in the capability framework Outcome Commissioning



Box 3.1: Capability-based model for mixed public services: the example of health¹⁰



The CA also has a potentially important role in consensus-building around a mixed model of public service delivery. It is critical to note, for example, that the capability approach does not make an *a priori* case for public, private or voluntary provision. Rather, it highlights the importance of an evidence-based approach to the contribution of different institutions and treats this issue as a matter for empirical examination (Box 3.1). Given social commitment to key capabilities, the role of the state as a *regulator* in a mixed model of public services might be expected to be particularly important. An example is the provision of care services for older people. A significant private market now exists in this sector and that has a major impact on the capabilities of older people that are resident in private care institutions. In the capability framework, the role of the state is not limited to direct state provision of such services but includes public action to make private markets more efficient and fairer (for example, by inspecting care homes and ensuring the implementation of minimum standards,

and by establishing the principle of non-discrimination in relation to annuities and other financial products used to finance home care packages). Similarly in private health care markets, there is a need for regulation of provision (e.g. inspection of the implementation of minimum standards) and financial regulation (e.g. to prevent discrimination in health care insurance markets).

In the current climate of public expenditure constraints, measures of this type that aim to impact on central and valuable capabilities by regulating the general legal environment – and specifying the ‘rules of the game’ in which private markets operate – may in play an increasingly important role in public policy. The broad range of policy tools that are available to Governments concerned with the protection and promotion of capabilities is another important insight. These range from direct state provision to public action aiming to protect and promote capabilities, to the underlying legal system, the specification of rights and responsibilities, and public action to change social norms, attitudes and behaviour¹¹ (e.g. Sen 1999a; Drèze and Sen 1989, 2002).

CA as a framework for highlighting key public policy concerns

Third, the CA has an important application as a framework for highlighting key public policy issues. This section discusses three of the key public insights: the importance of interpersonal variations in needs and situations; ‘holistic thinking’ about individual needs and policy responses; and the need for investment in key capabilities such as health and education.

Interpersonal variations in needs and situations

The CA highlights the importance of interpersonal variations in needs and situations as a public policy concern. For example, a disabled person might need additional or different resources to a non-disabled person to achieve the same standard of living or level of education. Consider Tracey and Yvonne who are 16-year-olds. Tracey has a hearing impairment and uses a hearing aid and lip reads, but her school does not always take account of her needs. The CA highlights how, in order to achieve equality in capability space, Tracey may require different or additional resources to Yvonne and puts this requirement at the centre of public policy¹².

It is worth noting that a capability-based understanding of equality and inequality is already embedded in public policy frameworks in England, Scotland and Wales and in elements of British anti-discrimination and equality law. For example,

mobility is a key element of the capability to achieve an adequate standard of living. Transport policy increasingly recognises the importance of accessible transport that facilitates the needs and situations of disabled people and other groups (such as parents and carers with buggies). The Sex Discrimination Act (1975) and the Race Relation Act (1976) both recognise that equal treatment understood as *identical* treatment can discriminate against those with different needs and in different situations (e.g. female part-time workers) whilst the Disability Discrimination Act (1995) introduces a requirement to take positive measures to address the different needs and situations of disabled people (the duty of “reasonable adjustment”). Since 2000, this understanding of equality has been further developed and articulated in a second wave of legislation (“positive duties equality law”) creating positive duties on public authorities to promote race, gender and disability equality. This legislation provides further recognition that in order to achieve a level playing field (in terms of capabilities) it can be necessary to take account of interpersonal variations in the needs and situations of individuals and groups through proactive measures and policies (Fredman 2007). In addition, there are important synergies between the CA and the ‘Every Child Matters’ Framework, which already provides an end-orientated, multidimensional framework for public policy in England and Wales.

‘Holistic thinking’ about individual needs / public policy responses

The capability approach also highlights the importance of thinking holistically, both about individual needs, and in terms of public policy responses. At the most simple level, the capability approach suggests that an anti-deprivation strategy should not exclusively focus on income and wealth when a wide range of multidimensional interventions are required. In this way, the CA provides a conceptual framework for initiatives such as ‘needs-based holism’ and ‘Total Place’, as well as for thinking across policy silos. Another key issue relates to the interaction between achievements between capabilities across domains, and whether capability achievement in one domain (for example, emotional intelligence and self-esteem – which fall within the ‘individual, family and social life domain’ in Box 2.0 above) are critically important (or ‘instrumental’) for achievements in other domains (such as employment). The literature on the capability approach and resilience, for example, has put a particular emphasis on the search for ‘magic bullets’ and whether it is possible to identify key instrumental capabilities such as self-esteem and emotion intelligence that should

provide a focus for public policy. The research in this area highlights the ways in which capability development and formation are constitutive elements of human capital, as well as the possibility of public action to trigger a ‘virtuous cycle’ of capability expansion (e.g. Bartley 2006). The “genuine opportunity for secure functioning” framework emphasises the importance of vulnerability / risk and of ensuring the security of a broad range of functionings over time. Policy interventions should aim to “decluster disadvantage” by paying special attention to “corrosive disadvantages” (which lead to further disadvantages) and “fertile functionings” (which are important in securing other functionings) (De-Shalit and Wolff 2007: 63-73; 119-132).

Capability expansion as a social investment

The discussion above suggested that a major contribution of the CA has been to highlight the ways in which key capabilities such as education and health can be conceptualised as forms of human capital and as engines of growth and development. Empirical evidence set out, for example, in Sen (1999a), Drèze and Sen (1989, 2002), UNDP Human Development Reports (1993-2009) and World Bank (2006) points to the productive role of capabilities and the important role that social investment in key capabilities can play in expanding the productive capacity of individuals, groups and nations. Since children and young people are at a formative stage of capability formation – with implications across the lifecycle and for society more generally – social investment in the capabilities of children and young people is a particularly important public policy concern.

CA and the analysis of individual behaviour

Fourth, the concerns and priorities of the Commission on 2020 Public Services raise a number of important questions about individual behaviour and responsibility, and their treatment in the capability framework. Who is responsible for outcomes when these are construed in terms of the capabilities that individuals and groups enjoy? To what extent is there personal responsibility? To what extent can the State be held accountable? And should public policy try to change individual behaviour?

The model of ‘capability production’ set out in Box 2.2 provides analytical space for thinking about the impact of individual behaviour on the outcomes achieved. One aspect of the model, for example, is the important role that is reserved for individual agency in the transformation of individual entitlements into valuable ‘ends’ (in the form of the 10 central and valuable capabilities). Another aspect of the model that might be of

particular interest to the Commission is the way in which the role of contextual variables such as social norms, public attitudes, the underlying legal system, and the specification of rights and responsibilities, are modelled as ‘factors’ that are instrumentally important for ‘capability production’. Further, these are all conceptualised as ‘variables’ that can themselves be influenced and changed through public action.

The CA, actual behaviour and rights-realizations

The analytical model in Box 2.2 is particularly suitable for teasing out how the conversion of public service entitlement into achieved policy ends depends critically not only on a guarantee of resource entitlement (which is ultimately a ‘means’) but also on attitudes, behaviour and choices. Consider the entitlement to free school meals for children living in households below a certain income poverty threshold. The policy objective here (that a child consumes a free school meal) can fail because the *formal entitlement* to a free school meal fails to translate into *receipt* of a free school meal. Failure to take up free school meals can be partly explained in terms of poor design of policy delivery mechanisms (with alternatives, such as swipe card systems, likely to improve take-up). The failure of public policy to address the needs and situations of diverse groups (such as the provision of high-quality school meals or school meals that conform to diverse religious beliefs and practices) and the perpetuation of feelings of stigma and humiliation that can be associated with lower take-up of free school meals are also key.

This example highlights an important and recurring theme in Sen’s work on rights – the need to move away from a negative rights framework and to take account of the impact of actual behaviour on the realisation of rights in practice. The distinction between the ‘formal recognition of rights’ and the ‘social realizations perspective’ is key here. This distinction has particular relevance in relation to the most severe inequalities (e.g. hunger and malnutrition, domestic and sexual violence) but also has important public policy applications in a range of contexts, from non-take up of benefits to the failure to achieve policy goals in areas of preventative health such as anti-obesity programmes, vaccination take-up and cardio-vascular risk. Significantly, formal public service entitlements are modelled as ‘means’ rather than an ‘ends’ in Box 2.2. The CA suggests that an exclusive public policy focus on ‘means’ (including formal entitlements) rather than ‘ends’ (in the form of capabilities and functionings) can result in systematic bias and policy failure when a range of policy instruments (including policies that aim to impact on underlying social norms, behaviour and attitudes) are relevant (c.f. Drèze and Sen (1989) and Sen (1999a)).

Another issue that Sen has emphasised is that the behaviour of other people – as well as one's own behaviour – can be an important factor in the realisation of rights in practice. Sen's formal work on rights has been concerned with the analysis and implications of 'complex inter-dependences' of this type. Sen's approach suggests a departure for the analytical space of liberty rights – with important public policy applications. Consider person A, an asthma sufferer, who wishes to drink in the pub without having an asthma attack triggered by the smoke from the cigarette of person B. In a case of this type, the things that person A can do and be (which include enjoying a drink in the pub, free from an asthma attack) are affected by behaviour of Person B. Sen's approach provides a framework in which there are reasons to consider the prohibition of smoking to avoid the outcome of passive smoking (c.f. Sen 2002: 428-430).

Sen's treatment of personal responsibility

The examples discussed above suggest that in a range of different situations and contexts, social norms, actual behaviour, the underlying legal environment, and the specification of rights and responsibilities, can have an important impact on the capabilities of individuals and groups. A related issue that is of concern to the 2020 Commission is the nature of personal responsibility, and the extent to which individuals on the one hand, and Governments on the other, have responsibility for 'final outcomes' in the capability framework. An important starting-point for thinking about Sen's treatment of personal responsibility is the distinction between the CA and the perspective of 'achieved functionings'. It was argued earlier that the key to this distinction is the valuation of individual freedom (and freedom of choice) in the CA. Sen also links this distinction to the issue of personal responsibility.

[I]n dealing with responsible adults, it is more appropriate to see the claims of individuals on the society (or the demands of equity or justice) in terms of freedom to achieve rather than actual achievements. If the social arrangements are such that a responsible adult is given no less freedom (in terms of set comparisons) than others, but he still wastes the opportunities and ends up worse off than others, it is possible to argue that no unjust inequality may be involved (Sen 1992: 148).

This position might be taken to justify a lack of concern in public policy terms with the 'achieved functionings' of responsible adults. This would provide grounds for

targeting public policy interventions at children and young people in the formative stages of capability accumulation, or when the threshold of responsibility is not met (e.g. in the context of mental illness or addiction) but as treating, in general, inequalities in functionings as a matter of personal responsibility. In this model, as long as individuals have freedom and real opportunity, their functionings in practice would not be a public policy concern.

There is, however, in my view a danger of misunderstanding Sen's position here, which also puts emphasis on the importance of the perspective of social realisation. Sen is absolutely clear that inequalities in 'achieved functionings' can also be a public policy concern – particularly when they are associated with the non-realisation of rights (as discussed in section 3.4.1) and in the context of entrenched discrimination and disadvantage. This approach amounts to a radical departure from a full personal responsibility model. The Commission should also be aware of the discussions about the importance of inequalities in 'achieved functionings' in the broader literature on the CA. Some contributions in the broader literature criticise the CA for failing to give adequate attention to inequalities in 'achieved functionings'. For example, Fleurbaey (2007: 307) challenges the blind application of responsibility rules that binds people to the consequences of their actions and makes them responsible for their past choices no matter what. 'When people ... regret their past decisions, they enjoy more freedom when they can benefit from a second chance'. Others have emphasised how the CA provides a basis for establishing public concern with inequalities in "achieved functionings" that meet a threshold of 'democratic import' (Anderson 2010).

De-Shalit and Wolff (2007: 78-79) underline the departure from a full responsibility model by developing a set of criteria for evaluating when it is "reasonable" to expect someone to act one way rather than another. This approach builds on the distinction between "formal" and "genuine" opportunities and the "costs" of a particular choice and action in terms of the person's *genuine opportunity* to enjoy secure functionings. Consider the case of an unemployed single mother who has no savings and turns down a menial, low-paid, full time job some distance from her home, in order to be able to see her young child to school, attend parent evenings, assemblies and medical appointments, and to undertake other related caring responsibilities. Should the mother be held responsible for failing to choose to work if this would result in deprivation in her ability to provide care for her child? De-Shalit and Wolff conclude that the application of a full personal responsibility model would suggest that the

mother should be fully personally responsible for her choices and actions and that she ought not to be eligible to receive state support (above, perhaps, a bare minimum for her children). In contrast, the “reasonable action and choices” model proposed by De-Shalit and Wolff takes account of the impact of the mother’s choices and actions on a range of functionings (including the ability to provide care for loved ones and emotional wellbeing). On this model there is, they conclude, a strong case that the state Government should support the mother. They further suggest that there is a need for a “democratic process” to elucidate and agree principles of “reasonableness” of this type (De-Shalit and Wolff 2007).

Co-production and the responsibilities of public service users

The 2020 Commission is addressing important issues relating to the question of co-production and the responsibilities of public service users. A starting-point for thinking through this issue is Box 2.2, which models capabilities not only as a function of the outcome of public services, but also as the result of a broad range of activities and interactions involving private markets, public services, individuals, civil society bodies and entities. In this sense, the model captures and highlights how capabilities are co-produced by private individuals, groups, communities and private market institutions and public services are only one element of this complex picture.

The question of the personal responsibilities of public service users raises difficult issues regarding the possibility of conditionality, penalties and sanctions in a range of contexts. Examples include: when health services are made conditional on the fulfilment of certain behavioural changes, such as stopping smoking; the imposition of sanctions in the form of reduced benefits when individuals fail to meet the criteria for job search; and / or the imposition of conditions on school admission, such as vaccinations and parental agreements. The value added of the CA in thinking through this issue relates to the ways in which the CA provides an analytical space for thinking about the role of individual behaviour and how it interacts with public policy. It further relates to the modelling of social norms and actual behaviour – as well as the underlying legal environment and the specification of rights and responsibilities – as ‘variables’ that can themselves be influenced by public policy. However, it would be overstressing the CA to suggest that the CA can in itself resolve the question of the particular circumstances under which conditionality, penalties and sanctions are, and are not, justified.

The 2020 Commission has also asked about redress mechanisms, and how these should take account of personal responsibilities of public service users. In *Beyond Beveridge*, for example, the Commission suggests that the State should not be held account for outcomes that it cannot guarantee ('being healthy', for example, as an achieved state of affairs). How is this to be squared with the CA? Once again, the 'value-added' of the CA here is in providing a general framework for thinking this issue through, rather than in providing specific standards or policies. It would be entirely incorrect to suggest, for example, that in proposing capabilities as an information base for evaluating the position of individuals and groups – and in proposing freedoms and capabilities as the grounds of social commitments – that the State is to be held responsible and / or accountable for all outcomes. For example:

- Capabilities as co-produced through the complex interactions of actual behaviour, personal characteristics, resources, private markets – the role of the State and public services are just one element of this overall complex picture;
- Capabilities (such as 'the real opportunity to be healthy') are analytically distinct from functionings (such as 'being healthy');
- There is valuation of personal freedom and an explicit role for personal responsibility;
- Capabilities are a 'weighty consideration' (rather than the only consideration) within an overall plural concept of justice.

If in raising this question about redress, the Commission is looking for specific legal proposals regarding State responsibility and the conditions under which individuals can make valid complaints in relation to the failure to protect and promote 'outcomes' such as 'life' and 'health', some of the ideas developed in section 5 may be of help. These sections discuss new thinking about 'rights to outcomes' and provide specific proposals for establishing and delimiting State responsibility using concepts such as 'adequate protection' and 'reasonable action'¹³.

CA as an 'ends-orientated' information base: applications in public service regulation, inspection and performance management

The capability approach has a potentially important application as an 'end-focused' information base for public services regulation, inspection and performance management. The information base provided by the capability approach captures

the central and valuable things in life that people can do and be, and in this sense provides an invaluable tool for monitoring the impact of public action (including public services) on the lives of individuals and groups. In Section 2, an Equality Measurement Framework that has been developed for monitoring the position of individuals and groups in England, Scotland and Wales was sketched out. The conceptual grid for the Framework set out in Box 2.1 includes a number of elements that should be preserved in any attempt by the 2020 Commission or others to apply the CA as an information base for public services regulation, inspection and performance management. These include:

- Coverage of a broad range of central and valuable capabilities (the Framework that covers key capabilities such as physical and legal security, participation and care, alongside the focus on standard of living, education and learning and health). The Framework outlined in Section 2 suggests 10 central and valuable capabilities of this type and the breadth of this coverage is important to preserve. Coverage of capabilities such as physical and legal security alongside education, employment, standard of living and health would be critical to maintain this focus, as set out in the Framework in Section 2.
- Coverage of (1) outcomes (2) treatment (e.g. discrimination and experiences of dignity and respect) and (3) autonomy (autonomy, choice and control). This reflects the distinction between capabilities and achieved functionings set out in Section 1.
- Deliberation and participation in the selection of the central and valuable capabilities that count for the purposes of measurement.
- The importance of disaggregating all information by key characteristics (moving away from a population averages approach) and of monitoring the position of the non-private household population.

There are in fact a number of synergies between the Framework set out in Section 2 and current discussions and priorities which emphasis the need for the development of 'outcome orientated' information bases for public services regulation, inspection and performance management¹⁴. For example, Cabinet Office (2008: 37) recommended PSAs that focus on the outcomes that matter to citizens and public service professionals. The capability approach can be of assistance in providing an information base that captures and reflects valuable

ends (rather than inputs of resources) and to this extent reflects current thinking regarding the need to move from process-orientated to outcome-orientated performance management. Cabinet Office (2008: 37) also highlights the importance of flexibility, local solutions and citizen engagement. The Framework introduced in Section 2 introduces an element of deliberation and consensus into the specification of 'end-focussed' indicators. In this sense, it provides a basis for a less top-down and a more consensus-building performance management framework, in line with current thinking. The Framework also reflects concerns about the need for information bases for public services regulation, inspection and performance management that capture and highlight user experiences and treatment. For example, the Darzi review recommended an information base for monitoring health services that captures quality of provision and individual experience, dignity and respect etc, as an alternative to a top-heavy, target-driven approach. There are important links between the types of indicators proposed by Darzi (dignity and respect, participation in decision-making, access to information etc) and the autonomy and treatment indicators that are being used to populate the capability-based Equality Measurement Framework.

There are, however, some areas in which the CA and current thinking around performance indicators may be diverging. For example, following the Policing Green Paper (Home Office 2008) many top-down targets for the police are being dropped with a new emphasis on targets relating to overall public confidence. A capability based Measurement Framework reserves a key role for subjective indicators of this type (along with, for example, self-reported discrimination and dignity and respect). However, a purely subjective information base raises issues of adaptation and conditioning discussed in Section 1. In order to capture and measure the capability concept, a pluralist information base and a balance between subjective and objective indicators is required. For example, the Framework developed in Section 2 uses indicators of the prevalence of domestic violence and sexual violence as well as confidence-based measures to monitor the physical security domain.

Further, whilst the information base of capabilities provides a supplementary form of monitoring, it cannot be assumed that the use of this information base reduces the need for detailed input-focused and resourced-focused standards. In relation to the example of domestic violence, the application of the information base of capabilities suggest that the success of public policy in this area should

ultimately be judged in terms of capabilities and functionings (i.e. freedom from domestic violence) rather than process orientated targets (e.g. time allocated on cases of this type within police stations or by CPS). This should not be taken to imply, however, that well specified standards regarding inputs (e.g. public expenditure, time and effort allocated to the detection and prosecution of domestic and sexual violence within the police and criminal justice system) are unnecessary.

Box 3.2: Capability-based framework for regulation, inspection and performance management of public services

ULTIMATE GOAL = EXPANSION OF CAPABILITY TO BE HEALTHY



STATE HAS A KEY ROLE IN THE PROTECTION AND PROMOTION OF THE CAPABILITY TO BE HEALTHY



CAPABILITY-BASED INFORMATION BASE FOR INSPECTION, REGULATION AND PERFORMANCE MANAGEMENT OF PUBLIC SERVICES

- Strong system of regulation, inspection and performance management required to ensure protection/promotion of capability to be healthy
- Covers all provider types (public, private and third sector) for regulation and inspection and for performance management purposes (where public funds are involved)
- Ultimate impact of public services on the lives of individuals and groups is evaluated in terms of information base focusing on central and valuable capabilities rather than other variables (inputs, resources etc)



Equity

Role of Government in ensuring that overall system protects and promotes equitable capability distribution at point in time, and equitable advancement of capabilities in overall processes of growth



Efficiency

Role of Government in ensuring efficiency – requires public action to address monopoly power, market failures, asymmetric information principal-agent problems etc



PUBLIC ACTION

- To make private markets more efficient
- To make private markets fairer
- To supplement private market provision

Finally, it cannot be denied that the capability approach is informationally demanding and that monitoring using the Equality Measurement Framework involves the use of a significant number of indicators – at a time when there is a general consensus on the need to limit the number of targets in the public sector and the need to move towards lighter touch inspection regimes that do not micromanage from the centre. However, the use of capabilities as an information base for evaluating the position of individuals and groups should not be confused with the use of ‘top-heavy’ or ‘centre-dominated’ delivery mechanisms. Recognition of the value of de-centralised mechanisms (including market and non-market based mechanisms) for achieving co-ordination, accountability and empowerment is central to the CA. The discussion now turns to the need for new sources of ‘bottom-up pressure’ that can help to address this concern – and the key role that rights-based approaches (including human rights) can play in moving forward.

(iv) Bringing Rights, Accountability and Empowerment into the Analysis

Thinking about rights in Britain is often dominated by the idea of universal entitlements to particular public services, with the state providing a universal entitlement through direct delivery mechanisms. As a result, in the British context, rights are often exclusively associated with rights to universal state delivered services such as health and education. However, in developing a model for public services in 21st century, the Commission on 2020 Public Services has raised the need for a broader mode of thinking about rights than the notion of universal entitlements delivered through direct state provision. The following sub-sections contribute to this discussion by providing a review of entry-points for thinking about rights-based approaches in the academic literature. The variety of rights-based approaches currently being applied in the British public services context and the role of human rights standards and a future codified Bill of Rights and Responsibilities are also explored. It is argued that rights-based approaches of this type are critical to quality, regulation and inspection as well as to the allocation of public service entitlements and will be a critical element of a new model for public services in 21st century Britain.

The need for new thinking about rights

The idea of a fundamental conflict between rights-based approaches on the one hand, and efficiency and growth on the other, has in the past often dominated thinking about individual rights in theoretical and empirical economics. The

codification of rights has often been perceived in terms of fiscal drain and capture by special interests, whilst the perception of a fundamental conflict between human rights and economic growth has often prevailed. In contrast, new paradigms and approaches are now emerging that suggest that rights-based approaches have a critical role to play not only in allocating basic entitlements but more generally in specifying the ‘rules of the game’ in contemporary democracies. In practice this could include incentivising socio-economic arrangements (both public and private), by creating a level playing field (for example, through the enforcement of standards upholding non-discrimination, equality and human rights) and creating bottom-up pressure that empowers individuals and ensures accountability (including where price mechanisms do not function). They relate critically, for example, to the legal environment / rules of the game.

The CA and the instrumental role of rights

The body of literature on the CA itself provides an important theoretical and empirical entry point for thinking about rights. As well as highlighting the *intrinsic* value of rights in ethical and economic evaluation (discussed in section 1), this literature provides an important body of empirical findings on the *instrumental* role that rights can play in the protection and promotion of capabilities. The notion that there is a fundamental conflict between economic growth and human rights has been effectively challenged, drawing on empirical evidence from a range of contexts and regions including India, China and East Asia (e.g. Sen (1999a:178-186;b; Drèze and Sen (1989; 2002); Drèze (2004: 1727). Sen and Drèze further establish how democratic forms of government and civil and political rights can provide critical incentives to governments in the context of famine prevention – by disseminating information, facilitating public scrutiny and debate, building up political opposition, increasing pressure on governments, proving for the correction of ‘errors’, and helping to precipitate a more effective public policy response. Examples range from the Indian Famine of 1947 to contemporary food shortages in Rajasthan. The instrumental role that human rights, including economic and social rights, can play in strengthening public accountability and efficiency by increasing ‘voice’ and providing an additional source of countervailing power is another important theme. The ‘Right to Information Movement’ and the ‘Right to Food’ campaign in India provide examples (Drèze and Sen 2002; Drèze 2004:1726).

Other theoretical and empirical entry-points for rights-based approaches

McKay and Vizard (2005) set out a theoretical and empirical entry-point for capturing the role of rights-based approaches in terms of the efficiency and equity objectives reflected in standard welfare economics¹⁵. According to this approach, the instrumental role of rights in overall processes of development and growth can be theorised and empirically tested in terms of their potential impact on efficiency and equity. A particular rights-regime might have equity effects, for example, by determining the allocation of fundamental entitlements in an economy, by broadening social opportunity (for example, by ensuring equal access to private markets and to public goods), by strengthening voice, empowerment and accountability and / or by focusing public policy attention on the needs of the poor and vulnerable. Rights may also have efficiency effects since they can promote efficient resource allocation by providing mechanisms for responding to monopoly power and to a range of market failure situations. This includes through the provision of public goods and by addressing adverse selection and problems of incomplete, imperfect and asymmetric information. Rights-based policy interventions provide a means of addressing the principal-agent problems that arise in these contexts – for example, by empowering beneficiaries, ensuring access to adequate information, strengthening accountability and ensuring that appropriate ‘democratic control mechanisms’ are in place (see Box 4.0).

Besley and Burgess (2002) take the analysis forward by developing a formal framework for analysing the responsiveness of governments to citizens’ needs in electoral democracies. The framework addresses the central question of whether the needs of vulnerable citizens are reflected in government policy in situations where vulnerable populations rely on state action for their survival. The underlying theoretical model (based on solutions to political agency problems) links the actions of an incumbent government to re-election incentives – with the question of whether a vulnerable population group has sufficient power to swing electoral outcomes viewed as critical in determining whether government policy is ‘responsive’. The hypothesis that having a more informed and politically active electorate strengthens incentives for governments to be responsive to citizens needs is tested using Indian panel data for 16 major Indian states for the period 1958-92. State governments in India are found to be more responsive to falls in food production and crop flood damage (via food distribution and calamity relief expenditure) where newspaper circulation is higher and electoral accountability is greater. The research has more general lessons for the role of rights in preventing public policy in preventing capture by elites and dominant social groups by increasing voice and strengthening the influence of subordinate groups in collective decision-making.

Box 4.0: How do rights-based interventions help to address the classic concerns of welfare economics?

Problem	How rights-based extensions provide a solution (or partial solution)
Monopoly power	Extension of rights addressing price discrimination and cream-skimming
Public goods	Creation of public service entitlements that supplement private market provision
Externalities	Reallocation of property rights / rights imposing constraints on behavior and activities to deal with complex interdependences and internalize costs of externalities
Incomplete, imperfect and asymmetric information	Rights-based extensions to increase the quality of information available and knowledge about options (e.g. Freedom of Information Act, information about choices and quality in context of public services)
Principal agent problems	Rights-based extensions both to address asymmetric information and to strengthen the threshold position of beneficiaries eg voice, choice
Adverse selection and moral hazard	Rights-based mechanisms to create level playing field e.g. regarding use of screening mechanisms and to prevent cream-skimming

Stiglitz (1999, 2002) examines how individual rights to information (e.g. in the form of Freedom of Information Acts) can enhance economic efficiency and resource allocation by increasing the availability and quality of information. Informational asymmetries can result in capture by special interests and in corruption by government officials, with strongly adverse consequences for investment and economic growth. Strengthening individual rights to information (e.g. in the form of Freedom of Information Acts) can reduce the magnitude and consequences of these agency problems, with greater access to information and resulting in better, more efficient, resource allocation (Stiglitz 1999). Extensions of rights can also strengthen accountability and ensuring that appropriate democratic control mechanisms are in place. Stiglitz (2002) characterises participatory processes as a “public good” – with an active civil society functioning as a check on abuses of power and influence and a source of countervailing power – and recommends extensions of individual rights to freedom of information and citizens’ rights to legal redress.

Accountability, empowerment and public services reform

There is an important cross-cut between the rights-based approaches examined above and the body of evidence on empowerment, accountability and qualitative improvement in public services. In the Indian context, Drèze and Sen (2002: 363) more generally discuss the ways in which public sector inefficiency has resulted in systematic public policy failures in education, health and food security. Drawing on case studies, their analysis links persistent public sector inefficiency to a lack of public sector accountability, highlighting the failure to introduce effective accountability mechanisms in the context of even the most extreme forms of public policy failure (such as public health centres being closed on a work day, or systematic absenteeism by teachers in public schools) and suggests that low accountability in the schooling system has played a role in depriving millions of children of basic education. Their recommendations for a major programme of accountability-based public sector reform in India highlight the important role of counter-veiling power structures in asymmetric power situations – with the possibility of concentrations of power in one domain being checked and restrained by a counter-veiling configuration of forces in another domain. They raise the need for public participation and scrutiny, audits, complaints mechanisms, electoral procedures and legal action in this context.

More generally, in the broader academic literature on economics, political economy and development, there is now a significant body of empirical evidence of the importance of accountability and empowerment including in public services where price-mechanisms are ineffective or do not operate. This includes recognition that extensions of democratic practice, including the recognition of individual rights, can function instrumentally in improving public service efficiency. The role of strengthened accountability mechanisms in reducing corruption and achieving efficient public service delivery is for example highlighted in the policy advice provided by leading international economic organisations such as the World Bank (2005; 2006). Addressing asymmetric information and increasing the influence of beneficiaries over providers are key to the policy concerns. Two types of accountability are widely discussed: (1) accountability-based mechanisms that focus on the extension of choice between service providers (e.g. by extending choice between public sector providers and/or facilitating the use of private and independent providers, sometimes using public finance); (2) accountability-based mechanisms that focus on strengthening voice through extensions of democratic

practice (including beneficiary participation, scrutiny and monitoring, direct management, strengthened complaints procedures and rights to information) as a complement and/or a substitute for choice- and exit-based mechanisms.

The role of public redress mechanisms in public services provision and delivery is examined in Dunleavy *et al.* (2005). Systems of public redress are characterised as allowing public service users to seek remedies for what they perceive to be poor treatment, mistakes, faults or injustices in their dealings with departments or agencies. As well as providing a basis for recognising and compensating individual grievances, redress mechanisms are viewed as having a key role as a driver of innovation and improvement in public services, where the price information available in competitive private markets is absent or plays a limited role of limited role in conveying information about consumer satisfaction. For example, redress mechanisms are found to provide a critical source of information for organisations regarding difficulties faced by their customers, early warning of poor or deteriorating service, systematic errors in decision-making, or problems with specific processes or areas of operation. The authors suggest that public organisations that react quickly to early warnings can minimise the time and cost of resolving these difficulties, ideally with many straightforward complaints being put right without delay by a simple apology or through informal but effective channels (Dunleavy *et al.* 2005: 7).

(v) Rights-Based Approaches and the UK Public Services Reform Context

In the context of the UK public services agenda, individual empowerment is now widely viewed as a key factor in achieving quality improvements in public services provision by promoting key objectives such as accountability, responsiveness and the personalisation of public services. Pathways to individual empowerment are characterised in terms of choice-based mechanisms (emphasising supply side conditions, contestability and competition) and voice-based mechanisms (emphasising active citizenship and participation) (e.g. Le Grand 2007, Dowding and John 2008, Burgess *et al.* 2006). Arguably both choice-based and voice-based reform strategies can be viewed in terms of extensions of individual rights (in terms, for example, of 'rights to choose', 'rights to participate' and 'rights to complain'). Increasingly, however, choice-based and voice-based approaches are being supplemented with approaches to qualitative reform that make more explicit reference to rights (including human rights).

Public services reform and new forms of rights

The increasing importance of rights-based approaches in the British context is reflected in the increased emphasis on charters and constitutions as governance mechanisms and engines of qualitative public services reform. A recent example is the new NHS Constitution. The NHS Constitution published with the Darzi Review reaffirmed the right to NHS services free of charge (with equal access for all) and enshrines patients' rights to choice and to NICE-approved drugs. All NHS organisations will have a legal duty to take account of the Constitution, which will be operative for at least 10 years, making it relatively difficult to overturn.

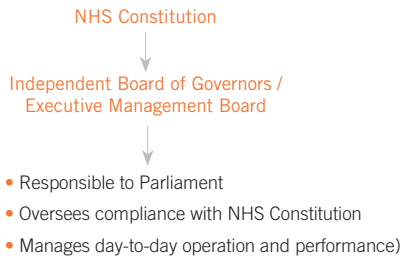
In the run up to the creation of the NHS Constitution, a reform model proposed by the British Medical Association focused on the establishment of a written NHS Constitution, overseen by an independent Board of Governors (see BMA 2008). Like the establishment of the independence of the Bank of England, this model was developed to put key aspects of day-to-day NHS management beyond the realm of political interference, promoting stability and innovation by putting the question of the existence of the NHS outside the arena of everyday political debate. According to the BMA proposal, the Board would ensure compliance with the NHS Constitution and accountability to Parliament and would be responsible for national operation and performance of the NHS (see Box 5.0).

Alldritt *et al.* (2009: 54-55) highlight how personal care budgets provide an example of the recognition of an entitlement to an *outcome* rather than to a service flow from a particular state provider. Personal care budgets provide a possible model for moving forward. Similarly, the inclusion of a right to minimum standards in the recent Children, Schools and Families Bill can also be interpreted not in terms of an entitlement to a flow of services from a particular type of provider but rather a right to an outcome (in this case, to a minimum quality of education). The entitlements would have given rise to a series of minimum quality guarantees covering a variety of provider-types (though not the private sector) and provided for redress procedures for where the minimum quality guarantee was breached. (The proposals on guarantees were among those dropped in wash-up in order to secure passage of the Bill before Parliament was dissolved.)

Other proposals for strengthening accountability in public services have focussed on the need for improved mechanisms for public service redress and complaints. The range of redress mechanisms identified in Dunleavy *et al.* (2005) include complaints procedures; appeal and tribunals systems; independent complaints handling or Ombudsman; and

judicial review and other forms of legal action. The 2004 White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, identified the need to improve access to administrative justice and to consolidate, integrate and simplify the provision of tribunal services. More generally, Dunleavy *et al.* (2005) were critical of the organisation of redress mechanisms and highlighted the need for organisational reform and streamlining. Possible models include ‘zero complaints’ models, the integration of separated Ombudsman services and single-access portals for information and complaints. The Public Administration Select Committee (2005: para. 210, 2008: para. 42) has also emphasised the importance of a single access point for advice and complaints. Barriers to complaints for different population groups are highlighted as a particular concern, with both telephone and internet access required. The Joint Parliamentary Committee on Human Rights report on a Bill of Rights raises the possibility of putting the “right to administrative justice” on a constitutional footing. Similar proposals were examined in the last Government’s Green Paper on Rights and Responsibilities (c.f. section 6).

Box 5.0: De-politicising public services: Does Bank of England independence provide a working model?



The new ‘public duties’ legislation

The examples of personal care budgets and rights to minimum standards in education reflect a new trend in British public service reform, whereby choice-based and voice-based policy instruments – that aim to improve quality in public services by strengthening individual accountability and empowerment – are increasingly supplemented by initiatives that relate more explicitly to equality, rights and human rights. The new wave of equality legislation (public duties legislation) that has been established in recent years provides a further exemplar of this new approach. Anti-discrimination law has historically recognised that

treating everyone identically can result in inequality in practice. For example, the prohibition of indirect as well as direct discrimination under the Sex Discrimination Act (1975) and the Race Relations Act (1976) provides recognition that practices and rules can be discriminatory; whilst the DDA (1995) included a duty of “reasonable adjustment”. The new public duties legislation takes forward these ideas and provides a platform for a reform agenda that recognises that negative principles of non-discrimination are an insufficient basis for tackling entrenched inequality and disadvantage. Structural changes in institutions may be required; and a range of proactive policies and programmes may be necessary to ensure that the organisation, structure and delivery of public services such as health and social care, education, the police and criminal justice system, housing and employment are non-discriminatory facilitate the different needs and situations of individuals and groups (Fredman 2005, 2006, 2008): 189; Butler, 2005: 20; DES *et al.* (2007).

- The Race Relations Amendment Act (2000) extended the prohibition against racial discrimination to public service providers, and imposed a positive duty on public authorities to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups (Lester 2006).
- A similar legislative change created a public duty to promote disability equality. The DDA (2005) establishes a general duty on public authorities to eliminate disability discrimination and promote equality of opportunity between disabled people and other people, and provides explicit recognition that this can involve treating disabled persons differently (Section 49A (d)).
- In 2006, the public duties legislation was again extended with the introduction of a positive duty on public authorities to promote equality of opportunity between men and women (Equality Act 2006).

The Equality Act (2010) (which received royal assent in April 2010) creates a new single Equality Duty on public bodies that covers the existing public duties relating to race, disability and gender but also covers age, transgender status, religion or belief, and sexual orientation¹⁶. In addition, public bodies are under a new duty, when taking strategic decisions, to have “due regard” to the “desirability” of reducing the “inequalities of outcome” that result from

socio-economic disadvantage.¹⁷ This formulation has been criticised for being too weak. The failure of the legislation to give rise to fully justiciable individual rights has also been criticised by NGOs (although the Joint Committee on Human Rights has put particular emphasis on the role of judicial review, in line with its ‘mid-way’ model for judicial enforcement of economic and social rights discussed later)¹⁸. Notwithstanding the criticisms, the new legislation provides an important new framework for ensuring that the need to prevent discrimination and to promote equality is recognised as a core function of key public services. For the 2020 Public Services Commission, it provides an example of how equality and human rights standards are playing an increasing role in the specification of the rules of the game and in the development of overarching regulatory frameworks for public services commissioning and delivery.

The Child Poverty Act (2009) has a similar emphasis on the creation of new public duties whilst going further than the Equality Act (2010) in providing for specific actions, time-lines and targets. The child poverty duty gives overall responsibility to the Secretary of State to drive forward progress and to ensure that specific targets are met in the United Kingdom by 2020. These relate to (a) the relative low income target (b) the combined low income and material deprivation target (c) the absolute low income target, and (d) the persistent poverty target. Local authorities are required to make arrangements to promote cooperation in relation to this target with partner authorities (e.g. police, transport and strategic health authorities) and other relevant bodies¹⁹. Like the public duties legislation, the child poverty duty does not create fully justiciable individual rights. However, the legislation has been favourably scrutinised by the Joint Committee on Human Rights, which has referred to the legislation as a “human rights enhancing measure” that engages the right of the child to an adequate standard of living under Article 27 of the UN Convention on the Rights of the Child and Article 11 of the UN Covenant on Economic, Social and Cultural Rights, and provides a mechanism for the progressive realisation of this right. Indeed, the legislation is viewed as providing a viable ‘midway’ model in debates about economic and social rights between full justiciability and enforceability on the one hand, and non-implementation on the other. This ‘midway’ model preserves an appropriate role for the Executive and Parliament whilst giving the Courts only a “limited” and “circumscribed” role with a possibility for judicial review (JCHR 2008, 2008a, 2010a).

Human Rights and public services regulation

The Human Rights Act (HRA) provides another new and potentially far-reaching driver of qualitative improvement and change in public services in Britain. The HRA enables the individual rights guaranteed in the European Convention on Human Rights (ECHR) to be enforced in domestic courts and includes, under Section 6, a duty for public authorities to comply with the HRA. Whereas prior to 1997 public authorities were not explicitly required to comply with the ECHR under domestic law, Section 6 of the HRA establishes that it is unlawful for a public authority to act in a way that is incompatible with a Convention right. As a result of this legal duty, public authorities such as Government Departments, the police, the immigration and prison services, Inspectorates, NHS and primary care trusts, local authorities and local authority run housing, education, social services and care homes are required to take the HRA into account in relation to all of their functions. ECHR and domestic jurisprudence specifies that state responsibility is not absolved when public functions are delegated to private bodies or individuals (Fredman: 2008: 59-61; Hosali 2010). Although private individuals carrying out private acts are not duty holders under the HRA, the protection of the HRA was intended to trigger state responsibility in relation to private or voluntary sector bodies performing functions “of a public nature”²⁰. In practice, however, the interpretation of the meaning of “public authorities” under the HRA has been a particularly difficult issue, with the Courts adopting a cautious and conservative approach. The relevance of the protection of the HRA in the context of private and voluntary providers of public health and residential services has recently been clarified through new primary legislation (2008)²¹.

The standards codified in the HRA underpin a growing body of domestic case law that has important implications for public services regulation²². Although the numbers of individuals involved remain relatively small, the cases are revealing in terms of the emergence of a new approach to public services regulation in Britain. The general duties of public authorities under Section 6 are widely interpreted as implying not only a minimal obligation of non-interference but also a duty to protect human rights by adopting positive, proactive measures (Klug and Wildbore 2005; Fredman 2008). For example, Article 2 – the right to life – is engaged not only in relation to the deprivation of life by the state, but also in relation to adequacy of regulatory frameworks

that are established to protect individuals from the risk of violations²³. It has been interpreted as requiring the British Government to take positive measures to protect the lives of individuals in custody in prisons and mentally ill people detained in hospitals, including protection from suicide²⁴. Outside of the detention context, the state also has positive duties to protect individuals from violations of Convention rights that result from the criminal actions of third parties. The ECHR has applied the positive duty principle to Article 3 (protection from torture and inhuman and degrading treatment or punishment) in the context of the duty of the state to protect children from abuse and neglect by parents²⁵ and Article 14 (non-discrimination, read in conjunction with Articles 2 and 3) to protection from domestic violence²⁶.

Generally speaking, the British Courts have exercised their power to declare legislation to be incompatible with the HRA only rarely, and have emphasised the importance of “an area of judgment within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body”. This has resulted in judicial caution in cases where there are significant resource implications. However, the deferential approach has not always prevailed. For example, in the *Limbuela* case, when it was ruled that withdrawing support from destitute late asylum seekers can constitute a violation of the prohibition against torture and inhuman and degrading treatment or punishment under Article 3 (Wadham *et al.* 2003: xiv-xvii, 23-128; Fredman 2008: 94-99)²⁷. Donald *et al.* (2009: 13) notes that the Bernard case is widely cited as illustrating the potential of human rights to improve public services. The case concerned a severely disabled woman who had knowingly been left in unsuitable accommodation for 20 months, confined to one room and unable to use the toilet. The UK Court’s ruled that the Borough Council had a duty to provide assistance so that she could maintain basic physical and psychological integrity without undue delay was a breach of Article 8²⁸. Candler *et al.* (2010: 17-20) discuss a range of further examples of issues that fall within the scope of the HRA that are of particular importance for public services. These include issues that fall within the ambit of Article 3 including the general conditions of a hospital, residential homes or care homes, and other institutions, and the standard of domiciliary care provision. Issues that fall within the ambit of Article 8 including the provision of care arrangements for older and disabled people and the closure of care homes or hospital wards are also covered.²⁹

An important claim emerging from human rights literature is that human rights standards can be instrumental in achieving qualitative improvements and better outcomes in public service delivery (Audit Commission: 2003; DCA: 2006; EHRC: 2009b p.37-87). For example, human rights can play an important role in ensuring that the different needs of individuals and groups are facilitated in public policy; in challenging poor treatment of vulnerable groups such as children, older people, people with disabilities (including learning disabilities) and users of mental health services; and as a policy framework for longer-term transformation and improvement in public services. According to this broader view, human rights standards are not about a narrow legalistic agenda, but provide a platform for a new approach to social justice – with values such as freedom, equality, dignity and respect and autonomy playing a major role in specifying the ground-rules of a good society and providing an overarching framework for public policy. What evidence is there that human rights standards can improve public service outcomes in practice?

Certainly, the standards in the HRA increasingly underpin proactive public policy as well as case law, and are reflected in the work of public service audit and inspection bodies such as the Care Quality Commission, OFSTED and HMI Prisons. These underpin new systems of monitoring and regulation, such as core standard 7e of the Inspection Guides adopted by the Healthcare Commission (now superseded by Care Quality Commission) which required Trusts to challenge discrimination, promote equality and respect human rights. The importance of working with soft as well as hard law human rights principles has been highlighted by NGOs and is central to the human rights strategy of the Department of Health (BIHR/DoH 2007). The strategy links soft law principles (e.g. dignity and respect) with human rights standards, suggesting that there is a minimum level of treatment which cannot be exceeded, and which attaches accountability to violations (ultimately, through legal processes) (Hosali 2010). The importance of this approach was reflected in a legal case concerning the way in which two severely disabled sisters were cared for by local authority carers in their home. Justice Munby noted that whilst the phrase [human dignity] is not used in the [European] Convention “...it is surely immanent in Article 8, indeed in almost every one of the Convention’s provisions. The recognition and protection of human dignity is one of the core values – in truth, *the* core value – of our society” (cited in JCHR 2007, Annex)³⁰. The Joint Committee on Human

Rights concludes that “there is no question that the concept of dignity and the developing jurisprudence on it is significant to our inquiry on the human rights of older people in hospitals and care homes”. This approach is supported more generally by case study evidence such as that provided by Mersey Care NHS Trust which has explicitly built on human rights values and principles as levers for qualitative improvement and change in public service delivery (JCHR, 2007; EHRC 2009b; IPSOS-Mori 2008: 34).

Nevertheless, in 2003, the introduction of human rights standards into public service planning, commission and evaluation was officially recognised as patchy and slow (Audit Commission: 2003). A Joint Parliamentary Committee concluded in the same year that the HRA had not “given birth to a culture of respect for human rights or made human rights a core activity of public authorities” (JCHR 2003:2). Subsequent evaluations have been more positive, with an official review in 2006 concluding that the HRA had had a significant beneficial impact on public policy outcomes by strengthening personalisation and helping to ensure that diverse needs are appropriately considered in the policy process (DCA 2006). The recent Equality and Human Rights Commission Human Rights Inquiry highlighted good practice in the introduction of human rights standards into regulation, inspection and performance management systems whilst highlighting the need for strengthened enforcement mechanisms, such as a new statutory duty to promote human rights, being introduced alongside the other recent public duties legislation (EHRC 2009b). Background research for the Inquiry included an examination of the impact of case law on public services provision (Donald *et al.* 2009); detailed case studies of the impact of human rights standards on organisations such as the National Policing Improvement Agency and Mersey Care NHS Trust (EHRC 2009c); and an analysis of the ways in which human rights standards are becoming embedded in frameworks for public services regulation and inspection (EHRC 2009d). The Inquiry concluded that despite examples of good practice the impact of the HRA on local and public policy remains limited. Further work is required to develop human rights performance management regimes. The EHRC should work with regulatory bodies and inspectors to develop appropriate targeted human rights indicators to measure the extent to which public bodies are adopting a human rights approach (EHRC 2009b: 184).

(vi) Proposals for a New Bill of Rights and / or a Written Constitution: Implications for the New Model of Public Services

The prospect of the HRA being supplemented or superseded by a Bill of Rights and / or a written constitution following the 2010 General Election raises the question of the role of constitutional reform in the development of a new model for public services. A constitutional instrument of this type which *extended* the human rights protections already provided by the HRA could play a major role in defining the objectives of Government in 21st century Britain and in developing modern structures of accountability and governance for regulating public services. For example, a codified individual right to health could sit at the apex of a regulatory structure for mixed public services (see Box 6.0), providing a guarantee of health protection and promotion as a core function of government, regardless of political affiliation and the mix of delivery mechanisms involved. An instrument of this type could also function as an important new source of ‘bottom-up’ pressure in processes of public service reform and could underpin both the NHS Constitution and arms length and independent governance mechanisms for direct state provision of the type discussed above³¹.

The question of economic and social rights

Given these links, the evolution of the constitutional reform agenda has important implications for the development of a new model of public services. The Governance of Britain Green Paper published in 2007 was apparently sceptical on the question of economic and social rights, with codification viewed as limiting the power of the elected parliament and government, resulting in unreasonable shift in power to an unelected and unaccountable judiciary on resource allocation matters (MOJ 2007: para. 209). The Green Paper *Rights and Responsibilities: Developing our Constitutional Framework* (published in March 2009) set out policy options for the development of a Bill of Rights and Responsibilities. Models discussed included the incorporation of a statement of values and purposes (focusing on goals such as freedom, autonomy, equality, dignity and respect); additional economic and social rights; children’s rights; and rights to equality and good administration. However, the focus of the proposals on economic and social rights set out in the Green Paper were on bringing together existing welfare entitlements rather than on incorporating internationally recognized economic and social rights and making these legally enforceable.

Internationally, there are new legal models emerging for judicial enforcement of economic and social rights such as the rights to education, health and adequate standard of living³². In its most recent report, the Joint Parliamentary Committee for Human Rights recommends the inclusion of education, health, adequate standard of living and housing as well as children's rights in a British Bill of Rights. Critically, in developing this proposal, the Committee suggests that there is a midway position between the full legal justiciability and enforceability of economic and social rights such as the right to health – and rejection of the idea of legal rights of this type on the other. The proposed midway reform model involves judicial review of a duty of progressive realisation of economic and social rights by reasonable legislative and other measures, within available resources, based on the South African experience (JCHR 2008: 170-181). Under a model of this type, prioritisation, rationing and targeting can be viewed as integral and indeed necessary elements of public policy. However, policies or programmes that are not reasonable because, for example, they arbitrarily exclude a significant segment of society can constitute violations of economic and social rights.

Box 6.0: Equality and human rights regulation: a new source of bottom up power?



Developing this model for the British context, a declaration of incompatibility could be issued by the Courts if a policy fails to satisfy a ‘reasonableness’ test in terms of its failure to protect or promote the right to health, with the general duty on government interpreted in terms of the obligation to adopt reasonable measures that protect and promote the achievement of the right to health, and the equitable advancement of this human right over time. This formulation would provide a principled, explicit and transparent platform for promoting human rights-based public policies in fields such as health and education, and for scrutinising and challenging primary legislation in these fields from a human rights perspective. Under the proposed model, however, Parliament could continue to have the final say.

Should responsibilities be put on a constitutional footing?

The Green Paper *Rights and Responsibilities: Developing our Constitutional Framework* (published in March 2009) also included policy options for putting *responsibilities* on a constitutional footing. Given its interest in the personal responsibilities agenda, the discussions around this issue are likely to be of particular interest to the Commission on 2020 Public Services. The idea that it might be possible to change individual behaviour and to foster a stronger sense of personal responsibility through constitutional change underpins the policy proposals. These include options for a “Statement of Values” (characterised as “underlying beliefs and characteristics that influence how we behave”) that could inform a preamble to any future Bill. In addition, options for including specific responsibilities on a constitutional footing are considered. Examples cited include the responsibilities people have to protect each others’ human rights and the responsibility to promote tolerance, mutual respect and a cohesive society. In addition, the Green Paper mentions the responsibility:

- To safeguard and promote the wellbeing of children;
- Living within environmental limits;
- To participate in civic society through voting and jury service;
- Assisting the police in reporting crimes and co-operating with prosecution agencies;
- The general duties to pay tax and obey the law.

In putting forward these proposals, the Government suggested that the aim was to ensure recognition that rights go hand-in-hand with responsibilities. Logically

speaking, this approach reflects formal models of rights in analytical jurisprudence and logic that define rights in terms of correlative responsibilities³³. However, the human rights framework is generally characterised in terms of the protection of the individual vis-à-vis the state and correspondingly in terms of the *rights of individuals* and the *responsibilities (or correlative duties) of governments*. This characterisation is reflected in current arrangements the Human Rights Act, whereby public authorities are duty-holders but individuals and private bodies (such as private companies) do not have direct duties in relation to private acts.

Should private individuals (and perhaps other entities, such as private companies) be given direct responsibility to respect human rights under a new Bill of Rights? Consider person A who is a wheel-chair user and who wishes to have a pint of beer in his local pub, without being targeted by other pub users on the grounds of his disability. In reality, Person A is regularly verbally abused and his wheel chair is overturned by other pub users including persons B, C and D. Under current legal arrangements, disability hate crime is an aggravating factor in other crimes and is illegal under primary legislation. Under the Human Rights Act, the State has a (vertical) duty to protect person A (including in relation to torture or to inhuman or degrading treatment or punishment). However, B, C and D are not direct duty holders under the Human Rights Act.

EHRC (2010) and Lazarus *et al.* (2009) suggest that there may be value in including within any Bill of Rights a general duty to respect the human rights of others. However, responses to the Government's consultation on its Rights and Responsibilities Green Paper (MOJ 2010: 14) overwhelmingly caution against incorporating lists of specific individual duties within the body of a Bill of Rights. One objection is that the rights of A are already protected in primary legislation (e.g. in the criminal law) and that protection can be strengthened through changes in primary legislation without any need for a constitutional instrument covering responsibilities (Hosali 2010). An underlying fear here is that the mixing of the personal responsibility agenda with the human rights agenda could result in a dilution of existing and established human rights protection – by transforming an instrument that protects individuals vis-à-vis the state into a 'treatise on good behaviour'. As the Labour Government itself recognised in the Green Paper, human rights protections such as freedom from torture and the right to a fair trial should not be contingent on 'good behaviour'. The case for including specific responsibilities in a Bill of Rights has also been firmly rejected by the JCHR:

“We cannot see what purpose is served by articulating a responsibility as general as the responsibility to obey the law, nor do we believe that a Bill of Rights is the place to set out legal responsibilities which are already legally binding on the individual. We do not accept that educating people about their legal responsibilities is an appropriate function of a Bill of Rights” (JCHR 2010:267)³⁴.

Section 6 of the HRA and the new model of public services

The concerns about putting responsibilities on a constitutional footing feed into a more general debate regarding the relationship between the existing Human Rights Act and any new Bill of Rights / written constitution. In addition to the question of responsibilities, key concerns raised in recent discussions include the question of whether coverage would be universal (including for example refugees or asylum seekers) or whether protection would be contingent on citizenship and focus only on a set of ‘citizen’s rights’. This discussion crystallises the need for policy proposals in this area to be clear on the distinction between rights that provide universal protection (i.e. human rights); rights that are contingent on *citizenship*; rights that are contingent on *contribution* (e.g. pension rights); and rights that are contingent on the fulfilment of *responsibility*. More generally, there is a concern that the final result of policy evolution in this area is likely to be the diluting rather than the strengthening of the protections already established in the Human Rights Act –with the end result of policy change being Human Rights Act ‘minus’ rather than Human Rights Act ‘plus’ (Justice 2007ab; Klug 2007abc, 2009; EHRC 2010; Donald *et al.* 2010; BIHR 2010; Lazarus *et al.* 2009). Given the important role that human rights standards increasingly play as an overarching regulatory framework for public services, the critical importance of the HRA and of the section 6 duties in particular (compliance of public authorities with EHRC rights) should be highlighted in the new model for public services developed by the 2020 Commission.

(vii) Conclusion

The objective of this chapter has been to provide conceptual and theoretical foundations for the work of the 2020 Commission in developing a new model of public services for 21st century Britain. The paper has examined the role that (1) the capability approach and (2) rights-based approaches (including the idea of human rights and section 6 of the Human Rights Act) can play in the development

of a new public services model of this type. Five entry-points for thinking about the role of the capability approach in the development of the new model for public services have been identified. These are (1) specifying the ultimate purposes and ends of public action; (2) consensus building around the need for public action / what the State should do; (3) CA as a framework for highlighting key public policy concerns; (4) thinking about individual behaviour and personal responsibility; (5) CA as an ‘end-focussed’ information base: applications in public services regulation, inspection and performance management. In addition, the chapter has highlighted the importance of rights-based approaches (including the idea of human rights) has been explored. Theoretical and empirical entry-points for rights-based approaches have been identified, and the need for new forms of bottom-up pressure and empowerment has been emphasised. New thinking about rights to outcomes (evident, for example, in the new Children, Schools and Families Bill) have been highlighted and the established role of the Human Rights Act, and the potential role of a new Bill of Rights, have been explored. The key recommendation is that the 2020 Commission draw on both the CA and rights-based approaches, using the ways suggested in order to develop a new model for public services.

Endnotes

- 1 The example of Ethel and Marie is taken from EHRC (2008).
- 2 For a recent examination of Sen’s contributions to a theory of justice see Brighouse and Robeyns (2010).
- 3 See for example, Sen (1999a), Drèze and Sen (1989, 2002) UNDP Human Development Reports 1993-2009), World Bank (2006).
- 4 See Arndt and Volkert (2007) for work on a new multidimensional poverty and wealth report in Germany and Alkire *et al.* (2009 Chapter 14) for a survey of recent international initiatives. For the Report of the Sarkozy Commission, see Stiglitz *et al.* 2009.
- 5 See endnote 2 for relevant references.
- 6 Sen (2002, 2005) distinguishes between the opportunity and process aspects of freedom. He contends that whilst many human rights can be viewed as capabilities, there are important limitations to this approach, and certain process rights cannot be adequately captured in the language of capabilities.
- 7 The use of the CA as a blueprint or a particular design for society is firmly rejected (2009: 232).
- 8 A capability-based understanding of equality satisfies many of the concerns expressed by participants in a consultation on equality undertaken by the Equalities Review. This includes concerns with inequalities associated with variations in the need and situations of individuals and groups, the importance of barriers and constraints; adaptive expectations and choices; respect for diversity; and the value of individual freedom. See Burchardt and Vizard (2007b) for further details.
- 9 Details of the Framework are set out in Alkire *et al.* (2009) and Burchardt *et al.* (2009).

- 10 This diagram draws Lagomarsino *et al.* (2009, table 1.3)
- 11 See endnote 3 for relevant references.
- 12 This example is taken from EHRC Briefing Note, available at http://sticerd.lse.ac.uk/textonly/case/research/equality/Briefing_Equality_Measurement_Framework.pdf
- 13 Sen's treatment of rights as goals and the notion of metarights (rights to policy outcomes) are also of relevance. See, for example, Sen (2005).
- 14 The EHRC is not using the Measurement Framework discussed in section 2 as a performance management framework. This section discusses how Government and other public bodies might apply the Measurement Framework as a basis for their own work.
- 15 In standard welfare economics, overall outcomes are often evaluated in terms of efficiency and equity (e.g. Barr 1993). The term equity is used in this paper in order to highlight the link with standard welfare economics but should not be taken to imply a recommendation to the Commission to focus on equity rather than equality.
- 16 The public duty is set out in Equality Act (2010) PART 11: ADVANCEMENT OF EQUALITY, CHAPTER 1, section 149. The full range of relevant protected characteristics are listed in paragraph 7 as age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. See Equality Act (2010) at http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100015_en.pdf accessed 14th April 2010.
- 17 PART 1: SOCIO-ECONOMIC INEQUALITIES (1) Public sector duty regarding socio-economic inequalities.
- 18 The JCHR (2010b; paras 16, 32, 29) highlighted the exclusion of those subject to immigration control from the socio-economic duty under the Equality Bill; called for a right to equality to be put on a constitutional footing; and emphasised the importance of judicial review. However, in line with its midway model for socio-economic, it did not go so far as to suggest that the new socio-economic duty should be directly enforceable by individuals. Rather, the role of judicial review was emphasised.
- 19 <http://www.publications.parliament.uk/pa/cm200809/cmbills/112/2009112.pdf>
- 20 Hosali (2010) notes that it was the intention of Parliament that a wide range of bodies performing public functions, including the delivery of public services, would fall within the section 6 HRA, both Home Secretary and Lord Chancellor made it clear that persons or bodies delivering privatised or contracted-out public services were intended to be brought within the scope of the Act by the "public function" provision HC Deb, 16 February 1998, col 773 (Home Secretary); HC Deb, 17 June 1998, cols 409-410, 433 (Home Secretary), HL Deb, 24 November 1997, col 800, 811 (Lord Chancellor).
- 21 For relevant jurisprudence and the closure of loopholes, see JCHR (2006) and Health and Social Care Act (2008): 145. Under the Health and Social Care Act, private and voluntary providers of public health and residential services are considered to be public authorities exercising "functions of a public nature" and as being bound by the provisions of the HRA. Candler and Hosali (2010) note that despite these advances state involvement (e.g. GP assessment or referral) remains necessary to trigger the protection of the HRA. Furthermore, gaps in protection including in relation to the transportation of individuals detained by the state by private security companies remain and organisations such as the British Institute for Human Rights are calling for this loophole to be closed. See BIHR (2010:5).
- 22 For reviews see Wadham *et al.* (2003), DCA (2006) and Donald *et al.* (2009).

- 23 A framework for delimiting the nature and scope of the positive duties under the ECHR was established in *Osman v UK* (1998). The ECHR reasoned that violations of the right to life can arise when (1) authorities know or ought to know about the presence of a real and immediate risk to the life of an identified individual or individuals from the criminal actions of a third party; and (2) authorities failed to take reasonable measures within the scope of their powers that might have been expected to avoid that risk.
- 24 *Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74
- 25 *Z and others v UK* ECHR 29392/95 2001
- 26 *Opuz v Turkey*, ECHR 33401/02 2009
- 27 The threshold for violation of Article 3 when the treatment in question did not involve the deliberate infliction of pain was, however, found to be high. Treatment was found to be inhuman or degrading “if, to a seriously detrimental extent, it denies the most basic needs of any human being”. See. *R v Secretary of State for the Home Department ex parte Limbuela* [2005] UKHL 66 [2006] 1 AC 396
- 28 *R (Bernard) v Enfield London Borough Council* (2003)
- 29 Cases cited in support of this argument in *Candler et al.* (2010: 17) include *A and others v East Sussex County Council and Another* (2003); *B v UK* (1983) and *R v North and East Devon Health Authority ex parte Coughlan* (1999).
- 30 *Klug and Wildbore* (2005) discuss this and related cases.
- 31 There is in fact an important link here with the capability approach and discussions about how constitutions can be important instruments for the protection and promotion of key capabilities. Sen’s treatment of the capability approach and human rights is discussed in section 1. The philosopher Martha Nussbaum, for example, views capabilities as “fundamental entitlements” that should be protected in all Constitutions and included among the fundamental purposes of social co-operation as objects of collective obligation at both the national and the international levels (2003, 2004: 13; 2006).
- 32 An important body of legal thought characterises positive duties as indeterminate, unenforceable and non-judicial. This position is challenged by legal thinking suggesting (1) civil and political rights involve resource allocations (2) economic and social rights can be made enforceable and justiciable through normative standard setting and jurisprudence. See *JCHR* (2004, 2008) for further discussion.
- 33 The classic framework for analysing rights in analytical jurisprudence relies on Hohfeld’s four basic rights-types (claims, liberties, powers and immunities) and their negations or opposites. For an up to logical treatment, see *Van Hees* (1995, 1996, 2010).
- 34 The analysis of consultation responses set out in (MOJ 2010: 14) highlights a list of responsibilities suggested by the Children’s Rights Director for England based on a survey of children’s views. These are: responsibility for your own behaviour and actions, to make use of your education, to show respect to others, to be responsible for your own safety, to look after others and yourself, to look after your health and hygiene, to give your opinion. Responsibility to take care of your own health, and a duty to participate in civil affairs, are also highlighted as having some support from participants in the consultation.

Conclusion – A Better Future?

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Public service policies have never been more committed to reducing damaging inequalities and promoting social cohesion. Changes in law and practice and considerable investment have all been directed at achieving more equal outcomes and better relationships between groups. As Zubaida Haque remarks in chapter one of this report, the extent of these changes has been ‘remarkable’. Yet despite unprecedented focus, and despite some real and valuable achievements in the face of formidable obstacles, the evidence presented in this report shows that services have generally struggled to make progress. As the country moves from a period of economic growth and buoyant tax revenues to one of slow growth and fiscal restraint, it seems unlikely that substantial further progress can be achieved using the same approaches (though the longer term impact of recently introduced public sector duties has yet to be seen).

The 2020 Public Services Trust believes that reform can unlock progress on some of the most entrenched inequalities if it redraws the parameters within which public services operate by including a wider set of resources and promoting a broader set of solutions. These will support and increase the scope for individual autonomy, which the Trust recognises as an intrinsic good, but also as instrumentally valuable in driving better outcomes and fairer treatment. The three fundamental shifts we propose – moving from social security to social productivity, moving power away from the centre, and reconnecting finance with purpose – can align public actions better with the outcomes we value as individuals and communities. Diversity of aims will be less problematic for community cohesion under a reformed system than it would under the current system. Today, service users are often invited to see themselves and others as consumers in receipt of – and in competition for – fixed and scarce resources. In the future, when people see themselves and others as agents and actors, individually or collaboratively expanding public value by generating new solutions, competitive animosities are likely to be reduced.

None of which should be taken to imply that reform will be straightforward or to deny the potentially negative impacts on equality and cohesion. The evidence gathered for this report makes it clear that reform carries risks, not all of which can be anticipated. A reformed system will be innately more unpredictable, innovative and various than the current arrangements. But where the risks are evident, mitigations can be introduced at the outset.

Choice in public services, including choice of supplier, or choice over how the service is delivered, may in some circumstances be facilitated by quasi-market mechanisms. But this is not the only value of choice. One of the strengths of Sen's capability approach, as described by Polly Vizard in chapter three, is that it situates the importance of choice in a human rights framework that values and protects individual autonomy and dignity rather than a narrowly consumerist context. This insists that real choice and substantive freedom is dependent in the first instance not on individual capacities, but on the nature of our social arrangements. In other words, there is a heavy onus on services to arrange their interactions with citizens so that everyone is able to make choices that convert their entitlements into valuable ends.

2020 public services will need to incorporate a number of approaches to ensure that the capacity for choice is encouraged and realised for all. Discussion groups conducted by Ipsos MORI for this report found strong support for the idea of specialist choice advice to help individuals to navigate public services and negotiate best value from them. The groups argued that this type of resource would be particularly useful to lower socio-economic groups and others who might be comparatively badly placed to understand their options and press their case.

No single model of support is likely to be effective in all circumstances, but work in several local authorities to develop more holistic and intensive advice and access programmes suggest how the process of realising choice could become extremely fruitful if developed as part of a shift in culture from social security to social productivity. For example, Life Coaches in Barnet are being designed to work with disadvantaged individuals and families in collaborative, rather than diagnostic or transactional relationships to identify personal strengths and aspirations. They would then help design simple experiences around individual budgets, act as service advocates and champions where necessary, and facilitate better relationships with informal sources of support

within family groups and communities. As either voluntary or paid advisors drawn from similar backgrounds to those they work with, Life Coaches could mobilise and stimulate previously untapped resources of empathy and practical resilience (Engine Group 2010). Alongside targeted support for individuals, reformed public services would also promote collaborative arrangements through which disadvantaged communities – of geography or interest – could make collective choices in pursuit of shared objectives. Potentially useful approaches include an expansion of neighbourhood level participatory budgeting, and mutualisation of local or specialist services to build in strong service user representation.

Active citizens who can shape services through voice and choice must be informed citizens. Misunderstanding about the levels and beneficiaries of social spending is currently widespread. This can damage the trust necessary to underpin social cohesion, and harden public attitudes to some disadvantaged groups. In 2002, for example, 71 per cent of the public believed that spending on benefits for the unemployed was the largest or second largest part of social security spending, whereas in reality it only made up a twentieth of the total (Hills 2004: 134). The Commission's belief in reconnecting finance with purpose responds to this lack of understanding. Information about spending and performance should be available in greater detail, in a more timely manner and in more comparable formats as a matter of course, not dependent on specific requests for disclosure. (The case is made in Alldritt *et al.* (2010), *Online or In-line.*) Bringing a capabilities approach to this accountability data – as exemplified by the Equality Measurement Framework – would ensure that disadvantaged groups or those advocating individually or collectively on their behalf would have powerful evidence of how their experience of services – and the benefits they derived from them – related to those of other citizens. In a reformed public service environment where choice and exit are more realistic opportunities for a wider number of people, such data will have the power to change behaviour and drive improvement.

As choice and exit cannot always be viable options, services also need to be held to account for their performance through 'voice' mechanisms, such as user representatives, external inspection, internal complaints mechanisms and ultimately legal challenge – none of which are new mechanisms, but each of which would take on new importance in a diversified system. As Polly Vizard points out in the case

of the NHS Constitution, rights-based governance mechanisms that reflect human rights values such as equal dignity and autonomy, and which focus on broadly defined outcomes, have already started to be introduced. These could provide important protections against unfair local variations across families of services. Internal complaints mechanisms would be the first level at which citizens could challenge practice or provision if they felt the outcome rights which they should enjoy were not being respected. With more comprehensive service data available as part of a reformed settlement, individuals – and potentially groups – will be better placed to identify grounds for challenging decisions or processes where these appear not to have taken proper account of equality in outcome, treatment or autonomy. It might be helpful to look at extending the role of choice advisors into advocacy during the complaints process to ensure that it is as accessible as possible.

Ultimately, the reforms envisaged by the Commission would lead away from directive or confrontational relationships between services and citizens, and towards collaborative models of working, where responsibilities are shared more evenly. Nevertheless, citizens' ability to legally challenge their services, on human rights or other grounds, should remain as a powerful incentive for service improvement. The incentive would be strengthened if the ability of disadvantaged citizens to take up their legal rights was enhanced by allowing class actions.

Taken together, improvements to information and advocacy, new outcome standards in governance, and more accessible complaint and redress mechanisms, would substantially mitigate the risk that disadvantaged groups would lose out under 2020 public services. However, one of the lessons of the last ten years is that if entrenched equality gaps are to be narrowed the scale of reform – and the allocation and distribution of resources supporting it – must be commensurate with the scale of the challenges and the force of countervailing pressures. For example, changes in the labour market internationally have blunted recent attempts at reducing income inequalities (Townsend 2009). The Commission's proposals lay down directions of reform that are capable of promoting cohesion and reducing inequality more efficiently, more democratically, and more sustainably than current arrangements, but they do not prescribe their level of ambition. Individual Budgets, for example, could be tight or generous; choice advisors could be plentiful with small

case-loads, or thinly provided and over-stretched. 2020's directions of reform do not – beyond human rights standards – fix a level of inequalities that is tolerable or intolerable. It is for the public and its politicians to decide the type of society they want to be part of. Minimally resourced and weakly led, reform at a time of austerity might only succeed in maintaining the position of disadvantaged communities. Boldly resourced and strongly led, 2020 reform could be transformative.

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