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The Impact of the Public Sector Equality Duties on Higher Education: A
Case Study.

Submitted for the Degree of Doctor of Philosophy
At the University of Northampton

2013

Melanie Crofts

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proper acknowledgement.

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Abstract

The Public Sector Equality Duties (PSEDs) are a radical development in anti-discrimination legislation due to the emphasis on the need for public authorities to be proactive in order to address institutional discrimination. They require public authorities to take a substantive approach to equality by removing institutional barriers and focussing on equality outcomes. The aim of this thesis is to consider the implementation and impact of this innovative legislative approach to equality, with specific attention given to race and disability within a Higher Education Institution (HEI).

It is demonstrated that senior management are not sympathetic to the substantive equality approach which is required by the PSEDs and instead operate with a formal understanding of equality. In addition, as the external pressures on Higher Education Institutions to comply with the legal requirements diminish over time, the processes established to deal with equality as well as legal compliance within the case study institution have weakened. As a consequence, there is a gap between what the law requires and what is happening in practice. At the same time, the experiences of Black and Minority Ethnic (BME) and disabled staff and students indicate that they are still experiencing significant disadvantage within the case study institution. As well as enduring individual instances of discrimination, broader institutional barriers are also evident. An institutional response to address the disadvantage, which is required by the PSEDs, is not visible. It is surmised that this is due to the adoption of the fairness as opposed to a substantive approach to equality.

Critical Race Theory (CRT) is employed in order to provide an explanation for the findings within the case study institution. Although it can be used to help account for the data in relation to race, there are limitations in terms of its application to the data regarding disability. CRT acknowledges the intersections between race and other forms of oppression, such as disability, although its focus is still on race as the primary factor for oppression. However, some of the key concepts utilised by Critical Race theorists, such as contradiction closing cases and interest convergence, can also be usefully applied to the data relating to disability.

Abbreviations

ASC	Academic Strategy Committee
BCODP	British Council of Disabled People
BME	Black and Minority Ethnic
BNA 1948	British Nationality Act 1948
BNA 1981	British Nationality Act 1981
CAB	Citizens Advice Bureau
CARD	Campaign Against Racial Discrimination
CIA 1962	Commonwealth Immigrants Act 1962
CIA 1968	Commonwealth Immigrants Act 1968
CLS	Critical Legal Studies
CRE	Commission for Racial Equality
CRT	Critical Race Theory
DA 1990	Disabilities Act 1990
DDA 1995	Disability Discrimination Act 1995
DDA 2005	Disability Discrimination Act 2005
Dis/Crit	Dis/ability Critical Race Theory
DLA	Discrimination Law Association
DP(E)A 1944	Disabled Persons (Employment) Act 1944
DRC	Disability Rights Commission
DSA	Disabled Students' Allowance
EA 2010	Equality Act 2010
EAC	Equality Action Committee
EC	Equality Committee
ECHR	Convention for the Protection of Human Rights & Fundamental Freedoms
ECJ	European Court of Justice
EDO	Equality and Diversity Officer
EHRC	Equality and Human Rights Commission
EIA/s	Equality Impact Assessment/s
EOC	Equal Opportunities Commission
EPA 1970	Equal Pay Act 1970
EU	European Union
EWG	Equality Working Group
FEA 1976	Fair Employment (Northern Ireland) Act 1976
FEA 1989	Fair Employment (Northern Ireland) Act 1989
GFA 1998	Good Friday (Belfast) Agreement 1998
HEFC,E,W,S	Higher Education Funding Council for, England, Wales, Scotland
HEI/s	Higher Education Institution/s
HoF	Head of Faculty

HRA 1998	Human Rights Act 1998
HRGC	Human Resources and Governance Committee
IA 1971	Immigration Act 1971
IA 1988	Immigration Act 1988
JCNC	Joint Consultative Negotiation Committee
LEA	Local Education Authority
NIA 1998	Northern Ireland Act 1998
NREC	Northamptonshire Rights and Equality Council
NSS	National Student Survey
NUS	National Union of Students
OFSTED	Office for Standards in Education, Children's Services & Skills
PATF	Policy Appraisal and Fair Treatment
PD	Personnel Director
PM	Personnel Manager
PSED/s	Public Sector Equality Duty/ies
PVC	Pro Vice Chancellor
QAA	Quality Assurance Agency
RR(A)A 2000	Race Relations (Amendment) Act 2000
RRA 1965	Race Relations Act 1965
RRA 1968	Race Relations Act 1968
RRA 1976	Race Relations Act 1976
SACHR	Standing Advisory Commission on Human Rights
SDA 1975	Sex Discrimination Act 1975
SEC	Student Experience Committee
SENDA 2001	Special Educational Needs and Disability Act 2001
UCU	University and College Union
UK	United Kingdom
UO	Union Official
UPIAS	Union of Physically Impaired Against Segregation
VC	Vice Chancellor
VOADL	Voluntary Organisations for Anti-Discrimination Legislation

Chapter 1: Introduction

The PSED was first introduced in Britain¹ under the Race Relations (Amendment) Act 2000 (RR(A)A 2000)² and was later extended to include gender³ and disability.⁴ The Equality Act 2010 (EA 2010) extended the duties further to bring sexual orientation, age and religion and belief within its scope.⁵ The PSEDs were modelled on the approach which had been introduced in Northern Ireland after the Good Friday (Belfast) Agreement 1998 (GFA 1998) in the form of s75 Northern Ireland Act 1998 (NIA 1998). This required public authorities to have 'due regard' to the need to promote equality of opportunity 'between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally, between persons with a disability and persons without and between persons with dependants and persons without.'⁶

Until the introduction of the RR(A)A 2000 anti-discrimination legislation in Britain focussed on the prohibition of certain behaviour which relied on individuals taking complaints of discrimination to court.⁷ Fredman and Spencer note that the after the introduction of the NIA 1998 the 'proactive model' approach to equality in Northern Ireland 'has gathered increasing momentum in Britain'⁸ The reason for the PSEDs being regarded as 'proactive' is that they required a different approach to equality. Public authorities are under a duty to *actively promote* equality and to remove any barriers within their organisations in order to address institutional forms of discrimination.⁹ The

¹ England, Wales and Scotland. Northern Ireland have separate provisions.

² Race Relations (Amendment) Act 2000 s2

³ Equality Act 2006 s84

⁴ Disability Discrimination Act 2005 s3

⁵ Equality Act 2010 s149

⁶ Northern Ireland Act 1998 s75(1)(a) – (d)

⁷ Hepple, B et al (2000) 'Equality: A New Framework; Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation' Hart Para 1.2

⁸ Fredman, S and Spencer, S (2006) 'Delivering Equality: Towards an Outcome Focused Positive Duty' Submission to the Cabinet Office Equality Review and the Discrimination Law Review p1

⁹ Institutional Racism (which is applied to discrimination more broadly) was defined in the Macpherson Report as: "[t]he collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people" Macpherson, Sir William (1999) 'The Inquiry into the Matters Arising from the Death of Stephen Lawrence' CM4262-1 <http://www.archive.official-documents.co.uk/document/cm42/4262/sli-pre.htm> (accessed 12/01/10) Para. 6.34

PSEDs have therefore been described as "...an innovative and potentially transformative approach to policy making."¹⁰ It is in the context of this innovative approach to anti-discrimination legislation which this research is set. The title for this thesis is: 'The Impact of the Public Sector Equality Duties on Higher Education: A Case Study.' The overall aim is to consider whether and how the PSEDs with regards to race and disability are implemented within higher education, focussing on one particular institution.

In order to be able to investigate this area, a number of specific research questions will need to be considered:

- How do different social actors within a specific case study perceive and understand the legislative requirements?
- What have been the experiences of disabled and BME staff and students within a case study setting?
- Have the PSEDs been translated into practice within a case study setting?

A case study approach has been adopted because the intention of this research is to focus on one institution over a given period of time. This allows for an in depth consideration of the implementation of the PSEDs in order to observe changes in policy and practice. A case study format also means that various social actors can be interviewed to gain in depth and rich data regarding the perceptions of the law and the experiences of staff and students at the institution. Although it is appreciated that it is difficult to generalise from the findings of this research and apply them to all HEIs, it is submitted that the conclusions which will be drawn are not out of line with the limited research which has been conducted in the area of equality within higher education. Therefore it is suggested that 'fuzzy generalisations'¹¹ will be possible and that the findings will resonate in other HEIs.¹²

¹⁰ Donaghy, T.B. (2003) 'Mainstreaming: Northern Ireland's Participative-Democratic Approach' Centre for Advancement of Women in Politics School of Politics, Queens University Belfast Occasional Paper #2 p2

¹¹ Basse, M (1999) 'Case Study Research in Educational Settings' OUP p52

¹² See Chapter 4 – Methodology for more regarding the use of case studies and 'fuzzy generalisations'

The focus of this thesis is distinctive in that it is an under-researched area of enquiry. Little has been written on equality in higher education generally, and in particular there does not appear to be any research looking into the translation of the PSEDs into practice with higher education. There has been some research looking at the production and effectiveness of equality policies within HEIs, but this research has not considered compliance with the law.¹³ The primary aim of this research is to consider the implementation of the PSEDs and equality legislation in order to assess the perceptions of and compliance with the law within a given context. This element makes this research distinctive as very little, if any, literature considers the gap between the law and practice. It was suggested by the Nuffield Inquiry on Empirical Legal Research that, “[w]hat is missing is... studies of how legal processes, outcomes and structures actually are in the ‘real world.’”¹⁴ The significance of this research is therefore in its consideration of the impact of the law in a ‘real world’ setting.

In order to be able to assess the impact of the PSEDs within a case study HEI it will be necessary to take an interdisciplinary approach. This means that both legal¹⁵ and sociological approaches and methods¹⁶ will be used in order to collect qualitative data¹⁷ from the case study institution and analyse it. Historically legal research has been primarily doctrinal in nature, although empirical legal research has been on the increase, particularly over the last 30 or 40 years.¹⁸ This inter-disciplinary approach was adopted as it was felt that a primarily legal or doctrinal approach would not effectively shed light on the way the law was translated into practice in a higher education context. Conversely, purely, sociological approaches have not, in general, been

¹³Deem, R, Morley, L and Tlili, A (2005) ‘Equal Opportunities and Diversity for Staff in Higher Education: Negotiating Equity in Higher Education Institutions’ Report to HEFCE, SHEFC, HEFCW; Neal, S (1998) ‘The Making of Equal Opportunities Policies in Universities’ Society for Research into Higher Education and OUP; Ahmed, S (2007) ‘You end up Doing the Document rather than Doing the Doing: Diversity, Race Equality and the Politics of Documentation’ *Ethnic and Racial Studies* Vol. 30 No. 4 pp590 - 609

¹⁴ Glenn, H. Partington, M. and Wheeler, S. (2006) ‘Law in the Real World: Improving our Understanding of How Law Works, Final Report and Recommendations’ www.ucl.ac.uk/laws/inquiry_p1 (accessed 01/04/08) p46

¹⁵ Gap Studies and Impact Studies – see Chapter 4 Methodology

¹⁶ Interpretivism and Critical Race Theory - see Chapter 4 Methodology

¹⁷ Interviews and document analysis - see Chapter 4 Methodology

¹⁸ Glenn, H. Partington, M. and Wheeler, S. (2006) op cit. p1

interested in the “law or legal structures...”¹⁹ It is therefore contended that an approach which combines these disciplines is not only unusual, but also means that it will be better placed to consider how the law has been implemented in practice within a given case study.

In addition, the focus of this research is not just on one protected characteristic, but two, namely race and disability. This comparative element is rarely found in research, as often the focus is on either one or the other or on equality generally.²⁰ Similarly, the voice of a number of different social actors within the case study is explored. The views of management, staff and students are sought. This is very rarely done and so the focus is broader than much of the available literature, which usually looks at either staff or students.²¹ One distinguishing feature of this research is the attention given to the voice of management and their perceptions in relation to the PSEDs and equality law more generally.

This research is also not merely based on the perspectives of social actors within the case study setting, but will also contain a document analysis which will:

- a) consider whether the perceptions which are expressed by the various social actors are reflected in the official documentation within the case study and;
- b) explore how the PSEDs and equality are dealt with in the case study institution over a given period of time.

Once again, this is distinctive to research in the field of equality which is usually either an analysis of documents relating to equality (mostly equality policies as stated previously), or primarily based on views and perceptions of a particular group with a specific protected characteristic.²²

The overall structure of this research will be in two parts. Firstly the development of the law relating to the PSEDs in relation to race and disability

¹⁹ Ibid, p10

²⁰ See Chapter 3

²¹ See Chapter 3

²² See Chapter 3

will be explained as well as a consideration of the higher education context more broadly. Secondly, a case study approach will be adopted in order to look at how the PSEDs have been applied in practice, with a specific focus on race and disability, within a particular HEI. Specifically, each chapter will cover the following:

Chapter 2 – The Development of and Factors Influencing Race and Disability Discrimination Law:

The purpose of this chapter will be to ascertain the context behind the development of anti-discrimination laws, particularly race and disability discrimination law, leading up to the introduction of the PSEDs. It will be necessary to outline the historical development of the law in order to establish the unique features of the PSEDs. There have also been suggestions that for the PSEDs to be successful the impetus has to come from affected and interested parties.²³ Consideration will therefore be had of how far grass roots organisations have driven the equality agenda forward in Britain. It will be argued that 'top down' influences have been paramount in pushing the legislation forward, with the driving force coming from political parties and influential individuals. Some of the top down pressures, such as the need for political will to propel the equality agenda forward, have proven to be more significant than others.

Chapter 3 – Equality in Context - the Higher Education Experience:

This chapter will focus on evaluating the literature in relation to two aspects of equality in higher education. Firstly, the literature regarding the change in HE policies over time and the principle pressures on HEIs to comply with the PSEDs will be discussed focussing on areas such as the role of the Funding Councils, the Widening Participation agenda, Equal Opportunities and the role of management. It will be argued that the pressures on HEIs have not been very effective in ensuring that equality is promoted, particularly when it comes to race. There have been some pressures on HEIs to introduce more inclusive

²³ Booth, C and Bennett, C (2002) 'Gender Mainstreaming in the European Union – Towards a New Conception and Practice of Equal Opportunities' *The European Journal of Women's Studies* Vol. 9 No.4 pp430 - 44 at p437

policies and practices with regards to disability, but this has primarily been in relation to students.

Secondly, the literature relating to the experiences of BME and disabled staff and students will be highlighted. It will be shown that the limited research in this area demonstrates that there is on-going disadvantage experienced by these groups in higher education. Alongside indications that there are limited, if any, pressures which are focussed on eliminating this disadvantage, the literature seems to point to the possibility that the PSEDs are not having the intended impact in higher education. This leads into the findings chapters of this thesis which will aim to test this assertion with one particular institution.

Chapter 4 - Methodology:

The methodology chapter of this thesis will set out the conceptual and theoretical framework in which this research is situated. An explanation will be provided of the theoretical approaches adopted, those being Interpretivism, Gap and Impact Studies and Critical Race Theory (CRT). The empirical methods of data collection and analysis will also be justified. The reasons for the case study approach and the qualitative methods of semi-structured interviews and document analysis will be explained alongside a measured appraisal of the ethical problems and the advantages and disadvantages of the methods employed in this research.

Chapter 5 – The Case Study Experience – The Perceptions of Social Actors:

The focus of this chapter will be to explore the perspectives of various social actors within a case study setting. The aim will be to demonstrate that management are not sympathetic to the institutional approach which is necessary to comply with the PSEDs. Management understanding of equality is along formal lines and is therefore at odds with the requirement of a substantive equality approach which is necessary in order to adhere to the legislative requirements.

In addition, it will be shown that, with some qualifications, the experiences of BME and disabled staff and students indicate that these groups are facing significant disadvantages and barriers which are not addressed by the case study institution. It will be suggested that the PSEDs are not being adequately

implemented and this is due to the formal equality stance adopted by senior management.

Chapter 6 – Equality in Context - the Case Study Experience – Legislative Compliance and Equality Processes:

The focus of this chapter will be two fold. Firstly there will be a consideration of the documentation produced by the case study institution and an analysis will be conducted of the case study institutions' Equality Scheme and Action Plan, the publication of equality data (particularly in relation to staff) and documents relating to Equality Impact Assessments (EIAs), focussing on the EIA of the admissions policy. This will be done in order to assess compliance with the legislative requirements. Secondly, there will be an examination of the processes within the case study institution which have been introduced to deal with equality. It will be necessary to reflect on whether these processes are sufficient in ensuring oversight and adherence to the law. This chapter will allow for a consideration of the implementation of the PSEDs over a period of time within the case study institution which will allow for an analysis of the impact of any changes which may have occurred.

Chapter 7 - Conclusions:

The final chapter will draw conclusions in relation to the implementation and interpretation of the law in practice within the case study institution. CRT will be examined in order to establish whether it can help to explain the findings noted at the case study institution. Finally, the policy implications arising from this research will be highlighted.

Overall, the conclusion which will be made is that there is a gap between what the law requires in relation to compliance with the PSEDs and what is happening in practice at the case study institution. The reason for this gap is that managers, and those tasked with implementing the law at the case study institution, tend to favour a formal or fairness model of equality, rather than adopting the more progressive or substantive view which is needed in order to fulfil the requirements of the PSEDs. In addition, the processes to deal with equality are slowly eroded over time and the impact of this, alongside the interpretation of equality, is that institutional discrimination experienced by BME and disabled staff and students is not addressed. However, although this

generalisation can be made in the context of the case study institution, there are some subtle differences between the experiences of staff and students with visible and non-visible disabilities as well as differences in the experiences of disabled and BME staff and students. CRT can be used to account for the data in relation to race. However, there are limitations in terms of its application to the data regarding disability. CRT acknowledges the intersections between race and other forms of oppression, such as disability, although its principal focus is still on race as the primary factor for oppression. CRT offers some useful concepts, such as contradiction closing cases and interest convergence, which help to provide an explanation for the erosion of processes and the interpretation which is given of equality by management at the case study institution. These concepts can also be usefully applied to the data relating to disability.

Chapter 2: The Development of and Factors Influencing Race and Disability Discrimination Law in Britain.

The aim of this chapter is to provide an overview of the development of and various principal influences on the passing of British anti-discrimination legislation, whether bottom up (for example, social phenomena) or top down (for example, Government/politically initiated). It is recognised that it is not necessarily easy to identify whether influences are bottom up or top down and it may be more complex than presented here, with influences having both bottom up and top down elements. However, for the purposes of this chapter this typology and distinction will be used to present material in a logical and organised way and to aid understanding of the primary issues. This chapter will focus primarily on the influences leading up to the passing of the RR(A)A 2000 and the EA 2010. The significance of concentrating on the lead up to these pieces of legislation is that the RR(A)A 2000 was the first piece of legislation which introduced the concept of PSEDs into British Law. The EA 2010 is the latest piece of equality legislation which seeks to clarify and consolidate²⁴ all previous equality provisions, including the statutory duties for race and disability.

Equality laws have not been passed in isolation, there are specific historical, socio-economic and political forces driving the advancement of the law and the purpose of focussing on the development of and the influences on the law is to demonstrate why the PSEDs are so significant and distinctive. In order to do this it will be necessary to show how and why the law relating to race and disability equality has developed, leading up to the inception of the PSEDs. The focus of this chapter will be on the development of the law, rather than focussing specifically on the socio-economic factors. The primary aim is to demonstrate the development of the law, the problems which have been associated with it, and then to highlight how things have changed in order to try and address the problems identified. Lester and Bindman emphasised that in order to understand why legislation takes the form that it does, it is

²⁴ Monaghan, K (2009) 'The Equality Bill: A Sheep in Wolf's Clothing or Something More?' *European Human Rights Law Review* Vol. 4 pp512 – 537 at p512

necessary to consider the processes and background to the present law.²⁵ Therefore the influences/catalysts relating to anti-discrimination legislation, particularly in the context of race and disability legislation, in Britain need to be fully appreciated and understood before a constructive analysis of the 'law in action,'²⁶ with regards to the PSEDs in higher education, can be made.

Some of the influences pushing forward the development of British anti-discrimination provisions have been summarised as "powerful economic and social trends, buttressed by visionary political leadership, and by determined campaigning from those most affected and their supporters."²⁷ In other words, it has been contended that both bottom up *and* top down factors have influenced the development of the law in this area. It should be noted that it is recognised that European Union (EU) Law, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and to a lesser extent, International Law, have influenced, and specifically in the case of EU Law, been the source of, UK anti-discrimination law.²⁸ The 'multi-layered'²⁹ nature of UK law should not be ignored and the influence of EU law in particular is not to be underestimated. EU law has had the most significant influence on gender equality legislation.³⁰ The decisions of the European Court of Justice (ECJ) impacted primarily on the area of gender as this was the original scope of the EU provisions on discrimination.³¹ However, more recently EU law has played a primary role in introducing protection for additional strands not covered by domestic legislation, namely religion and belief, age and sexual orientation.³² Although it is recognised that EU law relating to gender and the decisions of the ECJ which have followed have had some influence in the

²⁵ Lester, A and Bindman, G (1972) 'Race and Law' Penguin Books p107

²⁶ Lange, B (2005) 'Researching Discourse and Behaviour as Elements of Law in Action' in Banakar, R and Travers, M (2005) 'Theory and Method in Socio-Legal Research' Hart. See Chapter 4 – Methodology for more detail regarding the law in action.

²⁷ Equalities Review (2007) 'Fairness and Freedom: The Final Report of the Equalities Review' www.theequalitiesreview.org.uk (accessed 15/11/09) p29

²⁸ Bamforth, N et al (2008) 'Discrimination Law: Theory and Context' Sweet and Maxwell p43, Gijzen, M (2006) 'Selected Issues in Equal Treatment Law: A Multi-layered Comparison of European, English and Dutch Law' Metro

²⁹ Bamforth, N et al (2008) op cit. p43

³⁰ Particularly initially in the area of equal pay under Article 141(1) of the EC Treaty

³¹ Dickins, L (2007) 'The Road is Long: Thirty Years of Equality Legislation in Britain' *British Journal of Industrial Relations* Vol. 45 No. 3 pp463 - 494 at p466

³² Council Directive No. 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation and applies to age, religion or belief, disability and sexual orientation.

shaping of UK law relating to race and disability, due to the EU's limited influence on UK law relating to race and disability, its prevalence in this chapter will be limited.

The first significant domestic anti-race discrimination legislative advances were made in the 1960s and this was also the time period where the disability movement for equal rights started to make some inroads.³³ Therefore, it will be necessary to briefly consider the development of, and some of the issues which, have influenced the domestic legislative advancements from this time onwards as it may be argued that the *influences* leading to the 1976 Race Relations Act (RRA 1976) and the Disability Discrimination Act 1995 (DDA 1995) in fact began in the 1960s.

Generally speaking it has been noted that "the development of equality and anti-discrimination law in Britain has taken place in fits and starts."³⁴ It is for this reason that many commentators³⁵ have remarked on the complexity, inconsistent and inadequate nature of British anti-discrimination legislation.³⁶ Gijzen observes that this situation has developed due to the evolution of the legislation which has been piecemeal and characterised by the lack of strategic direction.³⁷ It has been suggested that although piecemeal in nature and with fundamental differences between them, the development of the law in Britain can be seen to have advanced in broadly defined stages or a "generational" development, with the legal framework currently sitting within the fourth generation.³⁸ The term 'generation' will be used in this context as a heuristic tool and not to signify a purposeful evolution or inevitability in the development of the law. Rather this language will be used to indicate the relationship between the pieces of legislation, but also, significantly, to highlight the differences between them.

³³ Barnes, C (1992) 'Institutional Discrimination against Disabled People and the Campaign for Anti-Discrimination Legislation' *Critical Social Policy Vol. 12* pp5 – 22 at p16

³⁴ O'Conneide, (2006) 'Fumbling Towards Coherence: The Slow Evolution of Equality and Anti-Discrimination Law in Britain' *Northern Ireland Legal Quarterly Vol. 57 No. 1* pp57-101 at p1

³⁵ See for example Feldman, D (2002) 'Civil Liberties and Human Rights in England and Wales' OUP p146; Gijzen, M (2006) op cit. p45 and Bamforth et al (2008) op cit. p43.

³⁶ Hepple, B et al (2000) op cit. Para 1.1

³⁷ Gijzen, M (2006) op cit. p45

³⁸ Hepple, B et al (2000) op cit. Paras 1.2 – 1.7

The primary characteristic of the first³⁹, second⁴⁰ and third⁴¹ generation of anti-discrimination legislation was “a negative prohibition on discrimination,”⁴² the prohibition of certain behaviour by providing redress to those adversely affected by this behaviour.⁴³ What distinguishes these generations of legislation are the systems of redress provided in each, with the first generation involving primarily criminal sanctions, second generation private law remedies and the third generation a mixture of private and public, along with redress for indirect discrimination.⁴⁴ As the shortcomings of the previous generation of legislation came to the fore, so the next generation of legislation developed as an attempt to address some of the inadequacies of the previous generation. Therefore, it was the developing legal concepts (such as indirect discrimination and the PSEDs) as well as the methods of restitution contained within the legislation, which defined the generations. Using the analogy of ‘generations’ neatly reflects the differences and the development of the legal concepts within equality law and has been described as such by lawyers and academics, such as Hepple.⁴⁵

Notions of Equality

It is at this point that it is useful to have a further, brief, explanation⁴⁶ of the different notions of equality. Conceptual distinctions will be drawn in order to provide clarification. However, it must be noted that in practice these distinctions are often not drawn in these terms. The concepts of equality will then be discussed in the context of the legal provisions as set out in British law and there will be a short discussion regarding how far the law should be concerned with influencing equality outcomes.

³⁹ Race Relations Act 1965

⁴⁰ Race Relations Act 1968

⁴¹ Race Relations Act 1976

⁴² Hepple, B et al (2000) op cit. Para 1.2

⁴³ McLaughlin, E (2007) ‘From Negative to Positive Equality Duties: The Development and Constitutionalisation of Equality Provisions in the UK’ *Social Policy and Society* Vol. 6 No. 1 pp111 – 121 at p112

⁴⁴ Bamforth et al (2008) op cit. p45

⁴⁵ Hepple, B et al (2000) op cit.

⁴⁶ For a more detailed expositions and discussions of the meaning of equality see for example; Fredman, S (2011) ‘Discrimination Law’ 2nd Edition OUP, Bamforth, N (2004) ‘Conceptions of Anti-Discrimination Law’ *Oxford Journal of Legal Studies* Vol. 24 pp693, Morris, A (1995) ‘The Normative Foundations of Indirect Discrimination Law: Understanding Competing Models of Discrimination Law as Aristotelian Forms of Justice’ *Oxford Journal of Legal Studies* Vol.15 pp199, Fredman, S (2001) ‘Equality: A New Generation?’ *Industrial Law Journal* Vol. 30 pp145, Knight, C (2009) ‘Describing Equality’ *Law and Philosophy* pp327

The first approach which will be highlighted is that of formal equality or equality of treatment. This is based on the principle that one should “treat like cases as like.”⁴⁷ This concept appears to be straight forward, until one considers the question of how does one determine what is ‘like’? It requires the comparison of the qualities of two or more people in order to establish that they should be treated alike. An extension of formal equality is proportional equality. This recognises that treating people identically is not always just and therefore “it treats all relevant persons in relation to their due.”⁴⁸ However, this concept also has its limitations as the question arises, who determines what a person is ‘due’ and what criteria is used?

Fredman has emphasised that the concept of formal equality does not take into account existing distributions of wealth and power.⁴⁹ Two people may appear to be ‘like’ in certain respects or may be allocated their ‘due’ based on merit, until there is consideration of their access to power and wealth, educational opportunities and so forth. Therefore treating them the same, even when taking into consideration issues of merit and ability, would lead to unequal outcomes. In addition, when it comes to legislating against discrimination on the basis of formal equality, decisions have to be made regarding what sort of distinctions or characteristics should be taken into consideration.⁵⁰

The second approach is that of equality of opportunity. There are two views with regards to how equality of opportunity can work in practice. The first is procedural and the second is substantive. The procedural view focusses on the removal of barriers to allow disadvantaged groups equality of access. However, this does not guarantee that disadvantaged groups will be able to take advantage of the newly created opportunities available to them due to wider structural and societal barriers. The more substantive approach requires “measures to be taken to ensure that persons from all sections of society have a genuinely equal chance of satisfying the criteria for access to a particular

⁴⁷ Aristotle ‘Nicomachean Ethics’ V3 1131a110-b15

⁴⁸ Gosepath, S (2007) ‘Equality’ Stanford Encyclopedia of Philosophy <http://plato.stanford.edu/entries/equality/> (accessed 26/04/14)

⁴⁹ Fredman, S (2011) ‘Discrimination Law’ 2nd Edition OUP p2

⁵⁰ Fredman, S (2011) op cit. p9

social good.”⁵¹ This may require positive action initiatives to be undertaken to be able to facilitate such access. Formal equality and procedural equality of opportunity have both been associated with a liberal interpretation of equality.⁵² This is because both approaches focus on the treatment of individuals. The substantive equality of opportunity approach can be said to be a more radical interpretation of equality as it requires that there be consideration of removing barriers for groups of disadvantaged people, as opposed to merely individuals. However, none of these perspectives on equality require there to be a consideration of equality of outcomes.⁵³

The third approach is that of equality of results. This attempts to address some of the shortcomings of formal equality. Focus is placed, as the name suggests, on ensuring results are equal by “achieving a fairer distribution of benefits.”⁵⁴ Equality of results can be considered in three ways. Firstly, one can consider the impact of detrimental or discriminatory behaviour on the individual, focussing on providing a remedy for such treatment.⁵⁵ Secondly, equality of results could focus not on providing a remedy for an individual, but rather one could make a presumption that discrimination exists by considering whether or not there is an equal distribution of a particular group within a specific context. For example, if there is not a fair distribution of women within a particular work place, there may be a presumption of discrimination, unless it can be shown that there is no exclusionary criteria being applied and that there are fewer women due to other factors.⁵⁶ “...the presumption of equality requires that everyone, regardless of differences, should get an equal share in the distribution unless certain types of difference are relevant and justify, through universally acceptable reasons, unequal distribution.”⁵⁷ The third type of equality of results concentrates on the distribution of a particular group and considers whether this distribution is reflective of, for example, the

⁵¹ Fredman, S (2011) op cit. p19

⁵² See for example Castagno, AE (2009) ‘Commonsense Understandings of Equality and Social Change: a Critical Race Theory Analysis of Liberalism at Spruce Middle School’ *International Journal of Qualitative Studies in Education* Vol. 22 No. 6 pp755 – 768

⁵³ Barnard, C and Hepple, B (2000) ‘Substantive Equality’ *Cambridge Law Journal* Vol. 59 No. 3 pp562-585 at pp562 - 563

⁵⁴ Fredman, S (2011) op cit. p14

⁵⁵ Fredman, S (2011) op cit. p14

⁵⁶ Fredman, S (2011) op cit. p15

⁵⁷ Gosepath, S (2007) op cit.

workplace or the population as a whole. The fact that there is underrepresentation is, in itself, regarded as discriminatory and justifies action, which may include treating the underrepresented group more favourably.⁵⁸

One of the main limitations of the equality of results approach is that it does not require a reconsideration of structures and practices which are discriminatory. Equality of results can be achieved by what Fredman terms as adopting an "assimilationist policy."⁵⁹ Similarly, Critical Race Theorists have also highlighted that equality of results can be achieved by underrepresented groups adopting a 'working identity.' In other words, equality of results is not achieved by removing discriminatory barriers, but merely by underrepresented groups conforming to the majority 'norm.'⁶⁰

The fourth approach has been described in philosophical terms as moral equality. This is the idea of "...equal respect for all persons and of the equal worth or equal dignity of all human beings."⁶¹ Equality based on the principle of dignity means that people who are disadvantaged should have their positions enhanced, rather than people who are in privileged positions having their positions 'levelled down', which is a danger with the previous approaches to equality. There are however, still problems with this approach. The first is in establishing the meaning of 'dignity'. Different interpretations will undoubtedly lead to inconsistency and may even lead to opposite consequences.⁶² In addition, commentators such as Hepple have highlighted that the concept of dignity can sometimes conflict with other important principles, such as liberty and autonomy. What happens if an individual wishes to act in a way which does not conform to the State's view of dignity?⁶³

The final perspective relating to equality which will be highlighted here is that of substantive equality. Substantive equality encompasses elements of all the

⁵⁸ Fredman, S (2011) op cit. p15

⁵⁹ Fredman, S (2011) op cit. p16

⁶⁰ Parker, L (2014) 'Understanding Race Equality in Education: Now and in the Future' Seminar held 24th March 2014 at [Centre for Research on Race and Education](#) Birmingham University

⁶¹ Gosepath, S (2007) op cit.

⁶² Fredman, S (2011) op cit. p23

⁶³ Hepple, B (2008) 'The Aims of Equality Law' *Current Legal Problems* Vol. 61 No. 1 pp1 – 22 at p11

various perspectives on equality which have been highlighted so far. However, it also requires a consideration of the historical and embedded disadvantage that certain groups have faced, and recognises that even where a group is given the same opportunities as others, due to the embedded and historical disadvantage and deep rooted barriers, there may still be discrimination when one considers the outcomes. Merely giving someone the opportunities does not mean they will be able to take advantage of them. Substantive equality requires consideration of outcomes of policies and practices.⁶⁴ However, the aim is to go further, to accommodate difference by not requiring minorities or disadvantaged groups to conform to the standards of the majority but to bring about structural change to accommodate such difference and to encourage full participation in political and social spheres within society.⁶⁵

In relation to aligning notions of equality with legal concepts, formal equality has been reflected in British anti-discrimination law in the form of a prohibition on direct discrimination, which routinely underpinned both the first and second generation of equality legislation.⁶⁶ "Direct discrimination is... the formalistic idea that likes should be treated alike, or, at any rate, not treated dissimilarly on grounds of a protected characteristic."⁶⁷ The formal equality stance was later supplemented by a more radical interpretation of equality of opportunity. This is addressed by the British law relating to indirect discrimination, a defining feature of the third generation.⁶⁸ The aim of the provisions on indirect discrimination are to attempt to remove what appear to be neutral policies or practices, but which have the effect of discriminating against a particular group based on the protected characteristics as covered by law. In effect, removing discriminating policies or practices should improve equality of opportunity and remove the barriers prohibiting such equality of opportunity. Indirect discrimination may also have an impact in terms of the equality of

⁶⁴ Castagno, AE (2009) op cit. p761

⁶⁵ Fredman, S (2011) op cit. p25

⁶⁶ Equality Act 2010 s13 (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

⁶⁷ Forshaw, S and Pilgerstorfer, M (2008) 'Direct and Indirect Discrimination: is there something in between?' *Industrial Law Journal* Vol. 37 No. 4 pp347 – 364 at p348

⁶⁸ See Appendix 1 for the definition of indirect discrimination under the Equality Act 2010

results.⁶⁹ It might be argued that the third generation of equality law takes a more radical approach, rather than merely a procedural approach to equality of opportunity as the provisions allowing the use of positive action initiatives⁷⁰ and focusses on removing barriers for groups.

Finally, the fourth generation of equality legislation, in the form of the PSEDs, was born. This legislative approach adopts an even more radical understanding of equality and is based on the concept of substantive equality. This idea of equality goes further than requiring that people be treated equally or to try and remove certain barriers so that people are able to have the same opportunities. It goes beyond merely prohibiting discriminatory behaviour. "The recognition of the limits of both direct and indirect discrimination⁷¹ has led law-makers to strike out in a new direction, namely the imposition of positive duties to promote equality, rather than just the negative requirement to refrain from discriminating."⁷² The PSEDs require public authorities to promote equality and adhere to the general duties under the EA 2010.⁷³

The question which has arisen is whether the law *should* move beyond merely addressing formal equality and how far the law has a role to play in addressing substantive equality. As will be demonstrated later, there was opposition even to the introduction of the earliest anti-discrimination legislation which only covered direct discrimination in very limited circumstances, let alone created obligations to consider wider policy issues. The opposition was on the basis that anti-discrimination legislation was perceived to interfere with principles such as freedom of assembly, freedom of speech and freedom to contract. At the heart of such opposition was the concern that legislating to regulate behaviour in relation to equality and discrimination would interfere with the conflicting value of liberty. The approach which is being summarised here can be conceptualised as neo-liberal laissez-faire, with its focus on the market as the guarantor of liberty and ultimately equality.

⁶⁹ Forshaw, S and Pilgerstorfer, M (2008) op cit. p351

⁷⁰ Equality Act 2010 s158

⁷¹ See for example Barnard, C and Hepple, B (2000) op cit. for an outline of the legal issues/problems regarding indirect discrimination.

⁷² Fredman, S (2001) op cit. pp145

⁷³ Equality Act 2010 s149

This standpoint advocates no State interference with the achievement of equality and the onus would be on individuals to determine their own fate. There would not be a conflict with the principle of liberty as individuals would be free to make their own choices and this approach would also support the argument for little or no legal intervention.⁷⁴

However, policy makers in Britain have not adopted the neo-liberal laissez-faire approach wholeheartedly and legislation has been introduced to regulate behaviour in relation to equality and a move towards a more substantive approach has been adopted, although not without criticism. The concept of liberty is likely to come into conflict more often where a substantive approach to equality is taken. As Fredman explains, "...minimum wage and maximum hour's laws could be struck down because they undermine individual freedom to contract or upheld because they promote substantive equality."⁷⁵

The final aspect which shall be considered here in relation to how far the law should be concerned with substantive equality issues is that of business or market driven arguments. This approach is anti-interventionist and suggests that the law should not interfere in a market driven economy and that competition and "...the market will naturally lead to whatever is the efficient level of discrimination, if any."⁷⁶ The arguments presented are linked to the previous issue of liberty, as this position advocates that employers and those in a position of power should be free to "pursue their own interests."⁷⁷ Therefore arguments may be presented along the lines of justifying interventions which restrict the pursuit of equality in favour of business need or "State macroeconomic policies."⁷⁸ Non-interventionists would, therefore, suggest that the substantive equality approach goes far beyond the law's proper remit.

⁷⁴ Fredman, S (2011) op cit. p34

⁷⁵ Fredman, S (2011) op cit. p34-35

⁷⁶ McCaffery, E.J. (Dec 1993) 'Slouching Towards Equality: Gender Discrimination, Market Efficiency, and Social Change' *Yale Law Journal* Vol.103 No. 3 pp595 - 675

⁷⁷ Fredman, S (2011) op cit. p36

⁷⁸ Fredman, S (2011) op cit. p35

More recently there has been an attempt to create some middle ground between the market driven arguments and the more interventionist approach to equality. It has been suggested that equality legislation can in fact enhance economic competitiveness by ensuring that the brightest and the best are not excluded from making a contribution. As Fredman highlights in relation to gender, "the disadvantaged position of women in the labour market [is viewed] as a source of economic inefficiency..."⁷⁹ However, It is suggested that this perception of 'convergence' between the market based arguments and the principle of equality "has merely obscured the extent to which market concerns have stunted the growth of a truly rights based equality principle."⁸⁰ Policy makers in Britain appear to have acknowledged that the market itself does not guarantee equality and that in order to achieve equality some intervention is necessary. Although traditionally the law has been primarily concerned with a formal equality stance, the move towards a substantive approach reflected in the legal provisions is to be welcomed. If substantive equality is the aim, the law has to have a more interventionist role which limits and regulates the market.

So, how and why has the British law developed to reach the fourth generation of anti-discrimination measures?

The Development of Race Equality Legislation

The first attempts at introducing race legislation in Britain were based on the notions that discriminatory action should be punished by way of use of criminal or public law sanctions.⁸¹ There were some attempts during the late 1950s and early 1960s to legislate against racial and religious discrimination, using the criminal law as a basis for redress, most notably by the MPs Reginald Sorensen and Fenner Brockway, who attempted to introduce a number of Private Members' Bills. All were unsuccessful due to the lack of support both from Government and opposition Labour MPs.⁸² Bindman, Lester

⁷⁹ Fredman, S (2011) op cit. p36

⁸⁰ Fredman, S (2011) op cit. p36

⁸¹ Bamforth et al (2008) op cit. p46

⁸² Thane, P et al (2007) 'Equalities in Great Britain, 1946 – 2006' Equalities Review

http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equalities_in_gb_1946_2006.pdf (accessed 12/08/09) p28

and Hepple explained some of the potential problems regarding the use of criminal sanctions in race discrimination cases, such as: difficulties in obtaining sufficient evidence to satisfy the burden of proof, the lack of skill in dealing with race cases demonstrated by the police and public prosecutors, the lack of expertise within the magistrates and the want of an effective remedy for the victim of the discrimination⁸³ "...[F]irst attempts to legislate were rather primitively based on the idea that if you made discrimination a criminal offence then that would be a way to discourage it... but in America this had been rejected sometime before because when they tried it... they couldn't get convictions because... white juries wouldn't convict other white people..."⁸⁴ The thinking behind merely having criminal sanctions for actions of discrimination seemed to be the 'public' nature of discrimination. There was a rather blinkered view that the scope of any legislation should be confined to public places with public law sanctions,⁸⁵ so as not to infringe on longstanding principles in English law such as the freedom to contract and freedom of association or choice⁸⁶ or even freedom of speech.⁸⁷

What emerged from discussions was the Race Relations Act 1965 (RRA 1965). Cabinet papers from the time suggest that there had been some disagreement from within Government regarding the favoured route, as conciliation and civil sanctions were mooted as a preferred option.⁸⁸ The Bill was amended to include civil remedies as well as criminal remedies achieved by conciliation via a very complex and drawn out process⁸⁹ of making complaints to conciliation committees which were established by the newly founded Race Relations Board.⁹⁰ Despite having its roots in civil law, Soskice⁹¹ made it clear that the conciliation process and the consequences of this process were penal in

⁸³ Lester, A and Bindman, G (1972) op cit. p100; Hepple, B (1970) 'Race, Jobs and the Law in Britain' (2nd Ed.) Penguin Books p163

⁸⁴ Bindman, G (April 2009) Interview conducted at Bindman's Solicitors 22nd April 2009.

⁸⁵ Suggestions regarding extending the Act's effect beyond a 'place of public resort' (s1) were not heeded.

⁸⁶ Hepple, B (1970) op cit. p155

⁸⁷ Hindell, K (1965) 'The Genesis of the Race Relations Bill' *Political Quarterly* Vol. 36 No. 4 pp390 – 405 at p399

⁸⁸ HM Government (May 1965) 'Conclusions of a Meeting of the Cabinet held at 10 Downing Street, SW1, on Thursday, 20th May, 1965, at 10.30 a.m.' CC65 Copy No. 36 Accessed via National Archives Cat Ref: CAB/128/39 <http://www.nationalarchives.gov.uk/cabinetpapers/default.htm> (accessed 08/05/09)

⁸⁹ Hepple, B (1970) op cit. p164

⁹⁰ Established under the Race Relations Act 1965 s2

⁹¹ Home Secretary 1964 - 1965

nature, thereby still sitting firmly in the public remedy camp,⁹² “[t]his is a question of a general public relationship which should be asserted in the name of the public at large....”⁹³ So even before the first generation RRA 1965 had received Royal Assent there were criticisms levied from all sides regarding its potential effectiveness and scope. Some, such as the former Home Secretary Henry Brooke, argued the Act was not needed at all and might even be confrontational.⁹⁴ Whereas others believed that the Act did not go far enough⁹⁵ as the remedies were inadequate and it should have included discrimination in areas such as employment and the rental of properties where discrimination was endemic.⁹⁶

These criticisms were echoed by others who would be instrumental in the framing of future race relations’ legislation, such as Lester. He argued that a major defect of the Act lay in the fact that although discrimination would be treated as a civil wrong, enforcement procedures were weak due to the lack of the availability of an individual remedy which is provided by all other civil wrongs.⁹⁷ The criticisms levied at the Act pre, during and post its passage through Parliament were realised in practice as the process and the outcome were considered to be generally ineffective: “there was often very little room for conciliation ... the usual pattern of resolving a complaint was by the complainant being persuaded to accept an assurance that there wouldn’t be any discrimination in the future ... Furthermore usually the person accused of the discrimination didn’t admit it so you’d get an agreement along the lines of ‘I deny that I ever discriminated against X, Y and Z, but I will certainly ... promise I will not do it in the future’... which is ... fairly worthless.”⁹⁸ Even the

⁹² Lester, A and Bindman, G (1972) op cit. p116

⁹³ Standing Committee B 25 May 1965 – 1 July 1965 cols. 3 - 412

⁹⁴ Hindell, K (1965) op cit. p399

⁹⁵ The RRA 1965 only prohibited discrimination in a ‘public place’ and the definition for this was: “For the purposes of this section a public place means an hotel within the meaning of Section 1, sub-section 3, of the Hotel Proprietors Act 1956, a restaurant, or a cafe, or any place kept or used for the sale of food or drink to the public, including premises licensed for the sale of intoxicating liquors, or any place kept or used for dancing, singing, music, a theatrical or cinematographic performance or any other public entertainment or recreation, or any premises or vehicle to which the public have access for the purposes of public transport...” HM Government Cabinet Papers (February 1965) ‘Racial Discrimination and Incitement to Racial Hatred: Memorandum by the Secretary of State for the Home Department’ C.(65) 23 Copy No. 59 p157

⁹⁶ Hepple, B.A. (1966) ‘Race Relations Act 1965’ *Modern Law Review Vol. 29* pp306 – 314 at p307

⁹⁷ Lester, A (1968) ‘The Race Relations Bill’ *Venture Vol. XX No.5* pp6 – 7 at p6

⁹⁸ Bindman, G (April 2009) Interview conducted at Bindman’s Solicitors 22nd April 2009

section of the RRA 1965 on incitement to racial hatred,⁹⁹ which was wholly concerned with invoking the criminal law, was at times interpreted by the Court of Appeal¹⁰⁰ in such a restrictive manner so as to render the Act almost completely ineffective.¹⁰¹ It is following these criticisms regarding the scope of the RRA 1965 and the realisation the enforcement provisions and sanctions were ineffective,¹⁰² that the second generation of race discrimination legislation was born. It took the form of the Race Relations Act 1968 (RRA 1968).

During the passing of the new Race Relations Bill, the aims of the law were stipulated by Roy Jenkins¹⁰³ as sending a strong message that racial discrimination was not acceptable and would not be supported by Government policy, as well as to educate people and attempt to influence public opinion.¹⁰⁴ The question is what made this Bill (and later the Act) different to the previous one? After all, it might be said that the aims of the RRA 1968 were not dissimilar to those of the RRA 1965. There were, however, some very important additions in the RRA 1968. The RRA 1968 extended the scope of the previous legislation to cover the provision of goods facilities and services,¹⁰⁵ employment¹⁰⁶, housing¹⁰⁷ and advertising,¹⁰⁸ some of the areas where it had been shown that discrimination was rife.¹⁰⁹ In addition, the powers of the Race Relations Board to investigate complaints of discrimination

⁹⁹ Race Relations Act 1965 s6(1)

¹⁰⁰ See for example the first case to use the Race Relations Act 1965 s6, *R v Britton* [1967] 1 All ER 486

¹⁰¹ Partington notes, commenting on the Court of Appeal interpretation of 'public at large' (s6(2)) in *R v Britton* [1967] 1 All ER 486 that "[i]f it is correct to say that distribution [of written matter which is threatening, abusive or insulting] to single individuals is no offence, it would seem to follow that an extended distribution to several single individuals after suitable intervals of time would equally be no offence. It is submitted therefore, that this section [s6(1)] has received a highly restrictive interpretation, which severely limits the efficacy of the Act" Partington, M (1967) 'Race Relations Act 1965: A Too Restricted View?' *Criminal Law Review* pp497 – 502 at p501

¹⁰² Hepple, B (1970) op cit. p167

¹⁰³ Home Secretary December 1965 – November 1967 and March 1974 - September 1976

¹⁰⁴ HM Government (1967) 'Race Relations Legislation – Memorandum by the Secretary of State for the Home Department' 15th December 1967, C67(196) Copy No. 65 National Archives <http://www.nationalarchives.gov.uk/cabinetpapers/default.htm> (accessed 08/05/09) p2

¹⁰⁵ Race Relations Act 1968 s2

¹⁰⁶ Race Relations Act 1968 s3

¹⁰⁷ Race Relations Act 1968 s5

¹⁰⁸ Race Relations Act 1968 s6

¹⁰⁹ Daniel, W.W. (1968) 'Racial Discrimination in England' PEP Report Penguin Books p209

were strengthened, as were the opportunities for successful complainants, via the Race Relations Board, to be awarded damages.¹¹⁰

However, the RRA 1968 still did not provide a direct or effective route to the court for the complainants of discrimination. In addition, the only remedy available to the complainant was that of damages which, as the Home Secretary James Callaghan¹¹¹ stated at the time of the passing of the Race Relations Bill, "I do not expect that the amount of damages involved would normally be very large...."¹¹² This may have been one indication of the shortcomings of the RRA 1968 in that it neither acted to try and change or deter discriminatory behaviour and neither did it provide adequate recompense for victims of discrimination. Despite the fact that the RRA 1968 did undoubtedly extend the provisions of the RRA 1965, the general feeling was that the enforcement provisions remained inadequate. These weaknesses in the law existed despite the fact that there had been warnings of the dangers of failing to provide adequate enforcement and remedies.¹¹³ However, suggestions to allow individuals to take action in the courts were not implemented and as a result there was a failure of the law to tackle both appropriate remedies for victims of discrimination and the problem of enforcing the law and addressing discriminatory behaviour in the employment sphere.¹¹⁴

Based on the above arguments it seems as if the RRA 1968, although marginally more effective than the RRA 1965 as the provisions were broadened to cover areas where discrimination was rife, still had major shortcomings which would need to be addressed if inroads were to be made in tackling racial discrimination. A frank assessment of the RRA 1968 was made some years later in a report whose aim was to assess the extent of race discrimination in society.¹¹⁵ The report commented that "[t]he statement that the 1968 Act has been a complete failure flies in the face of the facts. Of

¹¹⁰ HM Government (1967) op cit. p2

¹¹¹ Home Secretary November 1967 – June 1970

¹¹² Hansard 'Race Relations Bill' HC Deb 23 April 1968 Vol. 763 cc53 - 198 at 62 accessed via <http://hansard.millbanksystems.com/commons/1968/apr/23/race-relations-bill> (accessed 29/12/09)

¹¹³ Street, H et al (1967) 'Report on Anti-Discrimination Legislation: The Street Report' PEP p92

¹¹⁴ Hepple, B (1970) op cit. p230

¹¹⁵ Smith, DJ (1977) 'Racial Disadvantage in Britain' PEP Report Pelican Books

course, the Act has not been a complete success, either. There is still substantial and widespread discrimination because enforcement through complaints has proved to be largely ineffective.”¹¹⁶ The criticisms and shortcomings of the RRA 1968 led to what Hepple has described as the third generation¹¹⁷ of discrimination law. This third generation took the form of the RRA 1976. This Act repealed and made some significant amendments to the previous Acts and it remained the primary piece of legislation governing race discrimination in Britain until the passing of the EA 2010.¹¹⁸ The Government at the time of the passing of the RRA 1976 took on board some of the problems and criticisms relating to the previous two attempts to legislate against racial discrimination. In particular, it recognised that individual complaints, which could also not be brought directly to the courts by the complainant, were in themselves not effective in dealing with systemic discrimination.¹¹⁹ A new strategy in dealing with discrimination had to be devised and the RRA 1976 contained measures requiring organisations to take action to prevent discrimination.¹²⁰

One of the main aspects of the Act which was intended to ‘prevent’ discrimination was the amended definition of discrimination to include not only direct discrimination, as defined in s1(1)(a) of the RRA 1976, but also indirect discrimination, as defined in s1(1)(b).¹²¹ The concept of indirect discrimination is what positioned the RRA 1976 into the third generation of equality laws.¹²² The concept of indirect discrimination was viewed as a major advancement in anti-discrimination law. It would no longer be the case that merely overt and intended discrimination (or direct discrimination) would be covered. “This was an attempt to deal with an important part of institutional discrimination: those policies and practices which are to the detriment or racial minorities, although race is not the explicit criterion leading to inferior treatment.”¹²³

¹¹⁶ Ibid, p312

¹¹⁷ Hepple, B et al (2000) op cit. Paras 1.2 – 1.7

¹¹⁸ The Race Relations (Amendment) Act 2000 merely amended the Race Relations Act 1976. The Race Relations Act 1976 was not fully repealed until the passing of the Equality Act 2010

¹¹⁹ See for example McIntosh, N and Smith, D.J. (1974) ‘The Extent of Racial Discrimination’ PEP Report

¹²⁰ Smith, DJ (1977) op cit. p317

¹²¹ See Appendix 2 for definitions of direct and indirect discrimination under the Race Relations Act 1976

¹²² Bamforth, N et al (2008) op cit. p48

¹²³ McCrudden, C, Smith, D.J. and Brown, C (1991) ‘Racial Justice at Work: Enforcement of the Race Relations Act 1976 in Employment’ PSI p15

As mentioned previously, one of the major complaints of the previous Acts was that there was no direct access to the courts for a victim of discrimination to take their claim, which meant that the process was cumbersome and often failed to provide an adequate remedy for the discrimination suffered. The RRA 1976 allowed a complainant to take their complaint directly to either the Employment Tribunal,¹²⁴ in the case of employment related complaints, or the county court¹²⁵ with respect to all other complaints falling within the scope of the Act. The RRA 1976 also broadened the remedies available to a complainant where discrimination was found to have taken place. This was seen to strengthen the overall enforcement provisions in that, not only was there a right to claim damages, but the court or tribunal could also impose injunctive relief.¹²⁶

One major change to the legislation relating to racial discrimination came in the form of setting up a new Commission, the Commission for Racial Equality (CRE),¹²⁷ which would have additional powers "to carry out investigations of organizations to establish whether or not they are engaging in discriminatory practices."¹²⁸ This new power¹²⁹ was seen as significant as it was thought that it could have potentially far reaching effects on the practices of organisations due to both the threat of an investigation taking place, as well as the CRE's ability to serve non-discrimination notices¹³⁰ where an investigation had taken place and discrimination had been proven. This formed part of the strategic enforcement role of the CRE and such notices were intended to compel organisations and companies to take action to deal with discriminatory practices.¹³¹ Allowing individuals to take complaints directly to the courts also meant that the CRE could focus on what was termed "strategic enforcement."¹³²

¹²⁴ Race Relations Act 1976 s54

¹²⁵ Race Relations Act 1976 s57

¹²⁶ Race Relations Act 1976 s56 and s58

¹²⁷ Race Relations Act 1976 Part VII

¹²⁸ Smith, D.J. (1977) op cit. p317

¹²⁹ Race Relations Act 1976 s48

¹³⁰ Race Relations Act 1976 s58

¹³¹ Smith, D.J. (1977) op cit. p317

¹³² McCrudden, C, Smith, D.J. and Brown, C (1991) op cit. p15

It was for these reasons that the RRA 1976 was viewed by many with great optimism regarding the extent and success to which racial discrimination would be tackled.¹³³ Smith demonstrated this optimism shortly after the passing of the RRA 1976, “[t]he fundamental changes... represent a completely new approach to the use of the law to combat racial discrimination, an approach which focuses on the policies and practices of organizations rather than the actions of or complaints of individuals. It is clear from the whole of our analysis that this approach is fundamentally the right one.”¹³⁴ However, over time it has become clear that this optimism was “misplaced”¹³⁵ and that the aims of the Act to reduce the levels of race discrimination in society had not been realised.¹³⁶ Various studies¹³⁷ conducted since the passing of the RRA 1976 concluded that the disadvantage experienced by ethnic minorities in the UK was still widespread and significant.¹³⁸ The primary criticisms of the RRA 1976 relate to insufficient emphasis on the use of indirect discrimination in the litigation arising from the application of the RRA 1976, the ineffectiveness of the CRE (for various reasons, some within their control, many outside of their control) in terms of the number of investigations carried out,¹³⁹ lack of affordable access to the courts for victims of discrimination due to the unavailability of legal aid in many cases and, due to the complex nature of discrimination cases, legal representation was often required.¹⁴⁰ In addition to the above limitations of the RRA 1976, both in law and its application in practice, Hepple identifies one of the main limiting factors of the RRA 1976 as relating to the fact that “[e]ven if direct or indirect discrimination can be established, the outcome is usually compensation for an individual, not positive measures to ensure the full participation of disadvantaged groups in

¹³³ Pilkington, A (2003) ‘Racial Disadvantage and Ethnic Diversity in Britain’ Palgrave Macmillan p232

¹³⁴ Smith, D.J. (1977) ‘Racial Disadvantage in Britain’ PEP Report Pelican Books p318

¹³⁵ Pilkington, A (2003) op cit. p232

¹³⁶ Hepple, B ‘Have Twenty-five years of the Race Relations Acts in Britain Been a Failure?’ in Hepple, B and Szyszczak, E.M. (Eds) (1992) ‘Discrimination: The Limits of the Law’ Mansell Publishing p19

¹³⁷ For details see Clarke, J and Speeden, S (2001) ‘Then and Now: Change for the Better?’ Commission for Racial Equality pp18 - 21

¹³⁸ Ibid. p21

¹³⁹ “With the resources of the CRE at their present level the annual number of these investigations is bound to be small, so they are likely to have much of an impact on an employer’s impression that discrimination is easy to get away with.” Brown, C and Gay, P (1985) ‘Racial Discrimination: 17 Years after the Act’ PSI p33

¹⁴⁰ For further detail regarding these criticisms see for example Brown, C and Gay, P (1985) op cit.; Pilkington, A (2003) op cit. p233

the workforce and fair access for them to education, training, goods, facilities and services.”¹⁴¹

However, it might be suggested that many of the criticisms levied at the RRA 1976 above related more to its implementation and interpretation rather than criticisms of the legal concepts which were introduced per se. It might be argued that the limitations of the RRA 1976 may be explained by the fact that prohibiting discrimination can only go so far, “... societal discrimination extends well beyond individual acts of racial prejudice. Equality can only be meaningfully advanced if practices and structures are altered positively by those in a position to bring about real change, regardless of fault or original responsibility.”¹⁴² This concept of pre-emptive positive duty will be discussed further when looking at the fourth generation of equality legislation below.

The Development of Disability Equality Legislation

It was following World War II that concerns relating to the employment opportunities of injured and disabled service personnel led to the first piece of domestic disability related legislation. The Disabled Persons (Employment) Act 1944 (DP(E)A 1944), which was initiated by Bevin,¹⁴³ introduced a quota system requiring employers with 20 or more employees to ensure that at least 3% of their workforce was registered as disabled.¹⁴⁴ It is felt that only a brief introduction to the DP(E)A 1944 is necessary as the disability civil rights campaign did not start to gather momentum until the 1960s and legislation which followed this campaign was not introduced until the 1990s.¹⁴⁵

The DP(E)A 1944 sat (very tentatively) within the first generation of legislation as employers who failed to adhere to the provisions of the DP(E)A 1944 by demonstrating that they were employing the required quotas of disabled people could be prosecuted and face a fine or imprisonment,¹⁴⁶ so sanctions

¹⁴¹ Hepple, B (January 2004) ‘Race and the Law in Fortress Europe’ *Modern Law Review* Vol. 67 No. 1 pp1 – 15 at p12

¹⁴² Fredman, S (2001) op cit. p145

¹⁴³ Minister of Labour 1940 - 1945

¹⁴⁴ Woodhams, C and Corby, S (2003) ‘Defining Disability in Theory and Practice: A Critique of the British Disability Discrimination Act 1995’ *Journal of Social Policy* Vol. 32 No. 2 pp159 – 178 at p160

¹⁴⁵ Barnes, C (1992) op cit. p16

¹⁴⁶ Disabled Persons (Employment) Act 1944 s9(6)

were based on the criminal law. The DP(E)A 1944 Act remained in force until the passing of the much later Disability Discrimination Act 1995 (DDA 1995) despite research and evidence which suggested that the DP(E)A 1944 was not particularly successful in increasing the numbers of disabled people in work.¹⁴⁷ It has also been argued that the Act was poorly enforced and that employers could be provided with permits which allowed them to effectively opt out of the provisions if they could show that disabled people were not suitable for the available positions.¹⁴⁸

The DP(E)A 1944 was also different to future Acts which would follow in relation to race, as it did not provide for protection of disabled people from discrimination, whether at work or outside of the workplace. The emphasis of the DP(E)A 1944 was not in relation to providing social justice or civil rights for disabled people. This therefore sets it aside from other first generation anti-discrimination legislation. There were no further significant pieces of legislation in the area of disability until the introduction of the DDA 1995, which was the first piece of legislation which attempted to provide redress for acts of disability discrimination. The DDA 1995 sits in the third generation of legislation.

The first piece of anti-discrimination legislation which specifically aimed at prohibiting and removing discrimination relating to disability was the DDA 1995.¹⁴⁹ It was procedurally, and in terms of available remedies, almost identical to the RRA 1976 and the Sex Discrimination Act 1975 (SDA 1975).¹⁵⁰ However, the scope of the DDA 1995 was much more limited than that enacted for race and sex. Despite being enacted much later than previous anti-discrimination legislation, the DDA 1995 merely prohibited discrimination in the fields of employment¹⁵¹, services¹⁵² and the sale or rental of property.¹⁵³

¹⁴⁷ Bolderson, H (1980) 'The Origins of the Disabled Persons Employment Quota and its Symbolic Significance' *Journal of Social Policy* Vol. 9 No. 2 pp169 – 186 at p170

¹⁴⁸ Ibid, p170

¹⁴⁹ Wray, M and Houghton, A (2007) 'Disability: a Rough Guide for Widening Participation Practitioners' Action of Access p10

¹⁵⁰ Connolly, M (2004) 'Townsend-Smiths on Discrimination Law: Text Cases and Materials' (2nd ed.) Cavendish Publishing p461

¹⁵¹ Disability Discrimination Act 1995 Part II

¹⁵² Disability Discrimination Act 1995 Part III s19

¹⁵³ Disability Discrimination Act 1995 Part III s22

Even within these areas the scope of the Act was much more restricted than that for race and sex. The Act “only applies to employers with more than 15 employees... [t]he ... provisions do not apply to: members of the armed forces; prison officers; barristers; fire fighters; employees who work wholly or mainly outside of Great Britain; employees on board ships, aircraft or hovercraft; or police officers.”¹⁵⁴ Discrimination in education was not included until the passing of the Special Educational Needs and Disability Act 2001 (SENDA 2001) and discrimination in relation to accessing transport services was not covered until the passing of the Disability Discrimination Act 2005 (DDA 2005).¹⁵⁵ Not only was the coverage in terms of areas more restricted than other anti-discrimination legislation, the protection afforded to disabled people under the DDA 1995 was also much more limited. For example, the DDA 1995 allowed for direct discrimination to be justified.¹⁵⁶ It did not include provisions regarding indirect discrimination, although it did require employers and service providers to make ‘reasonable adjustments’¹⁵⁷ which Connolly argues “fulfils many of the same functions as the concept of indirect discrimination.”¹⁵⁸ There were however criticisms that the DDA 1995 would not be effective given the much narrower scope of the Act.¹⁵⁹

In addition, Meager et al¹⁶⁰ identified that the greatest stumbling block for disabled people in taking claims of discrimination to the Employment Tribunals (even before the question of whether discrimination has taken place was considered), as well as one of the obstacles to the achievement of equality for disabled people,¹⁶¹ was the definition which was afforded to disability. The definition within the DDA 1995¹⁶² (which has largely remained unchanged by future Acts) focussed on the claimant having to prove that they had a

¹⁵⁴ Gooding, C (2000) ‘Disability Discrimination Act: from Statute to Practice’ *Critical Social Policy Vol. 20* pp533 – 549 at p 533

¹⁵⁵ Disability Discrimination Act 2006 s5

¹⁵⁶ Disability Discrimination Act 1995 s5 ‘For the purpose of subsection (1) treatment is justified if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.’

¹⁵⁷ Disability Discrimination Act 1995 ss6 and 21

¹⁵⁸ Connolly, M (2004) op cit. p461

¹⁵⁹ Gooding, C (2000) op cit. p536

¹⁶⁰ Meager, N et al (1999) ‘Monitoring the Disability Discrimination Act’ DRC and DWP

<http://www.leeds.ac.uk/disability-studies/archiveuk/hurstfield/Final%20pdf.pdf> (accessed 18/08/12)

¹⁶¹ Woodhams, C and Corby, S (2003) op cit. p159

¹⁶² s1(1) DDA 1995: Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities.

disability, usually by providing medical evidence. This approach was based on a medical model of disability which “individualise and medicalise the problems associated with living with an impairment.”¹⁶³ The medical model focuses on the bodily deficit which the individual experiences and considers whether, and how far, the individual is able to adapt and carry out ‘day-to-day activities’.¹⁶⁴ The medical model approach has been criticised for not taking into account the primary disabling factors encountered by disabled people, that of social barriers and infrastructure.¹⁶⁵ Therefore an alternative model, the ‘social’ model of disability has been suggested as a way forward in amending the definition of disability within the law, “as a result, the territory of ‘correction’ becomes society and the environment, rather than the person with the impairment.”¹⁶⁶

The DDA 1995 did take the environment into account to some extent by introducing the duty for employers and service providers to make reasonable adjustments.¹⁶⁷ However, this duty only arose once the first stumbling block, that of proving that one had a disability, was overcome. The duty required employers and service providers to “take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or [physical] feature [placing the disabled person concerned at a substantial disadvantage] having that effect.”¹⁶⁸ Examples are then provided in the DDA 1995 of adjustments which may have to be made by an employer, for example, allocating the disabled person other duties, making adjustments to premises or providing a reader or interpreter.¹⁶⁹ This concept was regarded as pioneering within British disability legislation as it requires the employer to take positive action to remedy disadvantage, although it appears to have been introduced in an attempt to compensate for the lack of provisions regarding indirect discrimination.¹⁷⁰ This made the DDA 1995 a little different from other forms of third generation anti-discrimination

¹⁶³ Barnes, C (1992) op cit. p6

¹⁶⁴ Woodhams, C and Corby, S (2003) op cit. p164

¹⁶⁵ Connolly, M (2004) op cit. p466

¹⁶⁶ Woodhams, C and Corby, S (2003) op cit. p164

¹⁶⁷ Disability Discrimination Act 1995 s6 (employment) s21 (goods, facilities and services)

¹⁶⁸ Disability Discrimination Act 1995 s6(1)

¹⁶⁹ Disability Discrimination Act 1995 s6(3)

¹⁷⁰ Doyle, B (1997) ‘Enabling Legislation or Dissembling Law? The Disability Discrimination Act 1995’ *Modern Law Review Vol. 60 No. 1* pp64 – 78 at p74

legislation as they did not contain provisions requiring reasonable adjustments with regards to race or gender.

However, there was concern expressed by disability rights campaigners regarding the interpretation which would be given for the term 'reasonable.' The DDA 1995 gives quite a wide scope with regards to assessing what would be deemed as reasonable. For example, with regards to the employment provisions the Act provides that the following factors should be taken into consideration when deciding whether an adjustment is reasonable: s6(4)(a) the extent to which taking the step would prevent the effect in question; (b) the extent to which it is practicable for the employer to take the step; (c) the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt his activities; (d) the extent of the employer's financial and other resources.¹⁷¹ Despite the transformative potential of the duty to make reasonable adjustments there were continuing concerns about its relatively limited applicability and practical application and effect.¹⁷²

The final criticism of the DDA 1995 to be considered here relates to the enforcement of the Act. Unlike the SDA 1975 and the RRA 1976, the DDA 1995 did not introduce a body similar to the Commissions introduced under these other anti-discrimination Acts which could play both an enforcement and promotion role.¹⁷³ Although there were criticisms levied at the CRE, the failure to introduce a Disability Rights Commission (DRC) was seen as disadvantageous in achieving disability rights as the onus was on the disabled person to take legal action (where legal aid was often not available) and the prospects of success for claimants was thought to be markedly reduced without the support of a Commission.¹⁷⁴ These criticisms were recognised later (and under a Labour Government – see later in this chapter regarding

¹⁷¹ Disability Discrimination Act 1995 s6(4)(a) – (d)

¹⁷² Connolly, M (2004) op cit. p503

¹⁷³ O'Conneide, C (2006) op cit. p10

¹⁷⁴ Gooding, C (2000) op cit. p543

significance) and a DRC was eventually established under the Disability Rights Commission Act 1999.¹⁷⁵

Overall the Government's view when debating the Disability Discrimination Bill was that it was a landmark piece of legislation which would have a significant impact on disability rights in Britain. As Lord Mackay of Ardbrecknish stated, "...we in Government set ourselves a very tough task when we announced that we intended to eliminate discrimination against disabled people. The Disability Discrimination Bill represents a huge step forward towards this goal. It has been said elsewhere that it is the most visible landmark yet on the road to a more accessible society and a Bill which marks the United Kingdom out as a world leader in the crusade against discrimination."¹⁷⁶ Despite this confident assertion, academics at the time believed that the DDA 1995 was, at best, a half-baked attempt for the reasons stated previously.¹⁷⁷ However, the Act was not deemed to be a complete failure, particularly in the field of employment, and Gooding has argued that some of the concerns which were previously stated have not come to fruition as the higher courts have been willing to provide a purposive interpretation to its provisions. Therefore there have been some improvements in the campaign to achieve disability equality, particularly though individual case law.¹⁷⁸ However, as with the RRA 1976, Gooding also recognises that "more proactive measures need to be taken, with explicit emphasis on achieving substantive, rather than merely formal, equality."¹⁷⁹

Fourth Generation Equality Legislation – The Public Sector Equality Duties

This leads us to the fourth generation of discrimination legislation with the introduction of the PSEDs. The primary aim of the duties has been neatly summarised by Fredman, "[a]t the root of a positive duty... is a recognition

¹⁷⁵ McCrudden, C (2004) 'Equality and Non Discrimination' in Feldman, D (2004) 'English Public Law' OUP p592

¹⁷⁶ Hansard HL Deb 24 October 1995 vol. 566 cc1067-80 at para. 1070

<http://hansard.millbanksystems.com/lords/1995/oct/24/occupation-by-providers-of-services> (accessed 20/08/12)

¹⁷⁷ Doyle, B (1997) op cit. p78

¹⁷⁸ Gooding, C (2000) op cit. p534

¹⁷⁹ Ibid, p533

that societal discrimination extends well beyond individual acts of racial prejudice. Equality can only be meaningfully advanced if practices and structures are altered positively by those in a position to bring about real change, regardless of fault or original responsibility. ...In order to trigger the duty, there is no need to prove individual prejudice, or to link disparate impact to an unjustifiable practice or condition. Instead, it is sufficient to show a pattern of under-representation or other evidence of structural discrimination. Correspondingly, the duty-bearer is identified as the body in the best position to perform this duty. Even though not responsible for creating the problem in the first place, such duty bearers become responsible for participating in its eradication. ...[P]ositive action is required to achieve change, whether by encouragement, accommodation, or structural change."¹⁸⁰ This fourth generation of anti-discrimination legislation was first introduced in Britain in the form of the RR(A)A 2000.

The RR(A)A 2000 was conceived following the inquiry by Sir William Macpherson of Cluny into the death of Stephen Lawrence, who was the victim of a racially motivated murder. Details of the circumstances surrounding Stephen's death and the subsequent incompetence by the Metropolitan Police Service in the investigation are recorded in detail in the Macpherson Report and will not be detailed here.¹⁸¹ Following the death of Stephen Lawrence in April 1993¹⁸² and a failed private prosecution in 1996¹⁸³ of those suspected of murdering him, Jack Straw, the then Home Secretary, asked Sir William Macpherson of Cluny to chair an inquiry "into the matters arising from the death of Stephen Lawrence, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes."¹⁸⁴ It was the finding by Macpherson that the Metropolitan Police Service was "institutionally racist"¹⁸⁵ which made the findings of the inquiry so crucial.

¹⁸⁰ Fredman, S (2001) op cit. pp145

¹⁸¹ Macpherson, Sir William (1999) op cit. Chapters 1 and 2

¹⁸² Ibid, Para.1.1

¹⁸³ Ibid, Para. 2.3

¹⁸⁴ Ibid, Prelim.

¹⁸⁵ Institutional racism was defined by Macpherson as "[t]he collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people" Macpherson, Sir William (1999) op cit. Para. 6.34

The finding of institutional racism was regarded as so significant that it has been described by some as “a watershed in British race relations.”¹⁸⁶

It was not only the finding that the Metropolitan Police Service were institutionally racist, but the recognition for the first time, that such institutional racism permeated all public institutions. There was a realisation by the State that it had an obligation to tackle such institutional racism, at the very least within State run/funded institutions.¹⁸⁷ The “action” which was taken came in the form of an amendment to the RRA 1976. The RR(A)A 2000 required that all public bodies should be proactive in promoting race equality.¹⁸⁸ The path to the RR(A)A 2000 was, however, not a straight forward one. Following the publication of the inquiry “...Jack Straw told Parliament that ‘it challenges us all, not just the police service’ and expressed his determination ‘to tackle discrimination wherever it is found.’”¹⁸⁹ However, when the Race Relations (Amendment) Bill was published there was some dismay amongst campaigners as the scope of the Bill was not what had been expected. In particular the Bill was criticised for not extending the definition of indirect discrimination to all public authorities, nor had the Bill included the positive duty which was so eagerly anticipated. Lord Lester expressed these concerns with the Bill during debates in the House of Lords.¹⁹⁰

Jack Straw took on board the criticisms which were levied at the Race Relations (Amendment) Bill and as a result the RR(A)A 2000 was passed, which ensured that the concept of indirect discrimination applied to all public authorities¹⁹¹ and introduced the general statutory race duty. The introduction of the statutory race duty clearly sits within the fourth generation stage of legislative development. The race duty was later extended to incorporate

¹⁸⁶ Bourne, J (2001) ‘The Life and Times of Institutional Racism’ *Race and Class Vol. 43 No. 2* pp7 – 22 at p8

¹⁸⁷ Pilkington, A (2009) ‘The Impact of Government Initiatives in Promoting Racial Equality in Higher Education: A Case Study’ *Ethnicity and Race in a Changing World* p15

¹⁸⁸ Bourne, J (2001) *op cit.* p13

¹⁸⁹ *Ibid*, p14

¹⁹⁰ HL Deb. 14 December 1999 Vol. 608 cc127-85 Lord Lester of Herne Hill Paras 140 - 143

http://hansard.millbanksystems.com/lords/1999/dec/14/race-relations-amendment-bill-hl#S5LV0608P0_19991214_HOL_68 (accessed 28/08/12)

¹⁹¹ Except those exceptions as set out in Race Relations Act 1976 s19(B)(3)

sex¹⁹² and disability.¹⁹³ Although the wording of each of the duties was slightly different,¹⁹⁴ the principles of the fourth generation of equality legislation remained the same. The main and most important difference between the third generation and the fourth generation of legislation is the requirement that public authorities should be proactive in their advancement of equality. The PSEDs require authorities to identify patterns of underrepresentation and expects them to consult and involve disadvantaged groups in their responses.¹⁹⁵ The use of EIAs and the drafting of Equality Schemes and Action Plans were set out in the specific duties as tools for achieving the general PSED. Details of the specific duties and how public authorities could meet the requirements of the PSEDs were contained in statutory Codes of Practice produced by the former Commissions, CRE, DRC and Equal Opportunities Commission (EOC).¹⁹⁶ The Codes were admissible in legal proceedings as “[a] failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Act before an industrial tribunal any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the tribunal to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.”¹⁹⁷

In order that public authorities could demonstrate that they were meeting the requirements of the race duty, the CRE provided guidance in their Codes of Practice.¹⁹⁸ In order to help public authorities in meeting the requirements of

¹⁹² Under the Equality Act 2006 s84

¹⁹³ Disability Discrimination Act 2005 s5

¹⁹⁴ See Appendix 3 for the wording of the race and disability duties under the Race Relations Act 1976 (as amended) and the Disability Discrimination Act 1995 (as amended)

¹⁹⁵ Harrington, J (2001) ‘Making Sense of Equality Law: A Review of the Hepple Report’ *Modern Law Review* Vol. 64 pp757 – 766 at p762

¹⁹⁶ Gender Equality Duty: Code of Practice <http://www.eoc.org.uk/Default.aspx?page=19689>; Duty to promote Disability Equality: Statutory Code of Practice http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/explaining_the_duty/codes_of_practice.aspx; Code of Practice on the Duty to Promote Race Equality http://www.cre.gov.uk/pubs/cat_duty.html

¹⁹⁷ Race Relations Act 1976 s47(10)

¹⁹⁸ “Public authorities should consider the following four steps to meet the general duty.

- a. Identify which of their functions and policies are relevant to the duty, or, in other words, affect most people.
- b. Put the functions and policies in order of priority, based on how relevant they are to race equality.
- c. Assess whether the way these 'relevant' functions and policies are being carried out meets the three parts¹⁹⁸ of the duty.

the general duty the Race Relations Act 1976 (Statutory Duties) Order 2001 was passed which detailed the requirements of the Equality Schemes which public authorities had to produce and publish. In relation to HEIs there were additional specific duties under sections 3(1), 3(2), 3(4) and 3(5) of the Race Relations Act 1976 (Statutory Duties) Order 2001.¹⁹⁹

In order that public authorities could demonstrate their compliance with the Disability Duty, the DRC also stated in their Codes of Practice the steps/actions they would need to take to show compliance.²⁰⁰

Each of the elements were then further explained in Chapter 2 of the Code of Practice. The requirements for the production of a Disability Equality Scheme were set out in more detail in the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005.²⁰¹ One difference to note here as compared to the race duty is that there were not separate specific duties for HEIs. The specific duties under the disability duty applied to all public authorities as covered by the legislation. There was speculation at the time of the passing of the disability duty that it would be more effective than the race duty given that the disability general duty was more detailed and the specific duties were more 'action focused' and a distinction was not made between employment, education and other areas such as the provision of services which meant there was less room for confusion.²⁰²

As part of the specific duties there was a requirement that public authorities should produce an action plan to accompany the Equality Scheme²⁰³ detailing how the Scheme would be put into operation, along with specific time frames for implementation. In addition, the specific duties also required that public

d. Consider whether any changes need to be made to meet the duty, and make the changes.” Commission for Racial Equality (2002) ‘Statutory Code of Practice on the Duty to Promote Race Equality’ Para 3.11 p17

¹⁹⁹ See Appendix 4 for the legislative requirements relating to Equality Schemes and the additional specific duties for HEIs.

²⁰⁰ “- mainstreaming – impact assessment

- gathering and analysing evidence

- prioritising remedial actions

- involving disabled people; and

- public reporting – transparency.” Disability Rights Commission (2005) ‘The Duty to Promote Disability Equality: Statutory Code of Practice’ pp38 - 39

²⁰¹ See Appendix 5

²⁰² Palmer, C et al, McColgan, A (eds.) (2007) ‘Discrimination Law Handbook’ (2nd ed.) LAG p652

²⁰³ See Disability Rights Commission Statutory Code of Practice p70 and Commission for Racial Equality Statutory Code of Practice p41

authorities assess the impact of their policies and procedures on the groups as covered by law.²⁰⁴ As McCrudden states, "the idea of an impact assessment involves an attempt to try to assess what the effect of the legislation or policy is, or would be, on particular protected groups ..."²⁰⁵

As well as the guidance contained within the Codes of Practice, each of the Commissions also produced further, non-statutory, guidance with regards to the implementation of the PSEDs and how to draw up Equality Schemes and conduct EIAs. The more recently formed Equality and Human Rights Commission (EHRC) also drew up guidance in developing Equality Schemes.²⁰⁶ Relatively recent research into the success of the individual PSEDs concluded that despite a perception, at first, that the race duty was bureaucratic and burdensome, public authorities had, on the whole, come to accept the PSEDs and viewed them as beneficial.²⁰⁷ One aspect which was also mentioned by respondents in this research was the manageability of having three different duties and therefore having to produce three schemes. "In general, respondents seem to think that a move to a single equality duty covering all strands is likely to produce something that is more manageable."²⁰⁸ One does have to be a little careful with regards to the results of this research however, as the number of Public Sector Authorities who responded to the research was 174 out of over 3,500 organisations who were contacted.²⁰⁹ This would therefore represent a fairly limited cross-section of Public Sector organisations. However, the view that a single duty would be preferable was soon to be reflected in the legislation and the single PSED was introduced in the most recent piece of anti-discrimination legislation to be passed.

²⁰⁴ See Disability Rights Commission Statutory Code of Practice p39 and Commission for Racial Equality Statutory Code of Practice p17

²⁰⁵ McCrudden, C (2004) 'Mainstreaming Equality in Northern Ireland 1998-2004: A Review of Issues Concerning the Operation of the Equality Duty in Section 75 of the Northern Ireland Act 1998' p6. In McLaughlin, E and Faris, N (eds.) (2004) 'The Section 75 Equality Duty – An Operational Review Vol. 2' Annex B (Northern Ireland Office Belfast)

²⁰⁶ Equality and Human Rights Commission (2009) 'Developing Equality Schemes to meet the Three Existing Duties' Equality and Human Rights Commission.
http://www.equalityhumanrights.com/uploaded_files/PSD/9_developing_equality_schemes.pdf (accessed 14/07/13)

²⁰⁷ Schneider-Ross (2009) 'Assessing the Cost and Cost Effectiveness of the Specific Race, Disability and Gender Equality Duties' Government Equalities Office p3

²⁰⁸ Ibid, p15

²⁰⁹ Ibid, p6

The final piece of anti-discrimination legislation in relation to race and disability (among other areas) is the EA 2010. Under s149 of the EA 2010 the fourth generation of legislation developed to include one, overarching duty for all the protected characteristics currently covered in British law.²¹⁰ The exact wording of the current duty can be found in Appendix 6.

The new general duty reflects, in the round, the previous PSEDs. However, there is now a requirement that equality is not merely 'promoted' but that it is 'advanced' and this change in wording has been regarded as significant as it makes the PSED more "substantive."²¹¹ It is thought that the specific duties add flesh to the bones of the general duty and are "critical in determining the effectiveness of the duties."²¹² The specific duties are set out in The Equality Act 2010 (Specific Duties) Regulations 2011.²¹³

The final published specific duties were, however, a much more watered down version of what had been anticipated and what had been required under the old PSEDs. The reason for the amendment was the coming to power of a Conservative led Coalition Government who stated that "Following publication of draft specific duties regulations on 12 January 2011, we have looked again and think there is room to do more to strip out unnecessary process requirements... and [with] the wider policy objective of ensuring that public bodies consider equality when carrying out their functions without imposing unnecessary burdens and bureaucracy."²¹⁴ In essence, there is no longer a requirement on public authorities to produce an Equality Scheme and action plan and neither is there a formal requirement to assess the impact of policies and procedures (although these methods *may* still be necessary so that the Public Authority is able to demonstrate they have had 'due regard.')

The new specific duties merely require public authorities to publish information relating to staff and other groups who may be affected by their policies and procedures

²¹⁰ Race, disability, gender, age, sexual orientation, religion and belief, pregnancy and maternity and gender reassignment.

²¹¹ Monaghan, K (2009) op cit. p534

²¹² Ibid, p534

²¹³ See Appendix 7

²¹⁴ Government Equalities Office (2011) 'Equality Act 2010 - The Public Sector Equality Duty: Reducing Bureaucracy' Policy Review Paper
<http://sta.geo.useconnect.co.uk/pdf/110317%20Public%20sector%20Equality%20Duty%202%20-%20Policy%20review%20paper.pdf> (accessed 08/11/12) p1

(so for example, in the case of higher education, students) on a yearly basis and to publish one or more equality objectives arising from the production of the data, and this should be done every four years.²¹⁵

Concern has been expressed that the new specific duties will give the wrong impression with regards to what is required in order to achieve substantive equality and that the focus of the Government to reduce bureaucracy will send out the message to public authorities that ensuring that the requirements of the PSEDs are met are no longer a priority. This view has also been expressed by the Discrimination Law Association (DLA)²¹⁶ who stated in their response to the Policy Review Paper detailed above that “[t]his “light touch” approach creates a real risk that some public authorities may be misled to thinking that their duty under s.149(1) of the Equality Act is also “light touch”, which, are satisfied, was not the intention of Parliament. ...The new draft regulations will signal to those authorities which did very little to make race, disability and gender equality integral to the ways in which they carry out all of their functions that they may carry on as before. To those public authorities which have invested in making equality a core element in their policies, practices and decision-making the new draft regulations are likely to indicate that such commitment is no longer required.”²¹⁷ The research which was commissioned by the Government Equalities’ Office also recommended that the core requirements of the general and specific duties should not be considerably altered as this would undermine the progress and learning which had already taken place.²¹⁸ It should be noted, however, that in the devolved areas of Britain (Wales and Scotland), the specific duties are regarded as much more robust and contain much more detail regarding the requirements of meeting the general equality duty and to some extent reflect much more closely the old specific duties, but arguably with more of an emphasis on outcomes.²¹⁹

²¹⁵ The Equality Act 2010 (Specific Duties) Regulations 2011 ss2 and 3

²¹⁶ For information about the Discrimination Law Association visit

<http://www.discriminationlaw.org.uk/about>

²¹⁷ Discrimination Law Association (2011) ‘Discrimination Law Association Response to the Policy Review Paper: The Public Sector Equality Duty: Reducing Bureaucracy’ DLA

<http://www.discriminationlaw.org.uk/submissions> (accessed 09/11/12) pp4 - 5

²¹⁸ Schneider-Ross (2009) op cit. p42

²¹⁹ See Equality Act (Specific Duties) (Scotland) Regulations 2011

<http://www.legislation.gov.uk/sdsi/2011/9780111012215/introduction> (accessed 09/11/12) and Equality Act

The EHRC has published guidance for public authorities regarding meeting the requirements of the new general and specific duties in England.²²⁰ However, it should be noted that the EHRC is no longer able to issue statutory Codes, and all information now produced by them is in the form of non-statutory guidance. This has also been highly criticised as once again, the argument has been made that the impression which removing the statutory status sends out is that compliance with the PSEDs is optional or does not carry the same weight as it once did. The EHRC itself was displeased about the change in status of the Codes when they provided an update regarding the issuing of the Codes on their website, “[u]nfortunately, we are no longer able to proceed with these plans. The Government is keen to reduce bureaucracy around the Equality Act 2010, and feels that further statutory guidance may place too much of a burden on public bodies. Although the EHRC has powers to issue codes, it cannot do so without the approval of the Secretary of State, as we are reliant upon Government to lay codes before parliament, in order for them to be statutory. It is the EHRC’s view that, rather than creating a regulatory burden, statutory codes have a valuable role to play in making clearer to everyone what is and is not needed in order to comply with the Equality Act.”²²¹ So once again, despite the overall optimism regarding the introduction of the fourth generation of equality law, there have been some criticisms levied at the form and content of the legislation in Britain.

The aim of this section of the chapter was to demonstrate the development of equality legislation and to outline some of the main problems associated with each generation. It is clear that the move into the fourth generation is significant and the PSEDs are unique in their approach to equality within Britain. Arguably improvements can always be made to the legislation and the focus of chapters 5 and 6 within this thesis will be to look at how the law has been viewed and implemented within the case study institution. Are some of

(Specific Duties) (Wales) Regulations 2011 No. 1064 (W.155)

<http://www.legislation.gov.uk/wsi/2011/1064/made> (accessed 09/11/12)

²²⁰ Equality and Human Rights Commission (2011) ‘Equality Information and the Equality Duty: A Guide for Public Authorities – England (and non-devolved public authorities in Scotland and Wales)’ (2nd ed.) Equality and Human Rights Commission

²²¹ Equality and Human Rights Commission – News and Updates ‘Update on the Public Sector Equality Duty Statutory Code of Practice’

(23 April 2012) <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/news-and-updates-on-the-equality-duty/> (accessed 09/11/12)

the criticisms regarding the effectiveness of the fourth generation equality legislation warranted? Until this point this chapter has focussed on identifying the development of anti-discrimination law and attempting to outline some of the main positive and negative aspects which prompted the passing of race and disability legislation. However, in order to fully understand the development of anti-discrimination/race/disability legislation and to understand the current position, one must ask which factors have been key in leading to the fourth generation in the development of anti-discrimination legislation?

Factors Influencing the Development of Race and Disability Legislation

As mentioned in the introduction to this chapter, one of the aims is to discuss whether the influences on the passing of race relations and disability discrimination legislation have been bottom up (for example, social phenomena) or top down (for example, Government/politically initiated), or, as has been suggested by some commentators, a combination of both.²²² Identifying these influences is key in demonstrating *why* the law has reached the fourth generation.

Top Down Influences

Immigration and Immigration Policy

One theme which stands out and recurs, more overtly than others, whenever race and/or race discrimination legislation are discussed, is that of immigration. Frequently the view which seemed to be expressed by some politicians and academics is that ad hoc and flawed immigration policy/legislation and a failure to control those entering the UK, although only with regards to *specific* migrants,²²³ were/are the primary causes of racism and racial tensions. “[O]ur own race relations problem has been almost entirely, and unnecessarily, engendered by a defective immigration and nationality law... The history of our nationality and immigration laws, like most other things in this country, is the product of almost wholly unplanned development.”²²⁴ It is the aim of this section of this chapter to further explore this statement and to discuss the relationship with the introduction of race discrimination legislation.

In the 1950s and early 1960s, migration from the Indian sub-continent and the Caribbean began to gather momentum.²²⁵ Migration was said to have increased due to the fear of new immigration controls which aimed to stop migration from these counties.²²⁶ However, the subsequently enacted Commonwealth Immigrants Act 1962 (CIA 1962) had the opposite effect as

²²² Equalities Review (2007) ‘Fairness and Freedom: The Final Report of the Equalities Review’ www.theequalitiesreview.org.uk (accessed 12/08/09) p29

²²³ See discussions below in relation to the East African Asians, for example

²²⁴ Hogg, Q (1970) ‘Race Relations and Parliament’ *Race and Class Vol. 12 Part 1* pp1 – 13 at p7

²²⁵ Deakin, N (1970) ‘Colour, Citizenship and British Society: An Abridged and Updated Version of the Famous Report’ Panther Books p45

²²⁶ For further analysis see Foot, P (1965) ‘Immigration and Race in British Politics’ Penguin p135

previously migrants had come to the UK in search of work, when work was available. However, with the anticipation of immigration controls being introduced, migration from the Caribbean, India and Pakistan rose sharply.²²⁷ The public reason provided for the introduction of the CIA 1962, which, in the short term at least, failed so dramatically in achieving its aim, was an argument about numbers and availability of employment. However behind the public facade the real reason for preventing migration to the UK was clear. "Disquiet about free movement for these 'coloured' British subjects continued to be voiced in official circles...."²²⁸ This was demonstrated starkly by debates in Parliament and the discussions at the time within the House of Commons are revealing, particularly the views expressed on race and migration leading up to the introduction of the CIA 1962 by certain MPs such as the Conservative Backbencher Cyril Osborne.²²⁹

Concerns were expressed despite the fact that between 1951 and 1961 there were significantly greater numbers of "white" migrants coming from Ireland and the Old Commonwealth (Australia, Canada, New Zealand and South Africa).²³⁰ The presence of migrants from the Old Commonwealth and the Republic of Ireland had been acknowledged in some quarters and it was highlighted that the arguments relating to migration were in fact about race and the assimilation of non-white migrants rather than about the volume of migration per se.²³¹ It could be argued that views, such as those expressed by Cyril Osborne, were merely the rantings of a little known backbench MP at the time. In fact, as Foot stated "[f]or many years, Osborne was alone in his campaign, shunned by the modernizing Tory 'radicals' on his own side of the House, and snubbed by his own Front Bench."²³² However, Osborne continued his campaign for legislation to control the right of Commonwealth immigrants to come to Britain. A number of factors meant that Osborne's voice was able to become more mainstream, including an increase in numbers of migrants in 1961 in order to beat any possible legislation restricting entry to Britain, an

²²⁷ Deakin, N (1970) op cit. pp47 - 48

²²⁸ Shah, P (2000) 'Refugees, Race and the Legal Concept of Asylum in Britain' Cavendish p75

²²⁹ See Appendix 8 for full Hansard debate

²³⁰ Clayton, G (2008) 'Immigration and Asylum Law' (3rd ed.) OUP p10

²³¹ Hayter, T (2000) 'Open Borders: The Case Against Immigration Controls' Pluto Press p21

²³² Foot, P (1965) op cit. pp129 - 130

intensification in far right activity which “dragged the more disreputable anti-immigrant propaganda into the centre of the political stage”²³³ and an increased willingness by Conservative MPs to use immigration in by-election campaigns. These factors, alongside others which will not be discussed in detail here,²³⁴ culminated in the passing of the CIA 1962.

Over the course of a number of years more prominent politicians²³⁵ would express similar views to those of Cyril Osborne, primarily aiming their comments at Black migrants and raising concerns regarding assimilation. Clearly migration to the UK was not new, nor was the public and ‘(un)official’ racism which accompanied it.²³⁶ The question which arose was how to deal with such prejudice. The perceived solution to the prejudice which was encountered by the Black community revealed a contradictory, or at the very least uneasy, partnership of policies relating to immigration/citizenship and race equality. This paradox has been neatly expressed by Lester and Bindman, “[t]he approach of successive Governments has therefore been that Commonwealth citizens should be excluded from this country because they are coloured, but that Commonwealth citizens who are already here should be treated equally, regardless of their colour. ...The more obvious conclusion that has generally been drawn is that if coloured immigration poses a threat to Britain’s well-being so does the coloured minority living in Britain. ...The hostile expression of our immigration law casts doubt upon the friendly expression of our race relations law.”²³⁷ Had the issue of immigration not been in the forefront of politicians’ minds, the need for race discrimination legislation may not have been either.²³⁸ As implied by the above statement, the passing of the CIA 1962 did not stop the debate surrounding immigration and the perceived problem of “coloured” migrants.

²³³ Ibid, p136

²³⁴ For further details regarding these factors see Ibid, p135 - 138

²³⁵ Such as Tory MP Mangus Maude in 1965; Henry Brooke in 1966; Enoch Powell in 1968; Sir Winston Churchill in 1978; Margaret Thatcher in 1978 – See Hayter, T (2000) op cit. p27 and pp54 – 55 and Deakin, N (1970) op cit. p95.

²³⁶ See for example Hayter, T (2000) op cit.; Shah, P (2000) op cit., and Thane, P et al (2007) op cit. for a more detailed account of migration to Britain and discrimination encountered by migrants prior to the 1950s.

²³⁷ Lester, A and Bindman, G (1972) op cit. pp13 - 14

²³⁸ Hindell, K (1965) op cit. at p390

A few years later the Commonwealth Immigrants Act 1968 (CIA 1968) was rushed through Parliament with the specific aim of preventing East African Asians from entering Britain. The East African Asians had ancestral roots in India and had migrated to East Africa due to British Colonialism.²³⁹ They therefore acquired the status of Citizens of the UK and Colonies under the British Nationality Act 1948 (BNA 1948).²⁴⁰ During this time the normal practice was that as British colonies gained independence the residents normally acquired the citizenship of the newly independent country as well as retaining British citizenship.²⁴¹ However, in countries such as Uganda and Kenya, once they had gained independence the people lost their British citizenship. The East African Asians could only become citizens of the newly independent States if they applied to do so within two years of independence and gave up their British citizenship.²⁴² The choice for the East African Asians was therefore to either retain their British citizenship, and with it the right to enter the UK free from immigration control, or to apply for the nationality of the newly independent country and give up their British citizenship. Many opted to retain their British citizenship.²⁴³ Following their independence, some of the East African countries adopted a policy of 'Africanisation'.²⁴⁴ Many of the East African Asians therefore felt they had no option but to take up the rights conferred on them by their status as British citizens and move to Britain. However, as the process of 'Africanisation' gathered momentum, particularly in Kenya in 1967,²⁴⁵ along with the backdrop of race riots and the civil rights' movement in the US, a campaign was started led by Enoch Powell MP and Duncan Sandys MP. The message of the campaign was to argue that race riots and civil disorder could be averted in Britain only by halting migration.²⁴⁶ The aim of the campaign was "to ensure that they [the East African Asians] did not exercise their right to come to Britain."²⁴⁷

²³⁹ Hayter, T (2000) op cit. p52

²⁴⁰ British Nationality Act 1948 s4

²⁴¹ Clayton, G (2008) op cit. p68

²⁴² Lester, A (2003) 'East African Asians versus The United Kingdom: The Inside Story' http://www.odysseustrust.org/lectures/221_east_african_asians-sharma.pdf (accessed 31/12/09) p3

²⁴³ Hayter, T (2000) op cit. p53

²⁴⁴ "[G]iving preference to their citizens in trade and employment and in due course requiring the departure of people who were not local citizens and whose right to work or trade there had, been withdrawn. The British Asians were the victims of this racist policy." Lester, A (2003) op cit. p4

²⁴⁵ Pilkington, A (2003) op cit. p215

²⁴⁶ Deakin, N (1970) op cit. p122

²⁴⁷ Hayter, T (2000) op cit. p53

This campaign culminated in the CIA 1968 which restricted automatic rights of entry to the UK, free from immigration control, to those with “at least one of his parents or grandparents – a) born in the United Kingdom; b) naturalised in the United Kingdom or; c) a Citizen of the United Kingdom and Colonies by virtue of being adopted in the United Kingdom or; d) became such a citizen by being registered ...”²⁴⁸ Unsurprisingly, almost none of the East African Asians could comply with these requirements and so were denied entry to the UK. As Lester points out, “[i]t was the most unfair measure enacted by Parliament in my lifetime, racially motivated and in breach of a pledge made by Britain to the East African Asian community. A group of British citizens became citizens without status, stateless in fact, if not in abstract theory.”²⁴⁹ It was with this backdrop that discussions and debates were taking place regarding the strengthening of the RRA 1965. The RRA 1968 was therefore seen by many as a way of appeasing settled immigrant communities.²⁵⁰

Arguably, therefore, a major contributor to the decision to introduce race relations legislation in 1965 and again in 1968 was the adoption of a draconian and racist immigration policy at the time. Two emerging views regarding the reasons for the introduction of race legislation at a time of restrictive immigration policy and laws are apparent. Firstly, that race legislation was introduced in order to mollify Black and migrant communities already in the UK.²⁵¹ The second view, and arguably the official perception at the time, was that with fewer migrants it would be easier to integrate them into British life.²⁵² The introduction of race legislation would aid this integration.²⁵³ The pattern of introducing ever more restrictive immigration legislation, counterbalanced with the introduction of further race relations legislation continued into the 1970s. The backdrop to the passing of the RRA 1976 was the Immigration Act 1971 (IA 1971) which came into force on the 1st January 1973 and had the effect of introducing strict controls primarily on young men

²⁴⁸ Commonwealth Immigrants Act 1968 s1

²⁴⁹ Lester, A (2003) op cit. p2

²⁵⁰ Hepple, B (March 2009) Interview conducted at the University of Cambridge 19th March 2009.

²⁵¹ Miles, R and Phizacklea, A ‘Some Introductory Observations on Race and Politics in Britain’ in Miles, R and Phizacklea, A (eds.) (1979) ‘Racism and Political Action in Britain’ Routledge and Kegan Paul Ltd p24

²⁵² Solomos, J (1993) ‘Race and Racism in Britain’ (2nd ed.) MacMillan Press Ltd. p84

²⁵³ Geddes, A (1996) ‘The Politics of Immigration and Race’ Baseline Books p41

looking to work in the UK.²⁵⁴ The IA 1971 effectively brought primary migration to the UK from the Indian subcontinent, Africa and the Caribbean to an end.²⁵⁵

Anti-immigrant sentiment did not end there. The relatively newly formed National Front²⁵⁶ gained new fervour²⁵⁷ in 1972 when the British Government reluctantly admitted 27,000 refugees who had been expelled from Uganda under the regime of Idi Amin.²⁵⁸ This provided ammunition for the racist organisation to exploit. The actions of Enoch Powell, particularly his famous 1968 'Rivers of Blood' speech²⁵⁹ gave the National Front the publicity and legitimacy it needed in order to increase support for its extreme right wing policies.²⁶⁰ Although the relative popularity of the National Front was reasonably short lived²⁶¹ its legacy lived on through the mainstream political parties due to the fact that the "apparent popularity of a party which openly expressed racist views encouraged the main political parties to maintain a very restrictive immigration policy..."²⁶²

Restrictive immigration control in the form of the IA 1971 and the resurgence of anti-immigrant propaganda and racism, which was legitimised by Conservative policy and views on immigration up to the 1974 election, formed the backdrop to the passing of the RRA 1976 by the newly elected Labour Government. However, once again, although there was great optimism surrounding the RRA 1976²⁶³ it was cloaked in terms of providing the trade-off for the more restrictive immigration laws which had already been passed as well as, with the benefit of hindsight, further restrictions which were to be passed in later years by Conservative Governments in the forms of the British

²⁵⁴ Skellington, R et al (1992) 'Race in Britain Today' Sage Publications p56

²⁵⁵ Clayton, G (2008) op cit. p13

²⁵⁶ Formed just before the campaign to keep the East African Asians out of the UK

²⁵⁷ Pilkington, A (2003) op cit. p218

²⁵⁸ Ibid, p218

²⁵⁹ Delivered to the Conservative Association on 20 April 1968 – full text can be found at <http://www.telegraph.co.uk/comment/3643823/Enoch-Powells-Rivers-of-Blood-speech.html> (accessed 01/01/10)

²⁶⁰ Layton Henry, Z (1992) 'The Politics of Immigration' Blackwell p90

²⁶¹ With its demise after the 1979 elections due to placing "much of its prestige and so much of the movement's resources on fighting the election." Layton Henry, Z (1992) op cit. p96

²⁶² Pilkington, A (2003) op cit. p218

²⁶³ See previously for further details

Nationality Act 1981 (BNA 1981) and the Immigration Act 1988 (IA 1988).²⁶⁴ It has therefore been suggested that "...the effectiveness of the Race Relations Acts has been impaired by the tensions and contradictions between them and the immigration and nationality laws."²⁶⁵ Although this view was expressed in the early 1970s, it could be argued that the statement equally applies to the RRA 1976. It is not being suggested that the RRA 1976 was introduced as a *direct* result of more restrictive immigration control in the years preceding it, but that the connection between the policies relating to immigration, integration and race relations remains close and that the attitude of successive Governments towards immigration has tarnished the effectiveness of the RRA 1976.²⁶⁶

Since the late 1980s and early 1990s it may be argued that the racism and restriction aimed at Black Commonwealth immigrants as described above has shifted to a new concern, that of asylum seekers, and specifically those viewed as 'bogus'.²⁶⁷ The successes of the various previous Acts restricting migration from the New Commonwealth countries as well as restricting those who could become a British citizen, and with it the right of abode in the UK, has meant that the focus has changed with the increased numbers of those seeking asylum.²⁶⁸ Having asylum seekers now at the forefront of the political agenda has resulted in restrictive and racist policy being translated into ever more restrictive legislation.²⁶⁹ Since the year 2000 there have been numerous other Acts of Parliament aimed at restricting the rights of asylum seekers.²⁷⁰ The effect of this legislation has been to discriminate against and stigmatise those seeking asylum which has, once again, created a new type of institutional racism.²⁷¹ This has been reflected in the policies which have been introduced, such as dispersal, and the system of vouchers instead of paying cash benefits,

²⁶⁴ Hepple, B in Hepple, B and Szyszczak, E.M. (eds.) (1992) op cit. p28

²⁶⁵ Lester, A and Bindman, G (1972) op cit. p14

²⁶⁶ Bourne, J (2001) op cit. p14

²⁶⁷ Hayter, T (2000) op cit. p76

²⁶⁸ Ibid, p70

²⁶⁹ The Runnymede Trust (2000) 'The Future of Multi-ethnic Britain: The Parekh Report' Profile Books p212

²⁷⁰ See for example; Nationality, Immigration and Asylum Act 2002, Asylum and Immigration (Treatment of Claimants) Act 2004, Immigration, Asylum and Nationality Act 2006.

²⁷¹ Bourne, J (2001) op cit. p14

which have further marginalised and stigmatised asylum seekers.²⁷² The effects of this ever increasing legislation aimed at dealing with 'bogus' asylum seekers has been to create a 'new' racism.²⁷³ It may be said that this new racism is now less overtly related to the colour of the skin of those entering the UK, but to the fact that they nevertheless form part of a stigmatised group identified by their legal status.²⁷⁴ It is not suggested here that the RR(A)A 2000 was introduced as a direct result of this new racism or immigration/asylum policy, but merely that "[i]ssues surrounding immigration control and, now asylum seekers have been a persistent and negative feature of the British race relations situation."²⁷⁵ Race relations have been one reason for the introduction of immigration controls. However, there have been other reasons which have been given for the introduction of controls, such as concerns regarding pressures on public services.²⁷⁶

In conclusion it may be stated that clearly immigration policy has been an important influence in the development of race relations legislation over the years. In some cases immigration policy led directly to the passing of race legislation as in the RRA 1965 and RRA 1968. Immigration and asylum policy and the accompanying racism have also influenced the shape of later anti-race discrimination legislation. This may be due to the ideology of those in power at the time new immigration laws or new anti-discrimination laws were introduced. "Government policy has exhibited the influence of two contradictory traditions, racism and liberalism. While immigration policy and administration have tended to exemplify the first tradition, the measures designed to combat racial disadvantage have tended to exemplify the second tradition."²⁷⁷ However, immigration policy and laws have been framed, instigated and agreed on by politicians and Government from both of the main political parties, forming an (admittedly sometimes fragile) consensus in policy. It is therefore argued that immigration law and policy is primarily a top

²⁷² Ibid.

²⁷³ Clarke, J and Speeden, S (2001) op cit. p22

²⁷⁴ Pilkington, A (2003) op cit. p226

²⁷⁵ Clarke, J and Speeden, S (2001) op cit. p21

²⁷⁶ See for example the debates surrounding migration as articulated by The Migration Observatory <http://www.migrationobservatory.ox.ac.uk/top-ten/7-impacts> (accessed 14/07/13)

²⁷⁷ Pilkington, A (2003) op cit. p242

down influence on race relations legislation.²⁷⁸ The bi-partisan consensus which can be observed in immigration policy over the decades can also generally be seen to be the case with regards to the introduction of race legislation over the years.²⁷⁹

So when Hogg's statement, given at the beginning of this section,²⁸⁰ is considered in light of the arguments above, it might be contended that although immigration policy *has* been "defective" and "unplanned" it may be said that this was due to a history²⁸¹ of knee jerk, reactionary and racist policy against migrants. It may also be said that, generally speaking, the development of race relations policy and legislation was introduced as a response to such immigration measures which had themselves caused the "race relations problem" by institutionalising and legitimising racism, not, as Hogg suggests, due to the lack of a planned immigration policy.²⁸² The racist and knee jerk reactions to the perceived problems of immigration "undermines Britain's development as a cohesive but diverse society, for it implies or indicates that politicians are not genuinely committed to addressing all forms of racism."²⁸³ The significance of immigration policy in terms of the development of race equality law cannot be underestimated and it is argued here that it is a major contributing component leading to the development of the fourth generation of race equality legislation. Campaigners in the disability field did not have the same significant factor which influenced the disability rights agenda and brought it to the forefront of the politicians minds and so it may be argued that this is one reason (although not the only reason) as to why the rights for disabled people were much slower in their development.

Political Leadership and Ideology

The ideology of the main political parties has been key in terms of influencing whether and in what form race relations and disability anti-discrimination

²⁷⁸ However, due to the significance of immigration to race laws, it was felt that it was justified in separating out the issues of immigration from other top down influences to be discussed in this section of the chapter.

²⁷⁹ Pilkington, A (2003) op cit. p211

²⁸⁰ See note 205

²⁸¹ And it may be argued still is.

²⁸² Hayter, T (2000)op cit. p21

²⁸³ The Runnymede Trust (2000)op cit. p205

legislation has been introduced. It does not seem to be by accident that all of the legislation relating to race and strengthening disability equality have been passed under a Labour Government.²⁸⁴ As Pilkington suggests, race legislation (and arguably disability too) has emerged out of a tradition of liberalism²⁸⁵ which is more likely to be evident in the political ideology of the Labour Party.²⁸⁶ This ideology and commitment to equality was demonstrated by, for example, Roy Jenkins in 1967 when he stated that "...for those who are already here... it is essential that they should be treated properly in every way, and given the fullest human rights. For a Labour Government to fall down on this would be a betrayal without excuse of everything the Labour Party has ever stood."²⁸⁷ Similarly, in relation to the DP(E)A 1944 it was viewed as significant that it was a Labour Minister, Ernest Bevin,²⁸⁸ who was championing this legislation.²⁸⁹ The commitment to equality has also been restated in more recent times with the election of a (New) Labour Government in 1997 when they overturned the UK's opt-out of the EU Social Charter and with the introduction of the Human Rights Act 1998 (HRA 1998) which incorporates Article 14²⁹⁰ of the ECHR into UK law.²⁹¹ The Labour ideology has also been reflected in the speeches of Brown²⁹² and Blair²⁹³ as "[b]oth have their own clear view of socialism, but retain the same core values of opportunity and equality."²⁹⁴ This therefore demonstrates that notions of opportunity and equality have been key in both 'old' and 'New' Labour

²⁸⁴ Bleich, E (2003) 'Race Politics in Britain and France: Ideas and Policy Making since the 1960s' Cambridge University Press p112

²⁸⁵ Pilkington, A (2003) op cit. p242

²⁸⁶ And it may also be argued in the Liberal Party, although they have never been in Government during the passing of the Race Relations Acts. However, there have been a number of notable individuals in the Liberal Party over the years who have been active in campaigning for anti-discrimination legislation, for example, Mark Bonham Carter, Lord Lester.

²⁸⁷ Lester, A (ed.) (1967) 'Essays and Speeches by Roy Jenkins' Collins p287

²⁸⁸ Minister of Labour 1940 - 1945

²⁸⁹ Bolderson, H (1980) op cit. p176

²⁹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms Article 14 - The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

²⁹¹ Dickens, L (2007) op cit. p468

²⁹² Prime Minister 2007 - 2010

²⁹³ Prime Minister 1997 - 2007

²⁹⁴ Leston-Bandeira 'Division and Discord in the Labour Party: A qualitative and quantitative analysis of ideological and personal divisions between Tony Blair and Gordon Brown since 1994, focusing on speeches made to the party conference and the reaction of the press to these speeches' University of Hull http://www.hull.ac.uk/pal/Outcomes/Work-developed/research_project_diversity.pdf (accessed 03/01/10) p2

politics.²⁹⁵ Following 18 years of Conservative Government, the New Labour Government introduced a number of initiatives which indicated their commitment to equality.²⁹⁶

It is therefore clear that the ideology of the Labour Party played a significant role in the development of anti-discrimination legislation generally and race relations legislation more specifically. Street pointed out that without a Government *committed* to legislation outlawing discrimination, the aims of the law would not be fulfilled.²⁹⁷ The view of some members of the Conservative Party of past race legislation may not have been conducive to its introduction, let alone potential success.²⁹⁸

Although the first piece of legislation prohibiting disability discrimination was introduced under a Conservative Government in 1995, it might be argued that this was done under some duress²⁹⁹ and as a compromise for not passing strengthened disability rights legislation, rather than due to an ideological sense that it was necessary to legislate for equal rights for disabled people. There had been numerous attempts during the 1980s and 1990s to legislate in order to bring disability rights on par with other equality legislation, however there was a general view within Government during this time that legislation was unnecessary, as there was not sufficient evidence demonstrating prevalent discrimination against disabled people.³⁰⁰ It was only after renewed attempts to introduce disability anti-discrimination legislation in the form of the Civil Rights (Disabled Persons) Bill in 1994/5 that the DDA 1995 was introduced. As Connolly highlights, "...having ensured that a previous – and arguably stronger – Private Member's Bill – was prevented from passing through Parliament, the Government felt under a moral obligation to legislate."³⁰¹ The result was a much more watered down piece of legislation as compared to other anti-discrimination legislation as explained previously. Whilst in opposition, the Labour Party was critical of the DDA 1995 and

²⁹⁵ Ibid.

²⁹⁶ Pilkington, A (2003) op cit. p238

²⁹⁷ Street, H et al (1967) op cit. p62

²⁹⁸ Smith, D (1977) 'Racial Disadvantage in Britain: The PEP Report' Pelican p310

²⁹⁹ See below regarding grass roots pressure

³⁰⁰ Barnes, C (1992) op cit. p5

³⁰¹ Connolly, M (2004) op cit. p464

demonstrated their commitment to strengthening the rights of disabled people by including this in their election manifesto.³⁰² It was not until a Labour Government came into power that legislation³⁰³ introducing a Disability Rights Commission (DRC) along the lines of the CRE and the EOC was introduced as well as legislation³⁰⁴ strengthening the provisions of the DDA 1995 and bringing the scope of protection in line with race and gender.

However, it may be argued that alongside the ideology of the Government introducing anti-discrimination legislation, there have been some notable individuals within the political sphere without whom the legislation may still not have been implemented due to the opposition they faced.³⁰⁵ One of these individuals is Roy Jenkins³⁰⁶ who has been acknowledged as one of the main forces behind the passing of both the RRA 1968 and the RRA 1976. "I think also it's fair to say that had it not been for Roy Jenkins, we might not have got this legislation at all because he was very, very committed to it and I am not sure that he had the universal backing in his own party."³⁰⁷ It was Roy Jenkins' determination and ability to recognise the necessity of race discrimination law both in 1967 and preceding the 1976 Act³⁰⁸ which ensured that it would be passed.³⁰⁹

Another political activist who has been highly influential is Anthony Lester, now Lord Lester of Herne Hill.³¹⁰ Prior to the passing of the RRA 1968 Lester helped to generate the support of fellow MPs which was needed in Parliament in order for the RRA 1968 to be passed.³¹¹ However, his influence did not end in 1968. In fact, prior to the RRA 1976, Roy Jenkins had appointed him as Special Adviser with responsibility for developing race and sex discrimination

³⁰² Gooding, C (2000) op cit. p541

³⁰³ Disability Rights Commission Act 1999

³⁰⁴ Disability Discrimination Act 2005 and Equality Act 2010

³⁰⁵ Lester, A and Bindman, G (1972) op cit. p15

³⁰⁶ Home Secretary December 1965 – November 1967 and March 1974 - September 1976

³⁰⁷ Bindman, G (April 2009) Interview conducted at Bindman's Solicitors 22nd April 2009

³⁰⁸ See below in relation to Anthony Lester

³⁰⁹ Lester, A and Bindman, G (1972) op cit. p149

³¹⁰ Lord Lester of Herne Hill – Biography

http://www.libdems.org.uk/shadow_ministers_detail.aspx?name=Lord_Lester_of_Herne_Hill&pPK=47664be3-09f9-4902-ba9b-09fcd21f480e (accessed 03/01/10)

³¹¹ Bleich, E (2003) op cit. p78

policy.³¹² Lord Lester was also involved in the formation of the RR(A)A 2000 as well as the current EA 2010. It is clear from his experience both as a politician and as a practising lawyer that his influence in the discrimination and human rights sphere cannot go unnoticed or unappreciated.³¹³

There have also been political activists within the area of disability who have put disability rights on the agenda of the Government. Two Members of Parliament had tried to introduce disability anti-discrimination measures, Dr Roger Berry MP³¹⁴ and Harry Barnes MP³¹⁵ had introduced Private Members' Bills in the 1990s, the "Berry Bill" in 1993/4 and the "Barnes Bill" in 1994/5.³¹⁶ These Bills, along with pressure from campaigning organisations (see below), prompted the then Conservative Government to table its own Disability Discrimination Bill, which became the DDA 1995. The aim of these Private Members' Bills was more important than merely getting new legislation on the statute book, which realistically was not going to happen in the form they were proposed. The impact of the Bills was much further reaching as they helped to draw media and public attention to the discrimination which disabled people faced as well as the lack of anti-discrimination laws to deal with it. It is therefore argued that these Bills prompted the passing of the DDA 1995.³¹⁷

The disability movement also had their own equivalent of Lord Lester in the form of Lord Ashley of Stoke, who was himself disabled as he lost his hearing in 1967.³¹⁸ Lord Ashley was renowned for his campaigning on disability issues throughout his Parliamentary career.³¹⁹ Colleagues in the House of Lords

³¹² Ibid, p95

³¹³ For details of his political appointments, publications and cases see Lord Lester of Herne Hill QC - http://www.blackstonechambers.com/people/barristers/lord_lester_of_herne.html (accessed 21/07/13)

³¹⁴ MP for Kingswood 1992 - 2010

³¹⁵ MP for North East Derbyshire 1987 - 2005

³¹⁶ Roll, J (1995) 'Civil Rights (Disabled Persons) Bill – Research Paper 95/18' Education and Social Services Section, House of Commons Library

³¹⁷ Disability Rights Commission (2007) 'Learning Lessons: The Independent Living Bill – Building Strategic Alliances' <http://www.leeds.ac.uk/disability-studies/archiveuk/DRC/Learning%20lessons%20--%20the%20independent%20living%20bill.pdf> (accessed 01/09/12) p7

³¹⁸ Roth, A (April 2012) 'Lord Ashley of Stoke Obituary' The Guardian <http://www.guardian.co.uk/society/2012/apr/21/lord-ashley-of-stoke> (accessed 01/09/12)

³¹⁹ RADAR 'Disability Rights UK mourns passing away of Lord Ashley of Stoke, formidable champion of disability rights.' <http://www.radar.org.uk/news/disability-rights-uk-mourns-passing-away-of-lord-ashley-of-stoke-formidable-champion-of-disability-rights/> (accessed 01/09/12)

acknowledged his significant contribution to the disability rights movement.³²⁰ He twice introduced a Private Members Bill (Disabled Persons (Independent Living) Bill) in 2006 and 2009 in order to bring independent living for disabled people to the forefront of the political debate. Once again, the aim of the Bills were not merely to try and get Parliament to pass a relatively radical piece of disability legislation, but to get independent living for disabled people to be seen as an issue of fundamental human rights.³²¹ Without such influences within the realm of politics it is unclear as to whether the DDA 1995 would have been passed or whether disability rights would have been continued to be discussed and more importantly, taken seriously.

Although there have clearly been other influential individuals in the passing of anti-discrimination legislation³²² the final individual within the political arena who merits acknowledgement for his influence in the passing of race legislation, which also resulted in more progressive disability provisions, is Jack Straw.³²³ The significance of the Macpherson Inquiry and the legislation which followed, instigated by Jack Straw, cannot be underestimated in terms of the development of race relations legislation and anti-discrimination legislation generally, into the fourth generational stage.³²⁴ It is therefore argued that, had it not been for the political leadership shown by Jack Straw in commissioning the Macpherson Inquiry, his commitment to implementing the recommendations once the inquiry was concluded, as well as taking on board amendments which were suggested to the Race Relations (Amendment) Bill, race relations legislation would not have moved forward in the form that it has, incorporating both a specific duty to promote equality as well as the general duties which accompany it. However, the main force pushing those, such as Jack Straw, into setting up of the Macpherson Inquiry and campaigning for amendments in the Bill, was Doreen Lawrence. Her significant role and influence will be discussed further below. However, it is

³²⁰ HL Deb. 14 Dec 2007 Disabled Persons (Independent Living) Bill [HL] Baroness Royall of Basildon Col. 440

³²¹ Disability Rights Commission (2007) *op cit.* p7

³²² For example Mark Bonham Carter, Christopher McCrudden, Geoffrey Bindman, Bob Hepple among others

³²³ Home Secretary 1997 - 2001

³²⁴ HL Deb. 14 December 1999 Vol. 608 cc127-85 Baroness Howells of St Davids Para. 149 http://hansard.millbanksystems.com/lords/1999/dec/14/race-relations-amendment-bill-hl#S5LV0608P0_19991214_HOL_68 (accessed 28/08/12)

clear that, “[t]he Race Relations (Amendment) Act 2000... kick-started the biggest anti-discrimination drive in the UK.”³²⁵

It can therefore be seen that both political ideology and individuals in influential positions have driven race relations and disability anti-discrimination legislation forward over the years. Without these ‘top down’ influences it is argued that the legislation would not have taken the form it has, with a continuous intention by individuals to improve the law,³²⁶ if it would have been passed at all. However, it may also be said that political ideology and committed influential individuals on their own would not have been sufficient in driving the agenda forward.

Other Jurisdictions/Legislation

The final section relating to the top-down influences on race and disability discrimination legislation is focussed on the impact of other anti-discrimination legislation, whether that be anti-discrimination legislation in Britain but focussed on a different strand of discrimination i.e. sex, or the laws relating to race and disability discrimination in other countries.

One key influence behind the framing of the provisions of the RRA 1968 was the Street Report,³²⁷ written by Professor Harry Street, Geoffrey Howe QC (now Lord Howe) and Geoffrey Bindman (now a Sir) and which was sponsored by the Race Relations Board and the National Committee for Commonwealth Immigrants.³²⁸ The terms of reference for this influential report were to investigate the effectiveness of anti-discrimination laws in other countries and “to consider what types of legislation Parliament might consider most suitable should it decide that the Race Relations Act 1965 requires amendment or extension.”³²⁹ The Street Report had once again identified the weaknesses of anti-discrimination law in Britain as being that of the system of redress for complainants, the inadequate coverage of the RRA 1965 and the lack of power

³²⁵ Equal Opportunities Review (2006) ‘Race Equality: An Ongoing Obligation’ *Equal Opportunities Review No. 154* pp13 – 20 at p13

³²⁶ With varied successes as discussed previously

³²⁷ Street, H et al (1967) op cit.

³²⁸ Baroness Hale of Richmond (2005) ‘The Quest for Equal Treatment’ *Public Law* pp571 – 585 at p571

³²⁹ Street, H et al (1967) op cit.

of the Race Relations Board.³³⁰ Its recommendations were tailored in order to try and address these deficiencies. Although not all of the recommendations made in the Street Report for the formation of anti-discrimination provisions in Britain were to be taken on board, some of the main criticisms of the RRA 1965 were addressed. As Sir Geoffrey Bindman recalls, "...the three of us clearly concluded that the 1965 Act was totally inadequate. We recommended extending it to employment, housing *etc*, we recommended giving the Race Relations Board the power to go to court which it didn't have before and that was all accepted. There were other recommendations that weren't accepted. One of them ... was that we should be allowed to propose tailored remedies... so the court could actually direct an employer to take a particular action to remedy the discrimination."³³¹

Mark Bonham Carter drew similar conclusions and specifically emphasised the need to look to America to learn lessons for anti-race discrimination legislation and enforcement in Britain.³³² The Street Report,³³³ published in the same year as Bonham Carter's observations, also considered whether the UK could adopt similar legislation to the US and Canada.³³⁴ However, although the Street Report was highly regarded, the RRA 1968 failed to take into account many of the key suggestions made by the report.³³⁵ The North American influence did not end there and the influence of the US Civil Rights legislation was apparent in later race legislation, for example the inclusion of indirect discrimination.³³⁶ Some of the suggestions which had been made by the Street Report in 1967 which were not adopted in the RRA 1968, were reconsidered and implemented in the RRA 1976 as was demonstrated previously. This resulted in a situation where current race relations legislation has been strongly influenced by policy and law from the US and Canada.³³⁷

³³⁰ *Ibid*, p128

³³¹ Bindman, G (April 2009) Interview conducted at Bindman's Solicitors 22nd April 2009

³³² Bonham Carter, M (1967) 'Measures Against Discrimination: The North American Scene' *Race and Class Vol.9 No. 1* pp1 – 26 at p24

³³³ Street, H et al (1967) *op cit*.

³³⁴ Bleich, E (2003) *op cit*. p79

³³⁵ Hepple, B (1970) *op cit*. p169

³³⁶ Dickens, L (2007) *op cit*. at p466

³³⁷ Bleich, E (2003) *op cit*. p112 - 113

It might be suggested that the US was also of great influence with regards to the introduction of the DDA 1995. Alongside the grass roots campaigns as mentioned previously, it has been suggested that the civil rights legislation in America and specifically the Disabilities Act 1990 (DA 1990) was “especially inspirational.”³³⁸ As the Chairperson of the European Network on Independent Living, John Evans, stated “[w]e felt that if it was possible in the USA for such legislation then it was also possible in the UK.”³³⁹ Not only was anti-disability discrimination legislation being passed in the US, but other jurisdictions, such as Australia, had also enacted similar laws.³⁴⁰

Not only was the North American experience important in terms of influencing the content and scope of the RRA 1976, a grass roots campaign culminating in anti-discrimination legislation closer to home had also provided additional momentum. One important influence on the passing of the RRA 1976 was the campaign to equalise wages and treatment between men and women.³⁴¹ In 1970 the Equal Pay Act (EPA 1970) was introduced and in 1975, taking on board some of the suggestions made by Street with regards to race legislation, the SDA 1975 was enacted. As the provisions in the SDA 1975 provided a far greater level of protection against sex discrimination than did the RRA 1968 with regards to race, this meant that there was pressure to implement race laws which mirrored the protections afforded under the SDA 1975.³⁴² It may be argued that previous anti-discrimination legislation, particularly with regards to race, influenced the passing of the DDA 1995. Without these previous pieces of anti-discrimination legislation, the Conservative Government at the time may not have been compelled to address the inequalities faced by disabled people.

The final legislative influence on the development of race and disability legislation has also come from closer to home and has significantly contributed to the shape of the fourth generation of equality law in Britain. Although the

³³⁸ Woodhams, C and Corby, S (2003) op cit. p160

³³⁹ Evans, J (1996) ‘The UK Civil Rights Campaign and the Disability Discrimination Act’ <http://www.leeds.ac.uk/disability-studies/archiveuk/evans/ADLWIEN.pdf> (accessed 22/08/12)

³⁴⁰ Connolly, M (2004) op cit. p463

³⁴¹ McCrudden, C, Smith, D.J. and Brown, C (1991) op cit. p16

³⁴² Bindman, G (April 2009) Interview conducted at Bindman’s Solicitors 22nd April 2009.

Lawrence campaign and subsequent Macpherson Inquiry were key in pushing the race agenda forward in Britain, the form the resulting legislation took reflected laws which were already in force in Northern Ireland. Clearly the historical and political context in Northern Ireland is very complex³⁴³ and very specific and it would not be appropriate to go into detail here. However, the equality discourses which emerged leading up to the peace talks and the GFA 1998 originally had their roots in discussions about religious and political discrimination and the primary focus of the British Government up to the 1990s was to address the inequalities between Catholics and Protestants.³⁴⁴ This focus was to be reflected in two pieces of legislation, starting with the Fair Employment (Northern Ireland) Act 1976 (FEA 1976) whose aim was stated as "An Act to establish an Agency with the duties of promoting equality of opportunity in employments and occupations in Northern Ireland between people of different religious beliefs and of working for the elimination of discrimination which is unlawful by virtue of the Act; to render unlawful, in connection with such employments and occupations, certain kinds of discrimination on the ground of religious belief or political opinion; and for connected purposes."³⁴⁵

The FEA 1976 was not seen as having been particularly successful in meeting its aims as substantial inequalities were still in existence. A report commissioned by the Policy Studies Institute (the Report of the Standing Advisory Commission on Human Rights (SACHR)) concluded that little progress had been made by the time of the publication of the report in 1987.³⁴⁶ The FEA 1976 had been criticised on a number of grounds, including that the Fair Employment Agency, set up to enforce the FEA 1976, was weak due to its limited powers and it did not have sufficient funding or staffing to be able to fulfil the aims of legal enforcement, so its primary focus was on

³⁴³ For a good outline of the development of equality discourses in Northern Ireland see Porter, F et al (2006) 'Eighty Years of Talking About Equality in Northern Ireland' Working Paper No. 5 Equality and Social Inclusion in Ireland Project (<http://www.qub.ac.uk/sites/EqualitySocialInclusionInIreland-HomePage/>) and Hayward, K and Mitchell, C (2003) 'Discourses of Equality in Post-Agreement Northern Ireland' *Contemporary Politics Vol. 9 No. 3* pp293 - 312

³⁴⁴ Porter, F et al (2006) op cit. p22

³⁴⁵ Fair Employment (Northern Ireland) Act 1976 Introduction <http://www.legislation.gov.uk/ukpga/1976/25/introduction/enacted> (accessed 7/11/12)

³⁴⁶ Hepple, B (1990) 'Discrimination and Equality of Opportunity – Northern Irish Lessons' *Oxford Journal of Legal Studies Vol. 10 No. 3* pp408 – 421 at p408

education. In addition, "employers were urged to sign a 'Declaration of Principle and Intent' to say that they agreed with the principles of the legislation... but the undertaking was entirely self-regulated, and later research showed that most of those who signed paid little attention to its provisions. Evidence of discrimination was also very difficult to obtain: only a few of the cases investigated by the Agency were upheld, and it was ignored even by the firms that it investigated."³⁴⁷

These criticisms prompted the passing of a strengthened piece of equality legislation, the Fair Employment (Northern Ireland) Act 1989 (FEA 1989). This Act introduced positive duties on employers and required them to monitor the makeup of their staff. The FEA 1989 also introduced the concept of positive action which attempted to reduce inequalities between Catholics and Protestants in Northern Ireland.³⁴⁸ Importantly compliance with the FEA 1989 was compulsory, rather than voluntary and self-regulated. The Fair Employment Agency became the Fair Employment Commission and had increased power and enforcement mechanisms.³⁴⁹ However, the focus of attention remained largely on decreasing the inequalities between Catholics and Protestants. This was until there was a new policy introduced in Northern Ireland, known as Policy Appraisal and Fair Treatment (PAFT). This was the first move towards introducing a statutory positive duty. It required public bodies to consider the equality implications of their policies and it was a move towards a broadening of the equality agenda from a focus merely on inequalities between Catholics and Protestants to include nine equality categories, which would be later reflected in the NIA 1998.³⁵⁰ However, PAFT was not placed on a statutory footing and was therefore not regarded as very effective. However, the "...peace process provided an opportunity and an incentive to strengthen them further, as part of the package which would bargain strong equality measures.... Rights activists and the smaller political parties strengthened the proposals as part of the Good Friday Agreement

³⁴⁷ Todd, J and Ruane, J (2011) 'Beyond Inequality? Assessing the Impact of Fair Employment, Affirmative Action and Equality Measures on Conflict in Northern Ireland' in Brown, G et al (2012) 'Debating Affirmative Action' Palgrave MacMillan http://papers.ssrn.com/spapers.ol3/cfm?abstract_id=2116936 (accessed 07/11/12) p10

³⁴⁸ Hepple, B (2008) 'The Aims of Equality Law' *Current Legal Problems Vol. 61* p17

³⁴⁹ Porter, F et al (2006) op cit. p23

³⁵⁰ Ibid, p23-24

(GFA) of 1998.”³⁵¹ The FEA 1989 was developed further and PAFT were placed on a statutory footing with the introduction of the GFA in 1998, which was implemented by the NIA 1998.³⁵² Section 75 of the NIA 1998 imposes a positive duty on public authorities.³⁵³

The introduction of the NIA 1998, in particular s75, has meant that the duty to promote equality, to produce EIAs and Equality Schemes and Action Plans had already been in place for a number of years in Northern Ireland before the passing of the RR(A)A 2000. In order to fulfil the obligations imposed by the general duty there is a specific duty in Northern Ireland for all public authorities to produce an Equality Scheme which details how the public authority intends to fulfil its statutory duty under s75 within a specified timetable.³⁵⁴ The Equality Schemes³⁵⁵ should “state the authority’s arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity.”³⁵⁶ The specific duties are contained in primary legislation in the form of Schedule 9 of the NIA 1998. Additionally, public authorities in Northern Ireland were required to submit their Equality Schemes to the Equality Commission (NI) within 6 months of the commencement of the NIA 1998. No such requirement existed in Britain with the passing of the RR(A)A 2000 which was met with some criticism as it was questioned whether the enforcement mechanisms contained within the RR(A)A 2000 would be adequate.³⁵⁷

³⁵¹ Todd, J and Ruane, J (2011) ‘Beyond Inequality? Assessing the Impact of Fair Employment, Affirmative Action and Equality Measures on Conflict in Northern Ireland’ in Brown, G et al (2012) op cit. pp12 - 13

³⁵² Hepple, B (2008) op cit. p17

³⁵³ Northern Ireland Act 1998 s75 public authorities must have “due regard to the need to promote equality of opportunity—

(a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;

(b) between men and women generally;

(c) between persons with a disability and persons without;

and

(d) between persons with dependants and persons without.”

³⁵⁴ Northern Ireland Act 1998 Schedule 9 Para. 2(1)

³⁵⁵ See Appendix 9

³⁵⁶ McCrudden, C (2004) op cit. p6.

³⁵⁷ O’Cinniede, C (2003) ‘Taking Equal Opportunities Seriously: The Extension of Positive Duties to Promote Equality’ Equality and Diversity Forum and Equal Opportunities Commission cited by Joint Select Committee on Human Rights, ‘Commission for Equality and Human Rights: Structures, Functions and Powers’ 11th Report 2003 – 2004 HC 536 <http://www.edf.org.uk/news/cinneide%2026%20nov.doc> (accessed 29/04/07) p15

Fredman and Spencer note that this 'proactive model' approach to equality in Northern Ireland "has gathered increasing momentum in Britain ..." ³⁵⁸ which culminated in the PSEDs being introduced in Britain in the form of the RR(A)A 2000 ³⁵⁹, DDA 2005 ³⁶⁰ and the Equality Act 2006 ³⁶¹ (EA 2006) and now under the EA 2010 ³⁶² as previously detailed in this chapter. The NIA 1998 was considered to be "in the forefront of international practice" ³⁶³ and was undoubtedly highly influential in the framing of the RR(A)A 2000, moving British anti-discrimination legislation firmly into the fourth generation.

The next section considers the impact of grass roots, or bottom up influences in the development of race and disability legislation.

Bottom Up Influences

Grass Roots' Organisations

A significant, indirect, grass roots influence on the passing of early race relations legislation in Britain as well as being a significant influence on the disability movement, is said to have been the Civil Rights' Movement in the United States. It is argued that the events in the US at the time reached the psyche of politicians in the UK who were afraid that similar civil disturbances could occur here if the discrimination encountered by the Black and migrant communities were not addressed. ³⁶⁴ Clearly the history and form of discrimination in the US was not comparable to what was occurring in the UK. That is not to diminish the impact of the discrimination faced by Black communities in the UK, it is merely suggested here that a civil rights' movement in the UK was not in fact needed in order for politicians to act to address race discrimination in Britain in the same way that it had been necessary to deal with segregation and discrimination in the US. ³⁶⁵

³⁵⁸ Fredman, S and Spencer, S (2006) op cit. p1

³⁵⁹ Race Relations (Amendment) Act 2000 s2

³⁶⁰ Disability Discrimination Act 2005 s3

³⁶¹ Equality Act 2006 s84

³⁶² Equality Act 2010 s149

³⁶³ Todd, J and Ruane, J (2011) 'Beyond Inequality? Assessing the Impact of Fair Employment, Affirmative Action and Equality Measures on Conflict in Northern Ireland' in Brown, G et al (2012) op cit. p13

³⁶⁴ Bleich, E (2003) op cit. p73

³⁶⁵ Ibid, p112

Although there was no civil rights' movement, this did not mean that there were no grass roots' movements in the UK trying to persuade the Government of the need to deal with the discrimination Black communities were facing. During the run up to both the RRA 1965 and RRA 1968, an organisation which had been formed in December 1964 had been lobbying for the introduction of race discrimination legislation and later for an improvement of the RRA 1965.³⁶⁶ This group was known as the Campaign Against Racial Discrimination (CARD). Its membership was broad and it was run by middle class male lawyers in positions of relative influence within the political sphere. For example, Anthony Lester (now Lord Lester of Herne Hill) was a founding member and other members included Kelvin Hopkins (now MP), Ian MacDonald (now QC), Herman Ouseley (now Sir) and David Pitt (now Lord Pitt of Hampstead). Although there were members of CARD who could be argued to have had a more top down influence, it may also be said that the status of these individuals was not conferred on them until much later in their careers. In fact, there were clearly many members who made up a large 'grass roots' element, including some of those individuals who would later become MPs or would be awarded titles. A notable example of a grass roots' member of CARD was Vishnu Sharma, a trade unionist, activist and long-time member of organisations such as the Indian Workers Association and the Joint Council for the Welfare of Immigrants.³⁶⁷ As Sir Herman Ouseley explains, "[t]he black community and an army of liberal whites built an organisation, the Campaign Against Racial Discrimination (CARD). The membership ran into thousands: workers, students, professionals, the lot. We were linked with the rising tide of black revolt in America. We elected a leadership, held our annual conferences, demonstrated, picketed and propagandised - Asian, West Indians, everybody joined. We had no members of parliament then; but we had what can be described as grass-roots power."³⁶⁸

³⁶⁶ Ibid, p55

³⁶⁷ For a short biography see Vishnu Sharma -

http://www.grahamstevenson.me.uk/index.php?option=com_content&view=article&id=521:vishnu-sharma&catid=19:s&Itemid=120 (accessed 13/01/10)

³⁶⁸ Sir Herman Ouseley quoted in Howe, D (1999) 'We Blacks Should Copy those Rural Marches' New Statesman <http://www.newstatesman.com/199910040015> (accessed 03/01/10)

It is therefore suggested here that CARD was a grass roots organisation who comprised of community groups and organisations as well as individuals from the Black and Asian communities and this lobbying group was to be instrumental in pushing for the early Race Relations Acts and providing a voice for the victims of discrimination.³⁶⁹ CARD was being listened to by those debating the introduction of legislation in Parliament, particularly in 1965.³⁷⁰ As Lester and Bindman note with regards to the 1960s Race Relations Acts, they were "... won against formidable odds. Like much legislation, they were the product of skilful lobbying by interested pressure groups."³⁷¹ This might also be said of later legislation as other grass roots campaigning and lobbying groups, such as Equal Rights, Southall Black Sisters, the Discrimination Law Association among others, have fought for strengthened race relations and anti-discrimination legislation.

As well as the Civil Rights' movement in the US having an impact with regards to race in the UK it may be argued that it also had a similar impact on the disability movement in the UK during the 1970s and 1980s. Unlike in the area of race relations, there was not the same impetus or push in the 1950s and 1960s for disability rights, as civil rights for disabled people were not regarded as necessary and some groups representing disabled people had even advised British Governments at that time that "discrimination was not a problem and that anti-discrimination legislation was unnecessary."³⁷² Until the mid-1970s, disability organisations, such as the Disability Alliance, were primarily interested in the financial situation of disabled people and were mainly run by non-disabled professionals.³⁷³ It was not until the establishment of grass roots organisations, which were controlled and run by disabled people, such as the Union of Physically Impaired Against Segregation (UPIAS), the Liberation Network and Sisters against Disability, that a more radical approach to disability rights was adopted and this was influenced by the strategies employed by the Civil Rights' movement in the US.³⁷⁴ In 1981 some of these

³⁶⁹ Lester, A and Bindman, G (1972) op cit. p112

³⁷⁰ Ibid, p115

³⁷¹ Ibid, p149

³⁷² Barnes, C (1992) op cit. p17

³⁷³ Ibid.

³⁷⁴ Ibid, p18

more radical organisations came together and formed the British Council of Disabled People (BCODP). It was also during the 1980s that the disability movement established its equivalent to CARD in the form of the Voluntary Organisations for Anti-Discrimination Legislation (VOADL) which was set up to campaign for legislation protecting disabled people from discrimination, which consisted of a number of grass roots disability organisations, including BCODP.³⁷⁵ Taking inspiration from the US as well as organisations such as CARD, the disability movement began to co-ordinate more effective campaigns.³⁷⁶ These campaigns were influential in the introduction of a number of Private Members' Bills as mentioned previously. This pressure from increasingly outspoken grass roots organisations eventually culminated in the passing of the DDA 1995.³⁷⁷

One final and significant grass roots influence to be discussed in this section, which was a great initiator of the Macpherson Inquiry and subsequently the passing of the fourth generation RR(A)A 2000, is the campaigning and awareness raising of Mr and Mrs Lawrence, and Mrs Lawrence in particular. Although highlighted under the top down influences in the previous section due to the instigation of the Inquiry and commitment to implement the recommendations of the report by Jack Straw, the Lawrence Inquiry, and therefore the subsequent RR(A)A 2000, would not have come about had it not been for the tireless campaigning of Mr and Mrs Lawrence after their son's death.³⁷⁸ The significance of the Lawrence's campaigning was also recognised by the Inquiry itself.³⁷⁹ It is fair to say that without the Lawrence's pushing for an inquiry into their son's death and continually highlighting issues of race and racism, the fourth generation of equality legislation may not have come about.

³⁷⁵ Ibid, p17

³⁷⁶ Evans, J (1996) op cit.

³⁷⁷ McCrudden, C 'Equality and Non-Discrimination' in Feldmen (2004) op cit. p590

³⁷⁸ Moreton, C (20 April 2008) 'Doreen Lawrence: Fighting on, for the Love of Stephen' The Independent <http://www.independent.co.uk/news/people/profiles/doreen-lawrence-fighting-on-for-the-love-of-stephen-812196.html> (accessed 13/01/10)

³⁷⁹ House of Commons Home Affairs Committee (2009) 'The Macpherson Report – Ten Years On' HC 427 Stationary Office London p2

As mentioned in the introduction to this chapter, there have been suggestions that for gender mainstreaming (and arguably therefore equality mainstreaming) to be 'successful' the impetus has to come from affected and interested parties.³⁸⁰ As has been demonstrated above, it may be suggested that grass roots organisations have also been vital in pushing forward the legislative agenda in terms of race and disability. It may be argued that over the years the grass roots movement with regards to race has had some advantages over disability. Issues such as those relating to immigration and the treatment of migrants prompted race discrimination legislation in the UK. In addition, high profile events such as the Civil Rights' movement in the US and the tragic case of Stephen Lawrence have aided campaigners for race equality in the UK to move the agenda forward, with some successes on the legislative front at key points in history. Although the grass roots movement with regards to disability also started to take hold in the 1960s, it appears that campaigns for civil rights for disabled people was slower in getting started and there were fewer successes arising from the movement. Even the result, after of years of campaigning, the DDA 1995, was not what activists had hoped for in terms of strong anti-disability discrimination legislation. It appears that the disability campaign did not have the same 'flash points'³⁸¹ to help move the agenda forward in the minds of the politicians and disability was not viewed as a key concern in the same way as race. However, that is not to downplay or disregard the disability grass roots movement as it is acknowledged that despite the slower start, the protests and demands of civil rights' campaigners and those affected by discrimination with regards to disability (and race) have been a significant force in pressurising politicians into action.³⁸²

Conclusion

The aim of this chapter was to provide a brief overview of the development of race and disability legislation leading up to the fourth generation of legislation as well as considering the primary influences on the passing of the legislation. Overall it may be fair to say that British race and disability laws have not been developed as part of a long-term, thought out strategy or policy. Many

³⁸⁰ Booth, C and Bennett, C (2002) op cit. p437

³⁸¹ Or 'Contradiction Closing Cases' – See Chapter 4 - Methodology for an explanation

³⁸² Dickens, L (2007) op cit. p465

commentators³⁸³ have highlighted that the development in Britain has occurred in a piecemeal and rather ad hoc fashion. The various pieces of legislation introduced since the 1960s have undoubtedly had their critics, both from those who opposed the introduction of race and disability legislation altogether, or at the very most gave it a luke warm reception, to those who felt the legislation did not go far enough to try and eliminate systemic discrimination found in all areas of British society. However, as has been highlighted, the legislation which has been introduced has been thanks to a number of key influences pushing the race and disability agendas forward. These influences shaped anti-discrimination legislation and moved it into the fourth generation. These influences have comprised a combination of top down and bottom up factors, including the significance of immigration policy and laws, political ideology, influential and committed individuals, pressure groups, sex discrimination laws and legislation in other jurisdictions.

It might be argued that the combination of *all* of these factors over the years have been required in order for race and disability legislation to have made the statute books in the form that it has.³⁸⁴ It is therefore not suggested that any one of these influences was the sole force behind a particular piece of legislation. That is not to say that some elements and influences were not more significant than others, but that a combination of bottom up and top down elements have been needed in order to get to the point the legislation is now at. The significance of outlining the development of, and the key influences on the progression of the legislation, has been in order to demonstrate the differences in the various stages of the law so that the importance of the fourth generation legislation can be highlighted. This will therefore allow for an analysis of the perceptions and implementation of the PSEDs to be made in the context of the case study institution.

³⁸³ See Gijzen, Hepple and O’Cinneide for example

³⁸⁴ Bleich, E (2003) op cit. p112

Chapter 3: Equality in Context – The Higher Education Experience

The previous chapter set out the development of, and some of the primary influences on, race and disability equality legislation in order to demonstrate the historical context and the significance of the fourth generation of equality laws. This chapter seeks to evaluate the current literature relating to:

- a) The pressures on HEIs to comply with the PSEDs. A consideration will be given to how far the Labour Government Widening Participation agenda during the late 1990s and into the 2000s impacted on equality within HEIs. In addition, other pressures on Universities to comply with the PSEDs and address inequality, such as the influence of Funding Councils and audits conducted by the Quality Assurance Agency (QAA) for higher education as well as pressures relating to staff, such as the role of the Equal Opportunities agenda, will also be studied. The pressures to comply with the PSEDs also coincided with a period where higher education was being increasingly marketised. This has arguably created some tension in relation to compliance with the PSEDs and broader equality agenda within higher education.
- b) Factors within HEIs, particularly the role of management, in ensuring compliance. There will be a consideration of the impact of 'new managerialism' which came to a fore during the New Labour Government. Considering the role and perspectives of management within higher education is therefore significant, as managers at all levels within an institution will have some role and/or involvement in responding to the pressures on HEIs and are responsible for implementing the requirements of the PSEDs. Their role and perspectives on equality will often determine the nature of and extent to which HEIs respond and comply with the legislative requirements.
- c) The experiences of BME and disabled³⁸⁵ staff and students within HEIs, which is reflective of the extent to which HEIs have complied with the PSEDs. In short, what does the literature indicate regarding whether the

³⁸⁵ The overarching term BME has been used throughout this thesis. The term 'Black' is used when discussions relate to this specific group within the general BME categorisation. Similarly, it is recognised that people with disabilities have varying experiences and neither group is homogenous. It is recognised that there are problems with using generic terms such as these to reflect the experiences of all BME and disabled staff and students and this is discussed further in Chapter 4 – Methodology.

pressures/factors which influence compliance with the law have had an impact on practice and the experiences of these specific groups.

It will be concluded that the impact of the PSEDs on HEIs is a significantly under-researched area and therefore the conclusions which may be drawn will be fairly limited. The literature which *is* available appears to indicate that there are some, although not tremendous, pressures on HEIs to consider equality (particularly in relation to students) and that the agenda needs to be driven by senior management within the HEIs to be effective. However, some research seems to suggest that senior staff within HEIs do not appear to recognise that there are major equality issues within the Academy and therefore addressing these is not in the forefront of their minds. The pressures from within HEIs therefore amount to very little. In addition, the relatively limited research which is available suggests that the particular needs of BME and disabled staff and students are not being met by HEIs and these groups are experiencing significant disadvantages within HEIs.

The time frame for this chapter will be focussed on the period leading to the introduction of the RR(A)A 2000 and will broadly reflect the timeframe from the Stephen Lawrence Inquiry which was set up in 1997, to the introduction of the EA 2010 which came into force on the 1st October 2010.³⁸⁶ This time frame reflects the emphasis on the lead up to the fourth generation equality legislation in the previous chapter. It has been suggested by some that the Stephen Lawrence Inquiry and subsequent Macpherson Report was a turning point in the permeation of issues surrounding race into the higher education sector.³⁸⁷ This time-frame is also significant within higher education, as it was around this time that the influential report by the National Committee of Inquiry into Higher Education (the Dearing Report)³⁸⁸ was published. This report made recommendations in relation to a number of areas, including "...the purposes, shape, structure, size and funding of higher education,

³⁸⁶ With the Public Sector Equality Duties coming into force in April 2011 - Equality Act 2010 (Commencement No. 6) Order 2011 No. 1066 (C. 43)

<http://www.legislation.gov.uk/ukxi/2011/1066/contents/made> (accessed 30/05/2013)

³⁸⁷ Gulam, W in Law, I et al (2004) 'Institutional Racism in Higher Education' Trentham Books p7

³⁸⁸ Dearing, R (1997) 'The Report of the National Committee of Inquiry into Higher Education' <http://www.leeds.ac.uk/educol/ncihe/> (accessed 18/10/12)

including support for students..."³⁸⁹ which led to important policy decisions which have also had an impact on equality within higher education. These will be discussed further below. The specific factors/pressures on higher education highlighted in this chapter cannot be disconnected from the general factors influencing the development of equality legislation as detailed in the previous chapter. For example, the political ideology of the Government of the time is significant in not only the passing of equality laws, but also policies affecting equality within higher education specifically. In other words, "New Labour's approach to social justice has been informed by principles of economic redistribution, social inclusion and moral responsibility.... ...social justice may be conceptualised in relation to the distribution of both material and social goods, the latter including access to education...."³⁹⁰

It has been suggested that the PSEDs provided an opportunity to embed equality across the processes of institutions and provide an opportunity not just to comply with the bare minimum of the legislative requirements, but to effect real cultural change.³⁹¹ Some have gone even further to suggest that staff within universities have pinpointed the legislation as being "the driver for change."³⁹² However, other research suggests that universities have not acted swiftly to comply with the requirements of the PSEDs and previous reviews into the compliance with the RR(A)A 2000 suggested that the response of institutions was regarded as at best "patchy" and at worst, seriously defective.³⁹³ Even so, the conclusion has been drawn that "[t]he legislation has prompted action."³⁹⁴ The impact of the legislation on the practices within HEIs is still contested³⁹⁵ and research on the impact of the legislation is very limited. It is this aspect³⁹⁶ which makes this research distinctive and which

³⁸⁹ Ibid, "About"

³⁹⁰ Riddell, S et al (2005) 'New Labour, Social Justice and Disabled Students in Higher Education' *British Educational Research Journal* Vol. 31 No. 5 pp623 – 643 at p624

³⁹¹ Fullick, L (2008) 'From Compliance to Culture Change: Disabled Staff Working in Lifelong Learning' Summary Report NIACE p17 see also Harrison, M et al (2009) 'Research into HE Provision and Support for Disabled Students' Report to HEFCE

http://www.hefce.ac.uk/media/hefce/content/pubs/2009/rd2409/rd24_09.pdf (accessed 16/10/12) ppxvii

³⁹² May, H and Bridger, K (2010) 'Developing and Embedding Inclusive Policy and Practice in Higher Education' HEA p23

³⁹³ Pilkington, A (2011) 'Institutional Racism in the Academy: A Case Study' Trentham Books pp71 - 76

³⁹⁴ Ibid, p77

³⁹⁵ See for example Fullick, L (2008) op cit. p7

³⁹⁶ Along with others as noted in the Introduction to this thesis

will be explored in subsequent chapters, focussing on the case study institution by way of example.

Key Factors/Pressures on Higher Education

The aim of this section of the chapter is to consider the literature relating to some of the main factors which have influenced the focus which has been afforded to equality within higher education since the coming to power of New Labour in 1997 as well as the passing of the RR(A)A 2000 and the introduction of the PSED.³⁹⁷ It is not the purpose of this chapter to provide an in depth discussion relating to these factors, but rather to set the background and context in which equality within higher education was/is being discussed.³⁹⁸ It must also be noted that, as with the factors influencing the passing of equality legislation generally, the pressures and factors relating to higher education specifically can not necessarily be disentangled and so it is suggested that it has been a combination of these factors/pressures which have had an influence on the way equality, and specifically race and disability, have been dealt with within higher education.

Students

Widening Participation

One factor which has been identified as key in the development of more representative universities has been the move away from an elite system which focussed on a select group of individuals.³⁹⁹ There can be no doubt that there has been a significant expansion of the higher education sector which has occurred in post war era.⁴⁰⁰ The reasons which have been given for this expansion have ranged from Governments wishing to increase State control over the sector, to recognition that in order to compete in a global economy, the UK required a more highly skilled and educated workforce. It was primarily for the latter reason that it has been argued that higher education

³⁹⁷ The disability duty was introduced in the Disability Discrimination Act 2005

³⁹⁸ For a more comprehensive account of the external pressures on HEIs focussing on race, see Pilkington, A (2011) op cit. Chapter 3

³⁹⁹ Barnes, C (2007) 'Disability, Higher Education and the Inclusive Society' *British Journal of Sociology and Education Vol. 28 No. 1* pp135 – 145 at p136

⁴⁰⁰ For further explanation see Neal, S (1998) 'The Making of Equal Opportunities Policies in Universities' Society for Research into Higher Education and OUP Chapter 2 – The Changing Face of Higher Education in Britain pp18 - 36

has opened up to previously excluded groups. As Neal has explained, this expansion has not been due to a specific policy of achieving social justice, but rather is merely a 'by-product' of Government economic policy.⁴⁰¹

However, since the coming to power of the New Labour Government in 1997 and a new focus on social justice,⁴⁰² widening participation in higher education has been a key concern and became a specific Government policy. In response to the Dearing Report into Higher Education,⁴⁰³ which suggested that the widening of participation should be a priority,⁴⁰⁴ it was stated that "[t]he Government sees higher education playing a key role in lifelong learning and wants to see it making an even bigger contribution in future by: increasing and widening participation, particularly from groups who are under-represented in higher education, including people with disabilities and young people from semi-skilled or unskilled family backgrounds and from disadvantaged localities..."⁴⁰⁵ It may be unsurprising, therefore, that the Widening Participation agenda has been attributed as a key reason for an increased emphasis on equality and diversity within higher education as the sector has faced an increasingly diverse student population and has therefore had to consider more inclusive practices.⁴⁰⁶ It is certainly recognised that, for example, the number of disabled students enrolling at university has increased during this period.⁴⁰⁷ Whether this is as a direct result of the specific Labour policy of Widening Participation, or an increase in the number of students prepared to declare their disabilities in order to access financial and other support is unclear, although the two issues are not unrelated (see later). Specific funding support for Universities involved in the Widening Participation agenda has not just been available for the support of disabled students and therefore the Widening Participation agenda and funding have been closely connected, as will be discussed later. Studies seem to be enthusiastic about

⁴⁰¹ Ibid, p24

⁴⁰² Riddell, S et al (2005) op cit. p624

⁴⁰³ The National Committee of Inquiry into Higher Education 1997, chaired by Sir Ron Dearing

⁴⁰⁴ Dearing, R (1997) op cit. Para. 7.20

⁴⁰⁵ Department for Education and Employment and UK Lifelong Learning (1998) 'Higher Education for the 21st Century: Response to the Dearing Report' <http://www.lifelonglearning.co.uk/dearing/> (accessed 16/10/12) Introduction at Para. 2

⁴⁰⁶ May, H and Bridger, K (2010) op cit. p22

⁴⁰⁷ Konur, O (2000) 'Creating Enforceable Civil Rights for Disabled Students in Higher Education: An Institutional Theory Perspective' *Disability and Society Vol. 15 No. 7* pp1041 – 1063 at p1041

attributing increased participation among BME students to the Widening Participation agenda and accredit the fact that proportionately BME students are more likely to participate in higher education than white students as amounting to "...some success from efforts to widen participation amongst ethnic minority groups."⁴⁰⁸

This is not to say that there have not been any critiques of the Widening Participation agenda and questions asked about the true impact on disabled and BME students. As Fuller explains, despite a more inclusive higher education system, the voice and views of disabled students still do not receive adequate attention.⁴⁰⁹ With regards to race the research suggests that there is not a problem with the participation of BME students in higher education nationally, but this has been afforded much less, if any, attention.⁴¹⁰ In fact it has been suggested that, other than just after the publication of the Macpherson Report where race was in the limelight, the focus to widen participation has in fact been on social disadvantage and not specifically race (although it is recognised that there is often a connection between these issues).⁴¹¹ Moreover, even though the overall participation rates for BME students is high as compared to white students and it appears that there are also more disabled students entering higher education, the focus still appears to be on the learner who should adapt to the challenges of higher education, rather than HEIs adapting to take into account the different needs of a diverse student population.⁴¹²

Other research has reiterated the view that the policy to widen participation is in fact an issue of economics and competing in a market economy rather than truly about social inclusion and equality.⁴¹³ This is not, however, to deny that

⁴⁰⁸ Vignoles, A et al (2008) 'Widening Participation in Higher Education: A Qualitative Analysis: Full Report' ESRC End of Award Report, RES-139-25-0234 Swindon p22

⁴⁰⁹ Fuller, M et al (2004) 'Incorporating Disabled Students within an Inclusive Higher Education Environment' *Disability and Society Vol. 19 No. 5* pp455 – 468 at p455

⁴¹⁰ Berry, J and Loke, G (2011) 'Improving the Degree Attainment of Black and Minority Ethnic Students' ECU and HEA <http://www.ecu.ac.uk/publications/improving-attainment-of-BME-students> (accessed 21/07/13) p16

⁴¹¹ Pilkington, A (2011) op cit. p56

⁴¹² Ibid, p62 see also Thomas, L et al (2005) 'From the Margins to the Mainstream: Embedding Widening Participation in Higher Education' UniversitiesUK http://www.universitiesuk.ac.uk/Publications/Documents/margins_fullreport.pdf (accessed 15/06/12) p193

⁴¹³ Deem, R, Morley, L and Tiili, A (2005) op cit. p12

access has to some extent been widened and that this has prompted HEIs to consider their policies and practices with regards to equality, but it is suggested that "...the elite model of the university, if in a modified version, has not only survived, but has much currency in the discourses which surround contemporary higher education."⁴¹⁴ It is suggested that the policy of Widening Participation has done little to address a system which remains highly stratified in nature and has arguably become more polarised,⁴¹⁵ where the elite and Russell Group of universities are more highly valued. These universities have also been less likely to engage in the Widening Participation agenda⁴¹⁶ and have cited concerns regarding quality of provision and a reduction in standards to resist recruiting students from under-represented backgrounds.⁴¹⁷

Funding and Audit Culture

The introduction of a fee regime has attempted to displace the cost of higher education from the State onto the individual student (consumer), thereby creating a competitive market within the sector.⁴¹⁸ This has contributed significantly to the marketisation of higher education, where "[t]he recognition of [the] economic importance of higher education and the necessity for economic viability has seen initiatives to promote greater entrepreneurial skills as well as the development of new performative measures to enhance output and to establish and achieve targets."⁴¹⁹ There has been a tightening of regulation with an increase in the amount of auditing and a new type of managerialism⁴²⁰ has developed which stresses the importance of accountability.⁴²¹

⁴¹⁴ Neal, S (1998) op.cit. p19

⁴¹⁵ Chevalier, A and Conlon, G (2003) 'Does it Pay to Attend a Prestigious University?' Institute for the Study of Labor IZA Discussion Paper 848 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=435300 p22

⁴¹⁶ Grove, J (April 2013) 'OFFA lets Russell Group off Fair Access Hook' Times Higher Education <http://www.timeshighereducation.co.uk/news/offa-lets-russell-group-off-fair-access-hook/2002929.article> (accessed 15/07/13)

⁴¹⁷ Archer, L et al (2002) 'Higher Education and Social Class: Issues of Exclusion and Inclusion' Routledge p122

⁴¹⁸ Lynch, K. (2006) 'Neo-liberalism and Marketisation: The Implications for Higher Education' *European Educational Research Journal* Vol. 5, No.1 pp1-17 at p1

⁴¹⁹ Olssen, M and Peters, M.A. (2005) 'Neoliberalism, Higher Education and the Knowledge Economy: from the Free Market to Knowledge Capitalism' *Journal of Education Policy* Vol. 20, No. 3, May 2005 pp313-345 at p313

⁴²⁰ See section relating to the role of management later in this chapter

⁴²¹ Olssen, M and Peters, M.A. (2005) op cit. p315

It may be suggested that this emphasis on audits, targets, accountability and the 'consumer' could have a positive impact in terms of the pressure to comply with the PSEDs. Recognising that there is a diverse student population who have different needs, with HEIs competing for these students, and the setting of targets and monitoring equality outcomes via auditing, has the potential to ensure compliance with the legal requirements. However, the juxtaposition to this view is that, questions have arisen as to the extent to which this marketisation of higher education is, in reality, compatible with the achievement of substantive equality aims.

It might be argued that "regimes which are intended to foster accountability and transparency may simply be used to limit the creativity of professionals, distort performance by encouraging minimal compliance with targets..."⁴²² which is ultimately irreconcilable with the substantive equality, requiring an approach which goes beyond minimal compliance. If the function of a university is to respond to market pressures and to increase competitiveness it is suggested that equality issues will only become significant when there is an interest convergence which means that universities have a vested market interest in tackling substantive equality.⁴²³ Therefore it is argued here that there may be competing interests and tensions between the marketisation of higher education and the pressures on HEIs to comply with the PSEDs in the achievement of substantive equality, as will be demonstrated in the following section of this Chapter.

A key factor suggested in the literature closely linked to the Widening Participation agenda, which has influenced the equality discourse within higher education is that of the pressure exerted by the Higher Education Funding Councils for England, Wales and Scotland (HEFCE,W,S) for HEIs to demonstrate compliance with the legislative requirements. In addition, it has been argued that with the changes in the way universities are funded (from being wholly State funded, to part funded through the introduction of a student fee regime) there is also some pressure which is brought to bear by the students themselves, as consumers, as student satisfaction is measured

⁴²² Riddell, S et al (2005) op cit. p628

⁴²³ Riddell, S et al (2005) op cit. p637

through means such as the National Student Survey (NSS) and published league tables and a positive image becomes increasingly important, as competition has increased, in a university's bid to attract fee paying students, particularly those from overseas.⁴²⁴ One other organisation which will be considered in this section of the chapter is the role of the QAA, in the context of an ever increasing audit culture within higher education, in applying pressure on HEIs to comply with equality legislation.

The UK Funding Councils have, for a number of years, had the promotion of equality of access to higher education as a key strategic aim.⁴²⁵ Most recently, the continuing commitment to widening participation was re-iterated by HEFCE in their 2011/12 funding letter and specific funding has been available for universities who encourage participation from those from non-traditional backgrounds.⁴²⁶ It has been suggested by some recently that the focus of the Funding Councils has moved away from the specific funding of Widening Participation, to a greater emphasis on embedding practice.⁴²⁷ However, it is suggested that this repeated commitment to Widening Participation continues to focus on social disadvantage rather than explicitly on race or disability equality.

However, the knock on effect of the Widening Participation agenda has, it is argued, impacted most on disabled students as the Higher Education Funding Councils encouraged an increased attention to the problems faced by disabled students, by developing schemes and policies to encourage access and to widen participation.⁴²⁸ For example, since 2002, HEFCE has published comparative institutional data with regards to the number and proportion of disabled students.⁴²⁹ Funding for institutions in the form of a disability premium has also increased in recognition that recruiting, retaining and

⁴²⁴ Berry, J and Loke, G (2011) op cit. p12

⁴²⁵ May, H and Bridger, K (2010) op cit. p14

⁴²⁶ HEFCE (2012) 'Interim Widening Participation Strategic Statements for 2012-13' Circular letter 11/2012 <http://www.hefce.ac.uk/pubs/year/2012/cl112012/> (accessed 16/10/12)

⁴²⁷ May, H and Bridger, K (2010) op cit. p17

⁴²⁸ Fuller, M et al (2004) op cit. p457

⁴²⁹ Riddell, S et al (2005) op cit. at p627

supporting disabled students costs institutions more money.⁴³⁰ The amount of premium an institution receives is linked to the numbers of students in receipt of Disabled Students' Allowance (DSA).⁴³¹ Disabled students receive DSA to help them in meeting the costs of additional support they need due to their disability.⁴³² It is therefore suggested that institutions' policies with regards to disabled students have been encouraged due to the specific resources allocated in order to enable access for disabled students.⁴³³ Prior to the Funding Councils' introduction of the disability premium, higher education, for the most part, was not an achievable goal for the vast majority of disabled people due to its inaccessibility, both physically and with regards to the additional support which was needed to successfully complete the degree programme.⁴³⁴

It might be suggested that with the reduced emphasis on State funding for higher education (and therefore a decreased role for the Funding Councils), and an increased importance on individual students funding their degrees, the limited pressure which the Funding Councils can bear on universities with regards to equality, may be diminished as the voice of the students themselves becomes increasingly important. This view was expressed by Baroness Blackstone when she stated that changes in the funding of higher education would mean that students would become far more shrewd and selective when it came to making choices about their studies.⁴³⁵ Research has found that the views of students through, for example, the NSS, has been a strong driver for change within institutions, principally regarding learning and teaching.⁴³⁶ Whether the increasing emphasis on student satisfaction and student opinion will also have a specific impact on institutional policies and practices relating to equality in particular, remains to be seen. Presumably this will depend on BME and disabled students raising specific concerns through the NSS, so rather than ensuring institutions are proactive in

⁴³⁰ Tinklin, T et al (2004) 'Policy and Provision for Disabled Students in Higher Education in Scotland and England: The Current State of Play' *Studies in Higher Education Vol.29 No. 5* pp637 – 657 at p641

⁴³¹ Riddell, S et al (2005) op cit.p626

⁴³² See Disabled Students' Allowance - <https://www.gov.uk/disabled-students-allowances-dsas/overview> (accessed 18/10/12)

⁴³³ Riddell, S et al (2005) op cit. p624

⁴³⁴ Tinklin, T et al (2004) op cit. p637

⁴³⁵ Baroness Blackstone in Berry, J and Loke, G (2011) op cit. p6

⁴³⁶ May, H and Bridger, K (2010) op cit. p24

addressing race and disability equality, they may merely respond reactively to concerns raised by vocal groups of students.

In addition to the Funding Councils having some ability to exert pressure on institutions regarding equality using the 'carrot' of increased funding for certain areas (such as widening participation and students with disabilities) it is also submitted that the 'stick' approach⁴³⁷ was used by the QAA. The 'stick' approach can be seen through the use of targets and codes of practice relating to access and learning experiences of a diverse student population, particularly (once again) with regards to disabled students.⁴³⁸ The codes of practice⁴³⁹ can be used "in QAA's audit and review processes that consider the extent to which an institution, in developing and implementing its own policies, has taken account of the code of practice and its precepts."⁴⁴⁰ It has therefore been suggested that the QAA audit has the potential to provide a further impetus for HEIs to ensure that they address equality and embed inclusive policies and practices.⁴⁴¹

However, it is notable that the only area relating to equality which has a specific code of practice is that of disability. In addition, the other codes do not have identifiable sections regarding equality, and where there is a mention of equality it is usually in general terms, such as, "Institutions are, of course, also expected to conform to the requirements of relevant legislation such as that covering human rights, data protection, race relations, age discrimination and equality of opportunity...."⁴⁴² Where there is more specific detail, this is usually in the context of disability. For example, although the code of practice

⁴³⁷ Riddell, S et al (2005) op cit. p624

⁴³⁸ Ibid, p627

⁴³⁹ QAA (2010) 'Code of Practice for the Assurance of Academic Quality and Standards in Higher Education: Section 3 – Disabled Students'

<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Section3Disabilities2010.pdf>
(accessed 19/10/12)

⁴⁴⁰ Ibid, p3

⁴⁴¹ May, H and Bridger, K (2010) op cit. p18

⁴⁴² QAA (2006) 'Code of Practice for the Assurance of Academic Quality and Standards in Higher Education, Section 10: Admissions to Higher Education'

<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Code-of-practice-Section-10.aspx>
(accessed 21/11/12) p6

relating to Postgraduate Research Programmes⁴⁴³ again highlights the general need to ensure equality of opportunity for students within the admissions process, the main focus of the guidance is in relation to the need to inform students regarding the additional funding available for disabled students.⁴⁴⁴

The Code of Practice in relation to Appeals and Complaints⁴⁴⁵ specifically makes reference to providing information to students in appropriate formats⁴⁴⁶ but mentions nothing else with regards to other equality issues which may need to be considered by HEIs in this context. In fact, the sparse mention of other equality issues within the codes of practice is quite striking and other than disability, none of the other protected characteristics as covered by law are mentioned specifically within the codes. This therefore seems to suggest that although the audit process has the *potential* to provide a method of holding HEIs to account, it is unlikely to form a key element of the audit process, particularly when it comes to race.

Staff

So far the primary pressures, despite their limitations as suggested above, have been in relation to students. This is not to suggest that there has not been *any* emphasis on race or disability with regards to staff, but the literature discussing these is even scarcer. However, there are two areas in relation to staff where there has been the potential for some pressure to be brought to bear on HEIs in relation to BME and disabled staff.

Funding

The support which disabled staff receive is dependent on a university's commitment to making reasonable adjustments (individual and anticipatory)

⁴⁴³ QAA (2004) 'Code of Practice for the Assurance of Academic Quality and Standards in Higher Education: Section 1 – Postgraduate Research Programmes'
<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Code-of-practice-section-1.aspx>
(accessed 21/11/12)

⁴⁴⁴ Ibid, p9

⁴⁴⁵ QAA (2007) 'Code of Practice for the Assurance of Academic Quality and Standards in Higher Education: Section 5- Academic Appeals and Student Complaints on Academic Matters'
<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Code-of-practice-Section-5.aspx>
(accessed 21/11/12)

⁴⁴⁶ Ibid, p19

as required under law.⁴⁴⁷ There is, however, funding available to contribute towards making individual reasonable adjustments through the Access to Work⁴⁴⁸ scheme which is administered through Jobcentre Plus. Disabled staff have to apply for a grant which they receive in order to provide “practical support to help you do your job.”⁴⁴⁹ Examples of what the grant may be used for are given as, “specialist equipment, travel when you can’t use public transport, a communicator at a job interview.”⁴⁵⁰ The amount of funding available is determined by the size of the employer. “Access to Work will refund up to 80 per cent of the approved costs above a threshold determined by the number of... employees:

- 0 - 49 employees: nil
- 50 - 249 employees: £500
- Over 250 employees: £1000

[Employers] will also be expected to meet the costs up to the threshold, but any balance above £10,000 will normally be met in full by Access to Work.”⁴⁵¹

A major criticism of the funding for support has been that the amount of money available for the support of disabled students is not matched by the amount of financial support which is available for disabled staff. For, example, there is no ‘disability premium’ paid to HEIs which is linked to the numbers of disabled staff who apply for grants under the Access to Work scheme in the same way as there is for students who claim DSA. It has been argued that there needs to be an increase in the “[f]unds to support disabled staff proportionately equal to those supporting disabled learners and students, addressing the obvious injustice that two groups supported by the same organisation are treated so differently.”⁴⁵² This differential in financial support and incentives (disability premium) which institutions receive may go some way in explaining the perceptions and experiences of disabled staff that the

⁴⁴⁷ Disability Discrimination Act 1995 s6 – adjustments in employment, s21 – adjustments by service providers, Equality Act 2010 s20 – duty to make reasonable adjustments. See Chapter 2 for further details

⁴⁴⁸ See Access to Work: Overview <https://www.gov.uk/access-to-work/overview> (accessed 09/04/13)

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ RNIB ‘Access to Work Scheme’

http://www.rnib.org.uk/professionals/employmentservices/employersupport/Pages/access_to_work.aspx (accessed 30/05/13)

⁴⁵² Fullick, L (2008) op cit. p18

support they receive from HEIs is not comparable to that of students.⁴⁵³ For example, the guidance provided by the Equality Challenge Unit on 'Managing Reasonable Adjustments in Higher Education' also highlights alternative sources of funding for disabled students in addition to the DSA, such as Access to Learning funds, bursaries and funding available from other charitable organisations in helping to meet the costs of additional support which disabled students may require.⁴⁵⁴

Therefore it might be suggested that the same financial incentives which are there in relation to taking disability seriously for students, as detailed above, are lacking when it comes to disabled staff. In addition, concern has also been expressed that even where financial support is available for disabled staff, there is lack of information and knowledge regarding the Access to Work grants and that as a result, financial support for adjustments is not being accessed.⁴⁵⁵ This was echoed in the Government's response to an independent review of specialist disability employment support which stated that, "[t]here was also widespread agreement among respondents that there was a general lack of awareness of the Access to Work programme, by both individuals and employers. Many respondents suggested that increasing awareness about the programme was a priority, and that this would enable more people to benefit from it and thus to realise their potential."⁴⁵⁶

It might be suggested, however, that despite some of the criticisms and shortcomings of the financial support available to disabled staff within higher education, there does seem to be some support available, if it has been drawn to the attention of disabled staff. The same cannot, however, be said of the financial and support mechanisms available to BME staff.

⁴⁵³ Ibid, p1 and Horton, J and Tucker, F (2010) 'HE Staff with 'Disabilities': Preliminary Findings – Experiences of Academic Staff from GEES (Geography, Earth and Environmental Sciences) Disciplines' GEES HEA University of Northampton p2; Ewens, D (2011) 'Enabling Equality: Furthering Disability Equality for Staff in Higher Education' Equality Challenge Unit p20

⁴⁵⁴ Felsing, A and Byford, K (2010) 'Managing Reasonable Adjustments in Higher Education' Equality Challenge Unit <http://www.ecu.ac.uk/publications/files/managing-reasonable-adjustments-in-higher-education.pdf/view> (accessed 09/04/13) p32

⁴⁵⁵ Ibid, p33

⁴⁵⁶ DWP (2012) 'Disability Employment Support: Fulfilling Potential: Government's Response to the Consultation on the Recommendations in Liz Sayce's Independent Review 'Getting in, Staying in and Getting on'' Cm 8312 <http://www.dwp.gov.uk/docs/dis-employ-support-response.pdf> (accessed 09/04/13) p18

Equal Opportunities

Although some attention had been given to Equal Opportunities in the higher education sector, the need for a renewed focus was iterated in the Dearing Report in the form of Recommendation 49, which stated that, “[w]e recommend that all institutions should, as part of their human resources policy, maintain equal opportunities policies, and, over the medium term, should identify and remove barriers which inhibit recruitment and progression for particular groups and monitor and publish their progress towards greater equality of opportunity for all groups.”⁴⁵⁷

In addition to the Dearing Report there was some emphasis specifically on race directly after the publication of the Macpherson Report, as the funding letter from the then Home Secretary, David Blunkett, not only mentioned the importance of widening access for students, but also specifically mentioned race equality with regards to staff. He stated that, “I am particularly concerned to see that institutions make progress on race equality for staff. I therefore ask the [Higher Education Funding] Council to encourage institutions to give proper emphasis to racial equality in their policy statements.”⁴⁵⁸ However, it must be noted that this was the only time that race was mentioned explicitly in the funding letters, and this has been argued to have been the case due to the Macpherson Report being fresh in the minds of Government at this time.⁴⁵⁹ Staff and disability have not been mentioned specifically at all within the funding letters. The need to improve equal opportunities more generally was mentioned in a number of subsequent funding letters.⁴⁶⁰ The focus on equal opportunities was relatively short lived as the 2008 funding letter merely mentions improving pathways for underrepresented groups into senior positions⁴⁶¹ and there is no mention of equal opportunities at all in subsequent funding letters to the present time.

⁴⁵⁷ Dearing, R (1997) op cit. Para. 14.40

⁴⁵⁸ Blunkett, D (2nd Nov. 1999) ‘Higher Education Funding for 2000 – 1 and 2001 – 2’ <http://webarchive.nationalarchives.gov.uk/20100202100434/http://hefce.ac.uk/News/HEFCE/1999/dfee2499.htm> (accessed 19/06/12)

⁴⁵⁹ Pilkington, A (2011) op cit. p67

⁴⁶⁰ See funding letters from 20/11/2000, 29/11/2001, 22/01/2003 and 31/01/2006 <http://www.hefce.ac.uk/whatwedo/invest/institns/annalocns/governmentgrantletter/> (accessed 14/02/13)

⁴⁶¹ See funding letter from 18/01/2008 <http://www.hefce.ac.uk/whatwedo/invest/institns/annalocns/governmentgrantletter/> (accessed 14/02/13)

As part of this early push from the Secretary of State to encourage universities to focus on equal opportunity, additional funding was made available via HEFCE to encourage universities to update and develop their human resources strategies.⁴⁶² One of the six priority areas in developing these strategies was to “[D]evelop equal opportunities targets, with programmes to implement good practice throughout an institution. This should include ensuring equal pay for work of equal value, using institution-wide systems of job evaluation.”⁴⁶³ In order to address these within their strategies, HEIs were required to undertake a number of initiatives which were split into four broad categories:

- awareness and monitoring activities;
- targeted recruitment campaigns;
- job evaluation;
- development and enhancement of equal opportunities policies.⁴⁶⁴

However, the evaluation of the scheme which was undertaken noted that the largest proportion of the money allocated was used to address job evaluations,⁴⁶⁵ and that the focus was primarily about the gender pay gap, with race and pay differentials given little or no attention.⁴⁶⁶ In fact the overall conclusions of the report regarding the progress made regarding equal opportunities was that, “[a]ctivities undertaken during the period of R&DS 1 appear to have had the greatest impact on the role and reward of women in the majority of institutions. The role of minority ethnic groups and people with disabilities has received much less emphasis within R&DS 1.”⁴⁶⁷

It has been suggested that there was some progress made in the area of developing equal opportunities’ policies, owing partly due to the HEFCE funded

⁴⁶² “Therefore the Council should ask each institution to revise its human resource strategy to focus on these points, and reiterate the need for improvements in equal opportunities for higher education staff. Where the Council is satisfied that the strategy is sound and is being implemented properly, I look to the Council to add the additional funding to that institution's baseline. Where the Council has doubts, the additional funding should remain earmarked until the revised human resources strategy and its implementation satisfy the Council.” Funding letter from 22/01/2003

<http://www.hefce.ac.uk/whatwedo/invest/institns/annalocns/governmentgrantletter/> (accessed 14/02/13)

⁴⁶³ HEFCE (2005) ‘Evaluation of Rewarding and Developing Staff in HE Initiative 2001 – 02 and 2003 – 04’ A report by KPMG LLP http://dera.ioe.ac.uk/5856/1/rd14_05.pdf (accessed 17/02/2013) p19

⁴⁶⁴ Ibid, p50

⁴⁶⁵ Ibid, p52

⁴⁶⁶ Ibid, p56

⁴⁶⁷ Ibid, p57

scheme, but also due to the introduction of the RR(A)A 2000 which came into force in April 2001⁴⁶⁸ which also required both the Funding Councils and HEIs to produce a Race Equality Scheme and action plan to show their compliance with the Race Equality Duty.⁴⁶⁹ There has been some research looking into the production of equal opportunity policies which has suggested that once again, gender usually appears to be the main focus of such policies as well as there being a lack of monitoring followed by the setting of targets in order to ensure that the policies are implemented in practice. This has led to the conclusion that, particularly in respect of race and disability, "many HEIs have not taken equal opportunities seriously."⁴⁷⁰

A similar point has been made in relation to the production of the race (and later disability) Equality Schemes and Action Plans. In their previous Race Schemes HEFCE set an objective to "ensure that ethnicity and race were integrated into the priorities of higher education institutions..."⁴⁷¹ However, research has indicated that although under the RR(A)A 2000 there was a requirement for HEIs to produce Race Equality Schemes and Action Plans, a lot of time and effort (at least in some instances) was put into merely producing the document, but no action followed. At best the document was not translated into practise, and at worst it masked and maintained underlying discriminatory practices. This is because the production of the document was seen to be all that was required.⁴⁷²

It is a moot point as to how much influence HEFCE has to ensure that universities are in fact complying with the requirements of the EA 2010, as they themselves state, "[u]nder the terms of our Financial Memorandum with HEIs, we require institutions to comply with the Equality Act. We are not empowered to enforce this law directly, but if breaches come to our attention we will take this into consideration in our risk assessments."⁴⁷³ The limited amount of pressure on HEIs to address staff issues which did once exist

⁴⁶⁸ Race Relations (Amendment) Act 2000 Commencement Order 2001

⁴⁶⁹ See Chapter 2

⁴⁷⁰ Pilkington, A (2011) op cit. p71

⁴⁷¹ Deem, R, Morley, L and Tlili, A (2005) op cit. p13

⁴⁷² Ahmed, S (2007) op cit.

⁴⁷³ HEFCE (Jan 2012) 'Equality & Diversity Scheme 2012- 2014'

http://www.hefce.ac.uk/media/hefce/content/pubs/2012/201203/12_03.pdf (accessed 19/10/12) p10

appears to have dwindled to nothing. In a review of HEIs' Race Schemes and Action Plans, Professor Gus John concluded that there was in fact little pressure for universities to comply with the law and many universities believed that "...it does not really matter whether or not they demonstrate evidence of meeting the requirements of the RR(A)A 2000."⁴⁷⁴

Management

The Role of Management

It is argued that alongside the marketisation of higher education, which was discussed previously in this chapter, there has been an accompanying shift in the way HEIs are managed. This "new managerialism"⁴⁷⁵ has developed as a response to reduced resources, larger student numbers and is geared towards being more market orientated.⁴⁷⁶ Deem and Brehony have suggested that the main features of this 'new managerialism' are "...the erasure of bureaucratic rule-following procedures; emphasising the primacy of management above all other activities; monitoring of employee performance...; the attainment of financial and other targets, devising means of publically auditing quality of service delivery and the development of quasi-markets for services. ... [T]he widespread use of performance indicators and league tables, target setting, bench marking and performance management."⁴⁷⁷

This change in management style has been criticised as inappropriate within a higher education setting. Such top down and intense performance management has been argued to reduce and challenge academic freedom, which is so fiercely defended in the sector.⁴⁷⁸ This also has a potential impact on the way proposals to address inequality are perceived as academics and other who are encouraged to engage with such initiatives are sceptical of them

⁴⁷⁴ John, G (2003) 'Review of Race Equality Policies and Action Plans in HEFCE-funded Higher Education Institutions: Satisfying the Requirements of the RRAA 2000 The HE Sector in Focus' http://www.gusjohn.com/wp-content/uploads/2013/02/GJ_Satisfying-the-Requirements-of-the-RRAA-2000_REPORT.pdf (accessed 21/07/13) p11

⁴⁷⁵ Deem, R. and Brehony, K (2005) 'Management as Ideology: The Case of 'New Managerialism' in Higher Education' *Oxford Review of Education* Vol. 31 No. 2 pp217 - 235

⁴⁷⁶ Trowler, P (2001) 'Captured by the Discourse? The Socially Constitutive Power of New Higher Education Discourse in the UK' *Organization* Vol. 8 No. 2 pp183 – 201 at p185

⁴⁷⁷ Deem, R. and Brehony, K (2005) op cit, p220

⁴⁷⁸ Riddell, S et al (2005) op cit. p641

when they appear to be attached to a managerialist agenda.⁴⁷⁹ In addition, it has been argued that target setting and meeting management objectives may mean that a rather restricted view of equality is adopted. Rather than addressing substantive equality a 'tick box' or compliance approach to equality is taken.⁴⁸⁰ This does not require institutions to move beyond minimum legal requirements as long as institutional targets are met.

However, it is suggested that 'new managerialism' has the potential for transformative action in relation to equality. Some aspects of this approach, for example, monitoring, target setting, performance indicators and bench marking, maybe essential conditions for achieving substantive equality. Substantive equality requires that results are monitored and that appropriate action is taken to reduce or eliminate disadvantage. Arguably there is therefore a tension between academic freedom and a perception of a managerialist agenda and 'new managerialism' which demonstrates that HEIs are serious in meeting their equality objectives and achieving substantive equality. It is also suggested here that in practice 'new managerialism' has only be tangentially concerned with equality because of the marketisation of higher education, as explained previously.

In addition, in order for 'new managerialism' to have a positive impact in terms of achieving substantive equality, it is suggested that those within management positions are required to have a more radical understanding of equality. However, it has been shown that 'new managerialism' in fact maintains the position of dominant groups with shared interests and who wish to conserve their power and authority.⁴⁸¹ As will be demonstrated, the achievement of substantive equality can often challenge those in dominant positions and therefore it may not be surprising that those who are in a position to bring about change, fail to do so. Given that managers appear to have increasing power and influence within HEIs, their views and perceptions relating to equality are therefore clearly important when it comes to determining the agenda in this area.

⁴⁷⁹ Riddell, S et al (2005) op cit. p629

⁴⁸⁰ Trowler, P (2001) op cit. p190

⁴⁸¹ Deem, R. and Brehony, K (2005) op cit. p231

Management perspectives relating to equality may differ depending on the role and status of the individual. Varying perspectives will also clearly impact on how equality is viewed and managed within an institution. "...[T]he field of equality and diversity accommodates competing interests and actors who uphold them. Choices of different perspectives to equality and diversity are not haphazard. Instead they are often used as frames for allocating resources, prioritizing certain concerns while silencing others."⁴⁸² The role of management has been regarded as key in providing the leadership required and sending out the message that equality is significant in order to ensure that legislation is adhered to, not just by the letter, but also the spirit.

Management and top-down commitment appears to have been identified in the literature as one of the key factors in bringing about institutional and cultural change, and has been viewed as significant in the achievement of substantive equality.⁴⁸³ The same may be said of the role of management within HEIs where there has been an expansion of managers within the sector in recent years, and therefore the extent of their commitment to equality is key.⁴⁸⁴ This has been echoed in numerous pieces of research looking into equality within the higher education context, particularly when focussing on specific equality areas, for example in relation to BME student achievement, where ownership of the issues relating to BME achievement and success from the top of the institution was viewed as vital.⁴⁸⁵

Similarly, the Higher Education Academy and Equality Challenge Unit found that participants within the institutional teams who took part in their programme on 'Improving the Degree Attainment of Black and Minority Ethnic Students', were of the opinion that in order for initiatives to be successful, leadership of the project by a senior member of staff was vital to achieving staff and institutional buy-in to the project. Commitment to the aims of the

⁴⁸² Özbilgin, M and Tatli, A (2011) 'Mapping out the Field of Equality and Diversity: Rise of Individualism and Voluntarism' *Human Relations Vol. 64 No. 9* pp1229 – 1252 at p1232

⁴⁸³ Greene, A, Kirton, G, Dean, D (2005) 'Involvement of Stakeholders in Diversity Management: A Case Study of a Government Department' PSO Report p36

⁴⁸⁴ Deem, R, Morley, L and Tlili, A (2005) op cit. p82

⁴⁸⁵ Singh, G (2009) 'A Synthesis of Research Evidence. Black and Minority Ethnic (BME) Students' Participation in Higher Education: Improving Retention and Success' EvidenceNet Higher Education Academy www.heacademy.ac.uk/evidencenet p48

project and achieving equality had to be seen as genuine and not merely tokenistic.⁴⁸⁶ In addition, it was stated in the 'Lessons Learnt' section of the report that in order for projects in this area to be successful, there was a "need for strong and visible leadership"⁴⁸⁷ and that this gave projects their credibility and had an impact on effecting cultural change.⁴⁸⁸ The view that an effective, visible, proactive and committed management is significant in achieving equality and cultural change⁴⁸⁹ was not only highlighted in literature relating to race. Similar sentiments were expressed in research relating to disability equality. For example, one of the key recommendations made by the Equality Challenge Unit in advancing good practice within higher education for staff is to "[i]ntroduce clearly designated senior members of staff for providing leadership and championing disability equality...."⁴⁹⁰

Management Perspectives of Equality

Once the role of management has been established as one key factor in achieving substantive equality within HEIs, it is necessary to consider what the perspectives of management are with regards to the problems which higher education faces in order to tackle the institutional discrimination which Macpherson identified as permeating all public institutions.⁴⁹¹ One aspect which could be viewed as holding back the progression of equality within higher education is the perception, which is reflected in the research, that universities are liberal, meritocratic institutions which have equality at the heart of what they do.

Students are admitted on the basis of their objective achievement and staff are employed on the basis of their research profiles and other factors based on merit. Therefore there cannot possibly be any pervasive inequalities which need to be addressed in this arena. This assessment of meritocracy is not, however, without serious problems. As has been explained, the view that HEIs "hold notions of meritocracy which assume that intelligence per se ... has

⁴⁸⁶ Berry, J and Loke, G (2011) op cit. p15

⁴⁸⁷ Ibid, p26

⁴⁸⁸ Ibid, p47

⁴⁸⁹ Fullick, L (2008) op cit. pp1, 7 and 15

⁴⁹⁰ Ewens, D et al (2011) op cit. p9

⁴⁹¹ See Chapter 2 for definition

little to do with social factors. ... However, as some commentators have pointed out... this ignores the role of various social factors in determining educational attainment."⁴⁹² A similar point was made regarding the view that admission to university is based on notions of meritocracy. "The difficulty arises when such a context-free numbers-based admissions system is called a 'merit-based' selection, and the successful and unsuccessful candidates, respectively, thereby included or excluded from a presumed meritocracy. That could only be true if the playing field was level – which ... it is not"⁴⁹³

This perception has also been highlighted through other research conducted in HEIs when looking at equality. The dominant discourse appears to be that admission and success at university is based on merit and does not consider issues of social identity and that universities are "...intrinsically concerned with justice and fairness."⁴⁹⁴ This perception of higher education might, it could be argued, have an impact on how seriously equality is viewed within management, who, as it has been previously established, are so key in bringing about organisational change. A belief that equality is inherent in the function of a university brings with it the danger of complacency.⁴⁹⁵ If this is the case, these views will have an impact on the extent to which HEIs make progress in the area of equality and the extent to which they comply with the PSEDs.

In concluding this section it could be suggested that there have been some factors which have brought pressure to bear on HEIs to consider equality. Pressures such as the development of a Governmental Widening Participation Policy and specific funding for institutions for their Widening Participation initiatives, as well as funding attached to the recruitment of disabled students as recognition that supporting a diverse student population costs HEIs more money. Funding Councils and the QAA have the potential to exert some pressure (whether by carrot or stick) on HEIs to comply with the PSEDs

⁴⁹² Shaw, J. (Nov. 2009) 'The Diversity Paradox: Does Student Diversity Enhance or Challenge Excellence?' *Journal of Further and Higher Education Vol. 33 No. 4* pp321 – 331 at pp322 and p327

⁴⁹³ Brink, C (2009) 'Standards will Drop – and other Fears about the Equality Agenda in Higher Education' *Higher Education Policy and Management Vol. 21 No. 1* pp19 – 37 at p34

⁴⁹⁴ Deem, R. Morley, L. And Tlili, A (2005) op cit. p11

⁴⁹⁵ SQW Ltd (2005) 'Evaluation of the Equality Challenge Unit: Report to HEFCE by SQW Ltd http://www.hefce.ac.uk/pubs/rdreports/2005/rd27_05/ (accessed 16/04/12/) p26

through the funding systems as well as through institutional audits. It is also thought that the student voice will become increasingly significant as the competition to attract students increases with the changes in the funding of higher education moving principally from the State to individuals, through the fee regime. Responses to the NSS by HEIs have already demonstrated its importance as “[i]n some cases, they have initiated major change in response to survey feedback.”⁴⁹⁶

However, questions must be asked about the success of these processes to effect change and achieve substantive equality within HEIs as the PSEDs aim to do. Widening Participation strategies appear to focus on widening the participation of socially disadvantaged groups generally and the increased funding appears to have the greatest impact on disabled students.⁴⁹⁷ There also seems to be a clear focus on disabled students within the audit processes as highlighted by the production of a specific code of practice. Research suggests that there appears to be some focus and incentive for HEIs to consider disability,⁴⁹⁸ however, this focus does not extend to race. In addition, conspicuously absent from any discussions on equality, from those organisations with the potential to influence compliance with the legislation, appears to be the needs, requirements and experiences of staff within higher education. It appears that there is very little by the way of pressure on HEIs to address race and disability equality within its staff population and Human Resources functions.

The final element which it is suggested is key to the extent to which HEIs comply with the PSEDs and advance equality, is the role and opinion of managers within HEIs. Research submits that managers can influence the success or otherwise, of initiatives to advance equality and bring about effective culture change within institutions.⁴⁹⁹ However, the perception within higher education that equality is inherent in the day to day business of a

⁴⁹⁶ Ramsden, P (2008) ‘The Future of the Higher Education Teaching and the Student Experience’ <http://webarchive.nationalarchives.gov.uk/http://www.bis.gov.uk/wp-content/uploads/2009/10/HE-Teaching-Student-Experience.pdf> (accessed 15/07/13) Para. 1.18 p5

⁴⁹⁷ Fuller, M et al (2004) op cit.

⁴⁹⁸ Tinklin, T et al (2004) op cit.

⁴⁹⁹ Singh, G (2009) op cit.

university could lead to managers within institutions being complacent and believing the equality has been achieved thereby failing to provide the leadership necessary within HEIs to comply with the PSEDs and bring about substantive equality.

Progressing Equality within Higher Education?

The aim of this section is to consider the literature with regards to the extent to which the influences/pressures as discussed above have had an impact on progress. How far does the research indicate that the pressures and influences on HEIs have had an impact on the experiences of students and staff? Some of the more prominent themes will be discussed.

Race in Higher Education

Student Experiences

Achievement

One of the primary areas in the research conducted on student experiences in higher education is that of achievement of BME students. It has been well documented in the research based in schools that there has been an increase in the achievement gap between different ethnic groups and in particular Black African and Afro-Caribbean children.⁵⁰⁰ It might be said that BME student achievement gained a renewed focus in Britain after the Macpherson Report and the introduction of the Race Equality Duty in the RR(A)A 2000. Schools in particular were in the spotlight with the Office for Standards in Education, Children's Services and Skills (OFSTED) assuming the role of monitoring school progress in implementing the Race Duty as part of their inspection remit.⁵⁰¹ One of the areas OFSTED concentrated on was that of BME achievement and as part of their inspection powers they looked to see what the situation was with regards to Local Education Authority (LEA) strategies for raising the attainment of BME children. OFSTED found that less than one quarter of the LEAs they inspected had a strategy in place.⁵⁰²

⁵⁰⁰ Mamon, S (2004) 'Mapping the Attainment of Black Children in Britain' *Race and Class Vol. 46* pp78 – 91 at p88

⁵⁰¹ For further details see, for example, Osler, A and Morrison, M (2002) 'Can Race Equality be Inspected? Challenges for Policy and Practice Raised by the OFSTED School Inspection Framework' *British Educational Research Journal Vol. 28 No. 3* pp327 - 338

⁵⁰² Mamon, S (2004) op cit. p80

The picture has not been dissimilar in relation to the achievement of BME students in higher education and research asserts that certain groups of BME students consistently underperform when compared to White students⁵⁰³ and this impacts on the degree classification obtained by BME students.⁵⁰⁴ "Over the past seven years, the proportion of UK-domicile BME students has increased from 14.9% in 2003/04 to 18.1% in 2009/10. ...The difference between the proportion of white qualifiers who obtained a first class or upper second class honours and that of BME qualifiers (the attainment gap) increased from 17.2% in 2003/04 to a peak of 18.8% in 2005/06 and is now at 18.6% in 2009/10. The attainment gap is highest between white and black students, where the difference was 29.8% in 2009/10."⁵⁰⁵

Despite these statistics it has been asserted that although there is recognition of the problem, little appears to be done to prioritise the issue.⁵⁰⁶ Often the 'blame' is shifted to the student's themselves who are perceived as being less able than their White counterparts⁵⁰⁷ or universities have located the issues beyond their control, highlighting socio-economic factors or family background as reasons for the disparity in achievement.⁵⁰⁸ However, it is suggested that although socio-economic status and family background may play a part, there are other factors which universities do have control over which could help to reduce the disproportionality, for example curriculum design,⁵⁰⁹ inclusive learning and teaching strategies and student support mechanisms.

⁵⁰³ See for example Broecke, S and Nicholls, T. (2007) 'Ethnicity and Degree Attainment' Department of Education and Skills Research Report No. RW92

<https://www.education.gov.uk/publications/eOrderingDownload/RW92.pdf> (accessed 15/06/12)

⁵⁰⁴ Richardson, J.T.E (2008) 'Degree Attainment- Ethnicity and Gender: A Literature Review' Equality Challenge Unit, Higher Education Academy

http://www.heacademy.ac.uk/assets/documents/research/J_Richardson_literature_review_Jan08.pdf (accessed 15/06/12) p10

⁵⁰⁵ Equality Challenge Unit (2011) 'Equality in Higher Education: Statistical Report 2011 – Part 2 Students' <http://www.ecu.ac.uk/publications/files/equality-in-he-stats-11-part-2-students.pdf/view> (accessed 15/06/12)

pp24 - 40

⁵⁰⁶ Berry, J and Loke, G (2011) op cit. p13

⁵⁰⁷ Singh, G (2009) op cit. p7-8

⁵⁰⁸ Jacobs, s et al (2007) 'Ethnicity and Gender in Degree Attainment: An Extensive Survey of Views and Activities in English HEIs' Higher Education Academy

http://www.heacademy.ac.uk/assets/documents/research/Ethnicity_Gender_Degree_Attainment_Jan08.pdf (accessed 15/06/12) p19

⁵⁰⁹ Dhanda, M (2010) 'Understanding Disparities in Student Attainment: Black and Ethnic Minority Students' Experience' University of Wolverhampton <http://www2.wlv.ac.uk/equalopps/mdsummary.pdf> (accessed 15/06/12) p32

Berry and Loke noted that there was some recognition of the attainment gap by institutions and some did include the issue in their race equality schemes and action plans.⁵¹⁰ However, Thomas et al have suggested that focussing on interventions to improve BME attainment once students are at university will not be prioritised by universities, as the focus has traditionally been on widening participation (due to the funding which is attached, as highlighted earlier) rather than interventions to support students once they are at university.⁵¹¹ In short, the research relating to BME achievement in higher education suggests there is a continuing disparity between BME students and little targeted action is taken by universities to try and address this. However, there also does not appear to be much conclusive evidence from the literature regarding why there is this attainment gap and little research regarding what specifically should be done to address it (supported by evidence of successful interventions). Previous research appears to have identified the gap, but there is much speculation regarding what has caused it and what should be done to rectify it.

The support at university that BME students receive has been highlighted as being an important determining factor in achievement. However, BME students (particularly those from Black, Chinese and Asian backgrounds) are less likely than White students to access support provided by tutors due to forming poor relationships with academic staff, preferring instead to depend on peers, family members or preferring to try and cope alone.⁵¹² Research from the US has reflected similar findings and suggests that there are numerous reasons why Black students do not feel comfortable in approaching academics for help. These reasons include Black students perceiving tutors as being culturally insensitive, stereotyping and generalising Black students and, not taking into account Black perspectives in the curriculum.⁵¹³ Where specific support is available and is accessed, research suggests that the results of

⁵¹⁰ Berry, J and Loke, G (2011) op cit. p12

⁵¹¹ Thomas, L et al (2005) op cit. p193

⁵¹² Stevenson, J (2012) 'Black and Minority Ethnic Students at Russell Group Universities: Exploring the Link between 'Possible Selves' and Degree Attainment' Conference paper delivered to the Society for Research into Higher Education <http://www.srhe.ac.uk/conference2012/list.domain.asp?domainID=5> (accessed 07/02/13)

⁵¹³ Guiffrida, DA and Douthit, KZ (2010) 'The Black Student Experience at Predominantly White Colleges: Implications for School and College Counselors' *Journal of Counseling and Development* Vol. 88 pp311 – 318 at p312

providing such support is marked. Research into study support for BME groups within a school environment found that the impact on achievement for some BME students was double that of the rest of the cohort.⁵¹⁴

Developing initiatives to support BME students, such as mentoring or providing additional study sessions, proved a popular initiative of institutions which were involved in the Equality Challenge Unit and Higher Education Academy programme 'Improving Degree Attainment of Black and Minority Ethnic Students.'⁵¹⁵ As far as is known, there has not yet been any research to evaluate the impact of these initiatives in terms of their substantive success in reducing inequality. It has also been pointed out that although it is important to address the support needs of BME students, this must be done in a sensitive and non-stigmatising way as otherwise specific support arrangements could reinforce a 'deficit model.' In addition, merely providing the support does not mean that other barriers, such as those mentioned in research in the US, will have been addressed and therefore this could still have an impact on whether BME students choose to access the support which is available.⁵¹⁶

Even where support is accessed, research indicates that BME students, within the higher education context, are less satisfied with it as compared to their White counterparts. "While the majority of respondents (71 per cent) felt adequately supported by their academic tutors... almost one in four (24 per cent) did not. Nearly the same amount (22 per cent) also expressed dissatisfaction with their personal (pastoral) tutor when asked if they felt sufficiently supported by him/her."⁵¹⁷ The reasons for this dissatisfaction is unclear, although the NUS research suggests that students feel the lack of support is down to tutors not being interested in their progress, or not having the time to offer adequate support due to being overworked, as well as the

⁵¹⁴ MacBeth, J et al (2001) 'The Impact of Study Support: A Report of a Longitudinal Study into the Impact of Participation in Out-of-school-hours Learning on the Academic Attainment, Attitudes and School Attendance on Secondary School Students' Research Report No. 273 DES p74

⁵¹⁵ Berry, J and Loke, G (2011) op cit. p29

⁵¹⁶ Singh, G (2009) op cit. p50

⁵¹⁷ NUS (2011) 'Race for Equality: A Report on the Experiences of Black Students in Further and Higher Education' http://www.nus.org.uk/PageFiles/12350/NUS_Race_for_Equality_web.pdf (accessed 15/06/12) p4

perception that race played a factor in the level of support which was provided.⁵¹⁸

Another factor which has been prominent in the literature in relation to achievement has been that of the need to raise the expectations of tutors and challenging negative perceptions of the ability of BME students as well as raising the students' aspirations.⁵¹⁹ The role of negative/low expectations has been expressed by BME students themselves in other research where the expectation of failure has become a self-fulfilling prophecy.⁵²⁰ Research within schools has indicated that where student/teacher relationships are improved and are positive, this in turn increases the expectations of the teachers and this can have a very positive impact on the achievement of Black students.⁵²¹ This research has more recently been echoed in the US, focussing particularly on the role of Black members of staff within predominantly White schools in raising achievement of Black students.⁵²² Much of the literature confirms that increasing the number of BME staff more generally⁵²³ and ensuring that they are involved in the delivery and design of courses,⁵²⁴ has a positive effect on BME student achievement. One of the most popular interventions with regards to increasing BME achievement has been to increase the number of role models⁵²⁵ as there is some evidence that this has an impact on achievement of BME students.⁵²⁶

It appears that despite some awareness of the disproportionality relating to BME achievement within the higher education sector, and specific programmes such as that run by the Equality Challenge Unit and the Higher Education Academy to look into the issue, there has been limited research in this area,

⁵¹⁸ Ibid, p26

⁵¹⁹ Dhanda, M (2010) op cit. p5

⁵²⁰ NUS (2011) op cit. p6

⁵²¹ Ford, D and Harris, J (1996) 'Perceptions and Attitudes of Black Students toward School, Achievement and Other Educational Variables' *Child Development Vol. 67* pp1141 – 1152 at p1142 see also Blair, M and Bourne, J (1998) 'Making the Difference: Teaching and Learning Strategies in Successful Multi-Ethnic Schools' Research Brief No. 59 The Open University

<https://www.education.gov.uk/publications/eOrderingDownload/RB59.pdf> (accessed 18/06/12)

⁵²² Guiffrida, DA and Douthit, KZ (2010) op cit. at p313

⁵²³ Dhanda, M (2010) op cit. p5

⁵²⁴ NUS (2011) op cit. p4

⁵²⁵ Berry, J and Loke, G (2011) op cit. p11

⁵²⁶ Guiffrida, DA and Douthit, KZ (2010) op cit. p312

particularly assessing the outcomes of initiatives, such as increasing BME staff and having positive role models, to decrease the disproportionality in achievement. The reasons for the disproportionality have not been fully researched and these initiatives to deal with the problem appear to be based on speculation and small scale studies rather than hard evidence and broader, longitudinal, studies.

Discrimination

Experience of discrimination, both direct and indirect, was one of the factors identified in the literature as potentially affecting the achievement of BME students in higher education.⁵²⁷ Research has indicated that there has been a systematic failure to address overt race discrimination and cultural stereotyping as well as the adoption of 'colour blind' initiatives, such as 'one size fits all' assessment strategies and student support mechanisms, has led to race and racism being side-lined.⁵²⁸

Student perceptions of discrimination, for example in marking practices or the support they receive, are at odds with that of management and this has been confirmed in research where students have been asked about their experiences in higher education.⁵²⁹ Stereotyping students from BME backgrounds, for example in relation to their ability, has been found to influence other aspects of the students' educational experiences, for example their academic self-confidence. This in turn has a knock on effect and could be a factor in the achievement rates for these groups of students.⁵³⁰ Teacher/tutor bias also has an impact on perceptions relating to assessment, and particularly the grading of them, as BME students tend to have less faith and trust in assessment and moderation procedures and outcomes.⁵³¹ This perception has also been confirmed in more recent research by the National

⁵²⁷ See Singh, G (2009) op cit. p24

⁵²⁸ Turney, L., Law, I. and Phillips, D (2002) 'Institutional Racism in Higher Education Building the Anti-racist University: A Toolkit' Centre for Racism and Ethnicity Studies University of Leeds <http://www.sociology.leeds.ac.uk/assets/files/research/cers/the-anti-racism-toolkit.pdf> (accessed 15/06/12)

⁵²⁹ NUS (2011) op cit. p4

⁵³⁰ Ford, D and Harris, J (1996) op cit. p1142

⁵³¹ Dhanda, M (2010) op cit. p4

Union of Students (NUS) and anonymous marking was suggested as a possible means of addressing perceptions of bias and discrimination.⁵³²

Student Experience

Connected to the previous discussion regarding the students' experiences of discrimination, is the general topic area of BME student experience of higher education. The NSS suggests that Black students are overall less satisfied with their experiences at university than their White peers.⁵³³ This has also been reflected in research conducted by the NUS, who found that, "[w]hile the majority of respondents were positive about their teaching and learning environment, a significant minority viewed it negatively, with 23 per cent describing it as 'cliquey', 17 per cent as 'isolating', 8 per cent as 'hostile' and 7 per cent as 'racist'. These Black students detailed their feelings, often speaking of alienation and exclusion."⁵³⁴

As well as experiencing discrimination, one of the primary aspects relating to the BME student experience, as reflected by the above quotation, is the feeling of isolation and the segregation of BME students. This feeling of isolation was acknowledged in the Dearing Report⁵³⁵ and has also been reflected in other research conducted on the experiences of BME students.⁵³⁶ Isolation has also been suggested as a key factor within the school setting in terms of the underachievement of Black pupils, as it has been argued that they feel alienated and this leads them to "become introverted, withdrawn, aggressive or disruptive.... This confusion and sense of not belonging contribute significantly to underachievement...."⁵³⁷ Although there are clearly differences between school and higher education environments and the impact of the feeling of isolation would be different for school children as compared to adults, the feeling of isolation on BME student experiences of higher education

⁵³² NUS (2011) op cit. p4

⁵³³ Berry, J and Loke, G (2011) op cit. p12

⁵³⁴ NUS (2011) op cit. p4

⁵³⁵ Coffield, F and Vignoles, A (1997) 'Widening Participation in Higher Education by Ethnic Minorities, Women and Alternative Students' The National Committee of Inquiry into Higher Education Report 5 <http://www.leeds.ac.uk/educol/ncihe/> (accessed 19/06/12) at para 1.9

⁵³⁶ See for example NUS (2011) op cit. p5 and Connor, H et al (2004) 'Why the Difference? A Closer Look at Higher Education Minority Ethnic Students and Graduates' Research Report No. 552 DES <http://www.employment-studies.co.uk/pdflibrary/rr552.pdf> (accessed 19/06/12) p61

⁵³⁷ Ford, D and Harris, J (1996) op cit. p1143

appears to have an impact. Research has suggested that the feelings of isolation also impact on university students in terms of affecting retention⁵³⁸ and achievement. One reason given for the feelings of isolation is propensity for students from different backgrounds not to mix and the socialisation is not helped due to a tendency for students to form friendships whilst out drinking and clubbing, which some students, particularly from some BME backgrounds, did not feel comfortable in doing.⁵³⁹ The Runnymede Trust has suggested that a lack of interaction, segregation and even hostility were seen as visible signs of a divided campus community.⁵⁴⁰

Staff Experiences

Discrimination

In the 2000–2001/2001–2002 funding letter from the then Home Secretary David Blunkett, to the Higher Education Funding Council, concern was expressed regarding race equality within higher education, and in particular BME staff representation and progression.⁵⁴¹ Ten years after this statement was made, research has suggested that there is still a significant gap between policy statements and the experiences of BME staff within higher education.⁵⁴² Much of the research relating to race and staff within higher education point to on-going barriers and systematic racial discrimination within institutions throughout the employment lifecycle, with BME women faring even worse than the men.⁵⁴³ Much of the available research relating to staff, reports differences in policy and practice in relation to, for example recruitment and promotion, and overt racism is not dealt with effectively.⁵⁴⁴ Poor practice maintains the existing state of affairs and as a consequence the reality is that

⁵³⁸ Connor, H et al (2004) op cit. p65

⁵³⁹ Jessop, T and Williams, A (2009) 'Equivocal Tales about Identity, Racism and the Curriculum' *Teaching in Higher Education Vol. 14 No. 1* pp95 – 106 at p100

⁵⁴⁰ Sims, JM (2007) 'Not Enough Understanding? Student Experiences of Diversity in UK Universities' Runnymede Trust <http://www.runnymedetrust.org/uploads/file/Not%20Enough%20Understanding%20-%20final.pdf> (accessed 19/06/12) p7

⁵⁴¹ Blunkett, D (2nd Nov. 1999) 'Higher Education Funding for 2000 – 1 and 2001 – 2' <http://webarchive.nationalarchives.gov.uk/20100202100434/http://hefce.ac.uk/News/HEFCE/1999/dfee2499.htm> (accessed 19/06/12)

⁵⁴² Hey, V et al (2011) 'The Experience of Black and Minority Ethnic Staff in Higher Education' Equality Challenge Unit p4

⁵⁴³ Jones, C (2006) 'Falling Between the Cracks: What Diversity means for Black Women in Higher Education' *Policy Futures in Education Vol. 4 No. 2* pp145 – 159 at p146

⁵⁴⁴ Hey, V et al (2011) op cit. p23

discriminatory structures are preserved, despite what it says in the policies.⁵⁴⁵ On the whole there is a feeling that there is not a genuine commitment to achieving substantive race equality and that HEIs are "...paying lip service to the general idea but not giving it any support in practice."⁵⁴⁶

Where specific instances of race discrimination are encountered by staff there appears to be a general reluctance to report racism within the institutions due to the concern of being branded a 'trouble maker,'⁵⁴⁷ being victimised⁵⁴⁸ or for fear that careers may be jeopardised.⁵⁴⁹ Similarly, distrust of reporting mechanisms within institutions due to a belief that complaints of racism will not be taken seriously, and the worry that managers and those responsible for dealing with complaints have little knowledge of the law or equality and diversity,⁵⁵⁰ means that there has been a suggestion that the real extent of experiences of overt racial discrimination within higher education is being masked. Research indicates similar difficulties for BME staff, in terms of feeling marginalised and isolated, as was reported with regards to BME students.⁵⁵¹ Less has been written within the literature about staff but it is believed that these feelings are linked to the stereotyping and racism which BME staff experience.⁵⁵²

Not only have there been concerns raised about the extent of overt racial discrimination within HEIs, but also that institutional racism is not being adequately dealt with. One area which is a recurring theme and regarded as symptomatic of institutional racism is the underrepresentation of BME staff, particularly in academic and more senior managerial and leadership roles, within HEIs.⁵⁵³ BME staff tend to be located within the technical and

⁵⁴⁵ Ibid, p17

⁵⁴⁶ Brink, C (2010) 'Quality and Equality in Higher Education' Keynote address at the conference 'Diversity 2012: Making a Difference' <http://www.ncl.ac.uk/executive/assets/documents/quality-and-equality.pdf> (accessed 19/06/12) p2

⁵⁴⁷ Hey, V et al (2011) op cit. p25

⁵⁴⁸ Jones, C (2006) op cit. p149

⁵⁴⁹ Hey, V et al (2011) op cit. p11

⁵⁵⁰ Jones, C (2006) op cit. p149

⁵⁵¹ Leathwood, C et al (2009) 'The Experience of Black and Minority Ethnic Staff Working in Higher Education: Literature Review' Equality Challenge Unit p2

⁵⁵² Ibid, p32

⁵⁵³ See for example Hey, V et al (2011) op cit. p31 and UCU (2006) 'Further, Higher, Better' http://www.ucu.org.uk/media/pdf/1/b/ucucsrsummary_1.pdf (accessed 19/06/12) p24

administrative positions within HEIs.⁵⁵⁴ This has been regarded as problematic in that the academic staff profile does not reflect that of the student cohort they are teaching or local BME populations.⁵⁵⁵ Similar problems are reflected within the governance structures within HEIs as "...only 16% of institutions had minority ethnic community representation on their governing bodies."⁵⁵⁶

The research suggests that institutional racism is much more far reaching than merely affecting the number of BME members of staff within higher education. This example was used as it was the one which was most frequently cited and provided an illustrative example. Disproportionate impact affecting BME staff was highlighted in the research as concerning all elements of the terms and conditions of employment within HEIs, ranging from recruitment, to retention and promotion, to pay.⁵⁵⁷

One implication of the low BME staff profile is that initiatives and interventions, such as having positive role models or mentors, to try and raise BME student aspirations and achievement can only be of limited success.⁵⁵⁸ In addition, not having a reflective staff population (particularly in relation to academic and managerial positions) is not a conducive environment for effecting change, particularly given the importance of managers in this process, as highlighted previously. Some have argued that institutional racism is demonstrated through the lack of transparent recruitment processes⁵⁵⁹ which play a role in this underrepresentation. It is therefore suggested that the policies and practices within higher education reinforce discriminatory practices.

Expectations

Connected to the experiences of discrimination is the area of the expectations and perceptions of BME staff within higher education. Research in the UK and in the US has suggested that Black staff, particularly academics, within HEIs have to work harder than their White colleagues in order to get the same

⁵⁵⁴ Leathwood, C et al (2009) op cit. p13

⁵⁵⁵ Hey, V et al (2011) op cit. p15

⁵⁵⁶ Leathwood, C et al (2009) op cit. p23

⁵⁵⁷ See Ibid. and Hey, V et al (2011) op cit.

⁵⁵⁸ Berry, J and Loke, G (2011) op cit. p14

⁵⁵⁹ Leathwood, C et al (2009) op cit. p30

recognition for their work and research.⁵⁶⁰ The reason which has been suggested for this that BME staff are perceived as less able than their White counterparts⁵⁶¹ and that the work of Black staff is more readily scrutinised and mistakes are more likely to be highlighted, sometimes even leading to disciplinary action if expectations about work performance are not met.⁵⁶²

Not only are there higher expectations regarding the level of work and productivity, but also regarding their roles as Black staff within HEIs. Within the context of social work, it was suggested by Wainwright that both Black teachers and students are put under pressure to act as the 'experts' on equality and race within an organisation, purely on the basis that they were Black, "...whilst enabling some white colleagues to renege on their own legal and procedural responsibilities when addressing anti-racism."⁵⁶³ This was reflected in other literature regarding the experiences of BME staff within higher education. It is suggested that they are often invited to attend committees in order to represent the voice of Black staff, irrespective of whether or not they wanted to assume that role⁵⁶⁴ and in fact there were unwritten assumptions and expectations attached to certain appointments that BME staff would "...draw on their cultural experiences 'to bring colour to all-white committees' and 'cater for students of colour'."⁵⁶⁵ There was concern expressed about these expectations in the Equality Challenge Unit and Higher Education Committee programme on raising BME attainment, as there was anxiety expressed that BME staff would be overburdened as they would be viewed as being responsible for delivering on this agenda.⁵⁶⁶ Similar concerns regarding the burden of responsibility were also highlighted with regards to the expectations of challenging racism generally and providing informal support for other BME colleagues.⁵⁶⁷

⁵⁶⁰ Williams, MR et al (2005) 'Learning to Read Each Other: Black Female Graduate Students Share their Experiences at a White Research Institution' *The Urban Review Vol. 37 No. 3* pp181 – 199 at p185

⁵⁶¹ Leathwood, C et al (2009) op cit. p2

⁵⁶² Mirza, HS (2006) 'Transcendence over Diversity: Black Women in the Academy' *Policy Futures in Education Vol. 4 No. 2* pp101 – 113 at p106

⁵⁶³ Wainwright, J (2009) 'Racism, Anti-racist Practice and Social Work: Articulating the Teaching and Learning Experiences of Black Social Workers' *Race, Ethnicity and Education Vol. 12 No. 4* pp495 – 516 at p504

⁵⁶⁴ Hey, V et al (2011) op cit. p29

⁵⁶⁵ Leathwood, C et al (2009) op cit. p25

⁵⁶⁶ Berry, J and Loke, G (2011) op cit. p14

⁵⁶⁷ Hey, V et al (2011) op cit. p30

The final element relating to the expectations of BME staff concerns the challenging of their positions and particularly the ability to be in authority. This has been described as 'infantalisation' of BME staff as they are presumed to hold inferior positions than those they hold in reality.⁵⁶⁸ For example, one Black academic described her experiences: "...in many meetings, even though I am a professor, I have been mistaken as the coffee lady! Even students do a double take when they see that I am the Social Theory lecturer."⁵⁶⁹ The infantalisation experienced here may also have been partly due to the fact that she was also a woman. Would the same assumption of being the tea lady have been made if it had been a Black man? However, similar experiences were also detailed in research by Leathwood et al concerning both male and female BME staff.⁵⁷⁰

In view of the expectations on BME staff and the stereotyped assumptions which BME staff appear to face, and given the proportionately lower numbers of BME staff within HEIs, effective support has been highlighted in the literature as being significant in challenging negative assumptions as well as rebuilding any confidence which may have been lost. Without such support, the effect of the discrimination experienced by BME staff has meant that some have "given up."⁵⁷¹ One suggested method of support which appears frequently in the literature is that of mentors.⁵⁷² However, even a general access to mentoring (not necessarily provided for by other BME staff) is often not forthcoming⁵⁷³ and it has been suggested that not having a mentor could disadvantage, particularly Black women "who are not familiar with 'the rules of the game'..."⁵⁷⁴

As with the available research relating to BME students, there appear to be suggestions within the literature that there are serious problems affecting BME staff. Despite the mention of equal opportunities for BME staff by the Home Secretary to the Funding Councils, not only does it appear that BME staff

⁵⁶⁸ Mirza, HS (2006) op cit. p106 see also Hey, V et al (2011) op cit. p22

⁵⁶⁹ Mirza, HS (2006) op cit. pp105 - 106

⁵⁷⁰ Leathwood, C et al (2009) op cit. p2

⁵⁷¹ Hey, V et al (2011) op cit. p22

⁵⁷² Ibid, p29

⁵⁷³ Leathwood, C et al (2009) op cit. p2

⁵⁷⁴ Ibid, p37

experience overt discrimination, but institutional racism appears to be prevalent across the higher education sector, as demonstrated through the continuing comparatively low numbers of BME staff in HEIs, particularly among academic and more senior positions. In addition, the experiences of BME staff seem to reflect the isolation felt by BME students, and BME staff feel that expectations of them are higher and yet there is little available support. However, once again it must be stressed that the research in this area is quite limited, even more so than in relation to students (see below for a discussion of further limitations to the literature). However, the research does appear to suggest that there are concerns which cannot be easily explained away.

Disability in Higher Education

Student Experiences

Achievement

As with BME students, achievement of disabled students has been highlighted in the literature as a concern. However, the issue does not receive as much attention as that of BME achievement and it is often highlighted within research on disabled students generally, rather than providing the primary focus of the research itself. Research into the achievement of disabled students appears to suggest that they are less likely to achieve good degrees as compared to students who are not disabled.⁵⁷⁵ The reason for this has been highlighted as the additional barriers to learning, which disabled students have to overcome as compared to non-disabled students, which then has an impact on degree classifications.⁵⁷⁶ It has therefore been suggested that the support which disabled students receive in overcoming these barriers, for example in coping with course work requirements and the accessibility of learning materials, will be a determining factor in terms of their achievement.⁵⁷⁷

The provision of support for disabled students takes a different form to that potentially provided for BME students, in that HEIs are under a legal obligation

⁵⁷⁵ Rickinson, M (2010) 'Disability Equality in Higher Education: A Synthesis of Research' EvidenceNet Higher Education Academy www.heacademy.ac.uk/evidencenet p4

⁵⁷⁶ Fuller, M et al (2004) op cit. p456

⁵⁷⁷ Holloway, S (2001) 'The Experience of Higher Education from the Perspective of Disabled Students' *Disability and Society Vol. 16 No. 4* pp597 – 615 p604

to make anticipatory adjustments (under the requirements to make reasonable adjustments)⁵⁷⁸ to accommodate students' disabilities, as well as providing any individualised adjustments and support which students may require.⁵⁷⁹ Research seems to suggest that the support which disabled students receive is hugely varied in terms of both quality and appropriateness⁵⁸⁰ and often depends on the type of adjustment which needs to be made. On the whole, adjustments to the physical environment as well as adjustments which can be clearly identified, such as providing hand-outs in advance of lectures and extra time in examinations, appear to be relatively easily accommodated. However, staff were not always equipped to understand the needs of individual disabled students because they did not comprehend the nature of the impairment.⁵⁸¹ In addition, overcoming the negative attitudes as displayed by some members of staff have been regarded as much more challenging barriers, particularly, for example, in relation to issues such as the questioning of the validity of a diagnosis of dyslexia.⁵⁸² Such views could clearly impact on the support which is provided to those students by such members of staff and whether or not making an adjustment for disabled students was embraced, or seen as an encumbrance.⁵⁸³ There seems to be a reported discrepancy in the literature between what HEIs say they do with regards to supporting disabled students, and the reality for many of those students. What has been suggested is that, "...the rhetoric of support is rarely matched by the reality of provision"⁵⁸⁴ despite the production of strategies on learning and teaching and in many HEIs, the establishment of a specific unit to support disabled students.⁵⁸⁵ This appears to be particularly the case with regards to the support which is provided on an ad hoc basis, rather than a general criticism of anticipatory measures which have been taken.⁵⁸⁶

⁵⁷⁸ Equality Act 2010 s20

⁵⁷⁹ Rickinson, M (2010) op cit. pp4-5

⁵⁸⁰ Fuller, M et al (2004) op cit. at p466

⁵⁸¹ Ibid, p456

⁵⁸² Riddell, S et al (2005) op cit. p638

⁵⁸³ Ibid, p640

⁵⁸⁴ Barnes, C (2007) op cit. p142

⁵⁸⁵ Holloway, S (2001) op cit. p607

⁵⁸⁶ Riddell, S et al (2005) op cit. p641

The literature does, however, frequently make the point that the experiences of the support are often very positive,⁵⁸⁷ and that there are specialist services provided for students with disabilities, in particular for students with dyslexia.⁵⁸⁸ So the experiences of support appear to paint a mixed picture, from being extremely helpful, accommodating and mindful, to ignorant, misanthropic and uncooperative.⁵⁸⁹ There is also a recognition that often anticipatory adjustments made for disabled students, such as providing hand-outs in advance of lectures and other examples of good practice in learning and teaching, benefit all students.⁵⁹⁰

The literature regarding achievement and supporting disabled students does not make mention of the same difficulties as BME students in terms of students accessing support or the concerns about approaching tutors for help. This does not necessarily mean that these are *not* concerns for disabled students, but on the whole students who have declared a disability to their institution are likely to have done so in order to be able to access the support which is available. Issues such as approaching individual tutors for support may not necessarily arise in the same way for some disabled students, as often the support needs are dealt with and communicated to tutors centrally (although the literature does identify problems with this, see later), removing the need for students to approach tutors individually. There does, however, seem to be some evidence of differences of experiences of disabled students regarding the central support services as compared to the support which is provided by tutors when they are approached on an individual basis. The anticipatory nature of the duty to make reasonable adjustments also means that for certain disabled students some of the necessary amendments and support are already provided without them having to come forward and approach the tutor or ask for help. Some tutors also clearly see the value of some of these anticipatory adjustments, such as providing notes in advance of lessons, for the whole student population, not just for disabled students.⁵⁹¹

⁵⁸⁷ Rickinson, M (2010) op cit. p21

⁵⁸⁸ Ibid, p11

⁵⁸⁹ Holloway, S (2001) op cit. p605

⁵⁹⁰ Fuller, M et al (2008) 'Disabled Students in Higher Education: Experiences and Outcomes' www.tlrp.org/pub/documents/Fuller%20RB%2046%20FINAL.pdf p3

⁵⁹¹ Ibid.

Therefore there appears to be some distinction in the way that achievement and support mechanisms for BME and disabled students are provided and dealt with by HEIs.

Although there are clearly some positive experiences reported in the literature with regards to the support provided for disabled students, the picture is mixed and the literature has also highlighted that there are differences between policy and practice more broadly, reflected in the variation between equal opportunity policies and statements as compared to the lived experiences of disabled students. "In spite of the appearance of inclusiveness implied by admission, students experienced marginalisation and disempowerment."⁵⁹²

Disclosure and Identity

How students identified themselves and whether they disclosed their disability to their university were recurring themes throughout the literature and are closely connected. Whether a student discloses a disability will have an impact on the previous issue highlighted, that of achievement and access to support, as anticipatory adjustments can only go so far and individualised adjustments may need to be made in order to adequately support a student. However, whether a student discloses will also depend on whether or not they identify themselves as having a disability and whether, if they do identify as having a disability, they would fall within the requirements and definition of the EA 2010.⁵⁹³ Some students "...equated disability with powerlessness and therefore did not wish to incorporate disability into [their] sense of self."⁵⁹⁴ Research suggests that students with non-visible disabilities are also less likely to perceive themselves as disabled, thereby not disclosing their disability and ergo not accessing the support available to them.⁵⁹⁵ Additionally, if there is the view that the culture within an institution is not supportive, students may not feel confident enough to disclose their disability for fear of prejudice, discrimination and stigmatisation.

⁵⁹² Holloway, S (2001) op cit. p612

⁵⁹³ Equality Act 2010 s6

⁵⁹⁴ Riddell, S et al (2005) op cit. p640

⁵⁹⁵ Rickinson, M (2010) op cit. p11

Once a student has disclosed they have a disability, the way in which this information was used and conveyed was highlighted as significant. The research seemed to indicate that details of a student's disability were either not communicated to the relevant people/tutors within the institution⁵⁹⁶ thereby "...forcing them to identify themselves as disabled to many different people..."⁵⁹⁷ and having to negotiate adjustments on an individual basis.⁵⁹⁸ Alternatively, information was shared with people who were not deemed to be appropriate, or information was being discussed or shared without the consent of the disabled student. This therefore invoked feelings for the student of a loss of control over the situation.⁵⁹⁹

Therefore the way that disclosure was handled by the institution at large, as well as individuals in possession of that information, was a central theme within the literature. It was identified that information about disabled students was not always dealt with appropriately, shared with the right people or handled in a confidential and sensitive manner. One suggestion as to the reasons for these negative experiences around disclosure and identity was put in the following way: "[s]tudents' negative experiences were the consequence of policy and practice which views disability as the problem of the individual."⁶⁰⁰ This very much reflects the approach taken by the law⁶⁰¹ and has been adopted more broadly, that the disability is the problem of the individual student. This closely follows the medical model of disability.⁶⁰² Arguably this approach medicalises the student and individualises the problem, placing the onus back on the student to disclose and/or to adapt, rather than on the institution to take the appropriate anticipatory action. An alternative approach would be to make policy and practice within HEIs more inclusive so there is less reliance on the need for some students to disclose their disability. This would, however, require taking a substantive approach to equality.

⁵⁹⁶ Fuller, M et al (2004) op cit. p465

⁵⁹⁷ Borland, J and James, S (1999) 'The Learning Experience of Students with Disabilities in Higher Education. A Case Study of a UK University' *Disability and Society Vol. 14 No. 1* pp85 – 101 at p91

⁵⁹⁸ Holloway, S (2001) op cit. p602

⁵⁹⁹ Riddell, S et al (2005) op cit. p637

⁶⁰⁰ Holloway, S (2001) op cit. p613

⁶⁰¹ See Chapter 2

⁶⁰² Holloway, S (2001) op cit. p607

Staff Experiences

Disclosure

Disclosure was also often highlighted in the literature relating to disabled staff, as well as disabled students. In fact, the proportion of staff disclosing they have a disability within higher education is lower than that for students and is "...also lower than the numbers of disabled staff working in HE as recorded in the 2004 census."⁶⁰³ The reason most often cited in the research for the low disclosure rate amongst staff is the fear of discrimination, prejudice and labelling.⁶⁰⁴ There does, however, appear to be a difference with regards to the type of disabilities which staff are willing to disclose to their employer. On the whole, there is some trepidation about disclosing all but the most noticeable disabilities.⁶⁰⁵

Some research has gone further to suggest that mental health difficulties in particular are not disclosed by staff due to the surrounding stigma⁶⁰⁶ and the particular fear of negative attitudes associated with mental health.⁶⁰⁷ It is striking to note that in a relatively small scale research project, none of the participants who had mental health difficulties had disclosed the fact to their employer or even a colleague.⁶⁰⁸ This research also highlighted that the impact of not disclosing, whether that be to the employer or even just to a colleague, can have substantial negative effects on the disabled member of staff.⁶⁰⁹ Although not expressly stated, this impact is presumably felt due to the lack of subsequent support and a failure to be able to make specific reasonable adjustments for that member of staff.

The conclusion which is drawn by most of the research highlighting staff disclosure is the unsurprising theory that "...disclosure of disability is more likely to take place if staff have confidence in their employer's commitment to

⁶⁰³ Lucas, H (2008) 'Disclosure and Support Issues for Disabled Staff in Higher Education' Equality Challenge Unit p4

⁶⁰⁴ Fullick, L (2008) op cit. p7

⁶⁰⁵ Ibid, p9

⁶⁰⁶ Ewens, D (2011) op cit. p40

⁶⁰⁷ Fullick, L (2008) op cit. p10

⁶⁰⁸ Horton, J and Tucker, F (2010) op cit. p5

⁶⁰⁹ Ibid, p6

disability equality.”⁶¹⁰ Concerns regarding disclosure appear to be slightly different for staff than for students, as the same investment in staff and providing support is not as visible as it is with students.⁶¹¹ This suggests to staff that disability is not as much of a priority for staff as they are for students and there appears to be some cynicism regarding the level of support which staff will receive as well as the fear that disclosing a disability, particularly mental health difficulties, will merely exacerbate things and potentially increase the discrimination which is experienced by some disabled staff.⁶¹²

Experiences of Discrimination

Research regarding the experiences of disabled staff within further and higher education has found that there is widespread discrimination⁶¹³ and disability related harassment.⁶¹⁴ The findings of research into the discrimination encountered by disabled staff are not dissimilar to that of the research into the experiences of BME staff. For disabled staff, the discrimination and barriers extend beyond the physical barriers and direct/overt discrimination to include “subtle and indirect discrimination in a range of working practices...”⁶¹⁵ as well as discrimination at every point in the employment cycle, from recruitment to promotion and training and personal development opportunities.⁶¹⁶ Such subtle, indirect or even institutional discrimination manifests itself in similar ways as with BME staff, both in terms of personal experiences, and the general underrepresentation of disabled staff within higher education⁶¹⁷ as well as a chronic absence of disabled staff in senior or leadership roles.⁶¹⁸

There have been some notable differences reported in relation to the experiences of disabled staff with mental health problems as compared to other types of impairment.⁶¹⁹ Staff with mental health difficulties were more

⁶¹⁰ Lucas, H (2008) op cit. p4

⁶¹¹ Fullick, L (2008) op cit. p1 and Horton, J and Tucker, F (2010) op cit. p2; Ewens, D (2011) op cit. p20

⁶¹² Horton, J and Tucker, F (2010) op cit. p2

⁶¹³ Fullick, L (2008) op cit. p13

⁶¹⁴ Ewens, D (2011) op cit. p45

⁶¹⁵ Fullick, L (2008) op cit. p14

⁶¹⁶ Ibid, p16

⁶¹⁷ Ibid, p1

⁶¹⁸ Ibid, p7

⁶¹⁹ Horton, J and Tucker, F (2010) op cit. p5

likely to highlight negative consequences on teaching, productivity, research and career development.⁶²⁰ “The research suggests that a lack of understanding and awareness of mental health difficulties, the symptoms, their effects on individuals and their impact on work practice prevails in higher education.”⁶²¹ The experiences of discrimination, inconsistent employment practices⁶²² and a failure to address the needs of disabled staff has led researchers to the conclusion that there is “...widespread institutional discrimination against disabled staff.”⁶²³ However, it must also be noted that some research has found that certain disabled staff, primarily with sensory or mobility impairments or long term health problems, have stated that their impairment has not impacted on their careers within higher education and some thought that their disability in fact provided research and other career opportunities.⁶²⁴ This indicates that although overwhelmingly the available research reports the negative experiences of disabled staff, particularly with mental health difficulties, it must be remembered that, as with BME communities, experiences of disadvantage and discrimination are not homogenous.

Support Mechanisms

The final issue highlighted prominently within the literature relating to disabled staff is the support afforded to them, particularly with regards to the duty to make reasonable adjustments. As with student support, the concept of making physical adjustments to an environment to support disabled staff with visible and/or physical impairments appears to be a concept which is grasped much more easily than making adjustments in order to make promotion or career development more accessible.⁶²⁵ Once again, mental health difficulties have been highlighted within the literature as creating the most difficulty for HEIs, as there is often uncertainty about how to provide the best support and what type of adjustments can be made for people who experience mental

⁶²⁰ Ibid, p6 -9

⁶²¹ Ewens, D (2011) op cit. p40

⁶²² Fullick, L (2008) op cit. p7

⁶²³ Ibid, p1

⁶²⁴ Horton, J and Tucker, F (2010) op cit. p11

⁶²⁵ Ewens, D (2011) op cit. p29

health problems.⁶²⁶ Staff with mental health difficulties were also more likely to suggest that their working environment generally was not a supportive one for people with such conditions.⁶²⁷ As highlighted in relation to disabled students, research indicates that the experiences of disabled staff in practice are very different to the written policies and procedures found within HEIs.⁶²⁸ In addition, some of the negative experiences of disabled staff could also be down to the approach taken with regards to disability and the focus on the impairment, following a medical model of disability, rather than more attention being afforded to the removal of barriers which facilitate access and inclusion for all.⁶²⁹

As well as providing reasonable adjustments (with sufficient funding attached to be able to make effective adjustments),⁶³⁰ other methods of support for disabled staff were also highlighted in the research. One such mechanism was the support and guidance which could be provided by equality officers in furthering the disability agenda within HEIs.⁶³¹ Lucas has suggested that practitioners such as this within a university "...greatly improved the visibility of disability support for staff and the trust with which employees viewed the university..."⁶³² This growth in trust could in turn impact on the disclosure rates, thereby increasing the potential for disabled staff to access appropriate support, impacting on positive outcomes for disabled staff. However, not much research appears to have been conducted regarding the *actual* impact which such roles have on the achievement of substantive disability equality. What is clear from the literature is the distinct difference in the perception of support which is provided for staff as opposed to support provided for disabled students. This was mentioned earlier in this chapter, but was consistently iterated in the research on disabled staff.⁶³³ In addition, as with the experiences of student support, staff experiences appeared to vary and many disabled staff reported that they were able to formulate coping strategies in

⁶²⁶ Fullick, L (2008) op cit. p10

⁶²⁷ Horton, J and Tucker, F (2010) op cit. p13

⁶²⁸ Ewens, D (2011) op cit. p11

⁶²⁹ Ibid, p15

⁶³⁰ Fullick, L (2008) op cit. p11

⁶³¹ Ibid.

⁶³² Lucas, H (2008) op cit. p15

⁶³³ Ibid, p16

order to work effectively whether or not their university was providing them with direct support.⁶³⁴

In concluding this section relating to BME and disabled staff and students, it is suggested that their experiences are amalgamated and the varying experiences of people from *different* ethnic backgrounds and with *different* disabilities are not highlighted. There appear to be a very complex and interconnected array of factors which play a part in the experiences of these groups. The literature also often focusses on the problems which these groups experience with very little being written about the solutions. It does seem apparent though, that there are some positive experiences and examples of good practice⁶³⁵ reported, particularly among disabled staff and students predominantly involving visible and physical impairments. Such positive comments are not as forthcoming within the literature relating to race. The question which remains is, if there are persistent problems which are flagged up in the literature on a consistent basis and which have been attributed as a demonstration of institutional discrimination, why have they not been afforded more of a priority by those organisations and people within HEIs in a position to exert pressure on the sector to take further action? This question will be returned to later in this thesis.

Conclusions

In conclusion it is argued that despite some, albeit limited, pressure on HEIs to take action with regards to equality and complying with the PSEDs, the literature generally suggests there are still major concerns which need to be addressed with regards to race and disability equality. Even in the areas where there have been additional incentives to take action, for example the financial incentives with regards to disabled students, research seems to indicate that there are still concerns which need to be tackled in relation to areas such as student achievement, the experiences of discrimination faced by staff and the support of staff and students within higher education. The view that HEIs are liberal, meritocratic institutions where equality is perceived to be inherent in the work of the organisation arguably holds back progress in

⁶³⁴ Fullick, L (2008) op cit. p11

⁶³⁵ Ibid, p13

institutions. There seems to be a general view that HEIs are paying lip service to the law and notions of equality, and moves to substantive equality are making little progress. However, it is acknowledged that conclusions regarding the impact of pressures on HEIs to comply with the law and to address equality are limited by the lack of published research.

This is still an under-researched area of enquiry, not much has been written on equality generally in higher education. In particular there does not appear to be any research looking into the connection between the potential pressures on HEIs, such as from the Funding Councils and QAA, and whether these have an impact on implementation of the law. As was stated in the introduction to this thesis, there has been some research looking at the production and effectiveness of equality policies within HEIs, but this research has not considered compliance with the law and there has not been a consideration of the impact of the PSEDs.⁶³⁶ Much of the literature relating to students has been written on the impact of Widening Participation on higher education generally, often focussing on social class.⁶³⁷ There has been some research on participation in relation to disability,⁶³⁸ but less so with a focus on race, where the literature has focused more on institutional racism broadly.⁶³⁹

Although there has been more written regarding the *experiences* of staff and students, there are also limitations with this research. Much literature in relation to race stems from the US with regards to African American students⁶⁴⁰ and particularly on achievement in schools,⁶⁴¹ although there is some research which considers achievement in the higher education context. In fact where race is discussed in the context of higher education, the majority of the research focusses on BME student achievement, although as mentioned previously, research in this area is quite broad and therefore has its

⁶³⁶ Deem, R, Morley, L and Tlili, A (2005) op cit.; Neal, S (1998) op cit.; Ahmed, S (2007) op cit.

⁶³⁷ Vignoles, A et al (2008) op cit.; Thomas, L et al (2005) op cit.; Archer, L et al (2002) op cit. p122

⁶³⁸ Riddell, S et al (2005) op cit.; Barnes, C (2007) op cit.; Konur, O (2000) op cit.; Fuller, M et al (2004) op cit.

⁶³⁹ Gulam, W in Law, I et al (2004) op cit.; Pilkington, A (2011) op cit.

⁶⁴⁰ Williams, MR et al (2005) op cit.; Guiffreda, DA and Douthit, KZ (2010) op cit.

⁶⁴¹ Ford, D and Harris, J (1996) op cit.; Blair, M and Bourne, J (1998) op cit.; MacBeth, J et al (2001) op cit.; Osler, A and Morrison, M (2002) op cit.; Mamon, S (2004) op cit.

limitations.⁶⁴² In relation to disability, some literature has highlighted that "...the lived experience of disabled students has been missing from previous studies."⁶⁴³ Research into disability and students is often historical in nature and is also often dated.⁶⁴⁴ On the whole the literature which does consider the higher education experience more broadly, is focussed on a specific institution⁶⁴⁵ or a specific subject area e.g. geography⁶⁴⁶ or social work⁶⁴⁷ or is conducted on a small scale, meaning that the sample tends to be quite small.⁶⁴⁸ The issues which the literature focus on, although still of some importance, is also quite limited and much of the it focusses on a narrow number of areas, for example concerning student achievement, student support, the under-representation of staff and differences in the terms and conditions of BME and disabled staff.

The literature is also overwhelmingly focussed on students, both in terms of the potential influences on HEIs as well as the literature regarding the experiences.⁶⁴⁹ There is quite a bit of guidance relating to the law and good practice issued by, for example, the Equality Challenge Unit in relation to staff, but there is very little empirical, longitudinal academic research into BME and disabled staff experiences.⁶⁵⁰ Once again, where there is some empirical research into the experiences of staff, they tend to be small scale and based on perception and generalisations and conjecture, without objective evaluation of whether some of the suggested solutions, such as role models or raising staff expectations of BME students, in fact work. It is unlikely that these solutions would work in isolation and the institutional discrimination which lies at the heart of the problems experienced are not fully addressed in the literature.

⁶⁴² Broecke, S and Nicholls, T. (2007) op cit.; Richardson, J.T.E (2008) op cit.; Berry, J and Loke, G (2011) op cit.; Jacobs, s et al (2007) op cit.

⁶⁴³ Fuller, M et al (2004) op cit. at p458

⁶⁴⁴ Konur, O (2000) op cit.; Barnes, C (2007) op cit.; Holloway, S (2001) op cit.

⁶⁴⁵ Dhanda, M (2010) op cit.; Pilkington, A (2011) op cit.; Fuller, M et al (2004) op cit.; Riddell, S et al (2005) op cit.; Borland, J and James, S (1999) op cit.

⁶⁴⁶ Horton, J and Tucker, F (2010) op cit.

⁶⁴⁷ Wainwright, J (2009) op cit.

⁶⁴⁸ Holloway, S (2001) op cit.; May, H and Bridger, K (2010) op cit.; Fullick, L (2008) op cit.; Lucas, H (2008) op cit.; Ewens, D (2011) op cit.

⁶⁴⁹ NUS (2011) op cit.; Connor, H et al (2004) op cit.; Jessop, T and Williams, A (2009) op cit.; Sims, JM (2007) op cit.; May, H and Bridger, K (2010) op cit.

⁶⁵⁰ Hey, V et al (2011) op cit.; Jones, C (2006) op cit.; Leathwood, C et al (2009) op cit.; Mirza, HS (2006) op cit.; Fullick, L (2008) op cit.

These issues are important to take into consideration when drawing conclusions about the extent to which the pressures on HEIs have an impact on the action which they are taking to address inequalities and implementing the PSEDs. The current available research clearly has gaps and some shortcomings. Despite this, there are clear indications that there are concerns regarding disability and race affecting students and staff within the higher education setting.

At this stage, therefore, it is necessary to reiterate how this thesis fills in some of the gaps within the literature and addresses some of the shortcomings, as well as providing an explanation as to why some research techniques which are used are similar to some of the research already in existence. As was explained in the introduction, the research focus here is on two protected characteristics, namely race and disability. This comparative element is rarely found in research, as often the focus is on either one or the other or on equality generally. It aims to bring the research into the fourth generation of legislation up-to-date by incorporating changes in the political landscape as well as taking into account the new PSEDs as introduced under the EA 2010. The focus is on higher education, as opposed to schools, and is also based in the UK where there appears to be less research in the equality field. This research is still a small scale piece which is based within a case study setting, similar to other pieces of literature in this area as detailed previously. This is so that the experiences of staff and students, as well as the views of managers, at the case study can be analysed in some detail. It also allows for some in depth analysis of the documentation relating to equality in order to assess the extent of compliance with the PSEDs and the impact of the law within a particular institution over a specific period of time. Rather than focussing on other possible influences, such as Widening Participation, funding or Equal Opportunity Policies, this research will focus on the impact of the law on practice.

Chapter 4: Methodology

The aim of this chapter is two-fold. Firstly it shall be necessary to provide a conceptual framework on which this thesis is based. Following on from this the theories and approaches which are utilised are discussed. This will include the overarching epistemological and ontological perspective of Interpretivism and a consideration of more specific methodologies, those being Gap, Impact Studies and CRT. The combination of these approaches ensures a theoretical underpinning as well as highlighting the importance of empirical elements as "theoretical work without any empirical content is hollow and ... empirical work without supporting theory is shallow."⁶⁵¹

Secondly it is necessary to justify the qualitative methods used for data collection focussing on the use of interviews and documents. An account of the ethical considerations will also be given. The methods of analysis of the data shall be explained with an emphasis on thematic and content analysis. The aim will be to provide an honest appraisal of pros and cons of these methods as well as the challenges which were faced in producing this thesis.

Conceptual Framework

The idea for this research evolved from my personal experiences of the anti-discrimination work which my father had been heavily involved with all his life as well as my experiences as an academic within a HEI. I have always been interested in how the law is utilised to promote and further equality in society in general. I had been involved with organisations such as the Citizens Advice Bureau (CAB) as an assistant to the Employment Adviser, an administrator and Company Secretary for the Discrimination Law Association (DLA) and a member of the Board of Directors for Northamptonshire Rights and Equality Council (NREC). The experiences at these organisations have given me a sound knowledge of the law in this area. However, it has always been apparent to me that there are limitations to the use of the law to combat inequality for a number of complex and interrelating factors, such as, the emphasis on individual complainants having to pursue claims and the lack of

⁶⁵¹ Brownsword, R (2006) 'An Introduction to Legal Research' www.wellcome.ac.uk/assets/wxt030897.pdf (accessed 19/02/08) p19

available support for clients in navigating the complexities of the law, as well as the limitations of the wording of the Law and the way it has sometimes been interpreted by the courts, among others.

The introduction of the PSEDs was a new approach in Britain to the combatting of institutional discrimination within public authorities. Many had expressed the view that it had the potential to make a real difference in terms of tackling inequalities which were still prevalent and which previous legislation had not been able to address. However, more than ten years after the introduction of the RR(A)A 2000 and the passing of legislation to bring other areas within the scope of the PSED, including disability, progress has appeared slow. Within my own institution and within the public sector generally, the progress with regards to race which had been made in the direct aftermath of the Stephen Lawrence Inquiry and consequent Macpherson Report, appeared to have stalled and I speculated that in many areas the law was not being applied as had been intended.

I began to question whether progress had been made in other areas, such as in relation to disability, and whether there were any differences in terms of progress in these areas. As a lecturer I began to contemplate the situation in my area of work, higher education. Issues such as the lack of women in senior positions, pay differentials, BME achievement, the underrepresentation of BME staff within higher education, and the experiences of disabled staff and students, were being highlighted through the Higher Education Academy, Equality Challenge Unit and other research. I wondered what people within these groups thought about their own situations within higher education and what was happening within HEIs to address some of these issues. How were the PSEDs being applied within a higher education context and what did those in a position to bring about change think of the PSEDs and what they were trying to achieve? Were the PSEDs making a difference? Was the law being translated into practise? It was at this point that I started to formulate my research questions which can be found in the introduction to this thesis.

Theoretical Framework

Interpretive Approach

The specific overarching theoretical perspective which shall be used in this research is an interpretative one, based on Weber's concept of 'Verstehen.'⁶⁵² This means that research which employs this perspective seeks to consider and analyse social behaviour and interaction in order to understand and explain its causes and effects.⁶⁵³ "Interpretative theory is interested in knowledge of *what it is like* to be a social actor of a particular kind, and in how such people understand their social situation."⁶⁵⁴

The view will be that organisations and institutions comprise of social actors with distinct roles and therefore diverse outlooks and views. This will therefore affect the way the legislation in relation to the PSEDs is viewed and understood and the way it is applied. Similarly, the views of those social actors who the legislation has been introduced to benefit⁶⁵⁵ will be significant in determining their lived experiences and the effects of the legislation on them. The sociological interpretive approach, combined with the specific socio-legal approaches discussed later in this chapter will allow for an inquiry into the interpretation, implementation and experiences of the law relating to the PSEDs.

Socio-Legal Approach

As suggested in the introduction to this thesis, this research is interdisciplinary and will incorporate social science and legal research by utilising legal and sociological methodologies. Such a socio-legal approach aims to bring appreciation and methods of sociological inquiry alongside legal analysis with the aim of discovering 'law in action'⁶⁵⁶ as opposed to engaging a 'black-letter' or doctrinal approach to the research. As McCrudden has stated, "... socio-legal work often concentrates on the routine in the legal process, rather than

⁶⁵² Tucker, W.T (1965) 'Max Weber's Verstehen' *The Sociological Quarterly* Vol. 6 No. 2 pp157 – 164

⁶⁵³ Ibid, p157

⁶⁵⁴ Outhwaite, W 'Interpretivism and Interactionism' in Harrington, A (2005) 'Modern Social Theory: An Introduction' OUP p111

⁶⁵⁵ In this case BME and disabled staff and students

⁶⁵⁶ See for example Lange, B (2005) 'Researching Discourse and Behaviour as Elements of Law in Action' in Banakar, R and Travers, M (2005) op cit.

the hard case...."⁶⁵⁷ The aim of this research, therefore, is to move beyond considering the law in terms of its 'form and content' to considering the 'social reality.'⁶⁵⁸ Cownie, in her ethnography of legal academics, noted that half the respondents interviewed for her research described themselves as employing socio-legal, or critical legal, approaches.⁶⁵⁹ This demonstrates that this type of legal research has become "more catholic and less parochial"⁶⁶⁰ and socio-legal methods have been adopted into the mainstream of legal research. The Nuffield Inquiry on Empirical Legal Research has also emphasised the importance of socio-legal studies in "revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution systems and the impact of legal phenomena on a range of social institutions, on business and on citizens."⁶⁶¹

This research is not intended to discuss the way the law functions in general, but rather to focus on one aspect of the law, the PSEDs. The adoption of a socio-legal approach within this research is demonstrated by a key concern, to try and reveal and explain the relationship between the law relating to the PSEDs and the practices (or operation/impact of the law) within a particular 'social' institution, namely, higher education. In particular the perceptions of various actors within a case study setting will be examined to explore "the operation of law by actors at the lowest levels of the legal hierarchy..."⁶⁶²

Gap and Impact Studies

This socio-legal approach emphasises the disparity between 'law-in-books' and 'law-in-action' as articulated in 1910 by Roscoe Pound.⁶⁶³ Pound's analysis of this distinction focussed more on the 'law in action' as applied by judicial bodies, such as judges and juries, as opposed to focussing on the application of the law in every day practices by non-legal people or institutions.⁶⁶⁴ In

⁶⁵⁷ McCrudden, C (2006) 'Legal Research and the Social Sciences' *Law Quarterly Review Vol. 122* pp632-650

⁶⁵⁸ Eekelaar, J and Maclean, M (1994) 'A Reader in Family Law' OUP p2

⁶⁵⁹ Cownie, F (2004) 'Legal Academics' Hart

⁶⁶⁰ Brownsword, R (2006) op cit. p3

⁶⁶¹ Glenn, H. Partington, M. and Wheeler, S. (2006) op cit. p1

⁶⁶² McCrudden, C (2006) op cit. p3

⁶⁶³ Pound, R (1910) 'Law in Books and Law in Action' *American Law Review Vol. 44* pp12 - 36

⁶⁶⁴ Nelken, D (1984) 'Law in Action or Living Law? Back to the Beginning in Sociology of Law' *Legal Studies Vol. 4 No. 2* pp157 - 174 at p165

essence, Pound argues that, “distinctions between law in the books and law in action, between the rules that purport to govern the relations of man and man and those that in fact govern them, will appear, and it will be found that today also the distinction between legal theory and judicial administration is often a very real and very deep one.”⁶⁶⁵ Therefore the consideration of the ‘law in books’ as opposed to the ‘law in action’ which will be conducted in this thesis does not correspond exactly to Pound’s view but, will still provide useful concepts to assist with the analysis of the PSEDs in this thesis.

Influenced by Pound’s perceptions regarding the law in books and the law in action developed a socio-legal approach, which is referred to as Gap Studies, or Gap Theory.⁶⁶⁶ “What Gap Theory alerts us to is that the de jure position is one thing, the de facto practice sometimes quite another story.”⁶⁶⁷ However, the gap which is often investigated usually relates to either, the application of the law by regulators and legal officials, or the lack of use of the law by those who the law was introduced to benefit. Despite this, Gap Studies provides a useful starting point for this research, as it aims to discover the relationship between legislation relating to the PSEDs, or law-in-books, and the translation into practice, or law-in-action, albeit the ‘law in action’ being the application of the legal requirements by management within a higher education setting. Therefore general hypothesis extracted from Gap Studies, “that there will be some disjunction between the law-in-books and the law-in-action...”,⁶⁶⁸ will still be useful in the context of this research and will enable an inquiry into the application of the PSEDs in the context of a HEI.

Although Gap Studies is a useful approach to the law to bear in mind for this research, an additional approach to legal studies is also useful as it reflects the aims of this study, which is impact studies. Impact studies “aim to help us to understand more about the effect of particular interventions... the general lessons of such studies are that interventions are unlikely to be effective where there is a lack of consensus in support of the law and/or where the

⁶⁶⁵ Pound, R (1910) op cit. p15

⁶⁶⁶ For the purposes of this research the term ‘Gap Studies’ will be employed as it is not thought that this approach is a ‘theory’ but more of a conceptual framework as shall be explained later.

⁶⁶⁷ Brownsword, R (2006) op cit. p19

⁶⁶⁸ Ibid, p19

costs of compliance are higher than the costs of non-compliance.”⁶⁶⁹ So although there will be a consideration of the gap between the requirements of the PSEDs and its application within a case study setting, there will also be an analysis of the effect or ‘impact’ of the PSEDs on BME staff and students and disabled staff and students within a higher education setting in order to assess whether the law is effective.

Critical Race Theory

Although Gap and Impact Studies provide a useful mode of analysis which explores the dynamics of the law, they do not attempt to explain *why* there is a gap between the legal requirements and practice or *why* there may be a particular impact, or lack of impact. This therefore leads us to consider the particular theories which will be used to attempt to explain the results of this research. The main underpinning theory which will be used to do this is CRT. As CRT developed from Critical Legal Studies (CLS)⁶⁷⁰ it will be necessary to provide a brief introduction to CLS.

CLS emerged in North America in the 1970s and spread to Britain in the 1980s. It was influenced by theories such as American Legal Realism, Neo-Marxism and Post-Modernism.⁶⁷¹ CLS developed as a counter discourse to Liberalism and particularly the concept of “adjudicative neutrality.”⁶⁷² “This claim about legal reasoning – that it is autonomous from political and ethical choice – is a falsehood. It is a very important falsehood, because it legitimates the power of common-law judges and of the legal profession.”⁶⁷³ CLS scholars argue, that the law is created and maintained by judges and others who have political power, and who foist their political and moral views onto society in the guise of the law, in order to maintain and perpetuate their power and positions of privilege.⁶⁷⁴ The law is used as a means of oppression. This means that legal texts, such as statutes and cases, are interpreted by

⁶⁶⁹ Ibid, p20

⁶⁷⁰ Crofts, P ‘Critical Race Theory and Exploring ‘Whiteness’’ in Bartoli, A (ed.) (2013) ‘Anti-racism in Social Work Practice: Critical Approaches to Social Work’ Critical Publishing Ltd p105

⁶⁷¹ McCrudden, C (2006) op cit. p638

⁶⁷² Ward, I (2004) ‘Introduction to Critical Legal Theory’ Routledge Cavendish p144

⁶⁷³ Klare, K (1982) ‘The Law School Curriculum in the 1980s: What’s Left?’ *Journal of Legal Education* Vol. 32 No. 3 pp336 – 343 at p340

⁶⁷⁴ Altman, A (1989) ‘Critical Legal Studies: A Liberal Critique’ Princeton University Press pp13 - 15

judges and those in legal authority to suit their own agendas, "...statutory interpretation is relativistic, not objective."⁶⁷⁵

There have, however, been a number of criticisms of the approach taken by CLS. CLS is very much focussed on the analysis and interpretation of legal texts and is therefore primarily doctrinal in nature. It does not, therefore, consider the impact of the law.⁶⁷⁶ It has also been argued by some that the focus CLS is on social class and the argument hinges on the fact that the law is used to maintain elite power structures.⁶⁷⁷ It therefore fails to address the role of race and racism within the law.⁶⁷⁸

As this research is focussed on considering the impact of the law rather than the interpretation of it by legal personnel, CLS does not seem the most appropriate theory to apply, even though it would provide an explanation of any gap between the law and practice within a HEI as being down to the use of the law in order to maintain elite hierarchies. Although this may be the case at a micro level at the case study, class was not a specific concern of this research and a detailed application of the PSEDs as demonstrated through judicial decisions, was not within the scope of this thesis. As this thesis is concerned with the impact of the law within a given area and specific aspects of equality, it was decided that CRT may offer a starting point with regards to those elements of the research which are focussed on race. Similar theories relating to disability were not prevalent in the literature. However, a recent article has suggested a 'new' offshoot to CRT, Dis/ability Critical Race Studies (DisCrit) and this will be discussed further later.

CRT is hard to define. Its proponents have themselves suggested that CRT is difficult to pin down as it "spans many disciplines and the work often crosses epistemological boundaries. There is no single authoritative statement of CRT

⁶⁷⁵ Tay, YJ (1996) 'Reading Law as Literature: A Forced Relation' *UCL Jurisprudence Review Vol. 3* pp58 – 83 at p70

⁶⁷⁶ Trubek, M and Esser, J (1989) "'Critical Empiricism" in American Legal Studies: Paradox, Program, or Pandora's Box?' *Law and Social Inquiry Vol. 14 No. 1* pp3 – 52 at p34

⁶⁷⁷ Mosikatsana, T 'Critical Race Theory' in Roederer, C and Moellendorf, D (Eds) (2006) 'Jurisprudence' Juta p275

⁶⁷⁸ DeCuir, J.T. and Dixson, A.D. (2004) "'So When it Come Out, They Aren't Surprised That it is There:" Using Critical Race Theory as a Tool of Analysis of Race and Racism in Education' *Educational Researcher Vol.33 No.5* pp26 -31 at p26

rather, it is a developing perspective with constant changes and debate."⁶⁷⁹ If one were to sum up CRT it might be described as a framework which allows for an examination of the role and effects of race and racism on a society, which favours White supremacy.⁶⁸⁰ Rather than the focus afforded to economic and class disadvantage which was prevalent in CLS, CRT situates race as the primary factor of oppression.⁶⁸¹ Instead of principally an analysis of legal doctrine, or the law in books, CRT is sufficiently flexible to provide a framework within which the 'law in action' and importantly the potential gap between what the law says and what actually occurs, can be analysed. The question for this thesis is, can CRT provide an adequate explanation for the findings within this research? This will be discussed in the conclusion. Although there is no agreed definition of CRT, it is possible to give it some structure by providing a brief outline of some of the central components of the theory.

Firstly, as has been highlighted previously, is CRT's emphasis on racism. When discussing racism, the focus is not on what is described in this thesis as 'formal' racism (or equality), but rather CRT concentrates on institutional racism. The argument is that racism is rife within society and that it can be found in "subtle and hidden processes which have the effect of discriminating, regardless of their stated intent..."⁶⁸² This form of racism is said to permeate all hierarchical domains within society and reinforces White supremacy⁶⁸³ within these structures,⁶⁸⁴ including HEIs. When this form of systematic and engrained racism is ignored by HEIs, it is surmised that "...diversity action plans become ineffective. Instead, these initiatives work to propel and reinforce structural and institutional racism."⁶⁸⁵ This view of racism is helpful in terms of an analysis of the PSEDs given that it is such forms of

⁶⁷⁹ Gillborn, D. 'Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory' in Pilkington et al (Eds.) (2009) 'Race(ing) Forward: Transitions in Theorising 'Race' in Education' C-SAP Higher Education Academy p64

⁶⁸⁰ Hylton, K 'Critical Race Theory: An Extended Introduction' in Pilkington et al (Eds.) (2009) op cit. p86

⁶⁸¹ Gillborn, D (2008) 'Racism and Education: Coincidence or Conspiracy?' Routledge p1

⁶⁸² Gillborn, D. 'Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory' in Pilkington et al (Eds.) (2009) op cit. p65

⁶⁸³ "...the operation of forces that saturate the everyday mundane actions and policies that shape the world in the interests of White people." Gillborn, D (2008) op cit. p35

⁶⁸⁴ DeCuir, J.T. and Dixson, A.D. (2004) op cit. p27

⁶⁸⁵ Hiraldo, P (2010) 'The Role of Critical Race Theory in Higher Education' *The Vermont Connection Vol. 31* pp53 – 59 at p55

discrimination and disadvantage, which the law was introduced to seek to address within what have been regarded as racist hierarchical public sector organisations.

Secondly, CRT seeks to expose the institutional racism which is hidden behind a smokescreen of neutrality and inclusivity which furthers White supremacy. What is meant by this is the relatively recent discourse of liberalism which provides "...dominant legal claims of neutrality, objectivity, color-blindness [sic] and meritocracy...."⁶⁸⁶ The adoption of policies and practices based on colour blindness and meritocracy do not take into consideration the differing experiences of racial groups and the ingrained disadvantage some groups face. The concept of 'merit' is defined and measured by dominant, White, standards thereby perpetuating the inequalities and presenting them as fair, equitable and objective.⁶⁸⁷ It is argued by CRT that the impact of liberalism is that laws and policies which have been introduced to address racial inequalities have a limited effect in terms of tackling institutional discrimination as they are often eroded over time.⁶⁸⁸

The reasons for the winding back of any significant gains in terms of racial justice have been explained by CRT via the concepts of interest convergence and contradiction-closing cases. Interest convergence arises when any improvements in terms of race equality occur only when the changes also benefit White people. This premise was first expressed by Derrick Bell in 1980: "Racial remedies may... be the outward manifestations of unspoken and perhaps subconscious judicial conclusions that the remedies, if granted, will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites. Racial justice – or its appearance – may, from time to time, be counted among the interests deemed important by the courts and by society's policymakers."⁶⁸⁹

⁶⁸⁶ Tate, W.F. (1997) 'Critical Race Theory and Education: History, Theory and Implications' *Review of Research in Education Vol 22* American Educational Research Association pp195 – 247 at p235

⁶⁸⁷ Gillborn, D. 'Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory' in Pilkington et al (Eds.) (2009) op cit. p66

⁶⁸⁸ Ibid, p67

⁶⁸⁹ Bell, D (1980) 'Brown v Board of Education and the Interest-Convergence Dilemma' *Harvard Law Review Vol. 93* pp518 - 533 at p523

Contradiction-closing cases are the situations where major victories have been won in terms of race equality (when interest-convergence occurs). These victories “provide the solution when the gap grows too large between, on the one hand, the liberal rhetoric of equal opportunities and, on the other hand, the reality of racism.”⁶⁹⁰ However, contradiction-closing cases are used to maintain White supremacy and the status quo, and ergo institutional racism, by seemingly dealing with the inequality and addressing liberal concerns and at the same time mobilising conservative opposition.⁶⁹¹ Delgado and Stefancic explain that after a contradiction closing case any gains are slowly worn away “by narrow interpretation, administrative obstruction, or delay”⁶⁹² with the consequence that the circumstances slowly return to the position they were in prior to the contradiction-closing case.

Finally, one novel feature of CRT is the use of counter storytelling as a method of challenging dominant, White, discourse thereby giving a voice to marginalised and minority groups.⁶⁹³ This method is based on the assumption that those who have experienced racism “are uniquely positioned to understand certain elements of its operation and power.”⁶⁹⁴ This thesis does not employ this method as such, as it is not based on the author’s specific experiences of discrimination. However there is a story to tell and the views of BME staff and students and disabled staff and students are an important feature of this research. CRT provides one approach which shall be considered in terms of whether it can provide an explanation of the conclusions regarding the application of the PSEDs at the case study institution.

In order to be able to evaluate the usefulness of CRT, it is also necessary to provide a brief outline of the main limitation which is a relevant consideration for this thesis. Although there are other criticisms of CRT,⁶⁹⁵ the main focus

⁶⁹⁰ Gillborn, D. ‘Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory’ in Pilkington et al (Eds.) (2009) op cit. p68

⁶⁹¹ Gillborn, D (2008) op cit. p33

⁶⁹² Delgado, R and Stefancic, J (2001) ‘Critical Race Theory: An Introduction’ New York University Press p24

⁶⁹³ DeCuir, J.T. and Dixson, A.D. (2004) op cit. at p27

⁶⁹⁴ Gillborn, D. ‘Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory’ in Pilkington et al (Eds.) (2009) op cit. p66

⁶⁹⁵ See for example Cole, M (2009) ‘Critical Race Theory and Education: A Marxist Response’ Palgrave Macmillan and Cole, M and Maisuria, A (2007) ‘“Shut the f*** up’, ‘you have no rights here’: Critical Race

shall be on CRT's relationship with other types of oppression, such as those based on gender, sexuality and, for the purposes of this thesis, disability. As was mentioned previously for CRT, race is the primary factor of oppression.⁶⁹⁶ The question therefore remains that if similar patterns of oppression and lack of action to address inequalities based on disability are apparent, how does this tie in with a theory that places race as central to the understanding of inequality and oppression? Similar criticisms have been levied by academics who regard other factors as the central facet of oppression, such as class.⁶⁹⁷

There have been some spin-off theories which attempt to address intersectionality, such as Critical-Latino Studies and Critical Race Feminism, and more recently Dis/ability Critical Race Studies (DisCrit). Scholars proposing the theory of DisCrit, within an educational context, are interested in looking at the intersection of disability and race and the ways in which DisCrit "seeks to understand ways that macrolevel issues of racism and ableism, among other discriminatory processes, are enacted in the day-to-day lives of students of color [sic] with dis/abilities."⁶⁹⁸ Although this research does not deny the importance of the intersectionalities between these different forms of oppression, it has not been the aim of this research to consider the intersectionalities *between* race and disability. Rather, it has considered race and disability as separate entities which are equally significant factors of oppression. Therefore consideration has not been had of the experiences of staff and students who are from BME backgrounds with disabilities.

Qualitative Research Methods

A key concern of this research is to try and establish the relationship between the law relating to the PSEDs and the practices within a case study setting. In order to do this, a number of qualitative research methods have been employed in order to obtain diverse perspectives pertaining to the research questions. These methods consisted of a literature review which can be seen

Theory and Racialisation in post-7/7 Racist Britain' *Journal for Critical Education Policy Studies* Vol. 5 No. 1

⁶⁹⁶ Gillborn, D (2008) op cit. p1

⁶⁹⁷ Cole, M (2009) op cit. pp33 - 37

⁶⁹⁸ Annamma, SA et al (2013) 'Dis/ability Critical Race Studies (DisCrit): Theorizing at the Intersectionalities of Race and Dis/ability' *Race, Ethnicity and Education* Vol. 16 No. 1 pp1 – 31 at p8

in Chapters 2 and 3, semi-structured interviews with people who were involved in the design of the legislation and social actors at various levels within the case study institution and a document analysis. An analysis was conducted of minutes of meetings, emails and other equality documentation, such as Schemes and Action Plans and EIAs. In order to avoid “methodological chaos”⁶⁹⁹ in research which employs various qualitative methods, it is necessary to outline in detail the research methods used for the different types of data collected, and processes of analysis which have been employed, as well as provide some reflection regarding the limitations and advantages of these.

Case Study Setting

This research is intended to be an in depth qualitative case study. As Yin states “...the distinctive need for case studies arises out of the desire to understand complex social phenomenon. ...[T]he case study method allows investigators to retain the holistic and meaningful characteristics of real life events – such as individual life cycles, organizational and managerial processes, neighbourhood change, international relations, and the maturation of industries.”⁷⁰⁰ It is for this reason, the need to understand the complex relationships between various social actors and to understand their perceptions of equality and equality legislation, that a case study method has been chosen. A case study approach will allow for the authentic voices of the participants to be heard within a structured framework. The reason for choosing a case study approach is so that I could use the narratives of various social actors to be able to elicit information central to my research questions. It would not have been possible to conduct such a detailed examination if the case study methodology had not been implemented. This is the primary strength of a case study and offers the main justification for the use of this approach in this research.

⁶⁹⁹ Lambert, S.D. and Loisele, C.G. (2008) ‘Combining Individual Interviews and Focus Groups to Enhance Data Richness’ *Journal of Advanced Nursing Vol. 62 No. 2* pp228 – 237

⁷⁰⁰ Yin, Robert K. (2003) ‘Case Study Research: Design and Methods’ Third Edition, Applied Social Research Methods Series, Vol. 5 Sage Publications pg2

It is not intended that a broad brush approach is adopted in order to identify a representative sample of HEIs. This is one of the limitations with employing a case study approach. This research will only be a snap-shot into the views of social actors and practices within one institution over a specific time period. This may not be replicated in other institutions and there are many factors, such as the location of the institution, the type of institution (for example, Post 92, Russell Group), which would mean that the results could be different in other types of institutions. Other research, such as that carried out by the Equality Challenge Unit, Higher Education Academy and University and College Union in higher and further education institutions, may shed some light as to the overall situation and further research employing different research strategies may be necessary to have a greater understanding of the complete picture regarding the application of the PSEDs within higher education.

This is not to say, however, that this research and its findings are not useful in terms of its applicability to other HEIs. Although statements of scientific generalisation cannot be made with regards to the findings of this research (and rarely can be in relation to social science research), what Bassey describes as 'fuzzy generalisations,' can be made. Bassey suggests that 'fuzzy generalisations' are "...general statements with built-in uncertainty... in the use of the adjective 'fuzzy' the likelihood of there being exceptions is clearly recognized..."⁷⁰¹ This means that the policy implications which are highlighted at the end of this thesis ensure that the limitations of the research are recognised, but at the same time the research as a whole may prompt further research and analysis, and will make a contribution to professional discourse.⁷⁰² Despite a case study often producing inconclusive results, "by providing a detailed study of the particular we may come to better understand the general and... case studies, when thoroughly conducted serve the purpose of providing... unique insights."⁷⁰³

⁷⁰¹ Bassey, M (1999) op cit. p52

⁷⁰² Ibid, p54

⁷⁰³ Rose, R., Shevlin, M., Winter, E, and O'Raw, P. (2014 in press) 'Developing Case Studies within a Longitudinal Study of Special Needs Provision in the Republic of Ireland' *International Journal of Inclusive Education* p3

Another criticism of the use of case studies as a research method has been the trustworthiness of the results arising from a case study methodology. The triangulation of qualitative research methods has been said to increase the knowledge of a research area and is an accepted methodological technique.⁷⁰⁴ In addition, using different qualitative methods can help to ensure that the data is verified and is reported in the most valid way possible.⁷⁰⁵ Triangulation in a case study setting ensures the trustworthiness of the interpretation which is given of the interview data and documentation. Each of the methods used reinforces the findings of the other thereby demonstrating its trustworthiness.⁷⁰⁶ In addition, the exploration of a range of perspectives within a case study setting reinforces the trustworthiness of the data.⁷⁰⁷

The method of choosing the case study institution to be studied will not be discussed in detail here due to the dangers of revealing the case study institution. In brief there were two main reasons for the choice of case study institution. Firstly was the convenience of access to participants and documentation due to having contacts within the case study institution. As a lecturer in the higher education sector it was possible to access key actors within HEIs and networks of people involved in the implementation of the PSEDs. An understanding of systems, procedures and culture within the higher education sector was beneficial in locating information and approaching potential interviewees.

Secondly, there had already been some research undertaken at the case study and so it was thought that this research would be a useful follow-on to show the development over a period of time within the same institution.⁷⁰⁸ It is suggested that if there are any questions regarding the process of selecting the case study, that these should be explored further within the viva. However, it is worth noting that the case study institution is a Post-92 institution with around 14,000 undergraduate students.

⁷⁰⁴ Lambert, S.D. and Loisele, C.G. (2008) op cit.

⁷⁰⁵ Stake, R.E. (1995) 'The Art of Case Study Research' Sage pp107 - 120

⁷⁰⁶ Basse, M (1999) op cit. p76

⁷⁰⁷ Rose, R., Shevlin, M., Winter, E, and O'Raw, P. (2014 in press) op cit. p4

⁷⁰⁸ See Pilkington, A (2011) op cit.

Semi-structured Interviews

In order to gain rich data for analysis, a major part of the data collection was via the use of semi-structured interviews. The reason for choosing semi-structured interviews, as opposed to unstructured or structured, was that I wanted to ensure that the topic areas which related to my research questions were covered, but it was also really important that I should hear the 'stories,' experiences and views of the participants. Semi-structured interviews provide the flexibility required to expand on points which the interviewees have made without being too constrained by a set of rigid questions. The aim was to place the experiences and views of the participants at the centre of the research, but to provide them with a framework within which to express those views.⁷⁰⁹

The way in which I conducted the interviews was as follows;

- First I introduced myself and re-iterated the aims and purpose of my research, which were also stated at the top of the interview schedule, which had been sent to participants.
- I explained the consent form and issues of confidentiality and anonymity and told participants that there were no right or wrong answers and that I was just interested in their experiences. However, they did not have to respond to questions if they preferred not to. I also explained that the interview schedule was just a guide and that we may deviate from the schedule to explore a particular point if the interviewee was happy to do so. I also explained the reasons for tape recording the interview and asked whether they were happy for me to do so.
- I would start by asking the first question as given in the schedule and the interview would develop from there. If participants had already answered some of the questions in their explanations and responses I would rearrange the order of the questions.
- When it appeared that the interviewee had said all they wanted to in relation to the questions I would ask if they had anything else they would like to add which had not yet been mentioned and then thanked them for giving up their time to speak to me.

⁷⁰⁹ Rabionet, S.E. (2011) 'How I Learned to Design and Conduct Semi-structured Interviews: An Ongoing and Continuous Journey' *The Qualitative Report Vol.16 No. 2* pp563-566

Interview lengths varied from around half an hour to nearly two hours.

Interview sample

As part of the research I was able to interview a number of people who were involved with the design and implementation, as well as the monitoring of anti-discrimination legislation. This sample was chosen via a combination of identification through the literature as well as personal contacts. I had hoped to interview Lord Lester of Herne Hill as he was instrumental in the framing of the early Race Relations Acts as described in Chapter 2. However, unfortunately he was not available for interview. I interviewed Professor Sir Bob Hepple who was appointed to the Commission for Racial Equality in 1986 – 1990.⁷¹⁰ Hepple had had an important role to play in the introduction of the RRA 1976 as well as the EA 2000 as he authored the influential report 'Equality: A New Framework: Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation'⁷¹¹

I also interviewed Barbara Cohen who was the head of legal policy at the Commission for Racial Equality during the 1990s. She was also involved in Part 1 and Part 2 of the Stephen Lawrence Inquiry and was responsible for drafting the CRE's proposals for reform of the RRA 1976.⁷¹² In addition, I interviewed Sir Geoffrey Bindman. Bindman set up his own law firm in 1974 and he was also a legal adviser, firstly to the Race Relations Board and then to the Commission for Racial Equality.⁷¹³ He has also written extensively on the area of equality⁷¹⁴ in his own right as well as in conjunction with Lester.⁷¹⁵ The interviews I conducted with Hepple, Cohen and Bindman were in order to gain some insight into the motivations for changing the law and introduction of the PSEDs. All were able to provide some historical context to the lead up to the

⁷¹⁰ Professor Sir Bob Hepple
http://www.squire.law.cam.ac.uk/eminentscholars/professor_sir_bob_hepple.php#ftn17 (accessed 06/07/13)

⁷¹¹ Hepple, B (2000) op cit.

⁷¹² Barbara Cohen
http://www.devon.gov.uk/index/councildemocracy/improving_our_services/equality/devonforeveryone/equalityrace/tackling/part1c_crime.htm (accessed 06/07/13)

⁷¹³ Sir Geoffrey Bindman <http://www.bindmans.com/our-people/profile/sir-geoffrey-bindman> (accessed 22/07/13)

⁷¹⁴ Ibid.

⁷¹⁵ See Bibliography

RR(A)A 2000 as well as giving an indication of the purpose of the PSED and what it was hoped it would achieve. These interviews were primarily used to illuminate some of the historical context which is found in Chapter 2.

I also interviewed two distinct groups of people within the case study institution as the aims of the interviews were different depending on the participant. The interviewees were identified through two routes. Firstly some interviewees were identified due to the role they played within the case study institution.⁷¹⁶ The second group were identified initially due to convenience and this is also linked to the reason why the case study institution was also chosen.⁷¹⁷ Once a few interviewees had come forward, there was a snowballing effect as the word spread within the case study institution that I was undertaking this research. Some staff and students informed me that they had friends, colleagues or family members who worked or studied at the case study institution who might also be interested in being interviewed. This therefore had the impact of increasing the numbers of staff and student participants.

Group A were those who were in senior management within the case study or who had an equality remit as part of their role at the institution. The following roles were identified:

Vice Chancellor (VC)

Pro-Vice Chancellor (PVC)

Head of Faculty (HoF)

Personnel Director (PD)

Personnel Manager (responsible for equality and diversity) (PM)

Equality and Diversity Officer (EDO)

Union Official (UO)

As mentioned previously, these roles were chosen either because of their seniority, or their role within the case study institution having an equality remit, or both. The primary aim of the interviews with these participants was to explore their notions and understanding of equality and the PSEDs, and to

⁷¹⁶ See below

⁷¹⁷ See above in relation to Case Study methodology

gain an understanding of how the institution was complying from their own perspectives. In order to protect the anonymity of the participants as well as the case study institution, the titles of some of the roles have been changed. In addition, as the thesis is not focussed on issues of gender, the participants are described in gender neutral terms. Again, this is in order to protect their anonymity. Clearly, if the case study institution could be identified, the individuals may be too, given that there may only be one person within a particular role.

Group B was made up of staff and students in the case study institution who were from BME backgrounds or who had disabilities (visible and non-visible). The aim of interviewing this group was to hear about their individual experiences at the case study institution, focussing on issues around their ethnic and racial identities and disabilities. It was not the aim to ask this group of participants about their knowledge and understanding of the law. Once again, as there were relatively small numbers of BME and disabled staff and students in some areas of the case study institution, the specific features of those who were interviewed are not going to be detailed due, once again, to the risk of identification, particularly amongst the staff group. Again, both staff and students have been described in gender neutral terms throughout the thesis. Some of the disadvantages of this approach will be discussed further below. However, in terms of the numbers interviewed and whether they are academic or non-academic staff are detailed in Table A.

Table A:

	Non-visible Disability	Visible Disability	BME
Students	D1 D2 D3 D4		RA RB RC
Staff (Academic)	A1	A2	AB AC AD
Staff (Non-academic)	S1		SA SB

The numbers and letters represent the code which has been given to the participants to protect their anonymity. This code is used when quoting the participants in Chapter 5. Of the BME students interviewed two were of Black origin and one of Asian. In terms of staff, two were of Black origin and three of Asian. It is not possible to provide more nuanced details of the participant's ethnic and racial origins nor of the exact type of disabilities which participants had, once again, due to fear of exposure. In terms of disability, what can be said is that they ranged from mobility difficulties, mental health difficulties, dyslexia, dyspraxia and other non-visible disabilities.

Although Group A were selected due to their positions and/or roles within the case study, Group B was self-selecting. Advertisements were placed on electronic noticeboards via Course and Module Leaders who were approached at the case study on a random basis. The advertisements asked for participants who were willing to be interviewed with a short summary of the research topic and my contact details. Advertisements were also placed in the Disability Support Service at the case study institution. In addition, some of the participants, particularly staff, got in touch after colleagues had been interviewed and news of the research spread within the case study institution. It must be noted, therefore, that participants may have had a specific reason for coming forward, such as having a particular issue with the case study institution or wanting to get certain issues 'off their chest.' Therefore it has to be taken into consideration that those volunteering to be interviewed are possibly more likely to report negative as opposed to positive experiences.

Methodological Challenges

It is recognised that as well as the advantages of conducting such semi-structured interviews, there are also limitations. One of the main issues to note is the impact of 'interpersonal variables' and particularly the 'social desirability effect.'⁷¹⁸ I was very aware that my role as a young(ish), white, non-disabled, female academic in the relative early stages of her career and particularly in terms of research, would have an impact on the interviews depending on who was being interviewed. The power dynamics were visible in

⁷¹⁸ Langdridge, D (2004) 'Introduction to Research Methods and Data Analysis in Psychology' Pearson p51

relation to almost all the interviews conducted. Clearly the dynamics were different depending on whether I was interviewing the Vice Chancellor or other members of senior management, as compared to interviewing students, where the tables in terms of the power dynamics were turned. I felt that gender also played a role in the dynamics of the interviews as well as my Whiteness and my 'able-bodiedness' when interviewing participants who were from BME backgrounds and staff and students who were disabled.

The impact of these factors on the interviews manifested themselves in different ways. I was very aware that management were keen to demonstrate their compliance with the law and also often presented the 'policy' line. Probing further to extract a more personal view was difficult given the different power and gender dynamics, particularly as most of those interviewed in senior management were older and male. I was also very aware when interviewing students of the fear they may have had about accusing the case study institution of discriminatory behaviour and the fact that they knew I was an academic, so there may have been some reluctance to completely open up due to a concern that issues may get back to people at the case study institution, despite the assurances of anonymity and confidentiality (see more on this later). As well as the possibility of participants holding information back, I also had to recognise that they may have exaggerated elements of their accounts and this can be a particular danger "...if the 'truth' is inconsistent with their preferred self-image or if they wish to impress the interviewer."⁷¹⁹ I therefore had to try and ensure I remained neutral during the interview process in order to reduce the risk of this occurring.

The way in which I overcame some of the interpersonal variables was to ensure that the language I used was appropriate and accessible, free from legal jargon wherever possible. This was particularly important when interviewing BME and disabled staff and students about their experiences, as their knowledge of the law was not required. Some legal terminology was necessary when interviewing senior management and those staff with an

⁷¹⁹ Lambert, S.D. and Loiselle, C.G. (2008) op cit.

equality remit as part of the aim of the interview with these members of staff was to draw out their knowledge, understanding and interpretation of some of the legal requirements/concepts.

Providing an interview schedule⁷²⁰ in advance of the interview was also one way of putting interviewees at ease and trying to counter some of the interpersonal variables, particularly with regards to students as there was some apprehension about what they would be asked. By sending the questions in advance it ensured that the participants did not feel as if they were put on the spot or that they were not in control of the situation. This would have allowed the participants to think about their answers in advance and although this may be regarded as a disadvantage for some research which requires a more spontaneous response, this was not considered to be the case for this research. As I was interested in the views and experiences of the participants, I did not consider that any advanced preparation which the participants may have undertaken would be detrimental. In truth, the fact that participants had the time to think about their views and experiences meant that often their re-counting of events and perceptions were more detailed because they had time to consider them.

Another challenge with regards to the interviews was finding willing participants, particularly disabled staff. Despite being a researcher, some staff may have been reluctant to discuss their disabilities as they may have felt that this was effectively disclosing them to the case study institution. Some of the participants who were interviewed had disclosed some, but not all, of their disabilities to the case study institution for fear of stigmatisation. Once again, it was clearly very important that issues of anonymity and confidentiality were stressed. Despite this there were some difficulties in finding sufficient participants for this research.

One other limitation in terms of the interviews was that both disabled and BME participants were dealt with, to some extent, as homogenous groups. Due to the small numbers of interviewees it was not possible to disaggregate

⁷²⁰ See Appendices A, B, C and D for interview schedules

participants into the type of disability, nor to look at differences of experiences between different racial groups. Clearly, not all disabled or BME staff and students have the same experiences and so the grouping together into visible and non-visible disabilities and BME is potentially problematic. However, it was, to some extent, beyond this research to be able to conduct a thorough investigation into the experiences of staff and students with particular disabilities and from different ethnic and racial backgrounds. A much larger sample of staff and students with different types of disability and from various racial and ethnic backgrounds would have been required to be able to do an effective comparison of their experiences, and given the financial and time constraints, this would not have been possible. However, the limitations of this research are recognised.

Ethical Considerations

As this research spans a number of different subject areas, I ensured that I was following the guidelines for ethical research produced by the British Sociological Association⁷²¹ and the British Educational Research Association.⁷²² I had obtained permission from the Vice Chancellor at the institution to use it as my case study prior to commencing research. I made it clear that the institution would be anonymised as far as possible within the research. In order to do this some of the Committee names have been changed in order to make identification more difficult.

Clearly anonymity and confidentiality were crucial for the participants who were interviewed for this research. All participants were informed that the interviews would form part of the research for my PhD and they were provided with a consent form⁷²³ at the same time as the interview schedule being sent to them, which was usually a week before the interview. Participants were asked at the interview whether they understood the consent form and what the research was about and were given an opportunity to ask any questions.

⁷²¹ British Sociological Association (May 2004) 'Statement of Ethical Practice for the British Sociological Association' <http://www.britisoc.co.uk/media/27107/StatementofEthicalPractice.pdf> (accessed 08/07/13)

⁷²² BERA (2011) 'Ethical Guidelines for Educational Research' <http://content.yudu.com/Library/A1t9gr/BERAEthicalGuideline/resources/index.htm?referrerUrl=http%25253A%25252F%25252Fwww.yudu.com%25252Fitem%25252Fdetails%25252F375952%25252FBERA-Ethical-Guidelines-2011> (accessed 08/07/13)

⁷²³ See Appendix E

They were then asked to sign the bottom section of the form. I stressed again at the interviews that anything which would be said would be treated in the strictest of confidence and for the purposes of this research only.

Interviewees were told that the interview would be recorded for transcription purposes only and I also explained that all participants would be anonymised, although quotations from the interview may be used in the final thesis.

The anonymisation of participants was easier for staff and students than for some of the people I had interviewed due to their specific roles within the institution. I therefore attempted to disguise the roles as best I could by changing job titles and ensuring that participants were discussed in gender neutral terms within the research. This was, however, easier for some roles than for others, particularly where there was only one person in that position. It was therefore not possible to guarantee some participants absolute anonymity. Although the case study has been anonymised and cannot be identified by those reading the research from outside of the institution, clearly people within the institution knew I was conducting the research and would therefore be able to identify some of the participants from their job titles, for example the EDOs and Personnel Director.

Some of the additional ethical considerations with regards to this research have already been highlighted in the previous section relating to the methodological challenges.

Analysis

The main method used for analysing the interviews was thematic analysis. The use of thematic analysis was decided on as "it offers an accessible and theoretically flexible approach to analysing qualitative data... [and is] a useful and flexible method for qualitative research...."⁷²⁴ A definition of thematic analysis might be considered as an analysis which is based on identifying themes within the interview data.⁷²⁵ The themes which were identified form

⁷²⁴ Braun, V and Clarke, V (2006) 'Using Thematic Analysis in Psychology' *Qualitative Research in Psychology* Vol. 3 pp77 – 101
http://science.uwe.ac.uk/psychology/dr victoriaclarke_files/thematicanalysis%20.pdf p77

⁷²⁵ Seale, C (Ed) (2004) 'Researching Society and Culture: Glossary' 2nd Edition Sage Publishing

the sub headings within the analysis in Chapter 5. The interviews were all transcribed in order to be able to conduct the analysis of them. All quotations from participants have been provided verbatim.

The analysis was conducted from the standpoint that it would be theoretical/deductive, or 'top down', process rather than an inductive or 'bottom up' approach.⁷²⁶ This means that rather than the coding of the data being strongly linked to the data itself with the identified themes being unique to that data, the themes were identified from pre-existing codes from the available literature and previous studies which had been conducted, looking at the experiences of disabled and BME staff and students within higher education. This type of thematic analysis "tends to provide a less rich description of the data overall, and a more detailed analysis of some aspect of the data."⁷²⁷ Attention was therefore afforded to the sections of the interviews which related to themes discussed in previous studies. There were, however, a couple of themes in the interview data which did not appear in previous literature. As part of the analytical process the similarities and differences between the interview data and a variety of other sources, including previous research/literature were identified. These are discussed and reported in Chapter 5. This form of triangulation ensures that the themes which have been identified in the data are sound.

Document Analysis

As well as utilising interview material in order to establish the perceptions of the legislation and the experiences of various social actors within the case study institution, I also drew on other types of data in order to analyse what the documents said in terms of what the case study institution was doing over a given period of time. The document analysis was used as another, parallel, method of assessing how the institution was complying with the PSEDs. Documents such as minutes of committee meetings, the institution's Equality Scheme and Action Plan, EIAs as well as email communications, were used to complement the perceptions of the social actors who had been interviewed.

⁷²⁶ Braun, V and Clarke, V (2006) op cit. p83

⁷²⁷ Ibid, p84

The Equality Scheme and Action Plan, EIAs, statistical data and equality objectives were/are all required by law to be published and available to the public so access to these materials was not a problem. Information, such as committee minutes are also in the public domain and so the relevant clerks of the committees were contacted for copies of the minutes during the time frame of the thesis. Relevant email communications were passed to me by various interviewees. How some of the communication was obtained can also be discussed during the viva if necessary, as once again revealing such information could compromise the identity of the case study institution.

The following documents were used and analysed for Chapter 6 of this thesis:

- Minutes and Terms of Reference from the following committees for meetings held during the time period September 2008 and April 2012:
 - o Academic Strategy Committee (ASC)
 - o Human Resources and Governance Committee (HRGC)
 - o Student Experience Committee (SEC)
 - o Equality Action Committee (EAC)
 - o Equality Working Group (EWG)
 - o Equality Committee (EC)
- Equality Scheme and Action Plan 2006 – 10
- Equality Scheme and Action Plan – Report on Progress
- Equality Act 2010 Statement of Compliance
- Student Statistics 2010/11
- Human Resources Statistics 2009/10
- Full Equality Impact Assessment of Admissions Policy
- Equality Impact Assessment Schedule
- Various email communications

These documents were chosen for analysis due to the committees having responsibility in some form or another for equality issues⁷²⁸ or the documents themselves were required to be produced in order to demonstrate compliance with the law. It is recognised that these documents are all produced for varying purposes. Some, such as minutes of meetings, are produced as a

⁷²⁸ See Chapter 6 for further details regarding the committees

formal record which is available to the public and so they do not necessarily represent an accurate picture of discussions which took place within meetings as they are not produced with this purpose in mind. Similarly, email communications can be more informal and are generally regarded as private so the information which is contained therein, tends to be of a different nature and can tell a different story.

Content Analysis

Content analysis has been described as "...a flexible method for analyzing text data. ...Research using qualitative content analysis focuses on the characteristics of language as communication with attention to the content or contextual meaning of the text."⁷²⁹ The main approach used to analyse the documentation is a 'summative'⁷³⁰ content analysis. The aim was to identify key words within the documentation which were relevant to my research questions and then to explore how these words were used and their meanings within a specific context. The aim was to explore the use and development of certain areas, such as the Equality Scheme and Action Plan, within the case study institution in order to establish what action had been taken with regards these issues. "A summative approach to qualitative content analysis goes beyond mere word counts to include latent content analysis. Latent content analysis refers to the process of interpretation of content."⁷³¹

I was very aware that the use of the documents had to be consistent and in order for my research to be regarded as academically viable, I would have to ensure that I did not just analyse the sections of the documents which suited my hypothesis. As there was a lot of documentation to get through, I employed a strategy for narrowing down the amount of documentation, particularly when it came to the minutes of meetings, which were to be analysed. I therefore only searched for the use of a specific number of terms. Firstly, where the committees were general committees (i.e. not with a sole equality remit),⁷³² I only analysed those sections of the minutes which referred

⁷²⁹ Hsieh, H.F. and Shannon, S.E. (2005) 'Three Approaches to Qualitative Content Analysis' *Qualitative Health Research* Vol. 15 No. 9 pp1277 – 1288 at p1277 - 1278

⁷³⁰ Ibid, p1283

⁷³¹ Ibid, pp1283 - 1284

⁷³² HRGC, SEC, ASC

to equality and diversity. I narrowed this down further to concentrate on the sections where race and disability were discussed as this is the focus of the thesis. I do, however, provide a general overview in Chapter 6 of how often all equality areas were discussed at these committees to set the analysis in context. Secondly, where the committees were specific equality committees⁷³³ I used those sections of the minutes which related to the areas I was focussing on. These were: the Scheme and Action Plan, equality data and objectives, EIAs and staff data.

The content analysis of the documentation, as well as the thematic analysis of the interview data, meant that I was able to consider my research questions from different angles. The aim of analysing the interviews was slightly different from the aims of analysing the documentation and therefore different methods of analysis were employed. The interview data provided me with a richer understanding of the participants' perceptions and experiences of equality issues at the case study institution within the framework of pre-existing themes identified in previous literature. The aim of analysing the documentation was to provide both an historical and developmental overview of equality processes and outcomes at the case study institution to consider both the gap between the law and practice as well as the impact of the law. It is recognised that there are limitations to the methods employed in this research, such as the potential for researcher bias, but the use of different types of qualitative data as well as different, but suitable methods of analysis have mitigated against some of the more problematic limitations.

⁷³³ EAC, EWG, EC

Chapter 5: The Case Study Experience – The Perceptions of Social Actors.

The aim of this chapter is to explore the perspectives of various social actors regarding anti-discrimination legislation and equality within a case study setting. In research conducted by Özbilgin and Tatli they “conceptualize the field of equality and diversity as a space of relations between different institutional actors, i.e. statutory equality bodies, public and private sector organisations, professional bodies and learned organizations, trade unions, employer organisations, consultancies and training organizations.”⁷³⁴ This research will focus on the relationships between various social actors in a similar way, however, the analysis will be based on a micro level analysis, focussing on the various social actors within a specific case study, a HEI. Interviews were therefore conducted with members of the senior management (Vice Chancellor (VC), Pro Vice Chancellor (PVC), Head of Faculty (HoF), and Personnel Director (PD)) within the case study institution. Interviews were also conducted with other members of staff who had an equality remit within their role (Personnel Manager (PM), Equality and Diversity Officer (EDO) and a Union Official (UO)) as well as a number of academic staff, support staff and students from BME backgrounds and staff and students who have a disability (physical, mental and other unseen disabilities) as detailed in the methodology chapter.

The purpose of this chapter shall be twofold:

- a) To explore how management perspectives regarding equality, as well as those from other members of staff with an equality remit, impact on the way equality is dealt with in the case study institution.
- b) To see how far themes raised in the literature relating to equality within higher education generally (as detailed in Chapter 3) are reflected in the case study institution.

Previous research has found that “[t]here appeared to be a considerable gulf between the views of staff in the six institutions and the perceptions of their

⁷³⁴ Özbilgin, M and Tatli, A (2011) op cit. p1232 - 1233

senior managers. ...The view from the grass roots and the view from the senior management vantage point for our respondents, certainly seems very different."⁷³⁵ To some extent this will also be demonstrated by the research here. However, the primary conclusion which will be drawn is that managers, as well as some other members of staff within the case study institution, view equality along formal lines. This means that they are less likely to 'see' the problems relating to discrimination within the case study institution, this is particularly where there are instances of institutional discrimination, as highlighted by the experiences of some BME and disabled staff and students. Senior managers who are expected to lead on the implementation of the PSEDs view equality in terms of individual prejudice and discrimination, rather than in terms of institutional discrimination therefore, combined with the notion that HEIs are meritocratic, this means concerns raised by BME and disabled staff and students are not apparent to them.

The Role of Management

The starting point for analysing the views regarding equality and equality legislation is to consider the perspectives of management within the case study institution. The importance of the role and commitment of senior management in advancing the equality agenda within higher education was highlighted as significant within the literature as outlined in Chapter 3.⁷³⁶ This was also echoed by the participants in the case study institution, "I think you've got to have an institutional buy-in at senior level, no question about that. You've got [to have] a Vice Chancellor who is personally committed,"⁷³⁷ "...it depends how much push you get from the top. ...Certainly it depends on how it is viewed from the top."⁷³⁸ "The other thing that influences the institution is the leadership of the institution. ...I think it is a leadership question. ...The moral enterprise that lies behind equality and diversity legislation and policy requires a strategic leadership to generate purpose. ...It is the role of the leadership to ensure that we lead with a purpose."⁷³⁹

⁷³⁵ Deem, R. Morley, L. And Tlili, A (2005) op cit. p6 and p107

⁷³⁶ Ibid, p82

⁷³⁷ Pro Vice Chancellor (PVC)

⁷³⁸ Personnel Director (PD)

⁷³⁹ Head of Faculty (HoF)

Although there was general agreement amongst the senior managers that management buy-in and commitment was vital in achieving equality, the perceptions as to whether this management commitment existed in the case study institution was (unsurprisingly?) variable. Some of the senior managers felt that this commitment did in fact exist at the case study institution, "... I feel comfortable that we have a Vice Chancellor who are themselves very supportive and will take it seriously. I think that is very important. You then need some kind of guidance at senior level, if for no other reason than to remind heads of units [Faculties and Departments] that this is what they are supposed to be doing..."⁷⁴⁰ Further, "It's owned by the senior management team of the university."⁷⁴¹

However, the view from other members of staff appeared to be very different, "Definitely leadership. Even [the VC] wasn't that hot on it and it was something that had to be done. It was like filling in your tax return – you've got to do it but you don't necessarily enjoy it."⁷⁴² "First of all there has to be a commitment and will. You have to embrace the spirit if not the letter of what the law says and the guidance that goes along with what the law says. I'm not sure if management does that."⁷⁴³ "... I think there's probably been a lack of management imperative... I think there'd be much more likely to be engagement if there was a serious management commitment to it. At the end of the day management have to take responsibility for ensuring that their functions and area of responsibility are carried out in the context of legal and other obligations and they're currently failing to do so. ... I think it flows from the top and the people at the top who are responsible for the [Personnel] function as well, so it's not just the [Personnel Director] or the [Personnel Manager], it flows from who's supervising and managing them..."⁷⁴⁴ "[It's the Vice Chancellor] who has let the E&D job go and the widening participation job go. Would [they] stand up for disabled people's rights? [They] don't seem to

⁷⁴⁰ PVC

⁷⁴¹ HoF

⁷⁴² Personnel Manager (PM)

⁷⁴³ Union Official (UO)

⁷⁴⁴ Equality and Diversity Officer (EDO)

be. I don't think they would.... The University as a whole is not too good and I think it might be from the top."⁷⁴⁵

The view that the role of management is significant in terms of whether or not equality is taken seriously closely reflects the findings of other research which has been conducted in this area (see Chapter 3) and is therefore not necessarily surprising. Management perspectives and commitment have an impact on establishing the priorities for an institution thereby determining how equality is dealt with. It is therefore necessary to look at how management at the case study institution views equality, as well as their thoughts on the role of equality legislation, as this may provide an insight into the actions which are taken at the case study institution as well as how the legislative requirements are implemented.

Management Perceptions of Equality

As highlighted in Chapter 2, equality is a concept which is not necessarily a straight forward one to comprehend, or to agree on in terms of meaning. This therefore means that one person's view of how to achieve equality and prevent discrimination, and whether an organisation is complying with the law, could vary considerably. It is therefore necessary to look at the management's understanding of equality, as this may provide an explanation as to priorities set, actions taken, and the possibility of differences in opinion regarding what action the institution has taken by way of achieving equality and complying with anti-discrimination legislation.

The various concepts of equality were outlined and discussed in Chapter 2 (formal equality, equality of opportunity and substantive equality), and it is with the concepts of equality in mind that the management perspectives and understanding within the case study institution will be examined in order to try and gain some insight into the approaches taken. What appeared to come across during the interviews is that the initial understanding of equality was primarily in relation to formal equality amounting to fair and equal treatment, aligned to the concept of direct discrimination.

⁷⁴⁵ Participant S1

This interpretation/understanding of equality appeared to be reflected in the views of some of the more senior staff, but it was not merely confined to management. This perception of equality was also reflected among union officials and within the Personnel Department who described equality in the following ways, "...allowing equal access to the university's facilities... trying to create a culture within the organisation that is welcoming... whatever their background"⁷⁴⁶ "... it is about trying to get fairness for everybody."⁷⁴⁷ It is about "how you treat people in terms of job opportunities; training opportunities; how you treat people in terms of dealing with issues of underperformance."⁷⁴⁸ "...the duties require institutions to take measures to promote equality, to prevent discrimination... and to promote a better understanding and working relationship among groups. ...The law basically says "promote equality of opportunity," so basically there must be a strict policy of equal opportunity."⁷⁴⁹ The prevailing view of equality expressed by the participants in the case study institution was one of formal equality, a fairness or liberal model of equality. This view appeared to be reflected in the perceptions of staff, whether the member of staff was from a senior management background, or other participants, such as the Union Official and the Personnel Manager within the institution. At this point it is worth noting that impressionistically, these views (of a relatively small number of staff interviewed at the case study institution) were not atypical. Anecdotally, the view of equality as formal equality as expressed by management is replicated across the cases study institution by staff at all levels. As an academic and researcher it has come to my attention that a set of assumptions about equality, which fit the formal equality model, are detected in meetings and in conversations with colleagues when discussing equality. This was also confirmed in the interview with the EDO, "In training sessions for staff it was always much more difficult to get across to staff the concept of institutional discrimination and the fact that historical barriers and entrenched inequalities needed to be challenged through positive action. Most people saw questions of equality as personality flaws within individuals as reflected in racist

⁷⁴⁶ VC

⁷⁴⁷ PD

⁷⁴⁸ HoF

⁷⁴⁹ UO

attitudes.”⁷⁵⁰ There are some limitations regarding drawing conclusions around the perceptions of other members of staff, as only management and staff with an equality remit within the case study were interviewed for the purposes of this research. However, other research⁷⁵¹ has indicated that the language and perceptions surrounding equality and diversity are not merely restricted to management, but that these perceptions are shared by staff within and across institutions and possibly society as a whole.

However, as the PSEDs and the requirement to conduct Equality Analyses (formally EIAs) require a consideration and demonstration of equality *outcomes*, and a more detailed understanding of notions relating to substantive equality, (such as disproportionate adverse impact) it might be argued that the view taken by participants regarding the meaning of equality has an effect in terms of how the duties are interpreted by those required to implement the law. It clearly also has an impact on actions taken within the case study institution to go beyond ‘treating people fairly.’ A liberal interpretation of equality may be regarded as a relatively common view of equality. However, as Fredman highlights, such a view can lead to a reinforcing of discriminatory practises within an institution. “It seems logical to respond to the identified problem of discrimination by requiring that each person be treated as an individual, according to her own merits. However, the apparent commitment to neutrality masks as insistence on a particular set of values, based on those of the dominant culture.”⁷⁵²

Interestingly, Fredman’s view was reflected in the comments of other members of staff in the case study institution. The Personnel Manager stated that “...[T]he institution is run by people who don’t understand the difficulties suffered by people with protective characteristics... They’re mostly male, white and straight. ...I think they just don’t care because it doesn’t affect them... They don’t understand because it doesn’t affect them on a day to day basis.”⁷⁵³ Participant AA⁷⁵⁴ observed that “...unless you have some kind of

⁷⁵⁰ EDO

⁷⁵¹ See for example Ahmed, S (2012) ‘On Being Included: Racism and Diversity in Institutional Life’ Duke University Press

⁷⁵² Fredman, S (2001) op cit.p145

⁷⁵³ PM

positive action it's not going to change because the people at the top represent white, middle class views. They are overwhelmingly white middle class men. I'm not suggesting that they can't possibly understand at all the issues, but I don't think that having not experienced the kinds of issues that hold people back, that women experience, that ethnic minorities experience... I don't think they get it at all."⁷⁵⁵

Substantive equality or equality of outcomes were not mentioned when the participants were asked about their understanding of the equality duties (general and specific), except by the Equality Officer, who stated that, "... the idea that you look at equality and identifying areas where there's disproportionate adverse impact and taking action on them... I think these are very important positive duties..."⁷⁵⁶

It seems to be the case that participants not only typically drew upon a liberal notion of equality but also, as mentioned above, exhibited a lack of understanding of substantive equality and the notion of positive duties. The EDO expressed this well in relation to members of staff within the case study generally, "...people still... really don't understand that concept [of adverse impact], they see equality as treating people the same rather than identifying where people are actually treated differently and treating people the same is also an inequality, so people still see equality in terms of the concept of direct discrimination..."⁷⁵⁷ "I think people who aren't in [personnel] struggle with what it [equality impact assessing] means. ... I'm sure staff aren't aware of the duties."⁷⁵⁸ Here the PD seemed to imply that those outside of personnel struggle with the concepts of equality impact assessing and the positive duties. The PM went further and expressed the opinion that they thought even those *within* personnel struggle, with understanding equality and diversity generally, let alone the positive duties and equality impact assessing. "HR professionals should have E&D as their everyday stuff. I'd say half of [the

⁷⁵⁴ A member of academic staff

⁷⁵⁵ Participant AA

⁷⁵⁶ EDO

⁷⁵⁷ EDO

⁷⁵⁸ PD

personnel department] are just paying lip service... They have a brief understanding of what E&D is, but they don't really understand."⁷⁵⁹

This acknowledgement is ironically confirmed in the interview with the PD and PM when both confuse the notion of positive action⁷⁶⁰ with that of the positive duties. The PD explained the meaning and responsibilities of the institution with regards to the positive duties as "positively encourage your organisation to look at perhaps women, or whether it be race or disability. Where I used to work and in days gone by the big positive duty which wasn't actually legislated was disability, when you had to have a percentage of people registered disabled... you're actually going out there to meet your quota. Whether it is right or wrong is a different argument, but that's my understanding of positive equality."⁷⁶¹ There was clearly some confusion here as they were not describing the responsibilities as required by the legislation with regards to the positive duties, rather the possibility of using positive action initiatives to increase participation from certain groups, here referring to increasing participation with regards to people who are disabled. Similarly the PM, when asked what their understanding of the positive duties was, replied "Okay, I just want to make sure we're talking about the same thing, are you talking about positive action?"⁷⁶² Although there is a link between the positive duties and positive action (positive action may be one way of working towards achieving substantive equality)⁷⁶³ there was clearly some misunderstanding regarding the role of the positive duties within the case study institution amongst staff and senior managers who were responsible for leading on the implementation of the law.

⁷⁵⁹ PM

⁷⁶⁰ See Appendix 10 for the legal definition of positive action. "The Equality Act allows service providers to take action that may involve treating one group more favourably where this is a proportionate way to help members of that group overcome a disadvantage or participate more fully, or in order to meet needs they have that are different from the population as a whole. This is called 'positive action'." Government Equalities Office and the Equality and Diversity Forum (2010) 'Equality Act 2010: A Quick Start Guide to Positive Action in Service Provision for Voluntary and Community Organisations'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85026/vcs-positive-action.pdf (accessed 24/07/13) p3

⁷⁶¹ PD

⁷⁶² PM

⁷⁶³ Barnard, C and Hepple, B (2000) op cit. p566

Whether the view that equality equates primarily to formal equality rather than substantive equality was a conscious decision by the participants, or whether there was a lack of understanding of concepts, is unclear. However, similar research has found “an absence of clear understandings about diversity...”⁷⁶⁴ The view from some participants was that, whether or not there was a conscious decision to take a formal equality stance, this position had a knock on effect in terms of the way equality analyses were conducted and the effectiveness of them, “... I think people struggle with the concept of disproportionate adverse impact. Whether that’s a deliberate failure to understand it or a genuine lack of understanding of the concept, people are really struggling with the concept and Equality Impact Assessments therefore, which are about identifying that, are not currently very effective.”⁷⁶⁵ As the PD stated “[t]he thing with impact assessments is that, yes it is great in helping you to generate the data but then it is quite difficult to do something with that data afterwards. So it is like, here’s my impact assessment, it’s telling me this, but I can’t actually do anything about it.”⁷⁶⁶ This quote once again could reflect the perception that equality is about formal equality rather than substantive equality as there seemed to be a lack of understanding as to what was needed to be done, even in circumstances where disproportionate adverse impact was identified.

Although a relatively small theme, the significance of the approach taken and the type of interpretation by participants of the various legal concepts cannot be underestimated, as clearly this will have an impact on the way the requirements of the law are implemented by those tasked to do so. This is the case whether the staff are in management positions, or not. Those people who have an interest in equality are more likely to be aware of substantive equality as well as being more focussed on outcomes,⁷⁶⁷ but their views are not indicative of the wider culture within the case study and this culture is also reflected in the perceptions of senior management. It has been argued that if a formal interpretation of equality is taken, achieving ‘real’ or substantive

⁷⁶⁴ Morrison, M. (2006) ‘Constructions of Diversity. Research among Staff Leaders in the Learning and Skills Sector’ *Journal of Further and Higher Education* Vol. 30 No. 2 pp169 - 180 at p170

⁷⁶⁵ EDO

⁷⁶⁶ PD

⁷⁶⁷ See next section

equality becomes, at best much more difficult, and at worst, non-existent. "...[W]hen structuring the changes that ought to occur, we need to centre equity and substantive/expansive equality rather than continuing to embrace formal/restrictive equality. Our faith in the formal equality creed has resulted in very little substantive and concrete changes towards greater equity and justice..."⁷⁶⁸ However, it might also be said that even a substantive approach can only go so far "[a]s such, its limitations should not be ignored, particularly in that there may be no impetus to change underlying discriminatory structures."⁷⁶⁹

The Role of the Equality and Diversity Officer

What is clear is that the EDO, whose *raison d'être* was equality, was the only actor within the case study institution who adopted/understood a more radical view of equality and was thereby more closely aligned to the concept of substantive equality which is the aim of the positive equality duties under the EA 2010. In other words, the EDO was swimming against the institutional current⁷⁷⁰ when it came to perceptions of equality. It might also be said that the positioning of the EDO within the case study institution, which was outside of management structures of the institution and also not located within the academic framework, meant that the EDO position was on the margins of the organisation with little influence in terms of the direction the organisation should take on equality. In fact, "[d]iversity practitioners not only come up against the wall, as that which does not move, they are often themselves encountered as the wall, as obstructing the movement of others."⁷⁷¹ This therefore made the role of the EDO, and what they are trying to achieve, unique within the institution.⁷⁷²

Even the Union Official viewed equality along formal lines which meant there was no real push from below with regards to achieving substantive equality in the case study institution. The EDO, on the whole, was isolated and ran counter to management (as well as other members of staff) perceptions of

⁷⁶⁸ Castagno, AE (2009) op cit. at p766

⁷⁶⁹ Fredman, S (2001) op cit. pp145

⁷⁷⁰ Ahmed, S (2012) op cit. p186

⁷⁷¹ Ibid, p186

⁷⁷² See Ibid. for a detailed account regarding this issue.

equality within the case study. “What is important to consider here is that individual and institutional actors that occupy a particular field have unequal access to, and ownership of, power and resources, which constitutes a significant imbalance in the struggle for domination and legitimacy. Thus, not all actors in the equality and diversity field have similar levels of power and influence to determine the direction of change in the framing of equality and diversity. Disparate power and influence that actors have in the field of equality and diversity mean that strong actors, with neo-liberal agendas were able to twist the arm of the weaker ones who subscribed to more substantive approaches, and had greater legitimacy...”⁷⁷³

The EDO, therefore, had the potential to make a difference within the case study institution. This was because they understood the legal requirements in the form of the PSEDs and what was required in order to achieve substantive equality. However, the EDO was positioned within the case study institution in such a way which meant that they were not able influence the policy direction. Management occupied a much more influential space which meant that their perceptions of equality, which were along formal lines, were able to dominate the direction of the case study institution in terms of compliance with the legislative requirements. It might be suggested that the situation as described by Özbilgin and Tatli was reflected in the case study institution.

Problem, What Problem?

This leads neatly on to the next area, that of the perception of the extent of the problem of discrimination/inequality within higher education. This view will clearly influence whether or not there is an “impetus to change underlying discriminatory structures” in the case study institution. During the course of the interviews with senior managers, a common refrain was that there was no longer a problem with regards to discrimination or inequalities, particularly when compared to 30 or 40 years ago.

In fact, the view often appeared to be that equality legislation, and specifically the PSEDs, were outdated and further, not needed. “It [equality legislation]

⁷⁷³ Özbilgin, M and Tatli, A (2011) op cit. p1245

appears to me at times to be trying to address issues that were fundamental to the early equality push in the 60s and 70s. ...The language used in the current round of equality policy and possible legislation has a tone that is slightly dated. ... It [the legislation] doesn't really recognise, in the use of language, the journey that the UK, Europe and the rest of the world has undertaken, both structurally and in terms of policy and legislation, and behaviourally as well. ...We are not finding organisationally, the embedded, corporate, thematic inequalities and issues with discrimination that you might have found 30 or 40 years ago. ...I think the case for much of the current crop of legislation has never been proven. ...The early Race Relations Act and Sex Discrimination Act was [sic] inherently self-evident."⁷⁷⁴ If scepticism was expressed about the necessity for legislation generally, this scepticism was reinforced when it came to higher education, for "...in HEIs where student diversity has a strong marketing appeal, there is a sense that diversity and equality has been achieved."⁷⁷⁵

The literature in Chapter 3 seemed to suggest that there was a prevailing view within higher education that as they were liberal, meritocratic institutions, equality was inherent in what they did and that they were therefore different to other public authorities.⁷⁷⁶ This was also reflected in the interviews with senior managers within the case study institution. Although the perceptions of equality within higher education generally (and the case study) appeared to go even further as there seemed to be a complete denial that inequalities still exist within higher education and the case study institution, thereby there was a questioning of the need for the law to address inequalities within the Academy. Many senior managers in the case study institution (including the Vice Chancellor) considered that equality was inherent in what higher education did and therefore there was no problem of discrimination or inequalities. Suspicion towards the law was evident in many comments made by senior managers. Here is the VC: "I think the difficulty is that the law is now seen as a very blunt instrument. People begin to say "what is the problem that the legislation is addressing? Where is the problem? Aren't

⁷⁷⁴ HoF

⁷⁷⁵ Hey, V et al (2011) op cit. p4

⁷⁷⁶ Deem, R. Morley, L. And Tlili, A (2005) op cit. p11; SQW Ltd (2005) op cit. p26

Universities doing very well? Why should we need legislation?"⁷⁷⁷ The Head of Faculty commented that, "I'm not sure at times of the problem that is trying to be addressed. ...in many parts of the sector there wasn't a proven case around serious inequality challenges to address."⁷⁷⁸ This view is replicated elsewhere, "We are free thinkers within this organisation. We behave well towards one another anyway, what's the problem? We give students from India every opportunity, the same as we do the kids from Manchester or a mature student from [the town in which the case study institution is situated]. What's the problem?" You've got a culture which implicitly believes that... it's not a building site culture."⁷⁷⁹ This view was also reflected by another participant, who stated that, "[t]he purpose of universities is to raise aspirations and provide opportunities. It isn't to close opportunities to people and I think this is reflected in the way we work. ... I am aware that in some public sector organisations that if you don't use the phrase "duty" then nothing will happen. I don't think that applies to universities in truth."⁷⁸⁰ This fits the argument that "... the self concept that 'White' academics align themselves to – as being "liberal minded rational intellectuals" – coupled with a notion that racism is the product of small-minded, morally degenerate hateful individuals, is the perfect formula for locating the problem somewhere else."⁷⁸¹

However, it was also acknowledged by some in senior management that this attitude hindered the progress which could be made in the area of equality and made dealing with some of the problems much more difficult. Here is the PD, who is arguably located on the periphery of senior management and who does not have the same influence within the institution as other senior managers, "It comes back to the culture of HE, "We're liberal, of course we do it." Well actually, they don't, they aren't that good at it really. The arrogance creeps back in ... [T]here is a culture that academics think that they know it all and they don't need to be taught or their awareness raised. Actually, they

⁷⁷⁷ VC

⁷⁷⁸ HoF

⁷⁷⁹ PVC

⁷⁸⁰ HoF

⁷⁸¹ Singh, G (2009) op cit. p6

don't. There is a danger that arrogance creeps in. The HE sector and its culture is quite unique."⁷⁸²

There were, however, also some inconsistencies in the view that higher education does not have any significant equality problems. There was acknowledgement that other HEIs may have certain more 'visible' problems. "Perhaps if we were the University of East London you might see that there was an issue which needed to be addressed in relation to race inequality because it is absolutely visible to you. In [the case study institution] it is very difficult to see that. I think there are issues about people not understanding: What is the problem? Why is the law being used to address what might be a non-issue in people's minds?"⁷⁸³ This view seems to suggest that there are no equality problems (in this example specifically with regards to race) unless they are visible, which again links back to the approach taken to equality and having a fairly rudimentary approach to equality in the form of formal equality. It was felt that the potential situation as described by the Vice Chancellor with regards to institutions such as the University of East London were not applicable at the case study institution. The view which was expressed was that issues were being dealt with and everything possible was being done to ensure there were no discriminatory practices at the case study institution. "I do not think we are poor at it. ... As far as I know we are more than compliant with disability discrimination legislation, and I think we are careful in our advancement features and so on to ensure we are not discriminating unfairly in relation to gender or race."⁷⁸⁴

An example of an area which is regarded as more visible and referred to by the Vice Chancellor in the quotation above, is disability. "I think we have made a lot of progress on the estates issues for disabled people, that is important."⁷⁸⁵ The view that the visibility of the 'problem' is linked to the action which is taken, particularly with regards to disability, was also expressed by the EDO. "The dominant equality strand ... certainly in the

⁷⁸² PD

⁷⁸³ VC

⁷⁸⁴ VC

⁷⁸⁵ PVC

context of students, is disability. I think there's a lot of progress been made over embedding increased awareness and the need for change and adaptations and reasonable adjustments and a whole series of things around the area of disability... it has tended to be seen as far more important than other equality strands."⁷⁸⁶ This was also highlighted by staff and student participants to the research and will be discussed further later in this chapter.

However, it was also acknowledged that, despite the comments made by the Vice Chancellor above, there *were* some concerns relating to equality in the case study institution. "Regrettably we don't have a very high number of staff from ethnic minority backgrounds, but that's not from the want of trying."⁷⁸⁷ "I think higher education is a transformational opportunity for people of all classes, cultures and races. We remain endemically underperforming in that area as a University and as a [faculty]. ...There remains a question for the University around its own diversity profile. I think that remains a challenge for the University. ...The issue for the University is that its staff profile fails to reflect its aspirations around diversity and Widening Participation."⁷⁸⁸

An additional factor which was highlighted by the Pro Vice Chancellor was that of BME attainment. "[O]ne of the most important things we should do to achieve equality is to improve the achievement rates of BME students and, going further, part time students. ... I think that is very important and would be a big statement for the University... this would really demonstrate that we are doing what we say we are doing. ...I think the ethnicity and degree success is a concern..."⁷⁸⁹ These quotes therefore reflect that there *were/are* concerns, such as BME student achievement and the staff profile at the case study institution. It might, however, be said that the awareness of some of these issues was externally driven. For example, the Higher Education Academy had previously highlighted the achievement of BME students as a concern and the EDO within the case study institution had also signalled that this was an important area which needed addressing. It may not be a surprise

⁷⁸⁶ EDO

⁷⁸⁷ VC

⁷⁸⁸ HoF

⁷⁸⁹ PVC

then that the issue was mentioned by senior management as an area requiring some attention.

This view appears to be supported by the EDO who suggested that within the case study institution, "race issues there's some discussion, particularly in the context of BME attainment..."⁷⁹⁰ These comments from management and the suggestion that there is some concern regarding BME achievement from the EDO, do not sit squarely with earlier statements that there were not evident problems regarding racial inequality either more broadly or specifically within higher education and the case study institution. The view that there is no problem seems to relate to the fact that overt/direct discrimination is not as evident as it was in the past when Bed and Breakfasts and landlords had "no dogs, no blacks and no Irish" signs in their windows, i.e. a formal view of equality.

To conclude this section it may be observed that there appears to be a perception from senior management within the case study institution that there are no longer significant equality problems which need to be addressed. It appears that there is a view that equality, in the formal sense, has been achieved and therefore legislating to ensure institutions address equality is seen as a heavy handed and unnecessary approach. If the general opinion within the institution is that there is not really a problem to be addressed, then arguably this will have an impact on how equality is dealt with and the focus which is afforded to them. What might be argued is that the view that equality is about fairness, rather than taking a substantive equality approach, has led to the view that "[t]he use of duties and the heavy hand of legislation seems to be disproportionate to the kind of issues we are trying to address"⁷⁹¹ The language used by some in management positions within the case study institution appears to be distancing themselves from some of the possible issues the institution faces by abrogating responsibility. As De Marco argues, "...people with power, those with more, are not going to respond to claims

⁷⁹⁰ EDO

⁷⁹¹ HoF

that they should give up some of what they have when those claims are made merely on the grounds favouring equality."⁷⁹²

Previous research has not specifically identified the combination of management (and other social actors) taking a formal approach to equality combined with the view of meritocracy in HEIs leading to the perception that there are no problems. This combination of factors ultimately leads to a marginalisation of equality and diversity as has been noted in previous research where "in 6 of the 10 case studies ... an 'episodic approach' to diversity was discernible. ... [T]here were few pressures towards diversity, which tended to be seen as a marginal issue. ... Organizations following episodic approaches were more likely to concentrate upon equal opportunities, where the monitoring of staff and student data might be cited as evidence to demonstrate equivalence in terms of 'same' and fair treatment."⁷⁹³

There was acknowledgement that there may be places where equality issues are more visible and where, for example, you have a higher number of BME students, concerns about equality are more pronounced. However, this perception does not always sit comfortably with the perception of some staff and students within the institution, who have pointed to a number of areas which they feel demonstrate either instances of discrimination, or at the very least, a failure by the institution to take equality seriously, even where the data suggests there may be a problem. "When equality is understood as equal treatment and equality of opportunity, unequal and inequitable outcomes are not a catalyst for action."⁷⁹⁴

This perceived inaction combined with evidence to suggest that there are still significant equality issues which need to be dealt with within higher education, seems to suggest that institutional discrimination, and particularly institutional racism, are not being addressed in the higher education context (and particularly in the case study institution). As a result of this attitude towards

⁷⁹² DeMarco, J (2001) 'Substantive Equality: A Basic Value' *Journal of Social Philosophy* Vol.32 No.2 pp197 – 206 at p199

⁷⁹³ Morrison, M. (2006) op cit. pp175 - 176

⁷⁹⁴ Castagno, AE (2009) op cit. at p764

equality “[a] clear message from the research is that universities have tended to lag behind many other public institutions in facing up to ... institutional racism that was highlighted in the Macpherson Report.”⁷⁹⁵ This will be discussed further in the context of the experiences of staff and students at the case study institution below, and there will also be a consideration of the actions taken to comply with the legislative requirements in the case study, which will be explored in the next chapter.

Progressing Equality in the Case Study Institution

The feeling from staff and students⁷⁹⁶ within the institution has demonstrated that the view from senior management differed quite substantially from members of staff who were not in senior management positions. Some staff had the perception there were some quite significant equality concerns which were not being addressed by the institution, for example, “...gender is not on the agenda at all...”⁷⁹⁷ This was also reflected by the views of some students. The focus for the purposes of this research is on race and disability. The perceptions from BME staff and students, and disabled staff and students with visible and/or physical and unseen and/or mental health disabilities at the case study institution, will be discussed further here with the aim of highlighting some of the issues arising as perceived by the participants. These have been dealt with on a thematic basis and reflect, to some extent, some of the issues which were raised in Chapter 3 as highlighted by other research.⁷⁹⁸ However, it must be emphasised here that although some of the concerns highlighted by the staff and students interviewed are often based on individual experiences of discrimination and prejudice, suggesting that there are still instances of direct discrimination.. There is also a clear indication that some of the issues are broader than this and seem to signify the presence of significant instances of institutional discrimination. This is not a concept which appears to be in the consciousness of those tasked with leading on the implementation of the PSEDs, as discussed previously.

⁷⁹⁵ Singh, G (2009) op cit. p47

⁷⁹⁶ BME and Disabled

⁷⁹⁷ EDO

⁷⁹⁸ Please see methodology chapter for further explanation of methods of analysis used and details of participants interviewed.

Race in the Case Study Institution

Student Experiences

Achievement

As was suggested in Chapter 3, the support which BME students receive is thought to have a positive impact on the achievement of BME students within higher education. The view expressed in the research that BME students tend to access support from family members or peers was reflected in a comment made by one of the participants at the case study institution and there was a recognition that having access to this type of support could make a difference to the achievement of BME students, "While students who had access to either family members or mentors or someone who could just have a look at the essay – it makes all the difference."⁷⁹⁹ Only one student highlighted BME achievement specifically within the interviews and this was in the context of the help which students get from tutors, "I also feel it's [BME achievement] got to be partly due to lecturers ... not being readily available to assist, knowing that sometimes some individuals learn differently and they may need additional or different support."⁸⁰⁰ This comment also reflects findings from previous research that some Black students were a) not comfortable with approaching academic staff for assistance and b) where they did approach academic staff for support, they were not satisfied with the support that they received.

Another student expressed the opinion that there was a limit to the kinds of support which tutors could provide and that there was also potentially an unrealistic expectation from students in terms of what the tutors could reasonably do, as well as suggesting that there is also an onus on the student to seek out alternative, possibly more appropriate, help. For example in relation to help with communication skills, "If I had a presentation and I have my tutor here always ready to help me but it sounds as though the tutor is busy with other students. To approach the tutor and say how can you help me to talk in the presentation? How can he help me to improve my presentation skills? It is something I should be doing on my own and looking for external help. My tutor is here to give me what I need according to the course, the

⁷⁹⁹ Participant RC

⁸⁰⁰ Participant RC

materials, but is he here to sit with me for one hour and teach me communication skills? Is that too much to ask? It is going to seem like something I'm not going to do."⁸⁰¹

What was notable from the interviews, and which also reflected the literature, was that students noted the lack of BME staff and also felt that having all White Departments was a barrier for some BME students in accessing help from their tutors. "In science, in arts, I don't think there is anyone [staff] disabled or of any other race. I think it is lacking there.... ...more integration at a high level can only be a benefit to the people at the bottom.... If people from a minority group are not welcome at the top, that will affect people at the bottom."⁸⁰² "A lot of international students, or even ethnic minority students here, don't seem to feel at ease talking to them [tutors], where the majority of them are White. In fact they're all White in the Division, so you have that kind of barrier to start with. A lot of them don't feel particularly comfortable about it."⁸⁰³ The apparent lack of BME staff and the impact which having a more diverse staff population could have on BME students, not just academically but also in terms of non-academic support, was also something which was highlighted by some of the BME staff (both academic and support staff) who were interviewed, "...the Asian students like having an Asian lecturer because of the language and the culture, but I think that's not everything that evolves into the student experience but I think it is a part of it when people are thousands of miles away and they can relate to something. I think that's important..."⁸⁰⁴ "I was in my office, I came out and we had international arrivals. There was a group of girls from Thailand sat outside and they were struggling with their language a little bit speaking to a member of staff. As soon as I went out there, their main focus, the look in their eyes was "maybe you can help." It's what they feel. It's not what we want, it's a case of how do they feel as first time away from home, they arrive and do they feel comfortable?"⁸⁰⁵ So having staff from different ethnic backgrounds was perceived by both staff and students as aiding success in the academic

⁸⁰¹ Participant RA

⁸⁰² Participant RB

⁸⁰³ Participant RD

⁸⁰⁴ Participant AC

⁸⁰⁵ Participant SB

sphere as well as providing appropriate support in other areas of student life. The comments appear to be mainly made with regards to international students, although it might be suggested that all BME students would benefit from a staff population which is more reflective of the student population in terms of race and ethnicity. These findings are not dissimilar to the findings of other research looking at support and BME achievement.⁸⁰⁶

There was one issue raised by two of the BME students in the case study and which was not generally reflective within other research. That was the significance with which students held the dedicated Equality Department within the case study institution. The students perceived the Department to be available for them if they had any specific matters to raise relating to race and this was seen as a great strength of the case study institution and one which filled the students with some confidence (and comfort?) that any problems which may arise would be taken seriously by the institution. "Having a department like [the EDO's] department. I think it does feel as though there is a department to deal with such [race] issues. So if there is a problem, bigger problems than what I've just said, you know where to go. There's provision for that."⁸⁰⁷ "We also have the Equality and Diversity Department at the student centre which takes care of any difficulties we have. ...we have an Equality and Diversity Department at the University, these are the strengths we have."⁸⁰⁸ The only criticism that the students had regarding the Equality Department was that its existence was not advertised to the student more readily. "...We had different people come in and talk about their area [during Welcome Week] – library people came in, careers advise people come in, but no-one from there [the EDO's department]. ...Having a department talk about what they do and let every student know they are there if they have any problems with anything, especially race, I think that would be helpful."⁸⁰⁹

In general, the findings within the case study institution with regards to the support of BME students are not dissimilar from other research undertaken in

⁸⁰⁶ Berry, J and Loke, G (2011) op cit. p14

⁸⁰⁷ Participant RB

⁸⁰⁸ Participant RA

⁸⁰⁹ Participant RB

this area. Students have suggested that there are some barriers to accessing support from tutors, particularly where there are all White Departments. However, there was some acknowledgement that students also had a responsibility to access the appropriate support themselves and that tutors could not necessarily help with everything a student may have difficulty with, such as communication, and that a tutor's role was limited in providing help and support for academic or Course related matters. What was interesting was the emphasis which some of the BME students put on the availability of support from a dedicated Equality Department within the case study institution. This gave the impression that support was available to students who were experiencing discrimination (or in anticipation of the possibility of discrimination) and that their concerns would be taken seriously by the institution.

However, it may be suggested that the area of student support as raised by the participants at the case study institution is a reflection of institutional barriers which BME students believe they face in accessing the support they need. If management, and other members of staff, view equality along formal lines, it appears likely that the institutional factors which students point to which discourage them from seeking help and support, will not be recognised as requiring action. Rather than being an incidence of individual prejudice, providing appropriate or additional support to BME students, or ensuring that the staffing profile reflects the student profile, should be an institutional concern which could be addressed via the implementation of the PSEDs. It is also noteworthy that the Equality Department, which was regarded by BME students as a positive, institutional, aspect of student support and provided them with some confidence that any issues they may have would be dealt with seriously, was removed by the case study institution with no replacement.⁸¹⁰

Discrimination

The management perception at the case study institution, as highlighted previously, was that there did not appear to be any significant problems, particularly involving overt or direct discrimination, in the case study

⁸¹⁰ See Chapter 6 regarding this issue

institution. Not only was there the view that there appeared to be very little evidence of overt discrimination there was also a failure to acknowledge/understand the possibility of institutional discrimination due to a lack of understanding regarding substantive equality and the perceptions that universities were liberal and meritocratic organisations where equality was inherent in their work. As highlighted in Chapter 3, research also indicates that there is a systematic failure to deal with the racism which some students experience. Student perceptions of discrimination at the case study institution are also significantly at odds with that of management and this has also been confirmed in other research where students have been asked about their experiences in higher education. "Throughout the survey and focus groups, respondents touched upon both institutional and personal racism, and how these forms of racism must be acknowledged to fully understand Black students' experiences of further and higher education."⁸¹¹

During the interviews at the case study institution many of the student participants put the treatment they had received down to lack of knowledge or cultural awareness. One student observed the following circumstances where non-academic staff were overheard making derogatory comments about a group of international students within earshot, believing that they could not be understood. "...I have witnessed situations where, again you can't blame people for not understanding other people, but still. When the Chinese students come at the beginning of July they have an English course first and then they start as undergraduates. So when they come for their English course we expect them not to be able to communicate well in English. But then when they do come and try to communicate there are some people who don't understand them. There is a frustration, if two people are standing here talking and there is a Chinese student that isn't going to understand them, they say things about the Chinese people which could have been avoided. You know these people can't understand you so you can talk about them in this way. We are there so we see these situations happening and understand what they are saying about other people. This could have been avoided by sensitising the staff so that this should not happen. What if there are other

⁸¹¹ NUS (2011) op cit. p4

Chinese people who do understand English and see the situation where Chinese students are being treated in this way? It could cause a problem. ...Maybe if there was a member of staff who could talk Chinese?"⁸¹²

The student who overheard this was not Chinese, but did recognise the potential conflicts which could arise had the comments made by staff been understood given the racist connotations of what was being said. The student appeared to put this instance down to two factors, firstly a lack of cultural/racial awareness/sensitivity on the part of the staff members and secondly, the lack of staff that were from the same background as the Chinese students (in this example) to enable them to effectively communicate.

The lack of cultural awareness was also highlighted as a factor by another participant who had experienced racial stereotypes and assumptions made about him due to his African heritage. "...It's hard because as a university there are people from different places, so some people don't really know what is offensive and what isn't. ...People are naïve and people watch too much television and believe what they see. ...People believe, when someone is from Africa, they have seen a lion or they've grown up around lions – that's naïve. ...It's probably education"⁸¹³ Another participant described a scenario they had witnessed in the library at the case study institution and felt that this had also arisen due to stereotyped assumptions around Black students. "I spoke to a librarian fairly recently.... Two students to the side of him said, "I'm sorry I've lost my book" and he immediately turned around and said to the Black student: "Well, where have you put it?" And the woman standing next to him, a white woman, said, "it was me, I've lost the book." And he [the librarian] carried on talking to the Black guy! It was something out of a comedy sketch."⁸¹⁴

As well as BME students overhearing racially derogatory remarks made by members of staff at the case study institution or finding they are confronted with naïve and racially stereotyped ideas, participants also reported the feeling that racist and offensive comments were also directed at them by members of

⁸¹² Participant RA

⁸¹³ Participant RB

⁸¹⁴ Participant AD

academic staff. One participant described one such circumstance, "I don't know what he meant by what he said, but it wasn't good. It was offensive. To me, I looked at him and I thought, I'll let you get away with that one for once, but I'm not going to let you again. ...we were in a lecture to watch a film and the lights were off, dim-ish, ... he said "turn on the lights, I can't see you" but it wasn't dark.... From a lecturer as well, you think, no. He shouldn't say that."⁸¹⁵ The context was clearly important in this instance as the comment could also be interpreted as one which was about a genuine difficulty in seeing the students with the lights switched off. Whether this is due to oversensitivity on the part of the student (maybe due to previous experiences) or an innocent comment which was not racialised, is difficult to tell and either conclusion would be merely conjecture. However this Black student was obviously offended by the comment of the academic member of staff which was directed at him and the student believed was because of his skin colour.

Another participant highlighted a circumstance which they believed was also related to their status as an international student, and felt that the attitude they encountered was due to their nationality and the fact that they were not a home student. The student was also commenting on their perception of the overall institutional policy in allocating accommodation on campus to international students and felt that the policy and the way it was communicated to overseas students was less than helpful. "...when I applied for my accommodation, maybe people could be more helpful and less rude. ...There was an advertisement that said if you apply for your accommodation before the deadline you are guaranteed a place on campus. But then when we applied we gave three preferences and they say you will get one of your three preferences. But when it comes to when you have an offer you no longer have those three preferences you have another room that is twice as expensive and not what you chose. The excuse you have is that they no longer have any rooms for people there was a limited number of those rooms so you can't have it. You need to pay more or you can't have a place on campus. Coming all the way from another country we want to live on campus because some of us don't know around here. Some of us might never have

⁸¹⁵ Participant RB

come to the UK before, we don't know anywhere. We're relying on campus and the university to provide us a place to live to be able to study here. The same rooms that weren't available were available to home students who might even be living nearby. We felt a bit as though they should have taken those factors into consideration. ...Most of the time there was some rude talk as well which I can't do anything about. Maybe it could be more professional and more diplomatic for these things."⁸¹⁶

One participant expressed their view with regards to their experiences at the case study institution and the fact that overt discrimination was often difficult to pin down and that more often than not it was an 'attitude' which they felt they faced where judgements were being made on the basis of factors such as skin colour and disability which impacted on the way they felt they were being treated and which increased tensions at the case study institution. "...I'm trying to find a way to explain it without being racist or discriminative, what makes someone hate someone? Everyone is judgemental, so when you look at someone, what do you come up with before you've spoken to them? Do you look at their colour? Do you look at their disability before you judge them?... You don't have to expose racial hatred for you to show racial tension."⁸¹⁷

The implications of such perceptions for the case study institution need to be acknowledged given the importance of, for example, international students for higher education due to the higher fees they pay. The reputation of the institution may be tarnished and affect international recruitment if examples such as the ones highlighted are unchallenged. Such stereotypes and attitudes towards students from BME backgrounds have been found to influence other aspects of the students' educational experiences, which in turn has a knock on effect and could be a factor in the achievement rates for these groups of students. "...unconscious ethnic stereotypes can affect curriculum design, delivery and most importantly assessment strategies."⁸¹⁸ The circumstances outlined above had very often been put down by the students

⁸¹⁶ Participant RA

⁸¹⁷ Participant RB

⁸¹⁸ Singh, G (2009) op cit. p41

themselves to a lack of awareness or a naivety on the part of staff. As has been highlighted in research relating to schools, "...few teachers have received substantive preparation in multicultural education, few teachers are trained to examine their own biases and stereotypes regarding Black students..."⁸¹⁹ However, it might be suggested here that merely providing training in cultural awareness is a too simplistic solution to address some of the attitudinal issues which students in the case study institution believe they have experienced, and could be linked back to the overall culture of the institution and the message which seems to be coming from management that there are no instances of discrimination (particularly overt discrimination) in the case study institution. In addition to the view that there are not serious problems in the case study institution, nor within HE as a whole, is once again the difficulty associated with taking a formal equality stance. Many of the issues highlighted by the students above were because they felt they were at the receiving end of instances of individual prejudice. However, once again, some of the issues are broader than this and again reflect potential institutional barriers which would not necessarily be 'seen' by those tasked with implementing the PSEDs. For example, the implementation of the policy regarding allocation of accommodation, or, once again, the BME staff profile.

The area of teacher/tutor bias also has an impact on perceptions relating to assessment and particularly the grading of them. "There is now a growing body of statistical evidence suggesting that BME students generally feel less happy with their experience of assessment when compared to White students."⁸²⁰ This concern regarding the grading of assessment and the potential for discriminatory practices based on stereotypes/bias was also reflected in comments made by participants at the case study institution, "I might question the grades, in terms of how they do look at me... because the feedback that I get from what I've done I kind of agree with, but at the same time it raises a question that, when they are marking my work do they overanalyse the grammar or how I've said it?...I wonder whether when they look at my work they look at it differently."⁸²¹ "I have had feedback from the

⁸¹⁹ Ford, D and Harris, J (1996) op cit. p1142

⁸²⁰ Singh, G (2009) op cit. p44

⁸²¹ Participant RB

MBA students even. They've experienced it not just from the support side but from the academic side as well: "We've been in and we've seen our tutor and it's really difficult. I feel my grades aren't the grades I should have had and I'm trying to speak to the tutor and the tutors have brushed me off." They've kind of felt, "is it because I am non-white?" That's the sort of feedback I've had."⁸²² "I think if we're talking about the way grades are awarded, for example for an assignment, how, if you are marking, how do you arrive at how I got an 'A' or a 'B' or 'D'? To me it looks arbitrary... Sometimes there is no consistency, it might not be because of ethnicity or someone's age but... sometimes we discuss among ourselves... when you know what to expect, with me I know what to expect, so sometimes if you don't get what you expect and you try to find out why."⁸²³

It is noticeable that almost all of the BME student participants, as well as one member of BME support staff, reported a distrust of assessments and the grading of them and thought that race might play a role in the allocation of the grades. As has been highlighted by Dhanda, "[t]here is some perception of unfairness connected with lack of knowledge or mistrust in the moderation regimes."⁸²⁴ This perception has also been confirmed in more recent research by the NUS as detailed in Chapter 3. Anonymous marking was also raised as a potential solution to the perception (or possibly reality) of unfairness in marking processes by another BME student participant who was part of a focus group conducted by the author as part of separate research into assessments, "The whole point of just putting your student number in is that it's anonymous and the tutor isn't going to know your student number and they are going to mark the work on the piece of work that's in front of them, not on the personality of the person that's produced that work."⁸²⁵ However, if views regarding higher education and achievement in higher education are based on notions of meritocracy, it may be suggested that the view from academics and managers may be that anonymous marking is unnecessary. After all, students

⁸²² Participant SB

⁸²³ Participant RD

⁸²⁴ Dhanda, M (2010) op cit. p4

⁸²⁵ Participant RD in Crofts, M and Sneddon, S (2009) 'Equality in Legal Assessment: A Scoping Study' University of Northampton <http://www.northampton.ac.uk/downloads/download/402/research-at-the-university-of-northampton-relevant-to-undertaking-eias> (accessed 16/07/12)

will receive the grades they deserve based on the work they have done. This, once again, ignores the subtleties of the institutional barriers/discrimination which BME students face and assumes that the playing field is level, which, as has been demonstrated, does not appear to be the case and/or is perceived by BME students not to be the case, which has equally serious consequences for the case study institution.

The area of discrimination is an important one as the impact on the overall student experience could be considerable and has been documented in research detailed previously.⁸²⁶ As also highlighted concerns regarding tutor bias and the perception, if not reality, of this bias on assessments and marking could also have an impact on student achievement. It must be noted, however, that not all comments from the participants at the case study institution regarding their experiences generally or of assessments and marking, were negative. One participant stated that, "...we have students from all over the world coming here and we are all treated quite fairly. I have been treated quite fairly so far."⁸²⁷ And in relation to assessments and marking, "I believe it [assessments] is alright because it is a standard course. Everyone is given the same thing and the same thing is expected from us in exams. If it had been an oral thing then we could have raised some questions but most of it is written and when it comes to writing then people shouldn't really have a problem. We are studying the same thing, we've read the same thing."⁸²⁸

It must be noted that clearly student experiences will vary and not all students will experience overt discrimination. However, HEIs cannot be complacent with regards to incidents of discrimination which do exist, or of the wider impact of institutional discrimination on the student experience. As research has highlighted with regards to the specific aspect of tutor bias "...the issue ...has received much less attention in HE."⁸²⁹ It might be suggested that there may be an element of 'collusion' in relation to some of these issues between

⁸²⁶ Coffield, F and Vignoles, A (1997) op cit.; NUS (2011) op cit. and Connor, H et al (2004) op cit.

⁸²⁷ Participant RA

⁸²⁸ Participant RA

⁸²⁹ Singh, G (2009) op cit. p39

management and academic staff as academics seek to protect their professional autonomy, which may be questioned if policies such as anonymous marking were to be introduced, and this is not viewed as a priority within management. This is particularly the case when one considers that if the formal equality stance is adopted, actions such as anonymous marking are not considered necessary. It may be suggested that there is therefore a tension between the limiting academic autonomy and professional identity when it comes to supporting students and implementing policies which could have an impact on institutional discrimination and promoting equality.

Student Experience

Much of the literature relating to the overall BME student experience (so not specifically regarding experiences of discrimination) within higher education suggests that students feel isolated and there is a lack of interaction between groups of White and non-White students, even as far as describing it as segregation (see chapter 3). Students within the case study institution reported similar experiences. "But you know some people don't like other people... Not hate, I think I'm using hate, maybe not get on...I'd say getting on or interacting together."⁸³⁰ "We go to the SU [Student's Union] most of the time, if you go in there right now you will only see one or two people who are international [ethnic minority?⁸³¹] students in there. Most students in the SU will be home [White?] students. Sometimes some of us felt when we get into the SU it feels like some people are surprised that other students are coming in because usually most students there are home [White?] students."⁸³² This separation was also reported outside of the social sphere and within the classroom as well "...during group work most White students didn't want to be put in the same group as Black students. ...you always had the Black students in one group and the White students didn't want to be in the same group. We

⁸³⁰ Participant RB

⁸³¹ It is recognised that the experiences of international and BME students vary and so cannot automatically be discussed as equivalent. However, this student described home and international students on the basis of who they *thought* were home and international students by looking at them. Therefore some of their comments were based on ethnicity and others may have been in relation to nationality and it was often difficult to extrapolate exactly what they meant by these terms. However, some of the issues they raised are common to both BME and international student experiences and so are relevant here. Some of the issues mentioned were also confirmed in the interviews with home BME students.

⁸³² Participant RA

just got on with it.”⁸³³ “When you see your students and they are sitting separately. You can see a White community sit here and so what you have is a university whose culture hasn’t changed whatsoever.”⁸³⁴

When asked about efforts which were made by the case study institution to try and encourage interaction, one student highlighted that there were some efforts made in the first couple of weeks of joining the University, but that that was it, and that in terms of timing it was not ideal to try and encourage interaction and continued efforts throughout the year were needed, “...when I came here there was the orientation week and welcome week, there was events like meet and greet and things like that. But we met and greeted for two hours and that was it. Not enough. We don’t know anybody and for the first week we don’t feel like mingling and talking to everybody ...and it isn’t really a good moment for us to make the most out of it.”⁸³⁵ This student also made observations, which again are reflected in the literature, about the limited opportunities which are available during the course of the year to mix and get to know other ‘White’ students, due to the emphasis which is placed on socialising whilst out drinking or within other contexts which are not conducive to students from some cultures getting involved.

They also commented on the lack of effort which seemed to be put in by some students in understanding students from backgrounds different to their own, “Cultures maybe where people don’t smoke or drink or have issues with clothing. This can cause problems once again. All these differences, when you try to bring everybody together, there’s going to be segregation. ...Maybe the reason they don’t change from their position to try to mingle with us is because they don’t know about our culture and how we speak.”⁸³⁶ It was therefore suggested that opportunities to encourage interaction during the course of the academic year had to be organised by the international and ethnic minority students themselves, “We are thinking of doing activities at

⁸³³ Participant SA

⁸³⁴ Participant AD

⁸³⁵ Participant RA

⁸³⁶ Participant RA

the SU itself to help us mingle. We decided to do this because we felt there was something missing.”⁸³⁷

The perception for BME students at the case study institution is broadly reflective of other research which has looked into BME student experiences. The feeling of not fitting in and that there is not enough which is done to encourage interaction between different groups of students is evident. Students have commented that rather than relying on the University to help with the process of interaction, outside of the Student Union clubbing and drinking culture, students have had to take it on themselves to arrange opportunities to mix and encourage continued interaction and socialisation with students from differing backgrounds. This could be seen as a positive step as students feel this is significant enough to use their own initiative to break down barriers. On the other hand, it might be suggested that the students do not have the same resources or capacity to be able to organise events and continuing initiatives which break down barriers. The perception, from this student at least, is that more could be done by the institution to deal with the segregation which they feel is occurring on campus. This has also been acknowledged by members of BME staff as being important in creating a welcoming and inclusive campus atmosphere, “...I would hope that students turn up here and feel they are not on their own and that it was worth coming to [this institution] because they were made to feel included etc. I think [this is] where an institution like this would benefit clearly from the global perspectives of lecturers and academics, but I also think in terms of recruitment it is essential.”⁸³⁸

Role of the Law

One area which was mentioned by two students and which is once again not widely reflected in the current literature looking at BME students in higher education, is their perspectives on the role of the law in promoting equality and dealing with discrimination. This might have been due to the awareness of the students that the research was based on looking at the role of the law and how it was being implemented, although there were no questions asked to

⁸³⁷ Participant RA

⁸³⁸ Participant AB

the students specifically about the role of the law. Although the comments were a little vague as (unsurprisingly and to be expected) there was not much knowledge regarding the requirements of the law, there was still recognition by some of the students that the law had a potential role to play in achieving equality within the case study institution. This was an aspect which was highlighted by two students and the view of its effectiveness in the case study institution was a little mixed. One student felt that the law was compelling the case study institution to take action with regards to race equality, "I think the law first of all – they are bound by it and have to respect it. Obviously they are going to take actions and implement what they are offering here in accordance to what is required from them."⁸³⁹ However, other students were a little more sceptical about the role of the law and how far the case study institution was compliant with it, "...We will have had an equality impact assessment and looked at our legal duties, but we breach them."⁸⁴⁰ There was acknowledgment that the law could be a useful tool, but again, scepticism was expressed regarding how far the law could actually ensure cultural change and the belief that the law could, in fact, go further still. "The law can be useful but I think we still have this belief that those who work within that parameter are more moral, but they are not. ...People never enter the spirit of the law. ... The legislation is still important and we have never pushed the boundaries of the legislation."⁸⁴¹

One member of staff also highlighted the role of the law, and in particular the threat of the case study institution being taken to court for a failure to comply with the law. "I think it is risk management. I think they [management] view the risk of a student taking us to court rather more strongly than they see staff doing that. ...I think they take it seriously if there is some threat of legal action. I think there is a degree of taking it seriously in relation to students but I think that's protective rather than proactive."⁸⁴² It is interesting to note that the member of staff felt that the threat of legal action was more likely to come from students rather than staff and that this meant that rather more

⁸³⁹ Participant RA

⁸⁴⁰ Participant RC

⁸⁴¹ Participant RC

⁸⁴² Participant AA

attention was being given to student issues, but they clearly felt that the presence of the threat of legal action had a part to play in determining how seriously management took equality. However, it is also interesting to note that there is some cynicism expressed in terms of the case study institution being proactive in its efforts to eliminate discrimination, thereby possibly indicating that the case study institution may be less likely to comply with the PSEDs, but more likely to be concerned about addressing direct (and possibly indirect) discrimination which are directly enforceable in the courts by individuals who have experienced discrimination.

Staff Experiences

Discrimination

As reported in chapter 3, the research relating to BME staff within higher education suggests that they experience significant barriers and systematic racial discrimination which is not effectively addressed. It is unfortunate, but not surprising, therefore, that BME staff participants at the case study institution also felt that they had personally experienced instances of discrimination and/or knew of other BME staff who had, as well as racist views being expressed more generally both by staff and students. "I've had quite a number of experiences. ... regarding the car parking ... I came in this particular day and the barrier was not up... so I flashed my card and got through. I got chased by the security guard who then suggested I had stolen somebody else's pass. ...He ...said that I would have to turn around and go back to the student car park. I said "why would I want to do that?" He said he hadn't seen my sticker... I said "there's my sticker and there's my card." He said "Let's have a look at that, it could be anybody's."...I got out of my car and said I wasn't going to park in the student car park, "I'm a member of staff, but I'm going to make a complaint about your attitude and why you perceive me to have stolen somebody else's card." This other person turned up who was meant to be the boss. The first thing he said was that they were relief security guards and that they hadn't been through equality training. So I said "you don't need equality training to be nice to somebody..." I tried to explain what had happened and he said "take it as a compliment, he probably thought you were too young to look like a lecturer." ...I think there are days when you cope with it and make light of it and laugh, but there are days when it just becomes too much. As soon as I walked in I burst into tears and said

"it's just one of those days when I just hate being Black." ...You want to get in the car park without getting some grief."⁸⁴³ "There I was in a lecture having to listen to one group presentation on my own and assess it – that all Asian men, was the argument, were involved in the abuse of young white women. ...you have to face such nonsense and there's a rage inside you that you have to hold."⁸⁴⁴ "I had a student once who didn't want to be taught by an Asian lecturer."⁸⁴⁵ "I know a colleague who is a senior lecturer and she is BME and she is always having problems. I hear people saying about her name "Doesn't that sound like a piece of equipment?" But it's a person's name and because it's different from names people are used to they think it sounds like equipment. [They are] always getting stopped in here. If [they] want to get things printed the [print room staff] need to see their ID card. [they are] not happy about that but [they are] just dealing with it."⁸⁴⁶ Some of these instances were more overtly related to race than others, but even in the instances where race was not mentioned explicitly, the participants clearly felt that it was due to their race that they had received the treatment they did. It does make one wonder why equality training was raised in the first example if race had not been a factor in the car parking attendant's treatment of the participant.

One participant also highlighted the lack of awareness and assumptions which were being made about their religion, which they felt were based on stereotyped assumptions and a lack of knowledge based on their Asian heritage. The participant felt that managers in particular should be more culturally aware and take time to understand the people and teams they are managing. Interestingly, the connection between the way the members of staff are treated and the service which is provided to a diverse student population was also mentioned by this member of staff. "...Regular monitoring, observation, recognising, for instance "I've got a Hindu member of staff in my department and it's Diwali." Things like that wouldn't go amiss. That doesn't ever happen. I'm a Hindu, I get members of staff asking me if I'm doing

⁸⁴³ Participant AB

⁸⁴⁴ Participant AD

⁸⁴⁵ Participant AC

⁸⁴⁶ Participant SA

Ramadan and I think no, I'm not doing Ramadan because I am not a Muslim, I'm Hindu. It's that little bit of awareness. I know it's petty but if staff have worked with you for a number of years and that member of management doesn't know whether you are Hindu or Muslim, it's like, come on! Little things like that. If we can't work from a team and be aware of that, what chances have we got to deliver a service to our students who are coming from all walks of life?"⁸⁴⁷ Once again, as with the student experiences of prejudice and stereotyping, the connection was made by the member of staff between the individual instances of discrimination and the link that these have with some of the wider, institutional barriers, such as the impact that such a lack of awareness and overt discrimination could have on the services which are provided to students, thereby perpetuating institutional discrimination.

Some of these perceived instances of overt discrimination and more subtle discrimination or a lack of awareness, were reported to the case study institution by the participants. The response from the case study institution was regarded as being disappointing and the complaints were regarded by the participants as not dealt with effectively and therefore taking action was a drain both physically and emotionally for those making the complaint. "It was taken up by our [EDO] but it was fobbed off by management. They said it ... was a case of "we don't really get involved, it is a [personnel] issue." [Personnel] were saying it's down to the director of departments. It became a bounding ball and in the end it was too draining for us. ...we'd been worn down and drained out."⁸⁴⁸ This ineffectiveness in dealing with complaints of discrimination meant that participants stated that they were much less likely to raise a concern and report it due to feeling that it was a pointless exercise and was not going to achieve anything. "Maybe they think it is not going to get anywhere and it isn't going to be taken seriously. Maybe they think it is going to be dismissed. I feel sometimes it is my word against whoever. It's really difficult."⁸⁴⁹

⁸⁴⁷ Participant SB

⁸⁴⁸ Participant SB

⁸⁴⁹ Participant SA

Alongside this feeling of concerns not being adequately dealt with or being taken seriously, there was also a real concern amongst participants regarding the impact which reporting instances of racism might have in terms of how they would be viewed, as well as the impact that making such complaints might have on their careers. "...I think there is a fear of challenging certain types of things and a fear of being labelled as a trouble maker and that kind of thing."⁸⁵⁰ "I have actually raised it with my line manager and it's being looked at and I feel really frustrated about my job because I don't want to be seen as a whistle blower – [they've] only just started and [they're] causing trouble or saying things already."⁸⁵¹ "...in relation to academic staff in particular, there is the view that it would be professional suicide to proceed with taking the institution you work with to any kind of review process. I think there are disincentives for staff doing that. I think the institution relies on that to a degree. I don't think it pays particular attention to equality and diversity..."⁸⁵² This final comment seems to imply that the case study institution relies on the stigma attached to raising a complaint of discrimination as well as the possible impact on the career of the complainant, in order to maintain the status quo and do nothing in relation to dealing with instances of discrimination.

This feeling that little was going to change was reflected in the comments regarding the seriousness, or lack of, with which the participants thought the case study institution was dealing with discrimination. There was scepticism expressed regarding the rhetoric as compared to the action which was taken. Once again, this is reflective of other research⁸⁵³ in this area as discussed in Chapter 3, and also highlights the differences of opinion between the management at the case study institution and those who felt they had experienced discrimination first hand. "There's a shortness of awareness amongst staff and even amongst the heads of departments and directors of departments. Yes they take it seriously on paper, but when it comes to the reality of it or cases that come forward, I think it isn't really taken very seriously. ...some heads of department are aware but it's a case of "if we leave

⁸⁵⁰ Participant AA

⁸⁵¹ Participant SA

⁸⁵² Participant AA

⁸⁵³ Brink, C (2010) op cit. p2

it long enough it can be brushed under the carpet and done and dusted.”⁸⁵⁴ “It’s a policy statement, but is it living?”⁸⁵⁵ “It’s kind of a tick box exercise – yes it’s done, let’s leave it at that. But then the reality of it for students and staff, I do find that it doesn’t get addressed very well.”⁸⁵⁶ “I think occasionally it’s a beauty pageant we roll out during equality week...a bit of a banner and a few posters and a couple of sandwiches.”⁸⁵⁷ Once again, this echoes previous research where participants have felt that there is no real commitment to the aim of achieving substantive equality.

As well as the instances of overt discrimination taking place, participants also raised the issue of institutional discrimination being reflected in the case study institution. Many of the participants thought that this was manifested in the underrepresentation of BME staff within the case study institution and that a lack of BME staff was symptomatic of wider issues regarding equality and demonstrated that the case study institution was not taking race seriously. “I think it’s shameful how few members of staff we have that are members of ethnic minorities. It’s just bizarre to me.”⁸⁵⁸ “I don’t think we have enough non-white members of staff. There just isn’t the diversity at this university...”⁸⁵⁹ “...there aren’t many minority lecturers anyway. I think you can probably count them on one hand. I think I am the only ... Asian lecturer...”⁸⁶⁰ “...the Department I’m based in is predominantly White.”⁸⁶¹ “Why are we not attracting Black candidates? ...There is something about what we are doing that seems to function as a disincentive but nobody seems to care very much about it.”⁸⁶² “If this was a university that was open, transparent and welcome, it allowed young ethnic minority students to aspire, to become lecturers and they could become leaders in institutions, I think we’d see them.”⁸⁶³ There were also comments made about the staff profile as compared to the student profile at the case study institution, “Where I see the diversity

⁸⁵⁴ Participant SB

⁸⁵⁵ Participant AD

⁸⁵⁶ Participant SB

⁸⁵⁷ Participant AD

⁸⁵⁸ Participant AA

⁸⁵⁹ Participant SB

⁸⁶⁰ Participant AC

⁸⁶¹ Participant SA

⁸⁶² Participant AA

⁸⁶³ Participant AD

sometimes is amongst the student population. It is more visible than among staff. I've been to many different forums for staff and if I'm not the only one, then there is one other non-white person."⁸⁶⁴ The impact of this lack of diversity amongst the staff was also raised, "Even here, the majority of people that work here are white male above 50. If they don't bring in new lecturers then how can you be more fair?"⁸⁶⁵ One member of staff did, however, remark about the diversity within their own department but had commented that their team was quite small. "In terms of our team, we are really quite diverse and we are only small... I would hope this is represented in other departments."⁸⁶⁶ However, the general feeling amongst the staff participants (which echoed the students) was that there was a lack of diversity amongst the staff population at the case study institution and that this was indicative of a wider problem (within the case study institution) in dealing with discrimination and addressing substantive equality and institutional discrimination.

The final area highlighted in Chapter 3 under the heading of 'Discrimination' in relation to BME staff experiences was that of discrimination experienced during the entire employment lifecycle of BME staff. There was some awareness and experience of this expressed by two of members of staff at the case study institution. Their circumstances involved recruitment and redundancy and specifically a feeling that the processes which were used were discriminatory. However, there was reluctance, at first, by the second participant to acknowledge that the treatment they received was due to race. After a number of similar experiences, they decided that it was difficult to find any other explanation. "I'm Asian and the other person was Asian as well and they recruited somebody who had not much experience in the field and was not as qualified as the other two people who went for the position, but they still got the job. The feedback didn't come back, they couldn't say why really, it was just that they preferred that person over the other. Then it was looked into over a three month period when they interviewed all of the staff throughout the different teams in the Department and they found out that

⁸⁶⁴ Participant AB

⁸⁶⁵ Participant AC

⁸⁶⁶ Participant AB

there were some sort of racial underlying tensions there. It was investigated and the person didn't end up going into the position and the Vice Chancellor gave us new positions. They accepted that something wasn't right. We were asked to sign a disclaimer that said we would not take it any further but I think we both refused to do that. We didn't take it any further. ...there were a couple of us who were being unfairly treated in the recruitment process. The whole department was investigated afterwards and we got different jobs. The investigation did find that the University was at fault, that they didn't have equal recruitment processes and that they would recruit who they felt they wanted. So if you knew somebody then they would get the job."⁸⁶⁷

"I've experienced a lot of unfairness. We've had three lots of job reviews, for instance. Every time I've felt and experienced that I have never been considered by my line manager for a role that he could feel I could be put forward for. ...I know it has happened once, twice and this is the last time I've experienced it. Every time I've gone through that process I've given them the benefit of the doubt and thought, no, it can't be. Because you do. First time you think no, second time I thought no, it can't be, but this third time it made me feel that there is so much unfairness. ...I've literally been side-lined. ...we got caught up with too bigger issues with the [University reorganisation] and yes, we feel we were treated very unfairly... as time went on and we put our presentation in and got nil feedback, we then find that two other posts in the department had been changed and job titles had been changed. Their positions had been made safe while my position and my colleague's position [also BME] had been left dangling and we didn't know whether we'd have a job left at the end of it. ...I know I keep reflecting back on it but you feel: how come their job titles have been changed and tweaked and they've been looked after very nicely without being put through the stress and strain of it. What is going on? Initially you don't think anything of it, the last thing you think about is whether it is your race or your background – no, you don't have a negative thought in your mind. But then when you start to look at it and you put things into perspective, you think hang on a minute, what's going on here? From the same department, the same time – there's one framework here,

⁸⁶⁷ Participant AC

there's another framework there. You don't fit into that framework so you are going to battle it out on your own. Whereas, the other two fit in quite nicely – done and dusted. No great change but their job titles change. It makes you feel, hang on, something is not right. ⁸⁶⁸

Overall, all of the BME staff participants in the case study institution, who took part in this research, reported negative experiences of both overt racial discrimination as well as the feeling that there was institutional discrimination as reflected in the disproportionately low number of BME staff and the lack of fair and transparent recruitment and redundancy procedures. There was an acknowledgement that discrimination existed within higher education generally, and there appeared to be a kind of resignation, a giving up, from some participants that this was just the way things were and there was little confidence that things were going to change. "I still feel certain groups of people are not welcome. Whether they are not welcome within the country or within institutions like academia, I think it's there."⁸⁶⁹ "You'd be surprised how much prejudice people face, whether it is from lecturers or students. It is always going to be there."⁸⁷⁰ "There is always going to be some discrimination in whatever form to be honest. You can't alleviate everything. If it's not one thing it'll be another and you can't get rid of that."⁸⁷¹ Once again, the point has to be made that it is unsurprising, given the views of those who are tasked with implementing the PSEDs, that there does not appear to be a consideration of the wider, institutional, barriers around race and discrimination. If the university is regarded by management, and others in a position to action change, as not having any serious problems around equality, and if equality is only viewed in the context of individual prejudice or direct discrimination, it may not come as a surprise that they are blinkered as to the barriers which BME staff face. This has been demonstrated through the interviews which have been conducted. The broader institutional issues, such as the perceived unfair recruitment and redundancy procedures and reluctance to report discrimination due to institutional failures in dealing with concerns,

⁸⁶⁸ Participant SB

⁸⁶⁹ Participant AD

⁸⁷⁰ Participant AC

⁸⁷¹ Participant AC

means that such issues are not brought to the attention of the case study institution and therefore the view held by senior management that there are no equality problems within the case study institution are perpetuated. There is a failure to recognise the institutional barriers due to their formal equality view, and yet the instances of direct discrimination are not reported due to these institutional failures. Therefore they are also not aware of the direct discrimination which goes on, reinforcing the view that there are no serious problems or inequalities which need to be addressed.

Expectations

The comments made by participants at the case study institution were reflective of the literature regarding the expectations which are placed on BME staff.⁸⁷² The view that BME staff have to work harder and do not receive the same recognition for their work as their White colleagues was mentioned by two participants in the case study institution. One Black academic member of staff stated that, "You work twice as hard to prove your credentials. ...For some the default position is: "you ungrateful so and so". I hear that often, not just from students but also from those who are teaching. "It's not a bad job is it really?" – Well, you make some assumptions there. The amount of effort and time I spend doing, do I work twice as hard as my colleagues? Yeah I do. Knowing full well that you will get some recognition – you'll never get the recognition you want."⁸⁷³ The lack of appreciation as compared to White counterparts was also highlighted by a member of support staff within the case study who also stated that, "I feel like sometimes what another person is doing is recognised more than what I am doing. Although we are doing the same thing, in staff meetings she gets mentioned more. ... I just felt like I wasn't seen as equal as the other person. ... I just feel like [they are] getting all the credit and I'm sat in staff meetings feeling really left out and feeling really bad because I don't seem to be seen to be doing as much as [them]. ... The response I got was "oh, you won't be able to handle the students... I just feel that they didn't really think I was capable and the reason, that my

⁸⁷² Leathwood, C et al (2009) op cit. p2

⁸⁷² Mirza, HS (2006) op cit.; Wainwright, J (2009) op cit.; Hey, V et al (2011) op cit.

⁸⁷³ Participant AD

colleague is a White person. I just feel, maybe, because I'm not the same I'm not seen to be able to do what [they are] able to do."⁸⁷⁴

The final part of the previous comment also reflects another concern of BME staff, the view that they are less able than their White colleagues. This too is reflected in the literature⁸⁷⁵ looking at BME experiences in higher education. BME members of staff have also witnessed White colleagues questioning the professionalism and ability of other BME members of staff within the case study institution, "...A senior lecturer in one [faculty] of the Department I work with is Asian and [I have] witnessed a White person always undermining [them] when [they are] not there. Saying he doesn't feel [they are] capable of teaching and that the materials [they] give to students are not good enough. ...He doesn't speak like that about other lecturers. ...It's only this particular person he keeps talking about. I just feel..."⁸⁷⁶ Once again this example demonstrates that there are no overt references to race, and in fact the lecturer who was being criticised may be incompetent. However, the participant clearly felt that the comments were linked to the race of the lecturer who was being undermined.

The final element of the experiences of BME staff is that of the feelings of infantilisation. The literature⁸⁷⁷ highlighted that BME staff experienced a challenging of their positions and ability to be in positions of authority. Once again, such experiences were also reflected in the case study institution, as one BME academic highlights, "...another academic once spoke to me almost as though I was a child. The default position was that I didn't look as though I had 20 years of experience."⁸⁷⁸ This infantilisation, or assumptions made about the position of Black academics within HEIs was also reported by another Black academic in the case study, not just from other academics but also other staff as well as students. However, the experiences of BME academic staff in this respect were not merely confined to the case study institution. The same Black academic reported this type of experience outside

⁸⁷⁴ Participant SA

⁸⁷⁵ Mirza, HS (2006) op cit. pp105 - 106

⁸⁷⁶ Participant SA

⁸⁷⁷ Leathwood, C et al (2009) op cit. p2

⁸⁷⁸ Participant AD

of the institution when visiting students who were on placements, "The post room were horrible to me as well and the [post room man] thought I was the replacement.... I was really quite nicely dressed, I'm surprised he didn't notice that.... People knocking and coming in and saying "we're looking for the Course Leader." "Yes, that's me." "Oh, I thought you were the PA. ...Our job involves... visiting students on placements. Half of the time I'm asked to wait for my student to verify who I am, many times I'm asked for my ID...once they even attempted to ring my colleagues here. I returned to the office and asked who had been to this place and someone said "yeah, I have." I asked if they had ever been asked for this and they said no. ...At that point you start to make assumptions. My email to [my line manager] catalogued what I had felt had been inappropriate behaviour."⁸⁷⁹ Some of the issues mentioned here may lie at the intersections of race and gender, although as highlighted in Chapter 3, the literature indicates that infantilisation was also experienced by Black men as well as Black women.⁸⁸⁰

The support that BME staff received has been identified in the literature⁸⁸¹ as key in challenging negative assumptions and (re)building confidence. However, some scepticism was expressed by the participants regarding the number of people within the case study institution who were interested in challenging inequality and willing to provide such support "...you can find a certain number of people who are interested in ...diversity and equality who will support and promote and push those agendas. But they are just a group of people and there are people outside of that group who really don't give a toss."⁸⁸² In addition, another participant commented on the pressures which this relatively small group of interested people were under in other areas, which they felt meant that there was little time left to really provide a commitment to equality and diversity at the case study institution. "I think the people who would be most open to engaging with it [equality] happen to be the people who are already unbelievably busy. When I think about my own division and who would be interested in those kinds of issues they are the

⁸⁷⁹ Participant AB

⁸⁸⁰ Leathwood, C et al (2009) op cit. p2

⁸⁸¹ Hey, V et al (2011) op cit. p22

⁸⁸² Participant AB

ones who have massive teaching loads that they are trying to balance with research loads."⁸⁸³ The placement of equality as the responsibility of a few members of staff was also highlighted in other research, and in particular the added pressure on BME staff to take on the agenda and provide support for other BME staff on top of everything else they were expected to do.⁸⁸⁴

The main suggestion of support within the literature was the creation of mentors for BME staff.⁸⁸⁵ However, as one participant at the case study highlighted, they had not experienced any form of mentoring, "We've never had the mentoring, we've never had the belief and we've never had the aspirations."⁸⁸⁶ As with the students, one area of support which was mentioned specifically by the staff participants was the dedicated Equality and Diversity Department within the case study. As with the students, some of the BME staff felt that having a dedicated section within the institution along with equality advisors was a positive element, "...you can always go to the equality and diversity officers, whether that's staff or student. I think that's good."⁸⁸⁷ However, the demise of the equality officer for staff (and later also for students) within the case study institution (see Chapter 6 for details) attracted criticism from BME staff, who felt that this was an indication of the priorities which equality for staff was being given within the case study institution, "...the lack of a diversity officer for staff... clearly shows that someone wasn't interested in what happened to staff or think that staff had any equality or diversity issues."⁸⁸⁸ The final point here is revealing, as this member of staff has articulated the perceptions of management as reflected earlier in this chapter, and has made the connection between their views regarding equality and the demise of an institutional wide 'service' which had equality at the heart of its work. The existence of an Equality Department would have played a part in ensuring the implementation of the PSEDs due to its potential strategic remit, as well as the specialist knowledge regarding equality and in

⁸⁸³ Participant AA

⁸⁸⁴ Berry, J and Loke, G (2011) op cit. p14

⁸⁸⁵ Hey, V et al (2011) op cit. p29

⁸⁸⁶ Participant AD

⁸⁸⁷ Participant AC

⁸⁸⁸ Participant AB

particular due to the EDOs substantive equality stance which could have supported the case studies' efforts to implement the legislative requirements.

As with BME students, the experiences of BME staff within the case study institution are reflective of the experiences found within the literature and research conducted at other HEIs. One could argue that some of these experiences are raised by over sensitive BME staff who have experienced racism in other forms and ascribe any negative behaviour towards them as racially based, particularly in the instances where there is no direct mention of race and the explanation for the treatment could also be down to other factors, such as competence. However, it may also be said that it is too much of a coincidence that different members of staff, both academic and support staff, based in different departments and faculties, are noting similar experiences (and not just one or two) which are also replicated in research conducted elsewhere. Similar experiences have also been reported by BME students at the case study institution. The conclusion which may be drawn is that there is something else at play here indicative of unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which defines institutional discrimination as expressed by Macpherson.

Disability in the Case Study Institution

Student Experiences

Achievement

As with BME students, the specific area of achievement was not raised by disabled students themselves. However, as with BME student achievement, the literature in relation to disabled students has identified that the support which disabled students receive is shown to impact on their achievement.⁸⁸⁹ All of the disabled students within the case study institution recognised that support, both from the institution as well as individual tutors, were key to their success. The picture with regards to the support which was provided was, however, unsurprisingly, mixed. This was also reflected in the literature as highlighted in Chapter 3.⁸⁹⁰ Many of the students who had disabilities, both physical as well as unseen or mental health difficulties, reported that

⁸⁸⁹ Rickinson, M (2010) op cit. p4

⁸⁹⁰ Holloway, S (2001) op cit. p604

reasonable adjustments were not being made, or were provided and then for some reason stopped, and that this had a negative impact on their health and learning. "They started providing green paper about four weeks into it [the course] and then by the beginning of this year they had stopped doing it completely. ...I haven't even had dyslexia support. It's not been taken seriously...they just skip over that... they don't care... Support promised suddenly disappears and both my doctor and consultant have had to complain that this interruption in support had serious consequences on my health."⁸⁹¹

Often the students put the lack of support down to the attitudes of individual members of staff and, as the literature has suggested, negative attitudes play a significant role in terms of whether making adjustments are embraced or viewed as a burden⁸⁹² and that adjustments appear often to be made on an ad hoc basis.⁸⁹³ One student provided a detailed description of the attitudes they had encountered at various points during their time as a student at the case study institution and these attitudes appeared to be negative no matter which of their disabilities were in question:⁸⁹⁴ "Initially I felt there was an attitude, and there probably was from some of the staff trivialising my desire and need to seek support. I felt this had a lot to do with me being 40... and so met the attitude of 'you should be able to sort yourself out at that age.' Some lecturers were quite disagreeable. ...Before coming on the exchange programme, one of the comments was, "are you sure someone with a condition like yours should be going to Canada?" Nice, felt like I had a contagious disease. ... Being told Dyslexia is no reason to have an exam in a room separate to everyone is unpleasant, as is having a lecturer shout out in front of 100 people, "can all the people with dyslexia who have extra time come and sit at the front" is not much better."⁸⁹⁵ Another student detailed similar negative attitudes with regards to their disabilities: "In my experience I've had a lot of discrimination and they pointed me out in front of the lecture hall several times when I first started, and they continued to do that. ... They

⁸⁹¹ Participant D2

⁸⁹² Riddell, S et al (2005) op cit. p640

⁸⁹³ Ibid, p641

⁸⁹⁴ This student had a number of disabilities which impacted on the student both physically as well as mentally.

⁸⁹⁵ Participant D4

continue to be rude as well. In [a particular module] ... my lecturer first of all said I shouldn't actually be on the course if I can't read black on white. My latest grades he actually praised me because I got a B+."⁸⁹⁶

As well as individual lecturers appearing to be a hindrance to providing appropriate adjustments and support, some students felt that the processes of accessing support was in itself sometimes a barrier in that it took a long time to go through the process of proving a disability and support could often not be provided without such proof: "...I had no letter as [I was] referred directly to respiratory medicine to be seen in 10 days. Once there I was given an appointment card, booked in for a PET/CT scan the following week and told to attend in 2 weeks for open chest surgery.... Trying to apply for mitigating circumstances was impossible as I was told my appointment card was not acceptable and I must have a letter, when I said I had no letter and there would be no letter before surgery I was told I couldn't be having an operation without a letter. It was quite something! All I could do was say, well I am."⁸⁹⁷ "There was a little bit of an issue in the first year [regarding exam arrangements] because I hadn't had all of my assessment done. ...There were a couple of other modules that, because I didn't have the full DSA, were doing it by the book and saying they couldn't let me have the extra bit [of time] if I didn't have the full documentation for it. So I had to do a few examinations by hand. I don't think it affected my result too much, but it might have gone differently. ...the process has to be in place before the help is given, in some cases. It's very much lecturer to lecturer and module to module."⁸⁹⁸ The latter student also highlighted the ad hoc nature of the support which was provided, and that it really depended on the modules which they were studying and the attitude of the individual tutors as to whether the support they needed would be provided particularly if the support was required before the official assessment of their disability had been carried out and the official documentation supplied.

⁸⁹⁶ Participant D2

⁸⁹⁷ Participant D4

⁸⁹⁸ Participant D3

Where a student had disclosed a disability, whether they were provided with support was put down by the students to how much awareness and understanding the tutors had of their disabilities. Again, this was also highlighted in previous research.⁸⁹⁹ One student put the negative attitudes and lack of help they had received down to an ignorance of their conditions: “[They need] to actually educate lecturers on dyslexia, dyspraxia and all those issues. [Due to my disabilities] it means I am tired all the time and I’ve actually had accusations that I’m taking drugs and things like that – which I’m not!”⁹⁰⁰ Similar comments were made by another disabled student as they drew a distinction between the treatment they received from people in the specific Disability Support Department and their tutors more generally: “It’s a very rigorous system that has people who know what they are doing within the [Disability Support Department]. I think tutors are a different thing because there are some tutors who don’t fully understand the learning disabilities. Educating the tutors about how disabilities present themselves and just make them more aware we are just as bright as other people.”⁹⁰¹

As well as the negative experiences reported by several disabled students, there were also some students who appeared to have had very positive experiences with regards to the support provided at the case study institution. “From my experience yes [the university does take equality seriously]. As soon as they were aware, I was arranged an appointment where they could sort out alternative arrangements for me... they seemed quite good and they took it seriously.”⁹⁰² “The help I have received through student services has been good, my mental health support is the reason I am still on my course.”⁹⁰³ “I was first referred to them by one of my lecturers. They gave me a preliminary hearing which recommended I be tested for dyslexia and dyspraxia. ...After that it was just a case of getting the DSA form which they help me do, and getting that sent off to student finance and talking to someone in the University about things I can implement – learning techniques,

⁸⁹⁹ Fuller, M et al (2004) op cit. p456

⁹⁰⁰ Participant D2

⁹⁰¹ Participant D3

⁹⁰² Participant D1

⁹⁰³ Participant D4

remembering stuff and the sort of equipment I can get..."⁹⁰⁴ It appeared that where specialist support services were provided by the case study institution the experiences of the students regarding the central support mechanisms were pretty positive. Even where there did appear to be a breakdown, the problems were resolved quickly. "There must have been a breakdown in communication at the beginning because apparently it went over to [the Disability Team] and it wasn't until [my tutor] was given the first exams and she mentioned I can have a room away from everything in case anything happened or I had an episode and would help me concentrate. But that hadn't been made clear to [the Disability Team]. But [my tutor] sorted that out straight away and ever since, everything's been fine. ...as soon as somebody found out and the mistake spotted [it was dealt with quickly]." ⁹⁰⁵

Where central support services were accessed, students also reported not being made to stand out or feel 'different' or a burden and that the services which were specifically provided for disabled students did understand the needs of disabled students, "I didn't feel like I was imposing or anything. It didn't feel oh you're getting like special treatment. It felt quite normal."⁹⁰⁶ "I came to the university and I've only had to have one assessment for the DSA and one conversation with the mental health person. That was it. It felt like they understood things."⁹⁰⁷ The students identified two primary factors as contributing to the positive experiences that they had encountered, and this appeared to be down to individual tutors who took the time out to discuss students' individual needs as well as the centrally provided disability and equality services, "The main strengths are actually the members of staff who take you seriously and take time out after a lecture to actually speak to you and explain to you. ... The strength is the commitment and ability of the staff working in equality and disability posts."⁹⁰⁸

The experiences of disabled students at the case study institution appears to reflect the literature in this area. The experiences of reasonable adjustments

⁹⁰⁴ Participant D3

⁹⁰⁵ Participant D1

⁹⁰⁶ Participant D1

⁹⁰⁷ Participant D1

⁹⁰⁸ Participant D2

appears to depend largely on the attitudes of the individual tutors who are tasked with implementing them. Students reported a mixture of very helpful members of staff as well as negative attitudes towards their disabilities which hindered their progress and in some cases exacerbated their disabilities which had an adverse impact on their studies. For some students, the rhetoric of support was not matched by the reality. Once again this reflects the findings of other research as detailed in Chapter 3.⁹⁰⁹ However, students were, on the whole, also very complementary of the centrally provided services, particularly the Disability Support Department. One student did, however, express some scepticism as to why the case study institution did provide centralised support services for disabled students, "I don't know if they get extra funding for people who are classified as having additional needs, maybe that is why they are so concerned..."⁹¹⁰ As was demonstrated in Chapter 3, it has been argued that funding has impacted on whether HEIs take disability seriously and has meant that services specifically aimed at supporting disabled students are provided.⁹¹¹

It might be suggested that the services which are provided by the institution focussing specifically on disability are much more likely to be aware of the support needs for students with a wide ranging set of disabilities. It might be said, however, that these services are focussed on the individual needs of the student who has disclosed their disability, rather than being proactive in nature and trying to alleviate institutional forms of discrimination for disabled students. The response from tutors, on the other hand, appears to be very mixed. It might be suggested that within some of the comments of the tutors there is an assumption that it is for the disabled student to adapt in order to meet the demands of higher education, or that they should not be there at all ("my lecturer first of all said I shouldn't actually be on the course if I can't read black on white" or "are you sure someone with a condition like yours should be going to Canada"). Such attitudes might be reflective of the view of higher education as a meritocracy and that students achieve or fail or deserve to be within higher education due to their own abilities and efforts. This also

⁹⁰⁹ Barnes, C (2007) op cit. p142

⁹¹⁰ Participant D1

⁹¹¹ Tinklin, T et al (2004) op cit. p641

links in to the formal equality stance which appears to be prevalent among managers as well as other members of staff as detailed previously in this chapter, in that achieving equality is about treating everyone equally and therefore the recognition that some people may need to be treated differently in order to achieve equality is not recognised by some members of staff. Once again, if the broader institutional barriers and discrimination are not recognised in these circumstances, then anticipatory adjustments and achieving substantive equality for disabled students are unlikely to be viewed as a priority (or understood) and the institution will continue to merely respond to individual needs. However, as can be seen from the comments made by students, even these tend to be on a fairly ad hoc basis,⁹¹² with some students receiving the support they require and others having a completely different experience of the support services within the case study institution.

Disclosure and Identity

The nature of the support which students receive is partly dependant (where individual adjustments are required) on whether or not the student chooses to disclose their disability. Some of the participants at the case study institution were quite happy to disclose their disability, and not just to those who needed to know in order to make the required adjustments. "I've told everyone, all the lecturers and the course staff at the university and the equality and diversity [department]."⁹¹³ "I'm quite open about my disability on the whole. I don't see it as a negative aspect of my life, it's something I have. I'm quite free to talk about it with my friends and teachers. I think most of my lecturers know. Other than that, they have been quite confidential with who they have told within the University."⁹¹⁴

However, other students (as would be expected) were not as willing to disclose their disability to a wide range of people and preferred to only tell those who were required to know as well as close friends and family. "...I have told some people on my course that is it... It's really only a couple of close

⁹¹² See for example Holloway, S (2001) op cit.

⁹¹³ Participant D2

⁹¹⁴ Participant D3

friends and my family who know.”⁹¹⁵ As reflected in the research, some students were not comfortable with disclosing their disability as they did not want to incorporate their disability into their self-identity.⁹¹⁶ They did not want disability to be their defining feature. “I didn’t want the label of that [disability], although you have to label it as something, because I don’t want to be seen as disabled because I have a mental health problem. ...I want to feel as though I can have a normal life. I don’t want to be labelled as someone who’s not able to have a normal life. ...disabled seems more severe than what I have.”⁹¹⁷ “I have a slight issue with being labelled as disabled, purely because I don’t think it is the right word for it. ... The connotations that the word ‘disabled’ has with physical disability rather than mental disability. ...People might look at me and say I’m obviously not disabled because I don’t walk with a limp and I’m not missing anything physical. But I’m lacking some things mentally which aren’t obvious.”⁹¹⁸ Once again, these quotations also reflect findings in previous research that students, particularly with mental health difficulties, often do not perceive themselves as disabled.⁹¹⁹ It is interesting that in the quotations the students mention the fact that they have mental health difficulties. This was the defining element with each of the students who talked about disclosure or not wishing to disclose in their interviews. All the students who had mental health difficulties were not confident about disclosing this to the case study institution unless absolutely necessary. This was primarily down to the fear of stigmatisation and the fact that they felt they would not be treated ‘normally’ if they disclosed their mental health problems.

Often the students drew on previous negative experiences where they had disclosed their mental health difficulties. “If you have something that is visible then there is no being able to hide from that. That’s what I do I guess, I hide from the fact I have an illness because it makes me feel like I’m more normal I guess. ...Say I was just having a bad day that was nothing to do with my illness... they might make assumptions. ...When you say schizophrenia form of

⁹¹⁵ Participant D1

⁹¹⁶ Riddell, S et al (2005) op cit. p640

⁹¹⁷ Participant D1

⁹¹⁸ Participant D3

⁹¹⁹ Rickinson, M (2010) op cit.p11

psychosis, people think you are completely mad and it's not like that. But from the TV and stuff it can appear that way..."⁹²⁰ "I refuse to let them [the Disability Department] look at the full [assessment] report because it has things like mental health problems from the past ... they treat you in a different way. It was really serious at the time because I was going through a breakdown. They don't need to know that. ... [they treat you] as if you were a very vulnerable person or that you're going to start freaking out at whatever they say, which isn't true."⁹²¹ "It's the underground nature of it, it still holds the position of being a big dark secret that you shouldn't speak of. [There are] misconceptions of mental health are still there and often looked down on as trivial or that you are weird. ... If someone asked me whether to declare a condition I would be very reserved of saying, yes sure it would be fine. As I don't think it would be for most people. It is why I dropped out of seeing a councillor here on the exchange and didn't seek help until I had got quite unwell."⁹²²

Interestingly, some of the students who are quoted above had a number of disabilities, seen, unseen and mental health difficulties. Where the student had a number of disabilities, it was the mental health difficulties which they had not disclosed to the university, despite having disclosed other unseen disabilities, such as dyslexia. The main reason for not wishing to disclose was related to the perception of people with mental health problems and the stigma which was associated with it, but it was recognised by the students that this would limit their opportunities for obtaining appropriate support. "Anybody who is trying to move on and escape the stigma of mental health and all the problems of being labelled with a condition will not seek support."⁹²³ One member of staff felt that their own disability meant that students were more likely to disclose to them than other colleagues, "...the fact that I walk around with a walking stick means that anecdotally, students are more likely to disclose issues to me than to some of my colleagues.

⁹²⁰ Participant D1

⁹²¹ Participant D2

⁹²² Participant D4

⁹²³ Participant D4

...perhaps the fact that I am obviously hobbling around is making the students with some forms of disability feel more confident about talking about it."⁹²⁴

In concluding the section relating to disabled students, many of the concerns which the students raised were reflective of the literature as identified in Chapter 3. Experiences varied from student to student and whether a student disclosed their disability was very much dependant on whether they viewed themselves as having a disability. Some of the students were not happy to be labelled as such, particularly when they had mental health difficulties. Students, on the whole, were very complementary of the centrally provided disability support services, particularly with regards to individualised support and reasonable adjustments. However, the support provided by tutors was much more varied. This again reflects the findings of other research in the area where support is provided on an ad hoc and individual basis.⁹²⁵ Although individual support was provided to some of the students in the case study institution, there did not appear to be much evidence of anticipatory adjustments being made. Once again, there did not seem to be much consideration of the broader, institutional, barriers which disabled students faced, and the focus was very much on their individual conditions. It is also very telling that none of the students felt comfortable with disclosing mental health problems to the case study institution. This has a lot to do with broader societal attitudes regarding mental health, although it might also be argued that it is much easier to provide support for students who have specific needs which can be identified and 'rectified' or alleviated. If the tendency is towards a more formal equality stance, then the institutional barriers in place which prevent students with mental health difficulties from accessing support will not be recognised in the same way as the need to provide ramps for wheel chair users or extra time in exams for those with dyslexia.

It also appears that the view from some tutors is that it is up to the students to adapt, and once again reflects the medical model of disability as described in Chapters 2 and 3.⁹²⁶ This perception of the student needing to adapt was

⁹²⁴ Participant A2

⁹²⁵ Holloway, S (2001) op cit.

⁹²⁶ Ibid.

neatly highlighted by one of the quotations from the students when they stated that, "The only thing I can think of in terms of lecturers, there is one – I think he's from a different age of university when it was very much written down on paper and you just got on with it – he hasn't been that helpful in pushing back deadlines for assignments. He said you should plan enough time to make up for this. I haven't yet asked for one but he has made it very clear that we should give ourselves an extra week or three to make up for everything."⁹²⁷ It might be suggested that this view is once again reflective of the overall perception of equality along formal lines. After all, this tutor was treating all students alike!

Staff Experiences

Disclosure

As with disclosure in relation to disabled students, staff expressed a reluctance to disclose all but the most obvious of disabilities.⁹²⁸ Once again, where a member of staff had more than one disability and where one of those was a mental health difficulty, it would be the latter which participants chose not to disclose to the university. "There's one or two disabilities which I wouldn't declare to the university. Depression – I wouldn't declare it to the university because I don't think people take depression seriously. ... I wouldn't declare that and I think a lot of people wouldn't declare mental health issues."⁹²⁹

A distinction was drawn by the participants between disabilities which were clearly visible and which staff had to disclose in order to be able to get around to teach, for example, and some non-visible disabilities where once again it was regarded that they had a stigma attached to them and so disclosure was much less likely.⁹³⁰ "...If you had a mobility impairment or a sensory impairment that was clear to everybody, I think people were more confident about talking about the issues with colleagues, with individuals. But if you've got hidden disabilities and things that culturally might be quite difficult to share, particularly mental health issues. ...I think if we go back to some of

⁹²⁷ Participant D3

⁹²⁸ Fullick, L (2008) op cit.

⁹²⁹ Participant S1

⁹³⁰ Ewens, D (2011) op cit. and Fullick, L (2008) op cit. p40

those ideas about mental health ...I think there are perhaps some of those hidden disabilities where it may not be as easy to disclose, culturally as well as if you looked on the University website and thinking am I going to disclose this? Is it a safe place to disclose? ...I'm not sure whether you would have been able to find something on the Occupational Health website or elsewhere that would indicate to you that this disclosure will be dealt with in an appropriate way. ...I'm not sure that university is a comfortable place for people to disclose mental health differences... These ideas about making a place where people feel happy to disclose, where people are supported in positive ways, where there's that explicit positive equality and diversity aspect – I'm not sure that's necessarily a headline at the moment."⁹³¹

It is interesting that this participant highlights the need to create a culture within the institution which is conducive to disclosing mental health difficulties as the research has once again reflected that where there is confidence in the institutions commitment to disability equality, staff are more likely to disclose.⁹³² This participant did not feel that this had been established within the case study institution. This is also reflected in some of the comments by participants as detailed later with regards to experiences of discrimination and the support mechanisms available to disabled staff, particularly with non-visible or mental health disabilities. Once again, this is an institutional barrier which this participant believes exists and which hinders the ability of staff with mental health difficulties to access the help and support which they may require. If equality is primarily viewed in terms of formal equality, such barriers will not be evident to those tasked with implementing the PSEDs.

Experiences of Discrimination

Unlike the experiences of BME staff, disabled staff did not detail as many specific examples of discrimination. The concerns which were highlighted were usually regarding the support mechanisms which were available as well as accessibility.⁹³³ The main point which was made, however, related to the potential stigmatisation and treatment which staff feared if they were to disclose. This fear was primarily due (in their view) to a lack of understanding

⁹³¹ Participant A2

⁹³² Lucas, H (2008) op cit. p4

⁹³³ These are discussed in the next section.

of mental health. Once again, this was reflective of the research in this area.⁹³⁴ "I think that it's [depression] very much stigmatised. I do talk about it more often than I ever used to but I think people think that if you suffer from depression you are going to sob in a corner and run off and not come into work and things like that. People don't understand what it is all about."⁹³⁵

Another factor which was raised was the questioning of the 'reality' of the disability where it was non-visible and linked to mental health. "Because they don't see them [non-visible disabilities] as something they have to do anything about and because people don't complain about them or don't mention them ... sometimes it's embarrassing, sometimes it's difficult. ... people don't see people without a visible disability as disabled. I've had it at work – "you're not disabled, I can't see that you're disabled."⁹³⁶ This participant later went on to detail their experience regarding assumptions which were made about their non-visible disability (which they had disclosed, but was not their mental health difficulty) and that they were regarded as lying about the impact of their disability as well as the medical treatment which was required, "I was very ill, I had a month off work with pains in my side. They thought it was something to do with my bowel disease but it wasn't, it was something called costochondritis which is inflammation of the muscle. I was told by my specialist that I had to exercise and at the same time I had a stinking cold and when I came back I was on a return to work programme because I'd had quite a bit of time off and I was on morphine and stuff. I did the pancake race, I came splendidly last – I sort of walked it! [A particular member in occupational health] sent me an email saying: "Somebody saw you doing the pancake race, your return to work has been cancelled." No ifs and buts which I got very upset about and replied saying that I thought they needed to find out the reasons why I did the pancake race and they just said no. I took it to my union rep. I was the only one apparently who had stood up to her because she had done it before. She never looked at why I did it and the background and the disability reasons and everything. She just thought I'd run it without finding out what was actually wrong with me. ...

⁹³⁴ Ewens, D (2011) op cit. p40

⁹³⁵ Participant S1

⁹³⁶ Participant S1

I just went back to work and did full time. My boss said to come back to work part time but I'd just had enough of it. She had to apologise to me. We went through a whole procedure on doing it. She's gone now. ... it was the whole thing of occupational health – not checking what was going on and just making assumptions because I was off and doing a return to work programme running was... I'd been told to run but I couldn't run because I'd got a cold! It's not checking the facts out right and I think people do that a lot and assume."⁹³⁷

The member of staff who had a visible disability recounted one instance where they believed they had been discriminated against due to their disability, but this was not an instance which was related to the case study institution, but related to an institution they had applied to study, "I suppose my worst experience with HEI as a student or as a member of staff was when I was applying to go to university. I think we could apply to 8 places in those days and we hadn't heard back from all of them. One of my teachers phoned up to find out why I hadn't heard from a particular institution and was told it is actually quite hilly here, I don't think [they'd] be able to manage. And so I wasn't offered a place!"⁹³⁸

Two members of staff highlighted the expectations of staff within the case study, and higher education more generally, as being unrealistic and unhelpful for staff with disabilities. Where staff had not disclosed their disability they felt they had to demonstrate that they could cope and deal with the pressures without being able to access help and support. If difficulties were disclosed, there was a fear that this may lead to further discrimination and ultimately may lead to people failing to be appointed to positions or overlooked for promotion due to being viewed as unfit for the position. "I think they expect staff to be perfect and not disabled and to be able to cope and if you're a disabled member of staff it's just a bit of tough luck."⁹³⁹ "...partly because the nature of the academic role... people that were disclosing mental health illnesses tended to be people starting their career who had not disclosed to

⁹³⁷ Participant S1

⁹³⁸ Participant A2

⁹³⁹ Participant S1

anybody, and people who were seeing the academic role as a super-human role: you have to be teaching, writing, researching and bringing in some money. You have to be able to juggle everything, there are deadlines you have to meet, you have to go through the REF process which doesn't take any prisoners. There are these sorts of things which make it more difficult for people to disclose some disabilities because they might be seen as unfit for the role."⁹⁴⁰

The members of staff at the case study institution did not relay instances of discrimination in the same way as some of the BME members of staff. Some of the points raised related to the support which disabled staff had received and which is discussed separately. However, as explained in the methodology, the numbers of staff coming forward and volunteering to be interviewed for the research was much more limited and only one member of staff had a non-visible disability. Hard and fast conclusions regarding the discrimination which disabled staff face at the case study institution are therefore difficult to draw. Only one member of staff detailed specific instances of discrimination. However, it may not be so easy to dismiss the fact that this member of staff was the only member to have non-visible disabilities as well as mental health difficulties (which they had not disclosed to the institution). There appear to be indications from the interviews that there are negative attitudes towards disabled members of staff and a lack of awareness and assumptions made around disability, even amongst those tasked by the institution to provide support for disabled staff. There were also views expressed by a couple of staff that there are institutional barriers for disabled staff, again, primarily those with mental health difficulties. This was reflected in comments about the need to be 'perfect' and 'super human' and the impact that such expectations can have on both those who have declared their disability as well as those who feel they are unable to do so.

Support Mechanisms

The provision of support for disabled staff within the case study institution reflected that of student support, in that reports were mixed. However, there

⁹⁴⁰ Participant A2

did seem to be more of a split with regards to staff support along visible and non-visible lines. As reported in the literature, the concept of making adjustments to the physical environment, in particular when responding to individual needs, appeared to be grasped much more easily within the case study institution than making other forms of adjustments.⁹⁴¹ "That afternoon they came and assessed me to see what equipment I needed and ordered it immediately. At the same time they are proactive, they don't just react to what you have asked for. As I was having an assessment for an office chair the guy that came to talk to me also said to me, "listening to what you are saying, you could have a desk with a button you press to adjust the height so you could then stand at your desk and lower it to sit at your desk." ... So they are proactive. ...That's a fantastic response, really quick. I immediately got the new desk and the new chair."⁹⁴² However, even members of staff with physical difficulties recognised that the response from the case study institution was likely to be different depending on the type of disability and if their needs were relatively straight forward to identify and react to. "I think that it's always going to be easier to respond to those more obvious physical disabilities because they are there and people can see what you need. ...providing a desk is probably easier than providing the support someone might need because they have a mental health issue, I would imagine. My things are quite practical, they are easy to assess. ...I think that perhaps there's a lack of awareness or understanding of some other, maybe hidden, disabilities.... I think there's probably far less awareness and far less sympathy really."⁹⁴³ "I suppose because my issues are visible to people then it is perhaps easier to do [be proactive in making adjustments] and if you have a hidden disability I think that is probably more challenging."⁹⁴⁴

However, the views from members of staff were not quite so positive when it came to discussing anticipatory adjustments as well as the overall accessibility of the university campus for disabled staff, "I think that we are on to the visible disabilities that they do ... well I say yes they do take seriously, but

⁹⁴¹ Ewens, D (2011) op cit. p29

⁹⁴² Participant A1

⁹⁴³ Participant A1

⁹⁴⁴ Participant A2

when you report things like the pavements not being level, nothing's ever done about it. [The EDO] and I did a walk about, pavements not being level for wheelchair users, not being accessible, it was "yes, we'll do something about it" and they still never done anything about it, and that's 6 years. So while they say they do things, they don't actually walk the walk. ... Disabled toilets being out of order – that's a huge one. In [the other campus] there were no disabled toilets on the floor we were on"⁹⁴⁵ "Parts of it [the university] are very accessible, parts of it aren't. ...things like the [new] building – it's a beautiful building but it's got heavy fire doors every ten yards! For example, when I'm walking that building there are particular routes that I will take where I don't have to go through so many doors, because it puts a lot of pressure on your wrists when going in and out of doors. So the [new] building I don't find accessible at all."⁹⁴⁶ "... I think in terms of access, some of the facilities on campus are probably a bit more accessible than others..."⁹⁴⁷

It might therefore be suggested that where individual needs are identified, particularly where they relate to a physical adjustment, staff felt that these were adequately provided. However, all three disabled members of staff highlighted the shortcomings of the anticipatory adjustments to the physical environment, other than the provision of the most basic facilities, such as disabled parking spaces. One disabled member of staff did in fact highlight the importance of having anticipatory adjustments, "I think having things in place that might help support a number of people, whether disclosed or not, would be helpful."⁹⁴⁸ Once again, there seems to be evidence (albeit limited) from the case study institution that where the dominant view is aligned to the theory of formal equality, actions which would address substantive equality are not seen unless specifically raised by the disabled individual. In addition, there did not seem to be any discussion of the possibility of making anticipatory adjustments for those with mental health or other non-visible disabilities. The importance of the connection between whether there was a perception of discrimination and inequalities and the visibility of the 'problem'

⁹⁴⁵ Participant S1

⁹⁴⁶ Participant A2

⁹⁴⁷ Participant A1

⁹⁴⁸ Participant A2

was indicated by comments by the VC as mentioned previously in this chapter, as well as the PVC when they stated that, "I think we have made a lot of progress on the estates' issues for disabled people, that is important."⁹⁴⁹ This again indicates the consequences of adopting a formal equality stance, which has the impact of ignoring or not 'seeing' the barriers which need to be addressed in order to achieve substantive equality.

The final area with regards to the support mechanisms for disabled staff which was highlighted in the research, was the role of specialised Equality Teams/Officers in providing support and guidance to disabled staff as well as promoting the disability agenda.⁹⁵⁰ This was also raised by BME students at the case study institution as a positive element of the institutional support mechanisms.⁹⁵¹ In relation to disabled staff, having a specific person or team within the case study institution who was responsible for disability (and other equality characteristics) appeared to be even more important given that the view was that disability issues for staff were not invested in in the same way as it was for students, particularly as there is no specific funding attached to the support of disabled staff.⁹⁵² It is therefore no surprise that disabled staff identified the support from such a team as important within the case study institution. It is also not surprising that staff viewed the abolition of the Equality Department as a very negative move and one which the staff believed sent out a strong negative message regarding the lack of commitment which the case study institution had towards the achievement of equality and advancement of disability rights within the case study, "I think because we've got nobody to lead on equality and diversity matters and I also think that if you had a disability and you were struggling with something you could go to an E&D Officer – you can go to your union rep but if you're not a union member where do you go? You could go to your manager but what happens if your manager is part of the problem? ...we haven't got our E&D Officer and our Widening Participation Officer so it's gone to what? A committee? ...Having got rid of our E and D Officer and our Widening Participation Officer... well, that

⁹⁴⁹ PVC

⁹⁵⁰ Fullick, L (2008) op cit. p11

⁹⁵¹ See above under BME Students "Achievement"

⁹⁵² Fullick, L (2008) op cit. p18

says it all really!"⁹⁵³ "I don't think there is a central point for dealing with issues for staff. ...The one issue that raises questions at the moment is that we no longer have an Equality and Diversity Officer. We don't have a Widening Participation team. On the one hand that could be read as all the things are embedded in everything we do and therefore we don't need it, but on the other hand it could be read as an over-confident statement that we don't need this and it isn't important."⁹⁵⁴

Given that the EDO was the only actor interviewed within the case study institution who had a clear understanding of substantive equality, the concerns raised by disabled staff regarding the adequacy of support (both in terms of individual and anticipatory) which was provided has some justification. As was highlighted in relation to BME students, the removal of this service could once again be indicative of senior management's failure to recognise the broader institutional barriers which disabled staff face.

Role of the Law

As with BME staff and students, one area which was raised by disabled staff, but which was not really highlighted in the literature, was that of the role of the law with regards to ensuring that the case study institution took action to address disability equality, "I think some of it is to do with the Disability Discrimination Act and the legal aspect because there are steps that have to be taken. ... I would presume that some of the responses that the university have in place are because they are duty bound..."⁹⁵⁵ "At the one level you have the policies, the legal obligations. I don't know exactly what they are because I don't really know anything about equality and diversity law rather than the general, non-discriminatory aspect to it. There's that legal context in which we work."⁹⁵⁶

As with BME staff and students, there was some scepticism expressed with regards to how far the case study institution did in fact take the legal

⁹⁵³ Participant S1

⁹⁵⁴ Participant A2

⁹⁵⁵ Participant A1

⁹⁵⁶ Participant A2

requirements seriously, "I think the factors that influence them taking them seriously is the fact that they have to take them seriously under law. But they bend the laws and the rules."⁹⁵⁷

Due to the requirements to make reasonable adjustments, it might be argued that disabled staff were a little more aware of the proactive requirements which the case study institution were supposed to take to address disability discrimination. However, from the responses in previous sections, again, there appeared to be the view that any action taken tended to be reactive to individual needs, rather than proactive in relation to making anticipatory adjustments for disabled staff and students. The reactive measures were also more likely to be made where there was a physical disability and where the reasonable adjustment could be clearly identified. Again, all these factors point towards a formal equality stance, as action seems to be taken when there is a visible difficulty which needs to be overcome, rather than taking the approach of addressing disproportionate adverse impact where the inequality is not visible. It is suggested that the way non-visible disabilities (and particularly mental health difficulties) are dealt with is akin to the barriers which BME staff and students face. Therefore, although participants viewed the role of the law as significant in making reasonable adjustments, it was acknowledged that the law only went so far when it came to dealing with substantive disability equality.

Conclusions

In concluding this chapter, the main thrust of the argument presented has been that senior management (as well as other members of staff) within the case study institution are most likely to see equality in terms of formal equality and equality of opportunity. Given management are considered significant in leading on equality as well as ensuring that the PSEDs are properly implemented, their view of equality has a significant impact in the way that issues are dealt with in the case study institution. Evidence of this can be shown through the interviews conducted with BME and disabled staff and students. There were clearly instances of individual prejudice and

⁹⁵⁷ Participant S1

discrimination present within the case study as described by some participants, and these views collided with the management perspectives of the situation within the case study institution. The evidence from the interviews substantiates much of what has been recorded in the literature as detailed above and in Chapter 3. Where concerns have been addressed, they tend to focus primarily on individual cases and those which are most visible.

There does not appear to be recognition of the need to promote substantive equality which would address the institutional barriers and discrimination within the case study institution. Taking this approach to equality would tackle some of the problems highlighted by both staff and students. For example, increasing confidence in the complaints procedures for addressing individual instances of discrimination would create a culture within the case study which is conducive to staff feeling they are able to disclose their mental health difficulties to obtain appropriate support. The wider institutional issues appear to be foreign to management and staff focussed on equality (apart from the EDO) and there appears to be an inability to get to grips with institutional discrimination due to the focus on treating everyone equally and perceptions of meritocracy within the higher education Sector.

Chapter 6: The Case Study Experience – Legislative Compliance and Equality Processes.

The previous chapter considered the views and perspectives of equality, specifically in relation to race and disability, of various social actors within the case study institution. Conclusions were drawn suggesting that the formal equality stance adopted by management, and possibly other members of staff at the case study, meant that the concerns which were highlighted by BME and disabled staff and students were not being addressed.

It is the aim of this chapter to move away from considering the experiences and perceptions of social actors, to looking at the documentation produced surrounding compliance with the PSEDs. The purpose of looking at the documentation will be to provide a parallel assessment in relation to how the case study deals with equality and how/whether it has implemented the PSEDs. It must be borne in mind that the analysis provided is one interpretation of the basic legal requirements. In order to form a view, consideration will be given to the interpretation of the PSEDs as reflected in Codes of Practice/guidance produced by organisations such as the previous equality Commissions and the EHRC.⁹⁵⁸ The question which will be borne in mind throughout this chapter is: does the tendency towards adopting the formal equality stance also impact on the case study's response to the PSEDs as reflected in the documentation?

In short, it is suggested that over the period covered by this chapter, compliance with the legislative requirements relating to equality (focussing on the implementation of the general and specific duties) have deteriorated. This decline followed a period of relatively significant improvement which was attributed primarily to the appointment of two EDOs as well as a restructuring of the equality committees to establish two new ones which were focussed on discussing equality at the case study institution.⁹⁵⁹ It is argued that the formal equality stance adopted by management at the case study institution

⁹⁵⁸ Although it is recognised that there has been criticism levied at some of the guidance, this is beyond the scope of this chapter.

⁹⁵⁹ See Pilkington, A (2011) *op cit.* pp79 - 118

as well as a lack of external pressure meant that subsequently, equality concerns were not 'seen' and not regarded as a problem and the processes in place to deal with equality were substantially weakened. The manifestations of this weakening of equality processes at the case study institution are evident in the worsening compliance with the legal requirements.

The structure of this chapter will be as follows:

Firstly, there will be a consideration of the extent of legislative compliance in relation to a number of specific areas. The focus will be on

- a) the development and implementation of the Equality Scheme and action plan, as required under the 'old' PSEDs⁹⁶⁰ and the setting of equality SMART⁹⁶¹ objectives as required by the 'new' PSED under the EA 2010⁹⁶²
- b) the publication of equality data and in particular the publication and use of staff equality data relating to race and disability
- c) the use of EIAs (or Equality Analysis under the EA 2010) at the case study institution, with a focus on the only full impact assessment which was conducted on the Admissions' Policy. The reasons for choosing these areas are that they are all essential legal requirements of meeting the PSEDs.

Secondly, there will be a consideration of the processes⁹⁶³ used at the case study institution to address equality and how these processes have changed and whether these have impacted on compliance with the legal requirements. In order to examine the processes a number of documents will be analysed.⁹⁶⁴ These documents will consist of minutes and Terms of Reference for relevant committees (Equality Action Committee (EAC) and Human Resources and Governance Committee (HRGC), Academic Strategy Committee (ASC) and the Student Experience Committee (SEC))⁹⁶⁵ and various consultation documents and responses relating to a restructuring of equality provision at the case study institution.

⁹⁶⁰ See Chapter 2 for detail

⁹⁶¹ Specific, Measurable, Attainable, Relevant, Time-bound

⁹⁶² See Chapter 2 for detail

⁹⁶³ Committee structures which are in place to look at equality issues, the role of the Equality and Diversity Officer

⁹⁶⁴ Content analysis will be utilised – See Chapter 4 - Methodology

⁹⁶⁵ The role of these Committees will be explained in the section below relating to processes.

The time frame which shall be considered for both the sections relating to processes and legislative compliance is from September 2008 until April 2012. The reason for this time frame is that September 2008 saw the conclusion of a review into equality and diversity provision at the case study institution, which resulted in a number of changes to the structure of provision, including the committee structure and a reduction in the number of EDOs from two to one. Although these changes would have provided for an interesting analysis, this has already been done⁹⁶⁶ and so to avoid repetition an analysis will be conducted of events which occurred subsequently, with the beginning of the following academic year providing a neat starting point, although some historical context leading up to this point will be necessary. In addition, the Disability Equality Duty was not introduced until 2005 and so the start point of 2008 allows for a passage of a reasonable amount of time to give the case study institution time to implement the Disability Duty.

The end point of the analysis was chosen for two reasons. Firstly, the EA 2010 commenced in October 2010, with the provisions relating to the new PSED coming into force in April 2011. April 2012 was a good point at which to end as this was the deadline for the publication of equality objectives which were required of public authorities in order to comply with the PSED. Secondly, during 2011 there was a large restructuring of Professional Services within the case study institution which also included, once again, the equality provision. This was concluded in November 2011 and led to the redundancy of the remaining EDO. The end date of April 2012 therefore allows for this restructure to be discussed and analysed.

Assessing Legal Compliance – Actions Speak Louder than Words

The case study institution did not have the best start in terms of adhering to the requirements of the RR(A)A 2000 due to HEFCE stating that the case study institution had produced an inadequate Race Equality Policy and action plan.⁹⁶⁷ However this in turn “provided the opportunity for race equality champions to push through measures [such as the establishing of equality committees] which subsequently helped the institution make considerable progress in

⁹⁶⁶ See Pilkington, A (2011) op cit. pp115 - 118

⁹⁶⁷ Ibid, p118

promoting race equality."⁹⁶⁸ It could be argued that in the run up to the time period as covered by this chapter, not only was there progress in terms of race equality, but other equality areas were also receiving more attention due to the establishing of a two specific committees, one chaired by the Vice Chancellor and the other by the Pro Vice Chancellor,⁹⁶⁹ which considered equality as well as the appointment of two EDOs, one responsible for staff and the other for students.⁹⁷⁰

In order to analyse whether there was continuing progress made at the case study, there will be a consideration of some of the main elements of the PSEDs, or specific duties, as was required in the previous legislation as well as the more recent requirements under the EA 2010.⁹⁷¹ These specific duties were designed to be more focussed on outcomes, and although *just* concentrating on outcomes also has limitations, for example it can "...mask inequality within groups,"⁹⁷² considering equality outcomes is regarded as a fundamental aspect of achieving substantive equality.⁹⁷³ The three elements of the specific duties/duty which will be considered are a) the production of the Scheme and Action Plan as required pre EA 2010 and the publication of equality objectives as required under the EA 2010, b) the production of equality data, particularly relating to staff, c) the use of EIAs or Equality Analysis.

Scheme and Action Plan

During the time scale of this chapter there were two schemes which were relevant. One scheme was already in force and covered the period 2006 – 2010. The second Scheme and Action Plan covering 2010 – 2015 had been consulted on. Following the coming to power of the Coalition Government,⁹⁷⁴ the requirement to have a Scheme and Action Plan was abolished. It was at

⁹⁶⁸ Ibid.

⁹⁶⁹ See below section on processes for more detail

⁹⁷⁰ Pilkington, A (2011) op cit. p107

⁹⁷¹ As detailed in Chapter 2

⁹⁷² See for example Fredman and Spencer (2006) op cit. p3

⁹⁷³ Castagno, AE (2009) op cit. p761

⁹⁷⁴ May 2010

this point that there was a requirement introduced to publish various data as well as equality objectives arising from the data.⁹⁷⁵

The 2006 – 2010 Scheme and Action Plan was written by the EDO at the case study institution following an “extensive consultation period”⁹⁷⁶ and adopted and approved by the Equality Working Group (EWG) in June 2006. It was revised in October 2007. A progress report on the implementation of the Scheme was given to EWG in January 2008. In August 2009 the EDOs produced a position paper in order to start the production of the new Equality Scheme and Action Plan for 2010 – 2015. A consultation questionnaire was produced and disseminated across the institution inviting comments and asking: what staff believed the institution did well, what barriers people faced when accessing the institution’s services and where things could be improved.

The 2006 – 2010 Scheme detailed over 90 actions which were to be addressed during the time period of the Scheme and these were split into various headings (e.g. Governance and Administration, Consultation and Communication, Staff Recruitment Selection and Progression). Under each heading the action which was required, the area responsible for leading on the action (e.g. Personnel, Chaplaincy, EDOs), the timescale for the action, evidence required that the action had been completed as well as an extra section for additional comments which was used mainly to note progress, were provided.

The update of the 2006 – 2010 Scheme demonstrated that some progress had been made between June 2006 and January 2008 in areas such as the development of staff training on equalities, the production of a timetable for assessing policies for equality impact (see below regarding this), the production of guidance leaflets and marketing materials to reflect the diverse student population as well as the production and analysis of data relating to students on areas such as academic misconduct, good degrees and retention. Activities such as the establishing of an Equality and Diversity week and the

⁹⁷⁵ See Chapter 2

⁹⁷⁶ EDO (January 2008) ‘Report: Equality Scheme and Action Plan Report on Progress’ Presented to EWG meeting 22nd January 2008 p1

organisation of Equality and Diversity lectures were also noted in the Scheme and demonstrated some progress in raising the profile of equality and diversity at the case study institution and in the wider community.⁹⁷⁷

However, what is also noticeable throughout the report were phrases such as, "little progress has been made" or "progress is very slow" or "progress is inconsistent and variable across the institution"⁹⁷⁸ were used. Even where there were some improvements, such as in the area of staff training, the comment on progress which was made stated that "take-up on the ...training has been low amongst senior managers."⁹⁷⁹ So the process of putting together a Scheme and Action Plan at the case study institution had taken place with the introduction of two EDOs and some areas were making progress during this time period according to the EDOs. However, the mid-term review made it clear that a lot more needed to be done in order to achieve the targets which had been set and approved by the Senate Committee. The area where the least progress appeared to have been made was in relation to human resource/personnel functions, where comments regarding the lack of available monitoring data and the absence of EIAs having been conducted were highlighted by the EDOs (see below regarding both of these).⁹⁸⁰

What appears to have been the case in relation to the Scheme and Action Plan is that the EDOs were responsible for writing the document, albeit in consultation with stakeholders at the case study institution, and the Scheme was approved by both the Senate Committee and the EWG. However, when it came to implementing the targets which had been set, many of the areas tasked with the responsibility of doing so appeared, in the EDOs view, to fail to deliver. Minutes of the EAC suggest that the reason for the failure to act in some areas related to the fact that Faculties and Departments did not recognise ownership of the document and attempted to disassociate themselves from the targets thereby no action followed. In an attempt to improve the levels of engagement "...[Faculty] and Departmental Equality and

⁹⁷⁷ EDO (January 2008) 'Report: Equality Scheme and Action Plan Report on Progress' Presented to EWG meeting 22nd January 2008

⁹⁷⁸ Ibid, pp11, 12, 13, 21, 25,

⁹⁷⁹ Ibid, p11

⁹⁸⁰ Ibid.

Diversity Groups had been established and this was increasing the levels of ownership of actions within the Plan.”⁹⁸¹

Although some progress can be seen within the case study institution through the development of the Scheme and Action Plan, the relative inaction which was highlighted in the EDO’s update on progress may not be surprising since “[h]ow documents are written also affects how they might be taken up. If the document becomes the responsibility of an individual within the organization, then that organization can authorise the document (can sign it) and refuse responsibility for the document at the same time.”⁹⁸² Evidence of this is visible at the case study institution as well as within sections of the institution, such as the various Faculties, as detailed above.

During August 2009 the EDO produced a detailed position paper to outline where the case study institution was in terms of equality and diversity as well as setting out the legal framework and arguing for “an evidence based equality scheme”⁹⁸³ based, in part, on data reports which had been produced in relation to students. The position paper invited comments from staff and other stakeholders across the institution to aid the production of the new Scheme. In addition, efforts were made to engage the Faculties and Departments in the production of the Scheme, “[t]he Equality and Diversity Advisor was requesting a representative from each [Faculty] and Department to join a group which would consider key issues and priorities in the summer and early autumn with a view to presenting a draft Scheme and Action Plan to the October 2009 meeting of the Committee.”⁹⁸⁴ However, by January 2010 “there had been limited formal responses to the consultation”⁹⁸⁵ and the draft Scheme and Action Plan were not presented to EAC until May 2010. Following the period of consultation there was an introduction of performance indicators within the Strategy in order to try and address some of the areas of inaction which had occurred under the previous Scheme. However, there was some

⁹⁸¹ EAC (24th March 2009) Chair’s Minutes of the Second Meeting p 3

⁹⁸² Ahmed, S (2007) op cit. p5

⁹⁸³ EDO (August 2009) ‘Position Paper: The Production of a New Equality Scheme (Equality and Diversity Action Plan) 2010 – 2015 at the [case study institution]’ p5

⁹⁸⁴ EAC (23rd June 2009) Acting Chair’s Minutes of the Third Meeting

⁹⁸⁵ EAC (26th January 2010) Chair’s Minutes of the Fifth Meeting p1

level of discomfort expressed about the inclusion of these by members of EAC and “[t]he Committee encouraged consultation on the equality performance indicators at [Faculty] level... It was confirmed that this would take place.”⁹⁸⁶ As will be noted later, there was also some dissatisfaction with the targets expressed at the Governors’ Committee who endorsed further consultation in relation to the “stringent” targets which had been set.⁹⁸⁷

However, the difficulties in putting together the new Scheme and Action Plan did not end there. Following further consultation the revised Scheme and Action Plan was presented at the EAC meeting held on the 14th October 2010 with a view to the Committee approving the document so it could be passed to the Senate and Governing Council Committees to finally approve. Following over a year of consultation and amendments, the Scheme was met with the following response at EAC, “The Chair reported that the University was currently reviewing its key performance indicators as part of a review of the University’s Strategic Plan. In light of this review, it was suggested that the agreement of the Equality Scheme and Strategy would be on hold until Governing Council had agreed the revised Strategic Plan in November 2010.”⁹⁸⁸ The final entry in the minutes relating to the Scheme and Action Plan occurred in February 2011. Here it was stated that, “[t]he Equality and Diversity Advisor advised the Committee that the Equality Scheme and Strategy was on hold.”⁹⁸⁹

It appears that a lot of time and effort was devoted to producing the Scheme and Action Plan as well as attempts to involve all areas of the institution via consultation and working groups. However, as mentioned previously, the targets which were set were considered to be too stretching and there did not appear to be the push from management which was needed in order to implement the new Scheme and therefore the production stalled. As Ahmed notes, “[m]any practitioners and academics have expressed concerns that writing documents or having good policies becomes a substitute for action: as

⁹⁸⁶ EAC (4th May 2010) Chair’s Minutes of the Sixth Meeting

⁹⁸⁷ HRGC (9th June 2010) Chairman’s Minutes of the Meeting pp2 - 3

⁹⁸⁸ EAC (14th October 2010) Chair’s Minutes of the Seventh Meeting p4

⁹⁸⁹ EAC (15th February 2011) Deputy Chair’s Minutes of the Eighth Meeting p3

one of my interviewees puts it, 'you end up doing the document rather than doing the doing', or as another puts it, 'too much time can be spent on actually writing policies and action plans and I suppose it can detract from just getting stuck in'. Because of the labour involved in writing documents, and because of the continual need for new documents as a result of new legislation, for some practitioners, 'doing the document' is all you can do."⁹⁹⁰

Following the extension of the consultation period to allow further consideration of the targets which had been set, the Scheme and Action Plan was dropped. The EDO and PVC asked to discuss the issue with the new Vice Chancellor, and they were told that the case study institution was now only interested in the bare minimum legal requirements and the draft Scheme and Action Plan was no longer required.⁹⁹¹ As a result, a statement of compliance, which was drafted and agreed by Governors at a meeting held on the 24th June 2011, was published on the case study institution's website. The Statement of Compliance reaffirmed the core values of the case study institution as "inclusion, diversity and equality for all" and "the University seeks to give full expression to these values."⁹⁹² It goes on to reiterate the requirements under the PSEDs and in order that the institution adheres to the specific duties it will:

- "Look at evidence, engage with people such as employees, service users and others and consider the effect of what the University is doing will have on the whole community;
- Undertake equality analyses of all policies, practices or other significant course of action;
- Draw on a range of guidance and support – particularly from the HE sector organisation, the Equality Challenge Unit. The University will also be mindful of the statutory guidance issues by the Equality and Human Rights Commission;
- Comply with the publication requirements by publishing data that is readily available in relation to our students and employees in respect of protected characteristics;

⁹⁹⁰ Ahmed, S (2007) op cit. at p11

⁹⁹¹ EDO

⁹⁹² Case Study Institution (June 2011) Equality Act 2010 Statement of Compliance p1

- Collect information in respect of all protected characteristics; and
- Adopt equality objectives and address issues in the context of the equality duties and protected characteristics.”⁹⁹³

Although these aims are laudable, the key indicator of success is in the equality outcomes. There is nothing within the Statement of Compliance regarding who is responsible for ensuring these things happen, or how they will be carried out or how they will be monitored.

Appended to the main Statement of Compliance is an Appendix 2 which details the “interface between equality and diversity issues and the Strategic Plan”⁹⁹⁴ of the case study institution. It highlights issues such as increasing disability disclosure rates for students, reducing the BME attainment gap and disproportionate academic misconduct referrals and “ensuring equality of opportunity in recruitment of all staff, promotion/progression, professional development, research and RAE etc.”⁹⁹⁵ However, once again it does not identify who is responsible for leading on these aims, how they will be carried out or how they would be monitored. In addition, as will be seen below and later in this chapter, many of the claims made regarding what the institution will do and its commitment to equality are not demonstrated in practice, for example the inadequate data in relation to staff which was published, the lack of action on BME attainment and academic misconduct and the lack of EIAs (and at times hostility towards them).

One example of the disparity between the Statement of Compliance and what the case study actually did, was the publication of their objectives which were required under the EA 2010. The case study stated that they would publish objectives in order to comply with the duties. In addition to consulting with and involving Stakeholders in the formation of objectives and using the data published as an evidence base from which to compile the objectives, the Equality and Human Rights Commission guidance also states that:
“[t]he objectives you set must be specific and measurable. Specific and measurable objectives are explicit about:

⁹⁹³ Case Study Institution (June 2011) Equality Act 2010 Statement of Compliance p2

⁹⁹⁴ Ibid, Appendix 2 p6

⁹⁹⁵ Ibid, Appendix 2 pp6 - 7

- the policy, function or practice they relate to
- the people that are affected
- the outcome they seek to achieve
- why they have been selected, and
- how success will be measured (e.g. by how much or by how many).

A recognised way to set effective objectives is to ensure that they are SMART (Specific, Measurable, Achievable, Realistic and Time-bound)."⁹⁹⁶ On 30th March 2012 the University and College Union (UCU) representatives wrote to Personnel and the Director of Operations "to request further information on how the [case study institution] intends to discharge the duty in s149⁹⁹⁷ of the Equality Act 2010."⁹⁹⁸ In relation to the setting of objectives, the Union wanted to know "how [the case study institution] intends to involve the staff trade unions in the setting of the objectives which are due to be published on 6th April."⁹⁹⁹ The response from the Director of Operations was received on the 12th April (6 days after the statutory deadline for the publication of equality objectives) and stated that, "The University has published draft equality objectives for consultation on the website to meet the requirements to publish equality objectives by 6 April 2012 and then every four years. The draft objectives will be discussed at the next meeting of the Inclusive Student Group. The draft objectives will also be discussed at the next TU liaison group meeting with a view to agreeing the objectives and action plan."¹⁰⁰⁰

A number of points can be made about this exchange of emails. Firstly, the *draft* objectives were published on the website before any consultation with the Unions had taken place. As there is a requirement within the EHRC

⁹⁹⁶ Equality and Human Rights Commission (December 2011) 'Objectives and the Equality Duty: A Guide for Public Authorities' (2nd Ed.) Equality and Human Rights Commission pp10 - 11

⁹⁹⁷ Equality Act 2010 s149(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

⁹⁹⁸ UCU (30th March 2012) Formal Email Communication with the Director of Operations and Personnel regarding 'Compliance with the s149 Duty in the Equality Act 2010'.

⁹⁹⁹ Ibid.

¹⁰⁰⁰ Personnel Business Partner (12th April 2012) Formal Email Communication with UCU Representatives regarding 'Compliance with the s149 Duty in the Equality Act 2010'

guidance to consult (and not just with the Unions, but other Stakeholders and community groups)¹⁰⁰¹ in order to construct the objectives, it is considered that this did not fulfil the requirements of the new PSED. Secondly, the deadline for publication was the deadline for the *final*, approved equality objectives, *not* draft objectives. Finally, there was no further discussion with the Union regarding the objectives or to approve them. At the time of writing (19/06/13), the information on the case study institution website still states that the objectives are draft objectives and that they are still being consulted on¹⁰⁰² and they have not been amended since the Union originally sent its letter in March 2012.

In terms of the content of the objectives, these too are problematic. The objectives which were set are as follows:

- "To reduce the gap between the achievement of white students and home BME students in relation to 'good degrees'
- The University is committed to increase the proportion of disclosed disabled students across all programmes
- To establish and build upon benchmark data on staff in relation to protected characteristics. This is in addition to the data already collected and published
- Raising the cultural awareness of all staff to enhance the student experience and support the internationalisation strategy
- To develop training for staff to ensure that the cultural needs of all students and staff are respected and understood
- Ensure all new staff successfully completed the University's on-line Equality and Diversity training as part of their probationary period
- Increase consultation and engagement with students from each of the protected characteristics to ensure that their views are reflected."¹⁰⁰³

Given that there was a requirement for the objectives to be SMART, the majority of the objectives set by the case study institution are not considered to be compliant with the guidance provided by the Equality and Human Rights

¹⁰⁰¹ Equality and Human Rights Commission (December 2011) op cit. p8

¹⁰⁰² Case Study Institution Website 'Equality and Diversity: Equality Objectives' (accessed 19/06/2013)

¹⁰⁰³ Ibid.

Commission. "Objectives 'to improve community relations' or 'to have a more diverse workforce' would not be specific."¹⁰⁰⁴ For example, the objective set to "reduce the gap between the achievement of white students and home BME students in relation to 'good degrees'" does not detail how this will be achieved, nor how this will be monitored or measured nor the time frame in which it is proposed that this will be done. Many of the other objectives appear to be quite vague and do not fulfil the SMART criteria, with the possible exception of the one relating to staff training for new staff, which although not detailing how it will be achieved, is measurable and time bound.¹⁰⁰⁵

In a response to the email dated the 12th April 2012, the Union highlighted that, "Having considered the draft objectives published by the university, we would not consider these to be SMART objectives and would therefore encourage a reconsideration of the objectives before discussion of these at the TU liaison meeting."¹⁰⁰⁶ An external report which audited public authorities' compliance with the new PSED also deemed the case study institution to be in breach of its statutory obligations. It was observed that, "Only **draft** objectives published and they are not SMART, nor do student objectives relate back to any evidence/ information published."¹⁰⁰⁷

It is therefore argued that despite the Statement of Compliance and the accompanying appendix theoretically linking equality matters to the Strategic Plan of the case study institution which affirmed the case study's commitment to equality, there is disparity between what is said and compliance to the duty which impacts on action which is taken and ergo equality outcomes. The Scheme and Action Plan which had been rejected, although not perfect, was comprehensive. In drafting the Scheme and Action Plan there had been involvement from the case study institution community and outside

¹⁰⁰⁴ Equality and Human Rights Commission (January 2013) 'Equality Act 2010: Technical Guidance on the Public Sector Equality Duty England' Equality and Human Rights Commission p82

¹⁰⁰⁵ Ensure all new staff successfully completed the University's on-line Equality and Diversity training as part of their probationary period

¹⁰⁰⁶ UCU (2nd May 2012) Formal Email Communication with the Director of Operations and Personnel regarding 'Compliance with the s149 Duty in the Equality Act 2010' Communication

¹⁰⁰⁷ Organisation A (23/05/2012) 'Equality Duties Audit: Public Authorities in [county] relating to the Publication of Information and Setting Equality Objectives' p7

organisations.¹⁰⁰⁸ It had detailed actions which should be taken, by whom, with a time frame and how actions would be measured. It was a more action orientated and outcome focussed document than that which replaced it. It could be said that Ahmed's argument that "...by putting diversity in writing, as a commitment, performance or description, such documents can be used as supportive devices, by exposing the gap between words, images and deeds"¹⁰⁰⁹ is in fact replicated at the case study institution. The statement of compliance was regarded as sufficient commitment by the case study institution, but this commitment was not reflected in the actions of the case study institution as will be demonstrated further.

Staff Data

Following on from the requirement to produce a Scheme and Action Plan, and later, the publication of equality objectives, there was a requirement under the specific duties to collect and monitor equality data. Up until the implementation of the single equality duty under the EA 2010 s149, details of what was required by universities with regards the publication of data under the Race Duty and Disability Duty were contained in Statutory Codes of Practice as issued by the CRE and the DRC.

Details of the requirements under the CRE's and DRC's Statutory Codes of Practice in relation to the data which should be collected and analysed can be found in Appendix 11. The guidance remained essentially the same until the passing of the EA 2010 when new guidance was issued by the EHRC. Once again, the wording of the guidance in terms of the requirements for complying with the PSEDs can be found in Appendix 12.

Since the introduction of the Race Equality Duty under the RR(A)A 2000, the requirement to collate and monitor equality data relating to staff (as well as students, in the case of HEIs) has remained and is fairly comprehensive, as can be seen from the Codes of Practice and guidance. The difference has occurred in the status of the guidance, which used to be in the form of

¹⁰⁰⁸ Thorough consultation has been regarded as a key component of demonstrating compliance with the PSED see *Barwick and anor v. Bridgend County Borough Council* [2009] EWHC 1723 Paras 107 and 108

¹⁰⁰⁹ Ahmed, S (2007) op cit. p19

statutory Codes of Practice which carried more weight¹⁰¹⁰ than the current non statutory guidance. It might therefore be suggested that the requirement to publish data and the type of data which public authorities are required to publish is more flexible than under the statutory codes. However, it is argued that the content of the codes and guidance have remained consistent over the years and therefore the same information is required to be published and monitored, in order to be compliant with the PSED under the EA 2010 s149 as it was in order to comply with the single duties.

In relation to the case study institution, prior to the introduction of the single PSED, reports relating to various aspects of the student life cycle were produced by the EDO which were placed on their website. Some of the reports were discussed at EAC and some issues were raised and discussed at Senate and Governor committee level.¹⁰¹¹ Examples of the areas which the reports covered are: good degrees, withdrawal rates, academic misconduct, enrolments, cause for concern, statistical data regarding students in halls of residence and retention rates.¹⁰¹² All the reports covered the protected characteristics of age, disability, gender and ethnicity and most were also disaggregated by Faculty. The reports covered the time frame between 2004 to 2011. It is therefore clear that there was some attempt to collect data relating to students and to provide some analysis as well as suggesting ways of addressing disproportionate adverse impact if the data demonstrated there was a potential issue.

The situation relating to staff data prior to the EA 2010 was somewhat different. In May 2007 a UCU representative highlighted the lack of available staff equality data or analysis at a meeting of the EWG.¹⁰¹³ The response to this query came from the EDO who stated that, "it was [their] belief that, at that time, the institution was likely to be in breach of its statutory obligations

¹⁰¹⁰ See Chapter 2

¹⁰¹¹ For example in relation to BME student achievement and academic misconduct. See below in 'Processes' section.

¹⁰¹² Case Study Institution Website

¹⁰¹³ See below in 'Processes' section for details of this committee

with regard to the collection, analysis and presentation of staff data.”¹⁰¹⁴ In the years following this comment, data relating to staff broken down by equality variables and covering the areas which were detailed in the statutory Codes of Practice were not forthcoming, despite various requests.

In the meeting of the EAC on the 24th March 2009 the minutes note that UCU had requested information regarding applications to the institution broken down by ethnicity. The minutes stated that “[t]he committee noted that the data presented did not indicate a prima facie case that there was an under-representation of BAME [sic] applicants to university posts. However, the committee felt it would be helpful to benchmark the University against similar institutions and a breakdown of applications by HERA grade.”¹⁰¹⁵ Some observations may be made about this entry. Firstly, the data may not have demonstrated an under-representation of applicants, the issue which was not discussed was how many of those were translated into appointments, this is something which will be discussed in more detail later. Secondly, the benchmark data and the data broken down by grade were not forthcoming in future meetings.

The next time the issue was raised was in the meeting held on the 26th January 2010 where “[a] representative from the University and College Union reported that there were on-going concerns about the staff recruitment by grade in respect of equality and diversity variables. ...It was agreed this would be fed back to [Personnel] in the absence of a representative at this meeting.”¹⁰¹⁶ Once again, in subsequent meetings, no data relating to staff was forthcoming. And, once again, there was no-one from Personnel present at the meeting.

The final meeting where the issue of staff data was raised was in the February 2011 meeting. Prior to the meeting the UCU representative emailed the Personnel Manager responsible for equality asking, “...whether it would be

¹⁰¹⁴ EWG (14th May 2008) Chairs Agreed Minutes – 16.1 Amendment to minutes of meeting held 8th May 2007.

¹⁰¹⁵ EAC (24th March 2009) Chair’s Minutes of the Second Meeting p4

¹⁰¹⁶ EAC (26th January 2010) Chair’s Minutes of the Fifth Meeting p5

possible to include the below issues on the next [EAC] agenda for Feb. and receive an update from HR on a number of on-going issues. In particular UCU would welcome an update and/or comments on the following issues:... A breakdown of staff data relating to race and gender specifically according to [Faculty] and grade. There have been some issues raised with me about concerns of the staff profile, particularly in some [Faculties] at higher grades. ..."¹⁰¹⁷ The response to the email was that [w]e think we can accommodate that if it's OK with the Chair."¹⁰¹⁸ In the February 2011 meeting the minutes in relation to this item recorded that, "the [Personnel] Manager advised that she had undertaken the analysis in this area. However, such analysis could lead to the identification of individuals and it was suggested that further work was undertaken to this analysis to anonymise it and present it to the next meeting of the Committee."¹⁰¹⁹ There were no further meetings of the EAC.

No equality data was ever presented or discussed at the EAC despite on-going attempts by the Union representative to draw out the most basic staff equality data from the Personnel Department at the case study institution. It appeared that either there were no Personnel representatives available at the meetings to be able to provide the answers to questions about the lack of staff data, or the issue was postponed and never reappeared on the agenda. The minutes demonstrate that group activism, in the form of the Union representatives, was being neutralised through the persistent failure to address the concerns of the Union, either by failing to attend meetings or by means of diverting the issue. The staff data which was presented at other Committees was also fairly basic and did not address many of the areas which were covered in the statutory Codes of Practice as detailed above.¹⁰²⁰

In order to meet the requirements of the EA 2010, public authorities had to publish equality data by the 31st January 2012¹⁰²¹ and the type of data which was expected with regards to staff was outlined in the EHRC guidance as

¹⁰¹⁷ UCU Rep. Email Communication with Personnel Manager dated 26th November 2010

¹⁰¹⁸ Personnel Manager Email Communication with UCU Rep. dated 29th November 2010

¹⁰¹⁹ EAC (15th February 2011) Deputy Chair's Minutes of the Eighth Meeting p3

¹⁰²⁰ Further discussion regarding the presentation of staff data at HRGC is provided in the section on 'Processes.'

¹⁰²¹ Equality and Human Rights Commission (December 2011) op cit. p19

provided in Appendix 12. In response, the case study institution published two sets of data, one entitled 'Student Statistics 2010/11'¹⁰²² and the other 'Human Resources Statistics 2009/10'.

In relation to the student statistics, the areas which were covered and related to the protected characteristics were: Enrolments by gender,¹⁰²³ age,¹⁰²⁴ ethnicity,¹⁰²⁵ disability¹⁰²⁶ and domicile.¹⁰²⁷ Applications by gender and age¹⁰²⁸ and accepted applications by domicile.¹⁰²⁹ The sections relating to achievement,¹⁰³⁰ retention¹⁰³¹ and progression¹⁰³² did not break down the statistics according to equality variables. The report presents the statistics relating to the various headings, but there is no analysis or commentary provided in terms of the possible consequences regarding equality. As can be seen, the areas covered in the statistical report do not consider all areas of the student experience as some of the areas where there is a greater likelihood of disproportionate impact, as demonstrated by the literature in Chapters 3 and 5, such as achievement, retention and progression, are not disaggregated by protected characteristics. The data was clearly available in previous years due to the EDO having presented reports which considered the equality implications in these areas.

With regards to the data concerning staff, the first thing to note is that the data was already out of date on publication. When the Union representatives queried the publication of the out of date data¹⁰³³ the response was that "[t]he [Human Resources and Governance Committee] of the Governing Council receives, at its summer term meeting each year, the Human Resources Statistics for the previous academic year. The data published on the

¹⁰²² Business Intelligence and Management Information Unit 'Student Statistics 2010/11'

¹⁰²³ Ibid, pp8 and 9

¹⁰²⁴ Ibid, pp10 and 11

¹⁰²⁵ Ibid, pp12 and 13

¹⁰²⁶ Ibid, pp14 and 15

¹⁰²⁷ Ibid, pp16 and 17

¹⁰²⁸ Ibid, p18

¹⁰²⁹ Ibid, p19

¹⁰³⁰ Ibid, pp20 and 21

¹⁰³¹ Ibid, pp22 and 23

¹⁰³² Ibid, p24

¹⁰³³ UCU (30th March 2012) Formal Email Communication with the Director of Operations and Personnel regarding 'Compliance with the s149 Duty in the Equality Act 2010'.

University's website was taken from this information which had been considered and ratified at the meeting on 21 June 2011. The Committee meeting to take place on 19 June 2012 will consider the HR Statistics for 2010/11. Once this information has been ratified by the Committee, the workforce statistics will be updated on the University website."¹⁰³⁴ As of writing (23/06/13) the equality statistics relating to staff have still not been updated.

In terms of the content of the published staff statistics the following areas are covered: turnover by age group, age profile, ethnicity profile, recruitment (number of BME candidates – total and per vacancy), successful candidate age profile, gender profile and disability profile.¹⁰³⁵ The statistics presented do not provide any commentary in terms of a detailed analysis of the equality data and only a summary of the main figures is provided. Once again, it can be noted that the areas which are covered by the published data do not cover the areas as provided in the EHRC guidance in Appendix 12. There are no statistics regarding the conversion of candidates into posts in relation to BME staff, although there is for age, but none of the other protected characteristics. The only information which can be gleaned from the data is the total number of BME applicants and the total number of BME and disabled staff. This does not impart any significant equality information regarding possible areas where there is disproportionate adverse impact, such as in the recruitment processes or throughout the life-cycle of staff at the case study institution, promotion, redundancy, reasons for leaving and so forth. It has been determined via case law that there must be sufficient information published to enable a Public Authority to undertake evidence based decision making in relation to its functions: "...in this case ...the defendants had not obtained the relevant information... and it needed that information in order to make evidence based decision making."¹⁰³⁶ It is difficult to see how the data published would be able to satisfy the requirements to demonstrate "due regard"¹⁰³⁷ under the general equality duty. There is some scope for a public authority to explain

¹⁰³⁴ Personnel Business Partner (12th April 2012) Formal Email Communication with UCU regarding 'Compliance with the s149 Duty in the Equality Act 2010'.

¹⁰³⁵ McMillan (HRM) 'Human Resources Statistics 2009/10'

¹⁰³⁶ *R (on the Application of Rotao Rahman) v Birmingham City Council* [2011] EWHC 944 at Para.35(3)

¹⁰³⁷ Equality Act 2010 s149

the reasons for a gap in the available data which, for example, fails to cover a particular function or where there is not data available for a particular protected characteristic. However, the EHRC guidance states that in these circumstances “[w]here a listed authority establishes that it has gaps in its evidence base and has plans to fill these, it may also be useful to publish information about what steps it is taking to aid transparency and avoid unnecessary challenge.”¹⁰³⁸

As can be seen, there was some publication of systematic equality data covering race, disability and gender (as well as age) in relation to students pre the passing of the EA 2010. This was produced by the EDO with some analysis and comment on the figures and was placed on the University’s web pages. There was also some, albeit much more limited and far less detailed, data which was published regarding students in order to comply with s149 of the EA 2010. This data also contained very little analysis of some of the key areas by equality variables, such as achievement. There was also no mention of data relating to other aspects of the student experience where there was a possibility of disproportionate adverse impact, such as academic misconduct.

In relation to staff data very little was presented or published based on the protected characteristics and as required by both the ‘old’ PSEDs and the ‘new’ PSED under the EA 2010 when compared with the statutory Codes and guidance issued by the equality Commissions. There were some requests for data from the Union representatives but this was usually in relation to a very specific aspect of staff data and most often referred to race as opposed to disability. There was no systematic publication of equality data which covered the employment life cycle for staff. The data which was published in order to comply with the EA 2010 was also very basic and did not cover the areas as suggested by the EHRC guidance. The statistics were also out of date and as of writing (23/06/13) these have not been updated on the case study institution’s website, despite the requirement to publish such data annually.¹⁰³⁹

¹⁰³⁸ Equality and Human Rights Commission (January 2013) op cit. p80

¹⁰³⁹ Equality and Human Rights Commission (December 2011) op cit. p7

It is concluded that on the whole there was no serious action taken to analyse the data which was available and no evidence to suggest that any action was taken to address substantive equality where there was data available.¹⁰⁴⁰

Equality Impact Assessments/Analysis

Another element of the Specific Equality Duties is the requirement for public authorities to impact assess all policies and procedures in order “to understand the impact (or potential impact) of your policies, practices or decisions on people with different protected characteristics. Assessing impact on equality should be an integral part of policy development and decision making.”¹⁰⁴¹ Although the Specific Duties no longer mention the need to conduct EIAs¹⁰⁴² the EHRC still regard this as an important aspect for public authorities to be able to demonstrate that they have had ‘due regard.’ “In order to have due regard to the aims of the general equality duty, you will need to understand the impact of your functions on equality. This includes your existing policies and any new policies under development.”¹⁰⁴³

Case law under the old PSEDs has also confirmed the need to conduct EIAs on policies and decisions where there is possible adverse impact on a protected group and the need for these assessments to be recorded in order to demonstrate that the requirements of the PSEDs had been fulfilled. “An important reason why the laws of discrimination have moved from derision to acceptance to respect over the last three decades has been the recognition of the importance not only of respecting rights but also of doing so visibly and clearly by recording the fact. These considerations lead me to conclude that if the relevance of the important duties imposed by the Act had been adequately drawn to the attention of the decision makers there would have been a written record of it.”¹⁰⁴⁴

¹⁰⁴⁰ See also discussions in relation to HRGC below

¹⁰⁴¹ Equality and Human Rights Commission (January 2013) *op cit.* p102

¹⁰⁴² See Chapter 2 regarding discussion relating to this

¹⁰⁴³ Equality and Human Rights Commission (January 2012) ‘Meeting the Equality Duty in Policy and Decision-Making - England (and Non-Devolved Public Authorities in Scotland and Wales)’ Equality and Human Rights Commission p8

¹⁰⁴⁴ Per Judge Mackie QC in *R (on the application of Chavda and others) v Harrow London Borough Council* [2007] EWHC 3064 (Admin) Para. 40

In addition to the importance of demonstrating a record of assessing the impact of decision and policies, the Courts have also stressed the need to conduct EIAs rigorously and in advance of a policy decision being made. "The process of assessments should be recorded.... Records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy maker to undertake the conscientious assessment of the future impact of his proposed policy.... But a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes. The impact assessment must be undertaken as a matter of substance and with rigor..."¹⁰⁴⁵ The EHRC considers that the case law under the 'old' PSEDs will still be significant when interpreting and applying the 'new' PSED.¹⁰⁴⁶

In relation to the case study institution, policies and procedures were initially screened for any equality impact before a decision as to whether a 'full' impact assessment was necessary. The conducting of equality screenings was a little haphazard. This was possibly due to one of two factors, either the quality of the screening was poor or there was some hostility to the conducting of the screening/impact assessment or the outcome of it. Only one full EIA was conducted at the case study institution and this was on the Admissions' Policy.

Periodically, reports were produced¹⁰⁴⁷ by the EDO providing a schedule for the screening of policies which detailed the policy/procedure to be screened, the lead Department or Faculty, the year in which the policy should be screened, the person leading on the screening, the date on which the screening was completed and whether a full EIA was regarded as necessary. In February 2008 there were over 102 policies and procedures which had been identified as requiring equality screenings across the case study institution.¹⁰⁴⁸

¹⁰⁴⁵ Per Lord Justice Moses in *R (on the application of Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062 (Admin) Para. 25

¹⁰⁴⁶ Equality and Human Rights Commission (January 2012) op cit. p16

¹⁰⁴⁷ February 2008, March 2009, June 2009, March 2010

¹⁰⁴⁸ Case Study Institution - Equality Scheme and Action Plan 2006 – 10 Appendix 3 – Screening for Equality Impact: Schedule (11/02/2008)

Of those, 51 had been scheduled to take place during the academic year 2006/7. Of those 51, nine had taken place. 21 policies had been identified as requiring equality screening during academic year 2007/8. Up to the date of the schedule update, which was February 2008, no screenings for that year had been conducted.¹⁰⁴⁹ By the next schedule update in March 2009 a mere two additional policies had been screened, one of which was the Equality and Diversity Policy which had been screened by the EDO.¹⁰⁵⁰ By the June 2009 update there had been a further 13 screenings undertaken across the case study institution, mostly by Personnel.¹⁰⁵¹ By the March 2010 update there was a further 3 screenings listed as completed. The March 2010 screenings update showed that there were 120 policies listed for equality screening and a total of 30 (covering a period from 2006/7 to 2009/10) had been completed.¹⁰⁵²

The slow progress of the screenings had been highlighted by the EDO at a number of meetings of the EAC. In the meeting held on the 9th December 2008 the Equality Impact Assessment Schedule was presented to the Committee. In response the Chair¹⁰⁵³ "asked members to review the schedule and advise the Equality and Diversity Officer...of the date of any assessments which were not listed, to inform the Equality and Diversity Officer of any additional policies, procedures or regulations which were not included in the paper and instances where the assessment was overdue to indicate during which academic year (from 2008/9 to 2010/11) the assessment was likely to take place."¹⁰⁵⁴ So there was an attempt by the Chair to galvanise Faculties and Departments into some action regarding the screening of their policies and procedures, given the low numbers which were being subjected to this process. However, there was some questioning regarding what was required to undergo a screening and there was a discussion surrounding the necessity of including Faculty Plans in the process. One Head of Faculty commented that, "it would be very difficult to complete a qualitative narrative in relation to

¹⁰⁴⁹Case Study Institution - Equality Scheme and Action Plan 2006 – 10 Appendix 3 – Screening for Equality Impact: Schedule (11/02/2008)

¹⁰⁵⁰Case Study Institution - Screening for Equality Impact: Report on Progress as of March 2009

¹⁰⁵¹Case Study Institution - Screening for Equality Impact: Report on Progress as of June 23rd 2009

¹⁰⁵²Case Study Institution - Screening for Equality Impact: Report on Progress as of March 2010

¹⁰⁵³Pro Vice Chancellor

¹⁰⁵⁴EAC (9th December 2008) Chairs Minutes of the First Meeting p4

equality and diversity matters.”¹⁰⁵⁵ So some resistance to the process of equality screening was being demonstrated by senior managers at the institution.

At the next meeting of EAC, the Equality Impact Assessment Schedule was mentioned once again and “[t]he Committee noted the gaps within the responses from [Faculties] and Departments and it was agreed that the Chair and Equality and Diversity Officer would progress this matter.”¹⁰⁵⁶ Although in the previous meeting it was the Committee members who were asked to perform the task of assisting in filling in the gaps within the schedule, the use of the passive voice in the minutes suggests that there was no longer a requirement for the Committee to take any action regarding this and that this would once again be the responsibility of the Chair and the EDO to follow up and action. It is therefore no surprise that when the Equality Impact Assessment Schedule next came up for discussion at EAC the “Equality and Diversity Advisor reported that there were gaps in some areas of the University with regard to completing screening.”¹⁰⁵⁷

Similarly, in the next meeting, “It was reported that the schedule of Equality Impact Assessments had not changed dramatically since the previous report given to the Committee. ...the Chair commented that there was a need for all [Faculties] and Departments to consider the use of Equality Impact Assessments within their work. [The Chair] expressed concern about the lack of progress in this area and advised [they] would write further to [Heads of Faculties] and Directors requesting further work in this area – and in particular a note of the academic year in which assessments would be undertaken.”¹⁰⁵⁸ It had therefore got to the point that the inaction in this area prompted the chair of EAC, who was also the Pro Vice Chancellor, to intervene. Although this can be seen as a positive intervention, as can be seen in relation to the Schedule update of March 2010 above, still very little action was taken in order to address the lack of equality screenings. During the course of the

¹⁰⁵⁵ Ibid.

¹⁰⁵⁶ EAC (24th March 2009) Chair’s Minutes of the Second Meeting p3

¹⁰⁵⁷ EAC (27th October 2009) Chair’s Minutes of the Fourth Meeting p2

¹⁰⁵⁸ EAC (26th January 2010) Chair’s Minutes of the Fifth Meeting p2

meeting there were some reservations expressed once again, "The Deputy Registrar commented that [they] found the completion of the screening document difficult, particularly in relation to new policies. There was further discussion about the appropriateness of screening new policies and it was agreed it should continue. ...It was agreed that the Secretary and the Equality and Diversity Advisor should discuss the matter further and propose a suggested amendment to the paper template."¹⁰⁵⁹ Once again there was some resistance demonstrated to the conducting of screenings for certain policies, in this instance new policies and the screening paperwork was creating problems for some. However, the issues with completing the paperwork had not been mentioned in any of the preceding meetings. Following this meeting the Equality Impact Assessment Schedule was not mentioned again at EAC.¹⁰⁶⁰

The lack of action with regards equality screenings was not the only issue which arose. The quality of some of the screenings which *were* done was also questionable. The EDO stated that "there was a tendency to look at the wording of the policy or procedure to see if there was an equality issue, but there was no consideration of the equality *impact* which the policy or procedure may have had."¹⁰⁶¹ One example of such an approach to the screenings can be demonstrated by looking at a screening which was conducted by Personnel.

The Policy, which was being screened, was the Individual Redundancy Policy and Procedure. In response to the question 'Is there any evidence of higher or lower participation or uptake by the following characteristics?' (a list of the protected characteristics is provided) the response was to put a cross in the 'not known' box for all the characteristics. The comment which accompanied this was "there is no evidence to suggest higher or lower take up, based on the above characteristics."¹⁰⁶² Similarly, crosses were placed in the 'No' box for all the protected characteristics in response to the question, 'Is there any

¹⁰⁵⁹ Ibid.

¹⁰⁶⁰ The Committee was disbanded in 2011

¹⁰⁶¹ EDO

¹⁰⁶² Personnel Manager (October 2009) Equality Impact Assessments Initial Screening Form – Group and Individual Redundancy Policy and Procedure p2

evidence that different groups have different needs, experiences, issues and priorities in relation to this policy?' The comment stated that "all staff regardless of difference will be affected by the experience of going through a redundancy process. In the current economic climate all staff will face difficulties in finding alternative employment."¹⁰⁶³ One final comment on the screening form suggested that "equality of opportunity was one of the main drivers for the new policy and procedure. All staff must feel that everyone has had the same opportunity, the right to be consulted and represented. All staff are entitled to have their views heard."¹⁰⁶⁴

The formal equality stance comes across very strongly here as the implication is that all staff are treated the same and the policy is applied equally to everyone and therefore there can be no equality impact. However, there is no consideration of some of the situations where disproportionate adverse impact could occur in a redundancy situation, for example the potential for racial and gender disproportionality depending on the posts selected for redundancy, or the possibility of having to amend the procedure to make reasonable adjustments for disabled staff so that they are able to attend meetings and are adequately consulted. Given the lack of data disaggregated by equality variables produced by the institution, as discussed previously, it is no wonder that they do not have any evidence of disproportionate impact. However, the equality screening of this policy does not even recommend that this sort of data should be collected in the future to aid the monitoring of the policy for equality impact.

The final aspect to be discussed in relation to EIAs, is the full impact assessment which was conducted on the case study institution's Admissions' Policy. This was the only example of a proactive, outcome focussed and in depth consideration of equality issues, in particular race, at the case study institution. An initial equality impact screening was conducted by the EDO and Admissions Assistant Registrar which concluded that, "In respect of Black/Africans there is evidence of a disproportionately lower offer rate as compared to other racial/ethnic groups during the 2003/4 admissions

¹⁰⁶³ Ibid, pp2-3

¹⁰⁶⁴ Ibid, p4

process.”¹⁰⁶⁵ Due to the conclusions of the initial screening it was decided that a full EIA should be conducted in order to establish whether there was any indication of institutional race discrimination in the admissions’ processes at the case study institution. However, before a full EIA could be conducted, the issue of how this would be resourced was raised as a potential barrier. When the suggestion of a full impact assessment was raised with the Pro Vice Chancellor, it met with the following response: “Generally too expensive if you are looking for resources additional to those from [the EDO’s Department]; I will need a very strong case to argue for resources additional to what may already be available – couched in terms of what the institution will get out of the full assessment rather than just compliance.”¹⁰⁶⁶ What is striking in this response is the suggestion that ensuring the case study institution was legally compliant was not seen as a reason for allocating additional resources to conduct the impact assessment.

The focus of the full EIA was on ‘selecting’ courses where there was the potential for an element of subjectivity to influence the outcome of the application process, such as through interviews. The courses most affected sat within two Faculties at the case study institution, Health Care and Education.¹⁰⁶⁷ The full EIA failed to reach a decisive conclusion in relation to why Black African students received a lower offer rate in these courses and it was stated that, “We certainly cannot conclude that admissions tutors act in a racially discriminatory fashion.”¹⁰⁶⁸

Despite the conclusions of the full impact assessment, it was met with a very defensive response. One of the Heads of Faculty was keen to highlight the pressures under which admissions tutors were working as they “drew attention to the fact that there was a need for admissions tutors to be cognisant of the contracts and with this, the financial pressures on recruiting sufficient student numbers to meet the commissioned places available on the programme, as

¹⁰⁶⁵ Case Study Institution (undated) Full Equality Impact Assessment of Admissions Policy at [the case study institution] Appendix 1 p50

¹⁰⁶⁶ Pro Vice Chancellor (24th September 2007) Email Communication with the EDO

¹⁰⁶⁷ Case Study Institution (undated) Full Equality Impact Assessment of Admissions Policy at [the case study institution] Appendix 1 p4

¹⁰⁶⁸ Ibid, Appendix 1 p48

well as meeting the professional body or other cap in place. There was no evidence that these requirements had discriminated against any students who were recruited via 'selection' process irrespective of ethnicity."¹⁰⁶⁹ The other Head of Faculty responded by saying that, "there should be proactive support for all candidates, not just candidates from BME backgrounds, to ensure they were submitting timely applications for courses, thereby improving the opportunities for success with applications."¹⁰⁷⁰ Once again, this view demonstrates the formal equality stance, ignoring the possibility that the disproportionality would not be addressed with such an approach and that potentially other methods of addressing the disproportionality may be needed, despite the finding that there was no evidence of overtly discriminatory behaviour.

Once again, the formal equality stance is also visible in the conducting of the screenings as well as the responses to the EIA which again suggests a failure to 'see' the potential for institutional discrimination. The area of EIAs at the case study institution indicates a level of inertia with regards to addressing equality issues and the PSEDs. There is some, albeit very slow, progress and the EDO appeared to try and move things along in relation to the schedule for conducting screenings but did not get the support required from management, even after the intervention of the Pro Vice Chancellor. The lack of priority and progress is of little surprise, particularly more recently, given that the message to Local Authorities which was sent out from the Government was that EIAs are "...resource intensive and take staff away from planning and delivering important public services. ...Local Councils should be able to use their judgement to pay due regard to equality without resorting to time consuming, bureaucratic, tick box exercises at the end of the decision making process. ...I hope this light-touch guidance will be helpful in reducing burdens on Local Government."¹⁰⁷¹

¹⁰⁶⁹ EAC (23rd June 2009) 'Acting Chair's Minutes of the Third Meeting p2

¹⁰⁷⁰ Ibid.

¹⁰⁷¹ Lewis, B. (MP) (21st December 2012) Department for Communities and Local Government - Letter to all Leaders and Chief Executives of Local Authorities – Reducing Statutory Burdens: Equality Impact Assessments.

Assessing Equality Processes – Continuity and Change

The aim of this section of the chapter is to consider the processes and structures which have been used at the case study to allow equality and diversity to be discussed, disseminated and dealt with throughout the case study institution as well as identifying where legislative compliance is considered. It is suggested that looking at the governance structures which are in place can help to determine the priority which is given to equality matters as well as considering where decisions are taken and by whom. Looking at the committee structures within the case study institution can provide a useful insight into the commitment which management has suggested exists.¹⁰⁷² For example, looking at who chairs the committees and who is meant to be in attendance and exploring whether equality is in fact discussed and actions taken. Similarly, considering the changes in the role of the EDO can also provide useful insights into the priorities and commitment of the case study institution to equality.

A consideration of the processes relating to equality are also necessary in order to put the above analysis regarding the legislative compliance into context. The way the processes are structured will clearly have an impact in terms of who is responsible for ensuring compliance with the law and whether action to address substantive equality is taken.

Historical Context

In order to analyse the development of the committee structures and the role of the EDO, it is necessary to provide a brief history of their development up to the starting point of this research as detailed above.¹⁰⁷³ Prior to September 2008 the equality and diversity provision and committee structures at the case study institution consisted of the following: two EDOs, one who dealt with issues in relation to students and the other with staff. In relation to the committee structure, there were two main committees which specifically considered equality and diversity. The Equality Committee (EC) was a joint Governing Council and Senate Committee which was chaired by the Vice

¹⁰⁷² See Chapter 5

¹⁰⁷³ For a more comprehensive analysis of the change which occurred up to this point, please see Pilkington, A (2011) op cit. pp115 - 118

Chancellor. In addition to the Senate and Governor representatives, the composition of the Committee was made up of senior management¹⁰⁷⁴ as well as trade union representation¹⁰⁷⁵ and the EDOs.¹⁰⁷⁶ The Terms of Reference stated that the Committee will “be responsible for advising Council and Senate on policy and practice relating to diversity and equality of opportunity for both students and staff... ensure that ... practices and procedures meet its [the case study institution’s] obligations under legislation... establish and receive reports from sub groups... submit an annual report to Council and Senate on progress towards achieving the milestones set out in its overall equality and diversity strategy and in particular the goals set in the Race Equality Action Plan.”¹⁰⁷⁷

The second committee, which dealt with equality, was a sub-committee of the EC. The EWG was chaired by the Pro-Vice Chancellor and consisted of senior managers,¹⁰⁷⁸ trade union representation,¹⁰⁷⁹ community representatives,¹⁰⁸⁰ staff representatives and the EDO. The role of the Committee was, among other things, to “monitor and drive the implementation of equality and diversity policies, strategies and action plans, ensure... issues and activities are integrated and mainstreamed into the life and work of the university, receive regular progress reports and updates on the implementation of... action plans and strategies, advise and propose new policy... to the [Equality Committee]...”¹⁰⁸¹

In addition to these two committees which were specifically focussed on equality and diversity, some equality issues, in particular those concerning staff, were also be discussed at the Human Resources and Governance Committee (HRGC), which was a committee of the Governing Council and was primarily focussed on discussing human resource matters.

¹⁰⁷⁴ Pro Vice Chancellor, Director of Educational Partnerships and Lifelong Learning, Personnel Director, Director of Student Services, Heads of the Faculties (or nominee).

¹⁰⁷⁵ Students’ Union, UNISON and NATFHE (later UCU)

¹⁰⁷⁶ Equality Committee (19th November 2003)– Composition, Membership and Terms of Reference

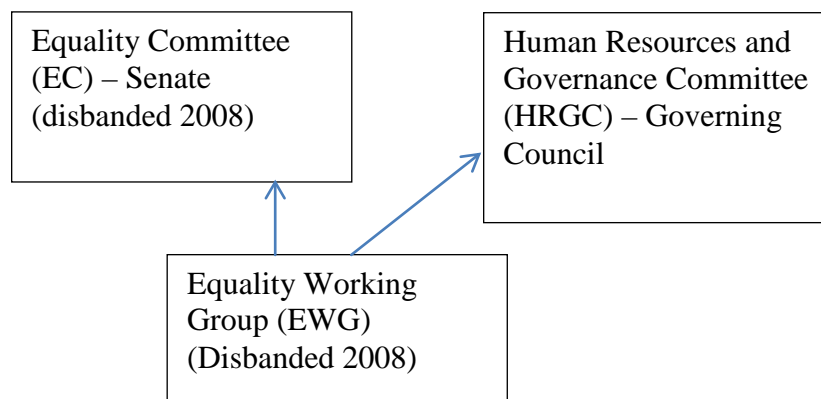
¹⁰⁷⁷ Ibid.

¹⁰⁷⁸ Heads of Faculties or nominated associates and Heads of Departments (or nominated representatives)

¹⁰⁷⁹ President of the Students Union, UCU and UNISON

¹⁰⁸⁰ Ability [case study institution town], Lesbian Gay and Bisexual Association, Racial Equality Council

¹⁰⁸¹ Equality Working Group (23rd June 2004) Composition, Membership and Terms of Reference



In June 2007 the academic Union at the case study institution (University and College Union - UCU) submitted a discussion paper to the Joint Consultative Negotiation Committee (JCNC), a committee attended by senior management (including the Vice Chancellor) and union representatives, which suggested that the equality provision at the case study institution should be given a higher profile, along the lines of health and safety.¹⁰⁸² The paper was proposed due to a concern regarding the dearth of EIAs undertaken on policies with a human resource function, as well as the lack of available equality data relating to staff and a confirmation by the EDO that in their view the case study institution was in breach of its statutory obligations.¹⁰⁸³

Among other things, the discussion paper suggested that consideration should be given to “the creation of a separate independent Equalities and Diversity Office, adequately staffed and resourced... [and] the establishment of a university wide Equalities and Diversities Committee as drawn from the example of the Occupational Health, Safety... Committee...”¹⁰⁸⁴ The response to the discussion paper was that the Vice Chancellor proposed a review into the provision of equality and diversity, as well as the committee structures, at the case study institution with the objective of the review being to consider “the effectiveness of the current arrangements for equality and diversity in the university” with a focus primarily on the “management and governance arrangements...”¹⁰⁸⁵ An external consultant¹⁰⁸⁶ was brought in to conduct the review and the process focussed on interviewing “the key players involved in

¹⁰⁸² UCU (12th June 2007) ‘Equalities and Diversities at [the case study institution]: A Discussion Document’

¹⁰⁸³ EWG (14th May 2008) Chairs Agreed Minutes – 16.1 Amendment to minutes of meeting held 8th May 2007.

¹⁰⁸⁴ UCU (12th June 2007) ‘Equalities and Diversities at [the case study institution]: A Discussion Document’

¹⁰⁸⁵ Vice Chancellor (undated) ‘Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation’ pp1 - 2

¹⁰⁸⁶ A recently retired Pro Vice Chancellor

support for E&D"¹⁰⁸⁷ as well as a review of the constitutions, agendas and minutes of the EC and EWG, and visits to two other institutions to compare "provision and effectiveness."¹⁰⁸⁸ Following the publication of the report, further comments were invited from those who were previously interviewed as part of the review process. Following this consultation on the report the recommendations were published.

The recommendations which followed the review can be said to have backfired on the Union and they did not meet the original intentions of UCU and in fact the equality provision was scaled down, rather than more resources being committed to it. 'Mainstreaming' and 'embedding' were used as reasons to justify the reduction from two EDO to just one,¹⁰⁸⁹ "in light of significant development in the law relating to employment, consideration should be given to embedding responsibility and accountability for staff related matters into the [Personnel] department..."¹⁰⁹⁰ Similarly the equality committees were, it is argued, downgraded. This was justified using similar reasons regarding the embedding of equality and diversity, "There was broad agreement that equality and diversity is to be embedded across the institution, it needs to become an integral part of the existing processes of Governance for both Governing Council and Senate."¹⁰⁹¹ The EC, the joint Senate and Governing Council Committee chaired by the Vice Chancellor, was abolished and HRGC would take up the responsibility of the work which was being done by the EC.¹⁰⁹² In addition the EWG (a sub-committee of the EC) was also dissolved and a new committee was established (the Equality Action Committee (EAC)) which would report only to Senate (the Academic Strategy Committee (ASC)) and was chaired (at least at the beginning) by the Pro Vice Chancellor.

¹⁰⁸⁷Case Study Institution (December 2007) 'Report on the Arrangements to Support the Equality and Diversity Agenda at the University...' p2

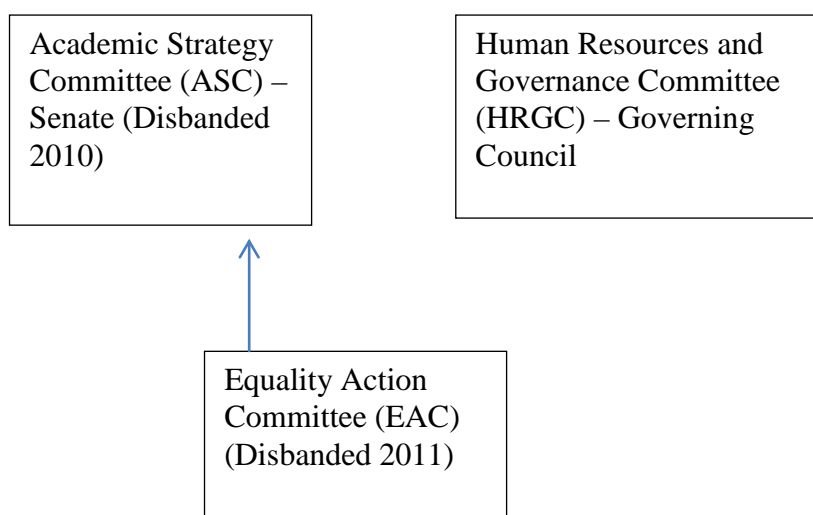
¹⁰⁸⁸ Ibid.

¹⁰⁸⁹ When the EDO for staff resigned, the post was not replaced.

¹⁰⁹⁰ Vice Chancellor (undated) 'Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation' p3

¹⁰⁹¹ Ibid, p4

¹⁰⁹² Ibid.



Therefore there was no specific equality committee which involved either the Governors (who are ultimately legally responsible for compliance at the case study institution) or the Vice Chancellor, who no longer chaired any of the committees devoted to equality. The concern regarding who chaired the committee was raised by the Union Representative during the consultation stages to decide on the composition of EAC. In an email to the Pro-Vice Chancellor it was highlighted that, "...the VC's chairmanship of EAC would give the committee the high profile it deserves and give [them] the opportunity to hear directly from the students and staff representatives about equality and diversity..."¹⁰⁹³ However, this was not agreed. Although equality issues involving staff would be passed to the HRGC, this would be one agenda item among many which this committee had to deal with.¹⁰⁹⁴

There were a number of other criticisms¹⁰⁹⁵ which were levied at the review process and the report and recommendations which followed. The first criticism was that the Terms of Reference for the review were diluted and therefore "...the report missed an opportunity to address the core issue raised in the UCU paper, namely what measures were needed to imbed equality and diversity..."¹⁰⁹⁶ One EDO made the point succinctly in their response to the report, "Unfortunately I think that the problems with this report emanate from

¹⁰⁹³ Email correspondence between the UCU representative and the Pro-Vice Chancellor dated 24th September 2008

¹⁰⁹⁴ The way in which equality issues were dealt with at this committee will be considered further later.

¹⁰⁹⁵ Particularly from UCU, Equality and Diversity Officers and other academics and staff at the case study institution.

¹⁰⁹⁶ UCU (undated) Commentary on the Report Regarding Equality and Diversity Arrangements and Agenda at the University..." p1

an (unintended) dilution of the terms of reference to focus essentially on 'management, organisation and governance' arrangements for specialist E&D activity... Once the focus shifted to the specialist E&D work and the E&D Officers and the work of the specialist E&D committees/structures, it would almost inevitably result in any 'problems' or 'solutions' being focussed on these arrangements. This has led to the rest of the institution being 'let off the hook' when it comes to progressing E&D.... The messengers and committed champions around equality have been unfairly identified as the 'problem' and hence any proposed changes...have focussed unfairly on these areas. This became the dominant discourse within the report."¹⁰⁹⁷ It might be suggested that the tendency to view the EDOs as the 'problem' should not come as a surprise considering the findings within the previous chapter that senior management do not 'see' that there is a problem with equality within higher education generally, or the case study institution particularly. Therefore, when concerns relating to substantive equality (represented here by a lack of staff equality data and EIA) are brought to their attention "[d]iversity practitioners not only come up against the wall, as that which does not move, they are often themselves encountered as the wall, as obstructing the movement of others."¹⁰⁹⁸ Therefore the barriers to achieving substantive equality within the case study institution were not considered by the report and the concerns which had prompted UCU to submit the discussion paper in the first place were not addressed and as one of the EDO stated, "restructuring committees still does not respond to the fact that the University is in breach (in the employment context) [of its statutory obligations] and to date does not appear to be undertaking any remedial action to address this."¹⁰⁹⁹

Given the importance of the interviews in informing the report and the consequent recommendations, the composition of the interviewees was important to note. As Pilkington highlights "[t]he opportunity to hear the views of policy recipients of equality and diversity was missed and no attempt

¹⁰⁹⁷ EDO (24th January 2008) 'Comments of the "Report on the Arrangements to Support the Equality and Diversity agenda at the University..." p3

¹⁰⁹⁸ Ahmed, S (2012) op cit. p186

¹⁰⁹⁹ EDO (21st April 2008) contained in email dialogue with a Union Representative

was made to weight the sample to ensure that the views of minority groups, such as minority ethnic staff and students, were taken into account.”¹¹⁰⁰ In addition, there appeared to be more emphasis placed on the views of the managers who had been interviewed¹¹⁰¹ which was also picked up by the response to the report by UCU, who stated that, “...it appears that the views of some individuals were valued more than those of others perhaps because of their roles in the University’s managerial structure.”¹¹⁰² Once again, the emphasis on the voice of senior managers throughout the review process meant that the recommendations should not have come as a surprise given that the view of these senior managers was that inequality is no longer a problem within higher education, or the case study institution and in fact “...significant progress has been made on the policy front and towards implementation of an action plan... and the university has responded appropriately to the national policy and legislative agenda”¹¹⁰³ despite the concerns which had been raised by UCU Representatives and the EDO.

The review of equality provision at the case study institution was not what the Union had hoped for. The focus on process and governance meant that many of the issues, which were concerning both the Union and EDO which related to the lack of outcomes, were not addressed, and the EDO themselves appeared to be ‘blamed’ as “[m]anagers reported feeling ‘policed’ and being in receipt of less support that they feel they would like.”¹¹⁰⁴ The report on the outcomes of the consultation and recommendations re-emphasised the (flawed?) reasoning that to have a separate equality unit would run counter to the possibility of mainstreaming. Therefore mainstreaming equality was used as a justification for reducing resources for equality work at the case study institution,¹¹⁰⁵ “...all respondents agree that equality and diversity is an issue for which all members of the university must take responsibility and therefore the further

¹¹⁰⁰ Pilkington, A (2011) op cit. p115

¹¹⁰¹ See Ibid. for examples

¹¹⁰² ‘UCU (undated) Commentary on the Report Regarding Equality and Diversity Arrangements and Agenda at the University...’ p3

¹¹⁰³ Case Study Institution (December 2007) ‘Report on the Arrangements to Support the Equality and Diversity Agenda at the University...’ p1

¹¹⁰⁴ Ibid, p3

¹¹⁰⁵ Pilkington, A (2011) op cit. p118

development and resourcing of a special unit for Equality and Diversity would probably run counter to this approach.”¹¹⁰⁶

As mentioned previously, following this review the case study institution had one EDO and one committee, the EAC chaired by the Pro-Vice Chancellor, which was dedicated to discussing equality. Student issues were reported to the Senate Committee ASC. Staff issues were discussed at the Governing Council Committee the HRGC. This arrangement continued until October 2010. Following the appointment of a new Vice Chancellor at the case study institution there was a restructuring of the senior management team. The Pro-Vice Chancellors were made redundant and the Heads of Faculties were elevated to Executive Heads of Faculties. Heads of Faculties were therefore responsible for the overall management of their Faculties as well as “... the strategic management and direction of the University...”¹¹⁰⁷ From October 2010 EAC was chaired by one of the Executive Heads of Faculty, a move which once again arguably added further distance between equality and diversity and the main governance structures of the institution.

Academic Strategy Committee and the Human Resources and Governance Committee

Given the importance of ASC and HRGC in terms of the governance structures within the institution and the fact that they were tasked with discussing and having an overview of equality for students and staff respectively, and ultimately being the sole committees where equality was meant to be discussed, it is important to spend some time analysing the minutes of these committees over the time frame as covered by this chapter.

ASC

ASC was a Senate committee which consisted of all the senior managers within the institution¹¹⁰⁸ which had a general overview of student issues,

¹¹⁰⁶ Vice Chancellor (undated) ‘Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation’ p5

¹¹⁰⁷ University Executive Team - Case Study Institution website (accessed 24/05/13)

¹¹⁰⁸ Academic Strategy Committee (April 2009) Membership - Pro-Vice Chancellor (Chair), Registrar and Clerk to the governing Council (Deputy Chair), Vice President Students Union, Director of the International Office, Head of Framework and Student Regulations, Deputy Director Information Services, Director

including those relating to equality. Following the review into equality provision and the abolition of EC, EAC reported to this committee until the ASC was disbanded in 2010 following the review into committee structures. The final meeting of the ASC was held on 24th February 2010.

During the time period January 2008 to February 2010 a number of equality issues did crop up at ASC. Out of a total of 13 meetings, equality was mentioned in 8. Most notably discussions were had regarding BME and overseas students in relation to academic misconduct (four meetings – 30/1/2008, 22/4/2008, 14/1/2009 and 25/2/2009) as well as BME student attainment (two meetings – 22/4/2008 and 11/6/2008). There was a short reference made to an amendment of the admissions procedure for disabled students (one meeting – 21/4/2009) as well as a mention made to a paper submitted regarding Transgendered staff and students (one meeting – 27/5/2009) and one short discussion in relation to the review of equality and diversity provision and the new committee structure which was proposed (one meeting – 1/10/2008). What is interesting is how some of these were dealt with by the committee, focussing on the areas relevant to this thesis, race and disability.

Academic Misconduct

Academic misconduct was discussed in four meetings over the 2 year period. The first time it was mentioned was in January 2008 in the context of an annual report being presented to the committee by the Assistant Registrar on appeals, complaints, disciplinary cases and academic misconduct. The committee had identified different categories of students, namely “black [sic] and Asian students, overseas students (especially those on postgraduate programmes) and students in the ... Business [Faculty]”¹¹⁰⁹ where there were disproportionately higher numbers of students referred. Interestingly the minutes use the phrase “*apparently* disproportionately high numbers”¹¹¹⁰ which seems to indicate an element of scepticism in terms of the information

¹¹⁰⁹ ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3

¹¹¹⁰ Emphasis added. ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3

which was being presented. Given that there were three areas of concern identified in the report in terms of disproportionate numbers referred for academic misconduct, the discussion only focussed on two of those areas: overseas students (in particular postgraduate students) and the Business [Faculty].

It is worth noting here that the term 'overseas' students could be used in a number of ways within this discussion. It could be that 'overseas' is used to mean BME students, but from a particular country e.g. China. It is possible that 'overseas' is being used as a proxy for BME students generally, or it could be that 'overseas' is being used to distinguish between international students and home students, with BME home students not intended to be included in the discussions when referring to 'overseas' students. Given that the report distinguishes between Black and Asian students and overseas students, it is suggested that 'overseas' is being used to denote international students and does not include BME home students.

It might be suggested that the 'reason' for the disproportionality is more easily identified in relation to overseas students and is put down to a lack of educational cultural awareness regarding referencing as well as language difficulties. Arguably, plagiarism can be detected more easily amongst overseas students where the use of English changes where sections have been copied within written work, and so this can be more easily picked up and reported, explaining, in part, the disproportionately higher numbers. Within the minutes, the 'problem' was clearly placed with the overseas students, as the only concrete suggestion for dealing with it was made by the Director of the International Office, and that was to address it was via "induction for new students."¹¹¹¹ The primary solution, therefore, was to address academic misconduct within an induction to alter student behaviour and inform them of the consequences before they had the opportunity to plagiarise. This approach appeared to assume that because they were overseas students they were likely to plagiarise. It would be interesting to know if the same induction was also used for non-overseas students.

¹¹¹¹ ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3

The very vague suggestion of considering “teaching and learning strategies” was also made, but no further discussions regarding what this would consist of ensued. Some action was being taken in relation to the postgraduate overseas students, as the Director of the Postgraduate Provision had set up a working group which “was preparing a paper addressing the issues specific to [postgraduate students].”¹¹¹² However, ASC absolved itself of any responsibility in considering this paper as “[i]t was agreed that this would be presented to the Learning and Teaching Committee in the first instance and forwarded to ASC if necessary.”¹¹¹³ Black and Asian home students did not get a mention in the discussions, despite an apparent distinction having been made between this group of students and overseas students in the report presented by the Assistant Registrar.

The other area identified in the report as having a disproportionately high number of academic misconduct referrals was the Business Faculty. It is not a coincidence that this is also the Faculty with by far the highest numbers of full time BME and overseas students, with 65.3% of the Faculty consisting of BME students.¹¹¹⁴ The nearest Faculty in terms of BME students to follow the Business Faculty was the Science Faculty with 38.3%.¹¹¹⁵ The figure for full time EU and overseas students for the Business Faculty stood at 43.9%, with the nearest Faculty in terms of overseas and EU students being the Health Care Faculty with 12.3%.¹¹¹⁶ Race was not, however, specifically mentioned in the discussions regarding referrals in the Business Faculty. The issue was described in the minutes in the following way: “It was agreed that *if* there was a problem it could be in the rigour applied to identifying misconduct, not necessarily in the treatment of cases once identified, and that there needed to be equal applicability across Faculties. It was noted that the sector average of 10% might be indicative of under-application in some [Faculties].”¹¹¹⁷

¹¹¹² Ibid.

¹¹¹³ ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3

¹¹¹⁴ Home and overseas students are not distinguished in this data

¹¹¹⁵ Case Study Institution ‘Student Statistics 2010/11’ (via case study institution website- accessed 04/06/13) p12

¹¹¹⁶ Ibid, p16

¹¹¹⁷ Emphasis added. ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3 - 4

The minutes indicate that there was agreement by the whole committee, although it is unclear about exactly *who* agreed that the problem could be put down to the rigour with which academic misconduct referrals were pursued in the Business Faculty. Certainly there do not appear to be any dissenting voices within the committee and this can be said of the discussions as a whole. The use of the word 'if' within the minutes again seems to suggest some scepticism regarding the acceptance of 'the problem.' The problem (if it indeed exists) is then explained away in positive terms, that of the rigour of the staff within the Business Faculty at addressing academic misconduct. The question which springs to mind here is *why* are the Business Faculty more rigorous at identifying and reporting academic misconduct? Particularly, as highlighted, it is the Faculty with the greatest proportion of BME and overseas students. Interestingly, there appears to be an indication in the minutes that there was some consideration that there could have been another reason for the disproportionate reporting when it was stated that the problem was "...not necessarily in the treatment of cases once identified..."¹¹¹⁸ This seems to suggest that the possibility of some students not being treated equitably when it came to referrals for academic misconduct as a reason for the disproportionate numbers appears to have been briefly entertained, but then dismissed. One reason which does not appear to have been acknowledged is the possibility of institutional discrimination which is arguably the problem here. The solution to the 'problem' was not to look at *why* the Business Faculty were more likely to refer students, particularly as they had the highest numbers of BME students, but rather "that there needed to be equal applicability across Faculties. It was noted that the sector average of 10% might be indicative of under-application in some [Faculties]." ¹¹¹⁹

Two things can be said about this, firstly that the formal equality stance is visible here. Rather than looking at the disproportionality, the focus is on all Faculties acting in the same way, even though this is unlikely to deal with the disproportionate numbers of BME and overseas students being referred because more are located in the Business Faculty. Secondly, the disproportionate reporting suddenly becomes a positive aspect, and something

¹¹¹⁸ ASC (30th January 2008) Chairs Minutes of the Eighth Meeting p3

¹¹¹⁹ Ibid, p3 - 4

which all the Faculties should aspire to, given the National figure is used as a bench mark.

There was a brief follow-up in the matters arising at the next ASC meeting (22/4/2008) regarding the paper prepared by the Director of Postgraduate Studies for the Learning and Teaching Committee, which confirmed that it was progressing, but no further mention was made of this paper at subsequent meetings. Another paper was also presented at this meeting with some additional data relating to academic misconduct. The minutes did not state who the author of this paper was. However, it appeared to make a number of suggestions about how the issue of the disproportionate numbers of BME students referred for academic misconduct could be tackled. The response of the committee to these suggestions was to treat them with some caution. The minutes stated that "It was agreed that many of the recommendations required further unpacking in terms of the detail of potential implementation and could have significant resource implications, for example in the area of staff development."¹¹²⁰ It is interesting that where the proposed actions relate to the case study institution having to take action, rather than the focus of the solution being on the students (for example the issue of student induction raised in the previous meeting), the concern regarding resources is highlighted.

One of the recommendations in particular was met with some hostility "It was agreed that it was not practicable and not necessarily desirable to introduce anonymous marking of text based course work across the board..."¹¹²¹ This response is interesting as it relates to an area which was raised by BME students, both in the literature, and in the interviews at the case study institution, as a way of addressing the perception of unfairness and discrimination within marking processes. It may not be a surprise that a suggestion which attempts to address an aspect of institutional discrimination is dismissed out of hand. Why would anonymous marking, which also casts aspersions on the academic integrity of lecturers, be necessary if students were being marked on merit and referred for academic misconduct on the

¹¹²⁰ ASC (22nd April 2008) Chair's Minutes of the Ninth Meeting p4

¹¹²¹ Ibid.

basis of their work (or lack of *their* work!)? All students are treated equally in this respect, so a solution to address institutional forms of discrimination is not deemed as necessary or “desirable.”

The minutes conclude the discussion by stating that, “It was agreed that the proposed recommendations to address academic misconduct required further consideration ... It was suggested that a more action based proposal could be presented to a future meeting after further consultation had taken place on the proposals.”¹¹²² The fact that the recommendations which had been made required even *further* consideration, despite the issue having been discussed over a year earlier and in the previous meeting, does not fill one with confidence that any action would be taken. It also seems odd that a ‘more action based proposal’ was suggested, despite there having been some actions suggested in the paper considered by the committee, but these were not embraced. In fact, the topic of academic misconduct and BME and overseas students was not discussed again by this committee until almost exactly a year later, when the Assistant Registrar once again presented the annual report on complaints, academic appeals and academic misconduct.

The minutes of the meeting on the 14th January 2009 noted that “...the pattern of academic misconduct was essentially the same as 2006-7, with a noticeable over-representation of Black, Asian and Chinese students and overseas students at [Postgraduate level].”¹¹²³ Given that on the whole the over-representation was explained away at the previous meeting, where this was discussed, and there was no consideration of the potential institutional discrimination (because a formal equality stance was adopted and no apparent actions taken to reduce the disproportionality), the conclusions of the following years report were unsurprising.

There was not as much discussion surrounding these issues reported in the minutes of this meeting as compared to the previous year. However, the disproportionality in the Business Faculty was once again highlighted and it was suggested that the data regarding the Business Faculty was “misleading

¹¹²² Ibid, p4 - 5

¹¹²³ ASC (14th January 2009) Confirmed Minutes of the Thirteenth Meeting p4

since in [the Business Faculty] 90% of postgraduate students were from these categories, which would therefore inevitably account for the higher proportion."¹¹²⁴

So once again, there was an attempt to explain away and dismiss the higher rate of disproportionality within the Business Faculty. In addition, only postgraduate overseas students were mentioned, and again this formed only one category of those identified as being over represented when it came to the reporting of academic misconduct. However it was acknowledged in the minutes that "...it was agreed that the situation merited further investigation."¹¹²⁵ It was decided that a 'statement of progress' would be provided by the Head of Framework in relation to the group which the former Director of Postgraduate Provision had set up in response to the problems highlighted in the meeting the year before. The group's remit was "to consider issues affecting students at level 7."¹¹²⁶ Once again, the focus was on a very specific group of students, as it had been the year before, postgraduate overseas students. There were no discussions surrounding Asian, Black or Chinese students at undergraduate level.

The issue of academic misconduct was discussed for the final time in a meeting of the 25th February 2009 in the context of the matters arising from the previous meeting. The focus of the discussion was solely on 'international students.' The minutes recorded the discussion as follows, "It was agreed that, in common across the sector, there were a combination of factors contributing to the higher rates of plagiarism among international students. The appropriate approach was through effective use of teaching, learning and assessment strategies and detection. The current good practice in the ... Business Faculty was noted. It was agreed that a further developed plan should be presented to a future meeting."¹¹²⁷

¹¹²⁴ Ibid.

¹¹²⁵ Ibid.

¹¹²⁶ Ibid.

¹¹²⁷ ASC (25th February 2009) Chair's Minutes of the Fourteenth Meeting p1

A number of comments may be made about this section in the minutes. Firstly, there is an attempt to locate the 'problem' of plagiarism among international students as something which is not unusual to the case study institution by noting the comparison with the rest of the sector, this had been done in a similar way before. Although it may be the case that this is not an issue peculiar to the case study institution, it gives the impression that they are not able to do anything about it, justifying inaction and the fact that nothing has changed with regards to the disproportionality. This does not take into account, as has been previously indicated in this thesis, that institutional discrimination can be seen across the HE sector and may therefore play a part in the higher proportion of overseas (and BME?) students being referred for plagiarism. Such an approach results in institutional inaction in addressing possible institutional discrimination.

Secondly, once again the minutes suggest a discourse of 'victim' blaming, where the problem is located with a group of students and the way to combat it is by focussing on the learning and teaching strategies to reduce the possibility of international students having the opportunity to plagiarise as well as through detection. In fact, not only was the rigorous detection of plagiarism, as conducted by the Business Faculty, viewed as a good thing (as highlighted in previous meetings) here it was actively advocated as an example of good practice. So over time the disproportionate numbers of BME students being referred to, for academic misconduct in this Faculty, moved from being raised as a potential 'problem' by the 2008 and 2009 reports by the Assistant Registrar, to being explained away using comparative statistics and then praised and held up as a model for other Faculties to aspire to.

Finally, it should be noted that in a similar pattern to the previous year, no further development plan was discussed within this committee as was suggested should be the case within the minutes. Once again there was a failure to discuss the broader issue of the disproportionate numbers of BME students being referred for academic misconduct as a whole, the majority of which would have been undergraduate students, given that these make up a greater proportion of the student cohort, and a large proportion of these would have been BME home, not overseas students. At no point did the committee raise the possibility of including someone with some expert knowledge of

equality, such as the EDO (who was still in post at this time), in these discussions. The 'problem' of BME students and academic misconduct was resolved by the committee focussing attention on overseas students as well as explaining the disproportionality away as a 'good' thing by suggesting that it was due to the rigorous pursuit of one Faculty to report instances of academic misconduct. A set of prejudiced assumptions regarding academic misconduct and who was thought to be more likely to plagiarise were taken for granted in these discussions, and so they were reinforced and solidified. The dominant perception was accepted and there were no dissenting voices within the committee.

BME Student Achievement

The other issue which received some attention at the ASC over two successive meetings was that of BME student achievement. In January 2008 the Higher Education Academy and Equality Challenge Unit published their final report on Ethnicity Gender and Degree Attainment.¹¹²⁸ For the meeting on the 22nd April 2008 the EDO had asked to be invited to ASC to provide an update of the report and to discuss how the findings could be applied to the case study institution. The minutes start by demonstrating that the case study institution was ahead of other institutions when it came to the disproportionate numbers of BME students achieving 'good degrees'. "The university's own data are sound and provided a historical perspective which put it ahead of the sector in terms of the information to hand."¹¹²⁹ Once again, comparing the situation with the rest of the HE sector and pointing out that it was 'better' than the rest, ensured that if no action was taken and no progress was made at the case study institution regarding BME achievement, it could still be stated that they were not doing too badly, considering.

The overall feeling of the minutes regarding this topic area appear to be quite self-congratulatory, with terms such as "put it ahead of the sector", "placed it ahead of the sector" and "the university was well placed to take the

¹¹²⁸ ECU and HEA (2008) 'Ethnicity, Gender and Degree Attainment Project – Final Report' http://www.heacademy.ac.uk/assets/documents/research/Ethnicity_Gender_Degree_Attainment_report_Jan08.pdf (accessed 05/06/13)

¹¹²⁹ ASC (22nd April 2008) Chair's Minutes of the Ninth Meeting p3

recommendations of the report forward” being used throughout. This is despite the fact that this issue was not discussed again in detail at this committee and the case study institution’s own report still highlighted some significant disproportionality, “Over a four year period (2004 – 7) ethnic minority students are **consistently** gaining fewer good degrees than White students across the university. For students of Asian origin the adverse difference is between 16% at its lowest and 24% at its highest. ...Black students are on average doing only slightly better, with an adverse percentage difference ranging from 11% at its lowest to 22% at its highest.”¹¹³⁰

There were, however, some indications about how the recommendations of the ECU/HEA report could be taken forward at the case study institution and some of the work which was being undertaken was highlighted in the minutes, “Student services had been reflecting upon improving support for students who, for various reasons, might not take advantage of the services available. In relation to student feedback the institution would need to explore how to gain a more nuanced feedback according to student background. In terms of policy and practice the university already had an equality and diversity scheme, planning ahead to 2010, on which there were annual updates and this again placed it ahead of the sector. The subject area of Law was undertaking research into the impact of different types of assessment on students according to ethnicity, gender and disability which would usefully inform the university’s learning and teaching strategies.” Again, although this could be said to be a positive step, as actions were seemingly being taken to look at what could be done to improve BME attainment, these were individual attempts to look at the issue, rather than an institutional and co-ordinated response. It is also worth noting that the Scheme and Action Plan mentioned in the minutes were later dropped in favour of a ‘statement of compliance’ which did not outline areas where actions were required, nor providing a timetable for these actions or who would be responsible for their implementation.¹¹³¹

¹¹³⁰ EDO (19/08/2008) ASC – Paper 17/08 ‘HEA/ECU Ethnicity Gender and Degree Attainment Project: Final Report (January 2007) – Evidence from our own data at the University...’ p5

¹¹³¹ See above regarding the discussion relating to the Scheme and Action Plan and compliance with the Equality Act 2010.

It was acknowledged in the minutes that what was needed was “a more co-ordinated approach” and it was agreed that “a paper should be presented to the next meeting on how to take the recommendations forward. ...It was suggested that the paper should include consideration of matters to do with appropriateness of assessment strategies for different groups, value added and focus on data at institutional level....”¹¹³² Once again, this sounded positive in terms of proposed actions to be taken and included an emphasis on an institutional response to addressing BME attainment.

However, when it came to the paper being presented at the next committee meeting (held on the 11th June 2008) it followed the review into equality provision and the reorganisation of the committees responsible for equality and diversity. Despite ASC still having an oversight of equality in relation to students at the case study institution post the equality review, the paper was referred to another committee. “...An equality and diversity committee, reporting directly to the [Human Resources and Governance Committee] of Council would replace the [Equality Working Group]. It was agreed that it would be more appropriate for the new committee to pursue the implications of the report in more depth.”¹¹³³ Although EAC was established to consider equality and diversity matters, it was in fact an inferior committee to the ASC which suggests an abrogation of responsibility of the issues by a committee which was made up of the most senior members of management. It is interesting to note that the HRGC (whose primary remit was in fact in relation to staff matters) did not in fact discuss or endorse any recommendations for action to address BME attainment. Nothing was passed from EAC to HRGC for approval according to the minutes.

Overall, although there were a number of occasions during the two year period where ASC considered equality issues, in particular in relation to race and academic misconduct and achievement, many of the initial concerns were either explained away or referred to other committees with no further mention of them or updates provided. Disability was mentioned once in the context of a short minute relating to the amendment of the admissions procedure for

¹¹³² ASC (22nd April 2008) Chair’s Minutes of the Ninth Meeting p3

¹¹³³ ASC (11th June 2008) Chair’s Minutes of the Tenth Meeting p1

disabled students. The committee was unsure of where the minor amendments had occurred and “agreed that a paper clarifying the changes should be circulated for members for comment and the final approval would be through Chair’s action.”¹¹³⁴ There were no discussions surrounding substantive disability issues at the committee.

HRGC:

The HRGC was a committee of the Governing Council and consisted of governors and senior management,¹¹³⁵ including the Vice Chancellor. The primary responsibility of this committee was to ensure the institution was complying with its legislative responsibilities as well as having an oversight of human resource functions, and, after the review into equality provision and the disbanding of the EC, their remit included equality, “[t]o approve and review policy and ensure appropriate arrangements for the implementation and embedding of:

- Occupational Health Safety and Welfare
- Employment of Staff
- Equality and Diversity matters (in relation to staff).¹¹³⁶

This committee was the only one which remained consistent and in place during the entire period as covered in this chapter.

There were 12 meetings held between November 2008 and June 2012. Equality was mentioned in 7 meetings. The first meeting, held on the 6th November 2008, merely endorsed the new structures relating to equality and diversity which were discussed previously. The other areas which came up at the committee were: staff data (raised at three meetings held on 10th March 2009, 17th March 2010 and 8th March 2011), the Scheme and Action Plan (three meetings held on the 18th June 2008, 9th June 2010 and 21st June 2011) and Transgendered staff (one meeting on the 18th June 2009). Some of these

¹¹³⁴ ASC (21st April 2009) Chair’s Minutes of the Fifteenth Meeting p5

¹¹³⁵ Ex Officio: Chairman of the Governing Council, Deputy Chairman of the Governing Council, Vice Chancellor. Governors: Five Independent or Co-opted Governors (other than members of staff of the University...) One Governor who is employed by the University. In Attendance: Pro Vice Chancellors (x3), Clerk, Personnel Director, Deputy Clerk (Secretary). (Constitution of the Governing Council – Section 10 (November 2010) [Human Resources and Governance Committee]: Composition and Membership 10.2 p3)

¹¹³⁶ Constitution of the Governing Council – Section 10 (November 2010) [Human Resources and Governance Committee]: Terms of Reference 10.4 p3

issues were already discussed in the section relating to legislative compliance, but it is still worth making some comments regarding the areas which were raised and discussed in this committee in the context of the processes.

Staff Data:

The statutory requirements regarding the collation of staff data in relation to race and disability were explained in the compliance section of this chapter. Data relating to staff was mentioned in three meetings and this appeared to occur once yearly as part of a report presented by the Personnel Director. In the meeting held on the 29th March 2009 the following was stated in the minutes regarding race and disability, “[t]he committee noted the increasing age profile at the university and an increase percentage of staff from non-White ethnic groups. There had been a record number of applications for vacancies at the University and an increase in applications from Black, Asian and Minority Ethnic (BAME) groups.”¹¹³⁷

Firstly, the committee were only required to ‘note’ this information and the data appears to have been presented without much discussion or questioning of it. It is stated that there is an increase in the percentage figure of BME staff at the institution, but no statistics are provided regarding what this figure was, or what the starting percentage was. An increase of 1% from 0% is still only 1% of the entire workforce, even if there has been an increase! This is also true of the data regarding applications. The data regarding the number of applications is potentially interesting, but what would be even more significant is how many of these applications were actually converted into positions as compared to White applicants. There was no data regarding any other element of the employment cycle, such as the number of promotions, where BME staff sit on the pay scales, the number of grievances and disciplinaries as required by the Codes of Practice.¹¹³⁸ All of this data was required to be presented and published under the requirements of the Race Duty and later the combined PSEDs.

¹¹³⁷ HRGC (10th March 2009) Deputy Chairman’s Minutes of the Meeting p3

¹¹³⁸ See previously regarding the Codes of practice and guidance

With regards to disability, there was no data presented at this meeting. In order to be able to show that a Public Authority is meeting the requirements of the PSEDs and can assess the impact of their policies and procedures in order to take action to achieve substantive equality, the bare minimum which needs to be demonstrated is that data is collected and analysed in terms of whether there is disproportionate impact on any of the groups as protected by law.¹¹³⁹ Given that the Governors are ultimately responsible for the legal compliance of the institution, the information presented here as well as any accompanying analysis and questioning appears to be woefully inadequate.

In the meeting held the following year where staff data was discussed, the following was recorded in the minutes, "Ethnic Profile: The percentage of staff employed from Black, Asian and Minority Ethnic (BAME) backgrounds rose to 7.2% in September 2009. It was reported that the university was working to improve its reporting in this area for those members of staff for whom an ethnic group was unknown.... Recruitment Candidates and Ethnicity: The Committee noted the average number of candidates per vacancy and the percentage of BAME candidates per vacancy. The decrease in percentage of BAME candidates in 2008/9 would be investigated. ...Disability Profile: The increase in the percentage of staff who declared a disability to 2.5% was noted. It was reported this percentage was close to the higher education sector average. At the conclusion of the discussion, the Chairman thanked the [Personnel Director] for [their] report."¹¹⁴⁰

Once again, the level of detail required by the PSEDs is not reflected in the information which is provided to the Governors at this meeting. A number of points are worthy of mention here. Firstly, although there was an increase in the overall BME staff percentage, this did not reflect the percentage for the local population, or the higher education sector average (see below). Secondly, it is also interesting that rather than looking at the number of applicants as compared to the number of conversions to posts and discussing whether there was a problem there, the focus on action was on a small

¹¹³⁹ Commission for Racial Equality (2002) op cit. p44 – 45; Disability Rights Commission (2005) op cit. p82 – 83; Equality and Human Rights Commission (December 2011) op. cit. p19

¹¹⁴⁰ HRGC (17th March 2010) Chairman's Minutes of the Meeting p3 - 4

minority of all staff (5%)¹¹⁴¹ who did not record their ethnicity in order to increase the number of recorded BME staff. Thirdly, once again the committee 'noted' (but did not question or discuss) the decrease in BME candidates and that this would be "investigated." The minutes do not record how this would be investigated, what the purpose of the investigation was, how the results of any investigation would be followed up or who was tasked with conducting the investigation. Finally, in relation to disability, once again the overall figures of those who declared a disability were noted without discussion, and there was a comparison with the sector average, giving the impression here that the case study institution was doing quite well in comparison. No other statistics with regards to disability were discussed and there were no action points arising from the equality data presented. Despite the obvious shortcomings of this report on equality data and very little, if any, evidence of action being taken, the Personnel Director was thanked for the report and this had been specifically noted in the minutes.

The final set of minutes where staff equality data was mentioned stated that, "Ethnicity Profile: The Committee noted the University's percentage of Black and Minority Ethnic (BME) members of staff was 6.5% compared to a sector average of 9.3%. It was noted that this sector average included urban areas with large concentrations of BME people. ... Recruitment Candidate Ethnicity: The Committee noted the increase in percentage of BME candidates applying to vacancies at the university. ... The Committee noted the proportion of Disabled staff at the university (2.8%) compared with the higher education sector average (2.9%) as at 31st August 2010."¹¹⁴²

Once again, the data presented was very basic with no analysis of them and they are merely 'noted' by the committee. There was some comparison to the sector average when it came to BME staff and those who had disclosed a disability. Again there was no comment or analysis of this and the comparison of the lower percentage of BME staff with the sector average was explained away, despite the fact that the case study institution was situated in an area

¹¹⁴¹ Case Study Institution (31/01/12) 'Human Resource Statistics 2009/10' (via case study institution website accessed 04/06/13) p8

¹¹⁴² HRGC (8th March 2011) Deputy Chairman's Minutes of the Meeting p3 - 4

with a higher BME population than that reflected at the case study institution (see below). It appears that when there is a comparison with the sector average which is unfavourable, a reason is found to explain why the case study institution is underperforming. Yet, when there is a comparison made which holds them in a relatively good light (such as declared disability) the comparison with the sector average is accepted.

These three, relatively short, extracts from the HRGC minutes reflect the extent of the discussions on race and disability relating to staff at the case study institution. As can be seen, the extent of the information presented to the committee as well as any discussion surrounding the statistics is extremely limited, and there are no discussions surrounding some of the major concerns which have been highlighted, both in the literature relating to BME, and disabled staff and the interviews in Chapter 5.

In terms of the data which is presented, there was a focus primarily on the number of BME applications the case study institution had received, but there were no statistics or discussions regarding how many of those who applied were subsequently appointed. In addition, there was very little comparative data and, although some comparison was made with the sector average (both in terms of race and disability), in relation to race, the lower average of BME staff is soon explained away due to the location of the institution and the fact that the national average includes institutions in urban areas with higher percentages of BME people in the local populations. However, what was not discussed is that the town in which the case study institution is located still had a higher proportion of BME people than the institutional average. In fact the local BME population is 8.6%.¹¹⁴³ In addition, although it would not necessarily be realistic to have a staff population which fits exactly that of the student BME population, the institution's figures suggest that it is no-where near close to reflecting the BME student population given that this stands at 35%.¹¹⁴⁴

¹¹⁴³ ONS (2011) '2011 Census: Ethnic Group, Local Authorities in England and Wales' Table KS201EW www.ons.gov.uk/ons/rel/census/2011-census/.../rft-table-ks201ew.xls (accessed 07/06/13)

¹¹⁴⁴ Case Study Institution 'Student Statistics 2010/11' (via case study institution website- accessed 04/06/13)
p12

With regards to disability, other than the percentage of disabled staff which is given in two of the meetings, no other data is given or alluded to in the reports from the Personnel Director. Given that the HRGC is the most senior committee responsible for having an oversight of staffing and equality, as well as being ultimately legally responsible, the scarcity of information which is presented as well as the seeming lack of analysis of it is plain. The duty to collect and analyse such data was introduced for race in 2001 and despite the disability duty having been introduced later, the deficiency of such data for both protected characteristics is concerning. It also appears that after the meeting held in March 2011 equality data was not discussed at all at any subsequent HRGC. This is despite there being the new legal requirement to publish such data under the new PSED. It may not be a coincidence that during the period after this meeting, the EDO was made redundant and the Equality Action Committee was disbanded (see below).

Scheme and Action Plan

As highlighted in the section relating to compliance above, the Scheme and Action Plan were a requirement under the PSEDs to demonstrate how a public authority was working towards complying with the general duty and later the PSED required the publication of equality data and objectives. The Governors within a HEI are ultimately responsible for ensuring that the institution complies with the legislative requirements. Therefore there might be an expectation that the Governors' committee would take an interest in the content of the Scheme and Action Plan and the equality objectives which were set under the EA 2010.

The Scheme and Action Plan were mentioned during the course of two meetings (18th June 2009 and 9th June 2010) in the given time period and a statement of compliance with the EA 2010 was raised in one meeting (21st June 2011). In the first meeting the Scheme and Action Plan were on the agenda but the "paper was deferred to the next meeting." However, there was no mention of it in the next meeting (dated 28th October 2009) and the issue did not come up again until the meeting held on the 9th June 2010. The fact that the paper relating to the Scheme and Action Plan was deferred to the next meeting but was in reality never discussed, could be an indication of the

priority which was given to it. No reason for the lack of consideration given to the paper was provided.

In the meeting in June 2010 the following was minuted in relation to the Scheme and Action Plan, "The Pro-Vice Chancellor presented the draft Equality Scheme and Strategy (paper E). It was reported that the draft scheme and Strategy was being presented to Governors alongside a similar consultation with the Student Experience Committee (of Senate). The new Scheme and Strategy, which would along with the next Strategic Plan, would include references to the Equalities [sic] Act 2010, duties from which would become legal requirements in the autumn 2010 and in light of this, an extended period of consultation was proposed. The draft targets which had been included within the Strategy and Scheme were considered to be stretching and would be reviewed in consultation with Faculties and Departments. Comments were invited from Governors. A Governor ... endorsed the proposed revisions to the stretching targets contained within the draft Strategy and Scheme. He supported the proposal to extend the consultation on the draft Strategy and Scheme to allow further discussion on the targets set."¹¹⁴⁵

This section of the minutes demonstrates that the development of the Scheme and Action Plan was being considered alongside the production of the case study institution wide Strategic Plan and this was therefore a positive step as it formed part of the mainstream planning processes. It also reveals that there was a consultation process involving both the Governors and the Senate Committee (SEC). The extension of the consultation period could therefore be viewed in two ways, it could be an attempt to include as many people within the consultation process as possible, or it could be a means of challenging the more demanding targets which had been set within the Scheme and Action Plan.

It does appear that management were not entirely happy with the targets which had been set as the Pro-Vice Chancellor stated that they "would be reviewed in consultation with [Faculties] and Departments." One of the

¹¹⁴⁵ HRGC (9th June 2010) Chairman's Minutes of the Meeting p2 - 3

Governors (although the minutes do not state who) also “endorsed the proposed revisions¹¹⁴⁶ to the stretching targets.” Considering that there appears to be evidence that there was little movement in relation to equality both in relation to staff and student issues, it is probably not a surprise that managers and Governors were unhappy about targets which would challenge the perception that the case study institution was doing well when it came to equality, as was the view expressed by senior management in the interviews.

There were no other discussions at this committee regarding the Scheme and Action Plan. In the meantime, the EA 2010 had been passed and the specific equality duties were amended. It was in response to this amendment that the case study institution decided not to go ahead with the Scheme and Action Plan, but instead to issue a ‘statement of compliance’ as detailed previously. The minutes of the 21st June 2011 recorded the approval of the statement of compliance by the HRGC. Following this meeting, no other equality issues were discussed at the HRGC for the remainder of the period as covered in this chapter (final meeting held on 19th June 2012).

It appears that the Scheme and Action plan, which had been extensively consulted on, was not viewed as a useful method of demonstrating commitment to equality or for planning or setting targets around the achievement of equality at the case study institution. There was also no discussion at this level regarding the data which had to be published to comply with the new statutory equality duties, nor was there any discussion surrounding the objectives which were required to be set. This is surprising considering that the data was presented on the case study institution’s website in the name of the Chairman of the Governing Council and the Deputy Chairman on behalf of the Governors.¹¹⁴⁷ Even though there was not much discussion regarding race (or even disability) at ASC, there was at least some student data which was presented and had been analysed and was debated in more detail at this committee. There was even less discussion about equality at HRGC. The fact that equality was also so sparsely mentioned within the

¹¹⁴⁶ Which made them less stretching

¹¹⁴⁷ Case Study Institution (31/01/12) ‘Human Resource Statistics 2009/10’ (via case study institution website accessed 04/06/13) p14

minutes of the HRGC with very little discussion or scrutiny, demonstrates that there was very little oversight at the case study institution from the governance structures.

The Demise of the Equality Action Committee

ASC was abolished in 2010 following a review of committee structures and replaced by a new Senate Committee, the Student Experience Committee, to which EAC reported until EAC was also effectively dissolved in October 2011. Although EAC was not formally dissolved until February 2013, the committee did not meet between October 2011 to February 2013, in part because of the absence of the Chair due to sickness. An email was sent to members of the EAC stating that, "As outlined in the All Staff communication earlier today, the [Executive Head of Faculty] will define the strategic direction for equality and diversity. In [their] absence, the meeting of the Committee which was due to take place next week has been cancelled."¹¹⁴⁸ This in itself was telling, as most committees have a Deputy Chair who stands in if the Chair is unavailable. Once again, it may be a reflection of the priority that this committee was given that there were no meetings at all during the period of the Chair's absence. Had equality been regarded as a serious issue which required continued discussion, particularly during a time where there was new legislation and a new PSED and statutory deadlines which the case study institution would have to adhere to, and with no EDO¹¹⁴⁹ to lead on this, other arrangements regarding a Chair would have been made. In total there were six Executive Heads of Faculties and so there would have been the possibility of one of the remaining five to take on the role of Chair at least during the Chair's period of absence.

It is suggested that in relation to the governance and committee structures relating to equality and diversity, there was a slow but purposeful erosion of the role and function as well as a downgrading of equality and diversity within the processes at the case study institution. This started with the abolition of committees with membership consisting of governors and chaired by Vice

¹¹⁴⁸ Clerk to the Committee – email communication sent 18th October 2011

¹¹⁴⁹ The EDO was made redundant in the restructuring of Professional services – this will be discussed further later

Chancellor, to one committee chaired by the Pro-Vice Chancellor, then Chaired by an Executive Head of Faculty, to no specific equality and diversity committees within the governance structure.

The first that the committee members knew of the dissolution of EAC was in an email from the clerk to the committee cancelling scheduled meetings. "As you might be aware, a review was undertaken last year looking at the University Committees. I have previously advised members of [EAC] that the meeting dates which were planned to take place this year should be retained pending the return to work of the Chair. The Chair has confirmed that these meetings dates... can now be released from your diaries."¹¹⁵⁰ When asked about cancellation of the meetings the clerk explained that "[The Chair] is taking forward ED matters with the Executive Heads of Faculty and Directors responsible for student and staff matters. ...The UET [University Executive Team] discussion of Committees which took place last year recommended that it was disbanded."¹¹⁵¹ The disbanding of this committee was also significant as when there was a further restructuring within the case study institution (discussed below) the EDO post was also made redundant. Part of the solution (regarding how equality would be managed at the case study institution without an EDO) which was stated clearly in the consultation documents relating to the restructure, was via the EAC. It is also surprising that the EAC was abolished given that only 6 months earlier one of the Governors had commended the work of the Committee at HRGC, "The Deputy Chairman commended the work of the committee as demonstrated in the minutes."¹¹⁵²

Student Experience Committee

In place of the EAC and ASC, the Senate Student Experience Committee (SEC) was tasked with the responsibility of discussing equality, but only in relation to students. Staff issues would continue to be discussed (or not?) at HRGC.

¹¹⁵⁰ Clerk to the Committee – email communication sent 13th February 2012

¹¹⁵¹ Ibid.

¹¹⁵² HRGC (8th March 2011) Deputy Chairman's Minutes of the Meeting p1

<p>Student Experience Committee (SEC) - Senate</p>	<p>Human Resources and Governance Committee (HRGC) – Governing Council</p>
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Once again, equality was to be discussed within a committee which did not exclusively have equality and diversity as its agenda and so the fear was that equality would be lost among a host of other issues which this committee was tasked to consider. The revised Terms of Reference for the SEC lists 12 areas of responsibility, such as “[t]o enhance the student experience and learning opportunities for all students... to promote effective practice in learning, teaching and assessment... to review the outcomes of the National Student Survey and other feedback from students ... to develop, monitor and review policy in relation to the admission of students...”¹¹⁵³ and the list goes on. Finally, point number 12 states “[t]o ensure the University is compliant in relation to its legal responsibilities in relation to students, including embedding of current Equality and Diversity policies.”¹¹⁵⁴

There are a number of observations which may be made here. Firstly, the positioning of the SEC’s responsibility for equality appears to come as a bit of an afterthought, right at the end of the Terms of Reference which gives an indication of the priority afforded to it. Secondly, the wording of the Terms of Reference is very telling as the emphasis is on legal compliance and embedding ‘current’ equality and diversity policies. There is no mention of monitoring, establishing or promoting good practice within the case study institution, or the development of new policies in relation to equality and diversity as may be required. The terms of reference for the EAC on the other hand required a “review of the appropriateness of the University’s Equality and Diversity policies...” as well as “to determine procedures, codes of practice and guidance in respect of equality and diversity issues”¹¹⁵⁵ among other things. It is also worth noting that amongst the original¹¹⁵⁶ and the amended

¹¹⁵³ Student Experience Committee (2nd November 2011) Terms of Reference 2011 – 12

¹¹⁵⁴ Ibid.

¹¹⁵⁵ Equality Action Committee (undated) Terms of Reference

¹¹⁵⁶ Student Experience Committee (undated) Terms of Reference. Composition - Registrar (Chair), Pro-Vice Chancellor (ex-officio), Director of Learning and Teaching, Director of the International Office, Director of Information Services, Head of Student Services, Head of Framework, Deputy Registrar, One

composition¹¹⁵⁷ (once the SEC had taken on the responsibilities of EAC) there was no-one with a specific knowledge of equality and diversity or equality law. The EDO, whilst in post, would ask to be invited onto the SEC if there was an issue which the EDO believed should be reported to this committee, but the EDO was not an official member. After the EDO post was made redundant, there was no 'expert' in the field of equality on the committee. However, the 2012 – 13 membership list appears to have been amended so that the Team Leader for the Disability Support Department at the case study institution was represented.¹¹⁵⁸

Given that SEC were tasked with considering equality relating to students after the disbanding of EAC, it is interesting to note the number of times that equality was discussed at this committee. During the period of this research, equality was mentioned three times in the minutes. In the meeting of the 29th April 2010 the EDO gave an update regarding the revised admissions process for students with disabilities. On the 17th June 2010, the EDO gave an update to the committee regarding the progression of the Scheme and Action Plan and opened it up for consultation and feedback. Equality issues were not mentioned again until 19th January 2012 where the Team Leader for the Disability Support Department asked whether the online National Student Survey was accessible.

Representative from each Faculty– to include at least three Field Chairs and one Associate Head of Faculty, Director of Information and Planning Unit, Vice president of the Student Union, Four Student Representatives – Undergraduate, Postgraduate, International and Part Time.

¹¹⁵⁷ Student Experience Committee (2nd November 2011) Terms of Reference 2011 – 12. Composition - Executive Head of Faculty (Chair), Executive Head of Faculty (Deputy Chair), Director of Student and Academic services, Director of Marketing, Head of Library and Learning Services, Head of Student Services, Head of Student Policy and Academic Advice, Head of Student Administration, Head of Quality and Academic Partnership, Sabbatical Officer Students Union, Membership Services Manager Students Union, Chair of Student Experience Committees, Director of HE (Partner College), Executive Officer, Office of the Vice Chancellor.

¹¹⁵⁸ Student Experience Committee (undated) Membership 2012 – 13 – Executive Head of Faculty (Chair), Executive Head of Faculty (Deputy Chair), Director of Student and Academic Services, Head of Student Administration, Professor of Learning and Teaching in HE, Deputy Head of Faculty (one from each Faculty), Representative from Faculties (2 representatives), Head of Student Policy and Academic Advice, Head of Quality and Academic Partnerships, Head of Library and Learning Services, President/Vice President Student Union, Representative from Partner Institution, Director UCEE, Director/Deputy Student services, Head of Learning technology, Director Advancement and International Relations, Representative OVC, Team Leader Disability Support, Officer.

It might be said that up until the SEC meeting held on the 20th October 2011, EAC was still in existence and therefore it could be argued that there was no need for equality concerns to be specifically brought to this committee. However it is still striking that in the period after October 2011, equality was only mentioned once, in the context of disability. No substantive equality issues were discussed by this committee post the dissolution of EAC. It may be the case that SEC discussed equality more frequently post the time frame for this research, but indications during the time period covered by this thesis appear to demonstrate that equality was not given a high priority (or any priority) during this time, other than when discussion was instigated by the EDO. Therefore fears that equality would be lost within the long list of other agenda items and there would be no-one to 'champion' equality appear to have been well founded.

The Demise of the Equality and Diversity Officer

Following the appointment of a new Vice Chancellor at the case study institution, there was a reorganisation of both the management structures, committee structures and later the non-academic Departments at the case study institution. Prior to the reorganisation the EDO was positioned within a Department which also contained Widening Participation, Aim Higher, Careers and Employability, Educational Partnerships as well as Learning and Teaching. In June 2011 a consultation paper was circulated which outlined the proposals for a restructure and invited responses to the proposals. The rationale for the restructure was set within the context of a changing higher education sector, such as the introduction of student fees, changes in immigration policy as well as the economic downturn and higher running expenditure. This meant that "we need to manage our staff costs."¹¹⁵⁹ In addition, "[a] key driver for this proposal to restructure Professional Services is the need to provide the opportunity to reinvest in the University's student experience...."¹¹⁶⁰ So the context for the restructure was very clearly based on finances and enhancing the student experience. The main crux of the restructure was to rationalise the Departments and reduce the existing ten Departments to five.

¹¹⁵⁹ Case Study Institution (June 2011) 'Professional Services Review: Consultation Document on Professional Services Restructuring at the University...' p1

¹¹⁶⁰ Ibid. p4

As part of the restructure, a new Student and Academic Services would be created and within this, “[t]he Operations Department would take forward all areas of student records systems developments, student data returns, academic governance and legal compliance, *including student-related equality and diversity...*”¹¹⁶¹ So within the initial consultation document, equality and diversity provision (therefore also assuming the EDO, or at least someone with responsibility for equality) still maintained a presence, at least in relation to students. With regards to staff, there was no mention of equality within the consultation document and so there was an assumption that equality for staff would continue to be the responsibility of the Personnel Department. Nothing further was stated in the consultation document regarding the position of the EDO.

As there was no mention of the potential removal of the EDO within the initial consultation document, the responses from the Unions and others, focussed on other elements of the restructure. At the conclusion of this round of consultation the Departments had been reduced in number.

Following the initial consultation leading to the reduction in Departments, another consultation document dated 22nd August 2011, was issued. The purpose of this consultation was to take into account the detail of the newly structured Departments and for the new Directors to “streamline and reduce staff costs where appropriate.”¹¹⁶² It was within this consultation document that the redundancy of the EDO was proposed for the first time. Under the section relating to changes in the Department of Student and Academic Services, the document stated that, “Equality and Diversity... will be addressed through action orientated strategies, managed by the Equality Action Committee. The committee will set the objectives against which achievement and compliance will be measured. Accountability will rest with [Faculties] and Departments.”¹¹⁶³ In relation to staff, it was stated that, “The current HR Business Partnering Team and HR Policy and OD Team will be reconfigured

¹¹⁶¹ Case Study Institution (June 2011) ‘Professional Services Review: Consultation Document on Professional Services Restructuring at the University...’ p10 (emphasis added)

¹¹⁶² Case Study Institution (22nd August 2011) ‘PSR Collective Redundancy Consultation Paper’ p1

¹¹⁶³ Ibid. p5

and combined to form HR Operations. This new team will deliver all HR activity pertaining to... staff equality and diversity.... One HR Business Partner will lead on policy development whilst the other will lead on Equality and Diversity.”¹¹⁶⁴

This development seemed to come out of the blue and there are no prior documents recording any discussion relating to the potential removal of the EDO post from the new structure. This issue was not discussed at the Committees which were tasked with having an oversight of equality at the case study institution. The announcement also came as a surprise to the EDO who stated in an email to staff on the equality mailing list that, “I have just been informed, following my return from holiday on Wednesday, that it is proposed there will no longer be a post of Equality and Diversity Advisor at the university...”¹¹⁶⁵ The post was confirmed as affected by potential redundancy in a document issued in September 2011.¹¹⁶⁶

The announcement that there was a possibility of the position of EDO disappearing prompted a number of responses to the consultation, which highlighted concerns about the potential redundancy and the alternative proposed structure. Responses were received from senior academics, Union officials, the Chairs of the Learning and Teaching Committees, and the EDO as well as other individuals within the case study institution.

Despite these responses the decision was made, with no justification provided, that the EDO position should be made redundant. The response to this second round of consultation stated that, “There were many comments in support of retaining Equality and Diversity as a separate entity. These comments were considered very carefully but the strategic direction of E&D is now the responsibility of the [Executive Head of Faculty] who will define the strategic direction of the University in relation to its Equality and Diversity agenda. The [Executive Head of Faculty] will work closely with both the Director of Student and Academic Services and Director of HR&OD to ensure legal compliance,

¹¹⁶⁴ Case Study Institution (22nd August 2011) ‘PSR Collective Redundancy Consultation Paper’ p4

¹¹⁶⁵ EDO (01/09/11) Email communication to Equality mailing List

¹¹⁶⁶ Case Study Institution (September 2011) ‘Collective Consultation – Posts Affected/Not Affected’ p4

best practice and embedded activity relating to E&D matters is adhered to and managed effectively.

The Director of Student and Academic Services (for students) and the Personnel Director and OD (staff) working with staff from within the Services and across the University will ensure the specific duties of the Equality Act are met. This will include monitoring student and staff data through relevant committees. Staff within Student Services will support the University agenda through the areas they support, such as the Chaplaincy, Student Matters, [the Disability Support Department], Counselling and Mental Health.

Issues relating to learning and teaching and the equality agenda will be led by the [Executive Head of Faculty] with responsible [sic] for Learning and Teaching and in conjunction with the Chair of the Disability Co-coordinators [sic] group.

The Student Experience Committee will oversee the achievement of the strategic direction on behalf of Senate."¹¹⁶⁷

There are a number of points which need to be made about this response to the consultation. Firstly, there was acknowledgement of the number of consultation responses which were made in support of maintaining a specialist equality advisor. This type of acknowledgement (regarding the number of comments which had been made on a particular issue) was not given elsewhere in the document, which seems to suggest that this was an issue which received a proportionately high number of responses. Although the document states that "these comments were considered very carefully" there is no rationale or explanation given as to why the decision was still made to make the post redundant, despite the many comments which were opposed to this. Had the comments been considered very carefully, one might have expected a more detailed reasoning and a formal response which addressed the concerns which were made. This was not forthcoming.

¹¹⁶⁷ Case Study Institution (18th October 2011) 'Outcome of 30 Day Collective Consultation: Professional Services Review' p7

The use of the word 'but' is also revealing, as it seems to be very dismissive of the comments which have been made and provides a device for distancing the equality work from the EDO to be replaced with something else. So despite the number of responses in favour of maintaining the EDO,, and despite the careful consideration of these responses, the decision was made to remove the post but no rationale was given for doing so.

In terms of the alternative proposed arrangement, the Head of Faculty who was tasked with leading on the strategic direction of equality at the case study institution was also one of the interviewees who did not think there were significant equality issues within higher education which needed to be tackled. They had stated that, "I'm not sure at times of the problem that is trying to be addressed. ...in many parts of the sector there wasn't a proven case around serious inequality challenges to address."¹¹⁶⁸ In addition, it can be seen from the discussion relating to compliance with the new PSED, that it is unlikely that the case study institution would be regarded as complying with the new duties based on the data which has been published and the objectives which have been set. This therefore indicates that the proposed arrangements (as set out in the outcome of consultation document) that the Director of Student and Academic Services and the Personnel Director will ensure that the specific duties of the EA 2010 are met, have not been effective.

The use of "relevant committees" to monitor student and staff data can be viewed as problematic as the only committee with a specific equality remit, EAC, was disbanded shortly after the EDO post was made redundant, despite having been mentioned as key in terms of managing equality and diversity in the case study institution in the second consultation document dated 22nd August 2011.¹¹⁶⁹ As can be seen from the minutes of the other committees with an oversight function, very little, if any, substantive equality issues were discussed at these committees. Usually discussion was prompted by the EDO being proactive and inviting themselves onto the committee to provide

¹¹⁶⁸ HoF

¹¹⁶⁹ "Equality and Diversity... will be addressed through action orientated strategies, managed by the [Equality Action Committee]. The committee will set the objectives against which achievement and compliance will be measured." p5

updates on specific areas. In fact, since the removal of the EDO and disbanding of EAC, none of the committees raised a single equality issue relevant to the case study institution.¹¹⁷⁰

In short, the leadership under the new structure with regards to managing equality and diversity rested on a Head of Faculty (who did not believe that there were significant equality issues which needed addressing within HE and was off on long term illness with no substitute appointed) and two committees, neither of which had discussed any significant equality issues in the years preceding the reorganisation, and had not discussed *any* post the restructure. Responsibility for supporting the case study institution's agenda on equality rested with numerous people, including the Director of Student and Academic Services, Director of HR and Student Services via the Chaplaincy, Student Matters, Disability Support Department and Counselling and Mental Health. Although specialist disability services are represented in this new structure to some extent, many of the other protected characteristics such as race, gender, sexuality and age do not have specialist representation or someone with expertise in these areas to push the agenda forward for these groups.

Along with the slow demise of the specific equality committees there was a slow erosion of the function of the EDO which eventually culminated in the post being removed altogether. The irony is that the main focus of the restructure was to ensure that the student experience was being enhanced, yet the one aspect which many of the students (and staff) who were interviewed highlighted as a positive element and which enhanced the experience for some groups of students, was removed by the institution.

Conclusion

Over the years, after some progress being made at the case study institution which was concurrent with the introduction of the EDO posts as well as

¹¹⁷⁰ HRGC – No equality issues mentioned in meetings held on 15/11/11, 28/2/12 and 19/6/12. SEC – No equality issues mentioned (except one question which was raised about the accessibility of the National Student Survey) in meetings held on 20/10/11, 24/11/11 and 19/1/12.

specialist equality committees with representation from senior management, there was a deterioration in the compliance with the legislative requirements. This also reflected the demise of the specific equality committees and specialist support at the case study institution. This deterioration can be seen in the abandoning of the Equality Scheme and Action Plan to be replaced by, in the authors view, non-compliant equality data and objectives, despite the new statements of policy made by the Vice Chancellor regarding minimum legal compliance. Although the publication of data was always somewhat problematic, the EDO had published reports relating to student issues and staff data was at least requested by the Union via the EAC. Since the EDO was made redundant and EAC was disbanded, the only data which was published was inadequate and out of date, and has not been updated on the institutions website since 2010/11.¹¹⁷¹ A similar story can be seen in relation to EIAs. Although production was historically patchy, there were assessments conducted, particularly relating to students, and EAC had some oversight of the timetable and were able to query why assessments were not being done. However, once again, since the abolition of specific equality processes there is no evidence that EIAs have been conducted. Therefore it is argued that the increasing lack of compliance and equality processes at the case study institution becoming less significant suggests a prima facie case that the former leads to the latter.

The question which needs to be considered is why were the equality processes reduced at the case study institution? It is argued that the reduction in equality provision and focus reflects the priority given to equality by the case study institution. Once again, management do not consider this to be a serious issue, and they do not see embedded and institutional discrimination, and therefore little attention is afforded to it. This lack of priority is visible elsewhere as the website still maintains that there is an Equality Action Committee and an EDO (with their contact details), Equality Champions, an Equality and Diversity Research Group and that there is a Diversity Week (which had previously been organised by the EDO). All of which no longer

¹¹⁷¹ True at the time of writing 24/06/13

exist.¹¹⁷² The dedicated Equality and Diversity intranet site was last updated in March 2012.

The decline has also been precipitated due to the degeneration of the external pressures to ensure compliance with the law. This is reflected in the weakening of the specific duties as was highlighted in Chapter 2 and the reduction in pressure from organisations such as the Funding Councils and QAA as discussed in Chapter 3. In addition, the Coalition Government's attitude towards the PSEDs has been demonstrated by including the EA 2010 in the 'red tape challenge' to reduce bureaucracy and specifically to review the Public Sector Equality Duty.¹¹⁷³ This sends out a strong message from Government regarding doubts about the PSEDs and the view that it merely adds to bureaucracy and is therefore unnecessary. In addition, the substantial reduction in resources for the Equality and Human Rights Commission means that enforcement of the PSEDs is likely to be affected¹¹⁷⁴ and so the risks of receiving a penalty or being challenged for non-compliance are relatively low.

¹¹⁷² True at the time of writing 24/06/13

¹¹⁷³ Cabinet Office (15th May 2012) 'Equalities Red Tape Challenge Announcement' <http://www.redtapechallenge.cabinetoffice.gov.uk/2012/05/equalities-rtc-announcement/> (accessed 14/06/13) see also 'Review of the Public Sector Equality Duty' <https://www.gov.uk/government/policy-advisory-groups/123> (accessed 14/06/13)

¹¹⁷⁴ Ramesh, R (15th May 2012) 'Equality and Human Rights Commission has Workforce Halved' <http://www.guardian.co.uk/society/2012/may/15/equality-human-rights-commission-cuts> (accessed 14/06/13)

Chapter 7: Conclusions

Summary

The aim of this thesis has been to consider the implementation of what have been regarded as an innovative and potentially transformative approach to equality legislation, the PSEDs. The reason for this view is because of the proactive nature of the legislation in requiring public authorities to actively promote equality and remove discriminatory barriers. The focus of this thesis in evaluating the implementation of the PSEDs has been via a case study setting with a particular focus on race and disability. The emphasis has been on how the PSEDs have been interpreted and applied within a HEI in order to provide an informed view of the workings of the law, and investigating whether there was a gap between the law in books, and the law in action, and if so, what impact this gap was having on BME and disabled staff and students. These aims were achieved by setting out the development of the law up to the passing of the fourth generation of equality legislation. This placed the PSEDs in context and demonstrated some of the major top down and bottom up influences on the passing of race and disability equality legislation. The major distinctions between the different generations of equality laws in Britain were highlighted in order to emphasise the significance of the PSEDs.

As this thesis was focussed on higher education, it was necessary to explore the available literature relating to equality within this context. A consideration was necessary of the pressures from agencies/organisations external to HEIs, to comply with the PSEDs. It was discovered that, on the whole, over time the pressures on HEIs to comply with the legal requirements had declined. Although there had been a policy of widening participation in relation to higher education, this was primarily focussed on class as opposed to race. There appears to have been very little external pressure from organisations such as the Funding Councils and the QAA in ensuring compliance with the PSEDs when it comes to BME students within higher education.

The Widening Participation agenda appeared, however, to have had more of an impact for disabled students as specific funding was made available to HEIs to support disabled students' access to higher education. The availability of

specific funding in relation to students and the existence of the QAA Codes of Practice which include particular reference to disability means that more attention has been afforded to the development of inclusive policies and practices relating to disabled students. The same availability of funding cannot be said to have been applied in relation to disabled staff however, and as a result much less attention has been afforded to the barriers they face.

The literature regarding the pressures on HEIs to comply with the PSEDs with regards to staff are even less visible. Although there was some pressure from the Government and Funding Councils on HEIs to produce Equal Opportunities Policies shortly after the Macpherson Report, there was a tendency for these to focus on issues relating to gender inequalities and equal pay. It is also a matter for debate as to how much authority the Funding Councils had in terms of ensuring HEIs were compliant with the law.

In addition to the external pressures, the role of 'internal' factors, such as the role of management, were also discussed. A major factor from within HEIs which determined the extent to which there was pressure to comply with the law was the commitment of management to the equality agenda. It was highlighted in the literature that notions of meritocracy and the view that HEIs were liberal institutions which are intrinsically about fairness and justice were prevalent. It was argued that if this perception was dominant amongst management, that this would then have an impact on the way the PSEDs would be viewed and complied with.

The literature relating to the experiences of disabled and BME staff and students was explored in order to consider how effective the external and internal pressures to conform with the law have been. Despite the limitations of the literature in relation to the experiences of BME and disabled staff and students, there were still suggestions that there are some significant issues affecting these groups. For example, in relation to BME student achievement, experiences of discrimination by both BME and disabled staff and students as well as the lack of available support mechanisms, the way disclosure of disabilities was dealt with by HEIs and the reluctance by staff and students to disclose mental health difficulties. It is therefore surmised that although there was some attention afforded to race and disability issues directly after the

Macpherson Report, the internal and external pressures on HEIs to comply with the PSEDs have been decreasing and are having a limited impact.

The results from the case study institution do, to some extent, reflect the findings of previous research. Management, and other members of staff, appear to view HEIs as meritocratic liberal organisations where equality is inherent in their work and therefore doubts were expressed that the PSEDs were needed. Management did not view higher education as having any problems with regards to equality, unless they were clearly apparent. This research found that the formal equality view was favoured amongst senior managers and those tasked with the implementation of the PSEDs. This was despite the PSEDs requiring a more radical understanding of equality. The member of staff who did take a substantive approach to equality, the EDO, was a lone voice at the case study institution with little power or influence in determining the direction of equality. It was therefore not surprising that many of the issues which had been highlighted in the literature, were also reflected in the comments made by BME and disabled staff and students at the case study institution. As well as individual instances of perceived discrimination being reported by participants, many of the issues which were highlighted were also institutional in nature. Issues such as unfair redundancy and selection procedures, an absence of adequate support, a lack of BME staff and an environment which was not conducive to reporting mental health difficulties or instances of discrimination were raised. It was suggested that these institutional barriers were not being addressed and that this was no surprise given that there was no recognition by management in the case study institution of substantive equality. The prevalence towards the formal equality stance, along with the view of meritocracy, meant that the institutional barriers were not recognised by those in a position to tackle them.

Finally this thesis considered the documentation which was produced over a period of time by the case study institution to demonstrate compliance with the PSEDs. The interviews provided data which related to perspectives of participants and social actors in terms of their views at a specific point in time. The aim of conducting a document analysis was to enable an examination of the development of the processes and compliance over a longer period. It was found that there was a steady deterioration over the period covered by this

thesis in the fulfilment of the statutory requirements. In addition to this decline was a parallel deterioration in the processes at the case study institution which were established to manage equality. It is suggested that the deterioration in relation to compliance with the PSEDs and the decline in processes was not coincidental. The reduction in the processes to deal with equality was reflective of the priority which it was given by management. Given the formal equality stance and the view that HEIs do well in this area, there was no imperative to maintain the equality structures which provided the means with which to address some of the institutional barriers faced by BME and disabled staff and students.

Findings

The findings of this thesis suggest that the hypothesis offered by Gap Studies that “there will be some disjunction between the law-in-books and the law-in-action...”¹¹⁷⁵ appears to have been demonstrated in this case. The legal requirements regarding the PSEDs do not appear to have been adhered to at the case study institution. In addition, conclusions may be drawn when applying the central premise of Impact Studies that “interventions are unlikely to be effective where there is a lack of consensus in support and/or where the costs of compliance are higher than the costs of non-compliance.”¹¹⁷⁶ It is argued that given the view from management at the case study institution that HEIs are liberal meritocratic institutions and equality is inherent in what they do as well as the view that there are not the systematic inequalities as could be observed 30 or 40 years ago, the PSEDs were not seen as necessary. Therefore it may not be a surprise that the PSEDs have not been effectively implemented at the case study institution. In addition, as there is very little pressure from organisations such as the QAA and Funding Councils as well as a continued decline in the political importance of the PSEDs (which had begun under Labour but continued at an ever increasing rate by the current Coalition Government), the cost of compliance with the PSEDs could be said to be greater than the cost of non-compliance as the risk of enforcement action against the case study institution for non-compliance can be said to have been greatly reduced. “[S]ince the formation of the Coalition Government in May

¹¹⁷⁵ Brownsword, R (2006) op cit. p19

¹¹⁷⁶ Ibid, p20

2010, we have seen the articulation, and now enactment, of a different approach to tackling equality. Rather than continuing to develop equality architecture, this has been weakened and reduced with far greater reliance placed on voluntary action as a means to deliver equality."¹¹⁷⁷

In summary, the findings reflected in the data at the case study institution suggest that the formal equality stance is prevalent both in the interview data as well as the documentation, particularly where equality is raised in the minutes of meetings. The institutional barriers faced by BME staff and students are not seen by those tasked with implementing the PSEDs because a substantive approach is not adopted. The processes which were established which had the potential of dealing with substantive equality issues were eroded and eventually disappeared altogether. This therefore means that there is no action to address substantive inequalities and this is reflected in the experiences of BME staff and students.

The question which still remains, however, is *why* the gap between the requirements of the PSED and the application within the case study institution is evident and *why* the impact has been greatly reduced? Society is structured by a range of dimensions, for example class, sexuality, gender, race and disability. Those in positions of privilege will attempt to maintain their dominance and privilege. It is therefore argued that CRT can provide us with some concepts which are helpful in understanding the data relating to race at the case study institution. In addition, although the focus of CRT is, by definition, on race as the primary factor of oppression, these concepts are also useful in providing an explanation with regards to what was happening in relation to disability too.

Critical Race Theorists argue that racism permeates all hierarchical institutions and takes the form of institutional discrimination which reinforces White supremacy. This is reflected and replicated within the case study institution as

¹¹⁷⁷ Fawcett Society (July 2013) 'Red Tape, Red Line: Five Reasons why Government should not "Drop its Duty" to Tackle Women's Inequality' <http://www.fawcettsociety.org.uk/wp-content/uploads/2013/07/Red-Tape-Red-Lines-five-reasons-why-government-should-not-drop-its-duty-to-tackle-womens-inequality.pdf> (accessed 21/07/13) p4

the findings in Chapters 5 and 6 demonstrate. In addition the liberal discourses of meritocracy and neutrality which Critical Race Theorists argue perpetuate the inequalities and in time justify the erosion of initiatives implemented to address institutional racism, are also visible within the case study institution as demonstrated in Chapter 5. It is submitted that after the Macpherson Report (which is suggested by Gillborn to be a contradiction-closing case)¹¹⁷⁸ there was some action within the case study institution given the external pressures. However, as is predicted by CRT, over time the modest advances which were made have returned to the situation observed prior to the Macpherson Report. Given that there is no incentive for underlying structures to be changed, in other words there has not been any interest convergence at the case study institution, it may be no surprise to Critical Race Theorists that little has been done to address the institutional racism which BME staff and students face.

The situation regarding disabled staff and students is a little more complex, although the principle of interest convergence could also help to explain the data relating to disability. It is apparent that some attention has been afforded to students with disabilities at the case study institution and some positive experiences with regards to the support which they received were reported in the interviews in relation to both visible and non-visible disabilities. It is suggested that given the specific funding attached to providing support for disabled students in higher education, there has been some interest convergence in providing institutional support and recognising some of the barriers disabled students face in a higher education environment. The documents at the case study institution appear to make less mention of disability issues as compared to race, particularly in the minutes of the committees. It might be said that due to the existence of a specific department within the case study institution to deal with student disability issues, disability was seen as already being addressed. However, despite some recognition of the barriers, on the whole, the support provided has been individualised and students also reported some reluctance in reporting mental health difficulties. This seems to suggest that despite some movement in

¹¹⁷⁸ See Gillborn, D (2008) op cit. pp118 - 145

terms of disability equality at the case study institution, some institutional barriers do still exist, particularly where the 'problem' is not easily rectified. Providing additional time in exams for students with dyslexia is a fairly straight forward adjustment to make. This again appears to reflect the formal equality stance as 'obvious' and individual barriers may be recognised, i.e. where it is not possible to treat a disabled person equally. However, a deeper understanding of substantive equality is needed in order to provide pre-emptive adjustments and to address barriers which are not as evident, for example in relation to mental health difficulties.

However, the situation with regards to disabled staff is somewhat different. There does not appear to be the same external pressures or financial incentives to address institutional disability discrimination. Therefore it may be argued there is not the same interest convergence as exists with students and therefore even less action taken to address institutional barriers which disabled staff face. Responses once again appear to be very individualised and the focus is on making adjustments where the disability is physical. Staff that were interviewed and reported a positive response from the case study institution were staff with physical disabilities where the 'problem' was easily identified and rectified. Participants with non-visible disabilities and mental health difficulties were less likely to report positive experiences and, as was the case with students, are unlikely to disclose mental health difficulties to the case study institution. The situation in relation to disabled staff is therefore similar to that of BME staff and students. Unless the barriers and discrimination are plain to see, little action is taken to address institutional discrimination. There is some interest convergence to act with regards to disabled students and so there is some recognition, albeit still limited, of the barriers which disabled students face. The concepts coined by CRT are therefore useful in explaining the inaction and decline of the institutional processes with regards to equality at the case study institution. The situation is unlikely to improve whilst the external pressures on institutions decline further, particularly with the Coalition Government's apparent hostility towards the PSED. The prediction made by CRT that successes in terms of race equality are eroded over time are reflected in the Coalition Government's actions, such as reducing the funding for the EHRC and reviewing the effectiveness of the PSED under the banner of eliminating 'red tape.' This

means that there is even less pressure on HEIs to comply with the law and this is consistent with the concepts of contradiction closing cases and interest convergence as described in Chapter 4.

The problem still remains, however, that CRT's focus is on race as the determinant factor for oppression. As can be seen from this research, similar patterns of institutional discrimination and oppression can be found in relation to disability. Gillborn does attempt to address this criticism by highlighting that CRT does consider other facets of oppression. "Critical race theorists often focus on how racism works with, against, and through additional axes of differentiation including class, gender, sexuality and disability."¹¹⁷⁹ Despite this argument, it is suggested that such intersectionality does not completely solve the problem, as this assumes that race is still a factor in the oppression of disabled people and that even White disabled people "benefit from Whiteness to some degree."¹¹⁸⁰ This, however, is beyond the scope of this research and such an assertion cannot be made without comparing the experiences of BME disabled staff and students with those of White disabled staff and students. None of the disabled participants in this study were from a BME background and those who were interviewed from a BME background had not disclosed any disabilities to me so this would not have been a factor in the analysis. There are therefore problems in adopting CRT whole-heartedly as providing an explanation for what has happened at the case study institution and further, more nuanced, research would be necessary.

It is suggested that although CRT is helpful to a point, a new theory explaining the inaction with regards to race and disability is needed, one which does not prioritise one type of oppression as more significant than others. It is argued that there are many facets of oppression and the data in this thesis has shown that the response to the barriers faced by disabled staff and students is similar to those faced by BME staff and students where there is no interest convergence. Therefore this research is not in a position to suggest that race

¹¹⁷⁹ Gillborn, D. 'Burning Down the House? Refuting the Myths and Recognising the Promise of Critical Race Theory' in Pilkington et al (Eds.) (2009) op cit. p75

¹¹⁸⁰ Ibid, p77

is a more significant factor than disability, or vice versa, in explaining the lack of implementation of the law designed to address institutional discrimination.

Originality and Contribution

This thesis was distinctive in that it was an under-researched area of enquiry. The focus of this research has not just been on one protected characteristic. This comparative element is rarely found in equality research, as often the focus is on one protected characteristic or on equality generally.¹¹⁸¹ Similarly, the voice of a number of different social actors within the case study was explored. This is very rarely done and so the focus is broader than much of the available literature, which usually looks at either staff or students.¹¹⁸² One distinguishing feature of this research was the attention given to the voice of management and their perceptions in relation to the PSEDs and equality law more generally. This research was also not merely based on the perspectives of social actors within the case study setting, but also contained a document analysis. Once again, this is distinctive to research in the field of equality which is usually either an analysis of documents relating to equality, or primarily based on views and perceptions of a particular group with a specific protected characteristic.¹¹⁸³

Perhaps most significantly, there does not appear to be any research looking into the translation of the PSEDs into practice with higher education. Very little, if any, literature considers the gap between the law and practice. It was suggested by the Nuffield Inquiry on Empirical Legal Research that, “[w]hat is missing is... studies of how legal processes, outcomes and structures actually are in the ‘real world.’”¹¹⁸⁴ The significance of this research is therefore in its consideration of the impact of the law in a ‘real world’ setting. In addition, in order to be able to assess the impact of the PSEDs within a case study HEI an interdisciplinary approach was adopted. Both legal, Gap and Impact Studies, and sociological approaches and methods, CRT and Interpretivism, were used

¹¹⁸¹ See Chapter 3

¹¹⁸² See Chapter 3

¹¹⁸³ See Chapter 3

¹¹⁸⁴ Glenn, H. Partington, M. and Wheeler, S. (2006) ‘Law in the Real World: Improving our Understanding of How Law Works, Final Report and Recommendations’ www.ucl.ac.uk/laws/inquiry_p1 (accessed 01/04/08) p46

in order to analyse the data from the case study institution and to draw conclusions regarding *why* there is a gap between the law and practice in this area.

Policy Implications

It is suggested that addressing institutional discrimination within higher education is extremely complex. There are many factors which need to be recognised and addressed, most of which are beyond this research and the authority of the author. Making recommendations for addressing institutional discrimination within HEIs is therefore not regarded as appropriate. In addition, the limitations of a case study approach have to be recognised when making generalisations which are to be applied across the higher education sector. However, the findings may be replicated in other institutions and some important policy implications can be identified from this research.

- 1) Government commitment to the equality agenda is key in preventing the progress which has already been made from stalling, or worse, unravelling. The current approach of viewing the PSEDs as unnecessary red tape merely sends out a message that the achievement of substantive equality is a bureaucratic burden. In addition, bottom up pressures appeared to have played some part in furthering the equality agenda. Therefore organisations which facilitate such pressure and enable oppressed communities to be empowered to challenge discrimination, need to be encouraged.
- 2) In order for there to be progress in working towards achieving substantive equality within higher education, external pressure is required by organisations such as the Funding Councils and the QAA. Funding similar to that provided for disabled students, as well as race and disability featuring much more highly in the auditing processes for HEIs, need to be given priority.
- 3) Management within HEIs need to demonstrate their commitment in achieving race and disability equality. This could require that adequate processes within HEIs be put in place to deal specifically with equality issues.
- 4) Management and staff within HEIs tasked to deliver on equality need to take and understand a substantive equality approach. The barriers

which are faced by BME and disabled staff and students may not be recognised unless a substantive approach to equality is adopted. Concepts of meritocracy and liberal notions of equality appear to be barriers to the realisation of the aims of the PSEDs and this should be recognised.

- 5) More radical approaches and strategies may need to be adopted to address institutional discrimination. For example, encouraging more widespread use of positive action initiatives to challenge White and 'ableist' privilege. Providing potential staff and students with a clear picture in relation to the priority given to equality within HEIs is important. This would enable BME and disabled students and staff to make informed choices about the institutions in which they plan to study and work.
- 6) HEIs need to give priority to addressing substantive equality issues, as opposed to paying lip-service to formal equality measures. The achievement of substantive equality may require HEIs to go beyond mere legislative compliance and the current, watered down, PSEDs.

Word Count: 92,407

Appendices

Appendix 1

Equality Act 2010 s19(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if— (a)A applies, or would apply, it to persons with whom B does not share the characteristic, (b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c)it puts, or would put, B at that disadvantage, and (d)A cannot show it to be a proportionate means of achieving a legitimate aim.

Appendix 2

Race Relations Act 1976 s1(1)(a) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if— (a) on racial grounds he treats that other less favourably than he treats or would treat other persons;

Race Relations Act 1976 s1(1)(b) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if— (b)he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but— (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and (iii) which is to the detriment of that other because he cannot comply with it.

Appendix 3

Race Duty: Race Relations Act 1976 s71 (as amended) (1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need—

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity and good relations between persons of different racial groups.

Disability Duty: Disability Discrimination Act 1995 s49A (as amended) (1) Every public authority shall in carrying out its functions have due regard to—

- (a) the need to eliminate discrimination that is unlawful under this Act;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.

Appendix 4

The Race Relations Act 1976 (Statutory Duties) Order 2001No. 3458 Race Equality Schemes

s2(1) A body or other person specified in Schedule 1 to this Order shall, before 31st May 2002, publish a Race Equality Scheme, that is a scheme showing how it intends to fulfil its duties under section 71(1) of the Race Relations Act and this Order. (2) A Race Equality Scheme shall state, in particular— (a) those of its functions and policies, or proposed policies, which that person has assessed as relevant to its performance of the duty imposed by section 71(1) of the Race Relations Act; and (b) that person's arrangements for— (i) assessing and consulting on the likely impact of its proposed policies on the promotion of race equality; (ii) monitoring its policies for any adverse impact on the promotion of race equality; (iii) publishing the results of such assessments and consultation as are mentioned in sub-paragraph (i) and of

such monitoring as is mentioned in sub-paragraph (ii); (iv) ensuring public access to information and services which it provides; and (v) training staff in connection with the duties imposed by section 71(1) of the Race Relations Act and this Order.

Race Relations Act 1976 (Statutory Duties) Order 2001 No. 3458 - Higher Education Institutions shall: s3(1) before 31st May 2002, (a) prepare a written statement of its policy for promoting race equality (referred to in this article as its "race equality policy"), and (b) have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (4)

(2) Such a body shall, (a) maintain a copy of the statement, and (b) fulfil those duties in accordance with such arrangements. (4) It shall be the duty of [such] a body to – (a) assess the impact of its policies, including its race equality policy, on students and staff of different racial groups; (b) monitor, by reference to those racial groups, the admission and progress of students and the recruitment and career progress of staff; and (c) include in its written statement of its race equality policy an indication of its arrangements for publishing that statement and the results of its assessment and monitoring under sub-paragraphs (a) and (b). (5) Such a body shall take such steps as are reasonably practicable to publish annually the results of its monitoring under this article.

Appendix 5

The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 No. 2966

Preparation and publication of a Disability Equality Scheme: s2(1) A public authority listed in Schedule 1 shall, on or before the relevant publication date, publish a Disability Equality Scheme ("Scheme"), that is, a scheme showing how it intends to fulfil its section 49A(1) duty and its duties under these Regulations. (2) Such an authority shall involve in the development of the Scheme disabled people who appear to that authority to have an interest in the way it carries out its functions. (3) A Scheme shall include a statement of (a) the ways in which such disabled people have been involved in its development; (b) that authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons; (c) the steps which that authority

proposes to take towards the fulfilment of its section 49A(1) duty; (d) that authority's arrangements for gathering information on the effect of its policies and practices on disabled persons and in particular its arrangements for gathering information on (i) their effect on the recruitment, development and retention of its disabled employees, (ii) their effect, in the case of an authority specified in Part II, III or IV of Schedule 1, on the educational opportunities available to, and on the achievements of, disabled pupils and students, and (iii) the extent to which, in the case of an authority specified in Part I of Schedule 1, the services it provides and those other functions it performs take account of the needs of disabled persons; and (e) that authority's arrangements for making use of such information to assist it in the performance of its section 49A(1) duty and, in particular, its arrangements for (i) reviewing on a regular basis the effectiveness of the steps referred to in sub-paragraph (c), and (ii) preparing subsequent Schemes. (4) Such an authority shall review its Scheme and publish a revised Scheme (a) not later than the end of the period of three years beginning with the date of publication of its first Scheme; and (b) subsequently at intervals of not more than three years beginning with the date of publication of the last revision of the Scheme. (5) Such an authority may comply with the duty to publish under paragraph (1) or (4) by setting out its Scheme as part of another published document or within a number of other published documents.

Appendix 6

Equality Act 2010 S149 (1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons

who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

Appendix 7

The Equality Act 2010 (Specific Duties) Regulations 2011 No. 2260

Publication of information - s2(1) Each public authority listed in either Schedule to these Regulations must publish information to demonstrate its compliance with the duty imposed by section 149(1) of the Act. (2) A public

authority listed in Schedule 1 to these Regulations must publish the information (a) not later than 31st January 2012; and (b) subsequently at intervals of not greater than one year beginning with the date of last publication. (3) A public authority listed in Schedule 2 to these Regulations must publish the information (a) not later than 6th April 2012; and (b) subsequently at intervals of not greater than one year beginning with the date of last publication. (4) The information a public authority publishes in compliance with paragraph (1) must include, in particular, information relating to persons who share a relevant protected characteristic who are (a) its employees; (b) other persons affected by its policies and practices. (5) Paragraph (4) (a) does not apply to a public authority with fewer than 150 employees.

Equality objectives - s3(1) Each public authority listed in either Schedule to these Regulations must prepare and publish one or more objectives it thinks it should achieve to do any of the things mentioned in paragraphs (a) to (c) of subsection (1) of section 149 of the Act. (2) The objectives must be published (a) not later than 6th April 2012; and (b) subsequently at intervals of not greater than four years beginning with the date of last publication. (3) An objective published by a public authority in compliance with paragraph (1) must be specific and measurable.

Appendix 8

“Mr Cyril Osborne: ... I know that some people will say that I say this because I am colour-conscious. This is not true. If the West Indians' skins were as white as snow, it would still be necessary to control the number coming into this country because of the social consequences that will arise from such a great influx of people. We have reached the stage when we cannot absorb them at the rate at which they are coming.

Mr Charles Loughlin: I know that the hon. Gentleman would not desire to convey the impression that he is colour-conscious or preaching racialism. Can he tell me why he has not attempted in his speech to deal with other problems of immigration, in some cases not involving British subjects? Examples are immigration of Southern Irish people, Cypriots and others. Why is he making his case solely on the question of coloured immigration and not on the question of immigration as a whole?

Sir C. Osborne: I have given way, but it is rather late and we must press

Mr Loughlin: It does not matter. We have all night.

Sir C. Osborne: I will make my speech and present my case in my own way, as I am entitled to. The problem is one of sheer numbers and the difficulty of absorbing—

The Under-Secretary of State for the Colonies (Mr Hugh Fraser): Sheer colour.

Sir C. Osborne: Of course, colour adds to the problem, but even if their faces were whiter than any in the country, the problem would still remain. Those who deal with housing problems and with hospitals, and those who read what the B.M.A. said recently about the incidence of certain diseases amongst the immigrants, must be startled, and in some cases frightened, by the problems which are being created." Hansard 'Immigration' HC Deb 01 August 1961 Vol. 645 cc1319-31 at 1322 –

Appendix 9

Northern Ireland Act 1998 Schedule 9 Para 4(2) A scheme shall state, in particular, the authority's arrangements- (a) for assessing its compliance with the duties under section 75 and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted);

(b) for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity;

(c) for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity;

(d) for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c);

(e) for training staff;

(f) for ensuring, and assessing, public access to information and to services provided by the authority.

Appendix 10

Equality Act 2010 s158 Positive action: general (1) This section applies if a person (P) reasonably thinks that - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or (c) participation in an

activity by persons who share a protected characteristic is disproportionately low. (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage, (b) meeting those needs, or (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.

Appendix 11

Commission for Racial Equality (2002) 'Statutory Code of Practice on the Duty to Promote Race Equality' Commission for Racial Equality p44 - 45

"The institution should monitor all activities that relate to staff recruitment and selection, and to career development and opportunities for promotion. It might consider monitoring for each department as well as the whole institution. This is likely to include:

- a. selecting and training panel members;
- b. applications and appointments;
- c. success rates for the different selection methods;
- d. permanent, temporary or fixed-term appointments; and
- e. home or international status (for institutions that recruit internationally).

The institution should identify areas where career progress could be affected and monitor those. They might include:

- a. staff, by their grade and type of post;
- b. staff, by their length of service;
- c. staff training and development, including applications and selection, if appropriate;
- d. the results of training and career-development programmes or strategies that target staff from particular racial groups;
- e. staff appraisals; and
- f. staff promotion, including recruitment methods and criteria for choosing candidates.

The institution will find it useful to assess its monitoring information regularly. This will allow it to evaluate the progress it is making in meeting its race equality targets and aims."

Disability Rights Commission (2005) 'The Duty to Promote Disability Equality: Statutory Codes of Practice: England and Wales' The Stationary Office p82 – 83

"Larger authorities will need to collect more detailed information. In relation to recruitment, information will need to be collected about applicants and successful applicants. Information could include the monitoring of each stage of recruitment to find out what happens to disabled applicants.

In relation to 'development', information will need to be collected about training (such as who applies for training, who is offered training, and what types of training) and promotion (such as success rates of disabled employees). 'Development' can also cover performance reviews, workplace benefits and facilities, as well as treatment generally, including harassment, discrimination, grievances and disciplinary action.

In relation to 'retention', information will need to be collected about termination (such as redundancies, resignations, dismissals, end of fixed terms etc). Employers should analyse any differentials in these areas between disabled and non-disabled staff; investigate the reasons for them; and take action to remedy them."

Appendix 12

Equality and Human Rights Commission (December 2011) 'Objectives and the Equality Duty: A Guide for Public Authorities' (2nd Ed.) Equality and Human Rights Commission

"The Commission would normally expect to see the following information (for listed authorities with 150 staff or more):

- the race, disability, gender and age distribution of your workforce at different grades, and whether they are full or part time
- an indication of the likely representation on sexual orientation and religion and belief, provided that no-one can be identified as a result
- an indication of any issues for transsexual staff, based on engagement with transsexual staff or equality organisations
- gender pay gap information
- information about occupational segregation
- grievance and dismissal information for people with relevant protected characteristics

- complaints about discrimination and other prohibited conduct from staff
- details and feedback of engagement with staff and trade unions
- quantitative and qualitative research with employees e.g. staff surveys
- records of how you have had due regard to the aims of the duty in decision-making with regard to your employment, including any assessments of impact on equality and any evidence used
- details of policies and programmes that have been put into place to address equality concerns raised by staff and trade unions.

It would also be useful if you publish disaggregated information on:

- return to work rates after maternity leave
- success rates of job applicants
- take-up of training opportunities
- applications for promotion and success rates
- applications for flexible working and success rates
- other reasons for termination, like redundancy and retirement
- length of service/time on pay grade
- pay gap for other protected groups."

Appendices A – D (Interview Schedules) have been included in order to demonstrate the questions which participants were asked. This allows for additional illumination of the research methods used as well as permits the replication of this research in other case study settings if required.

Appendix E (Consent Form) has been included for transparency reasons to demonstrate adherence to the ethical principles as described in Chapter 4 - Methodology.

Appendix A

Interview schedule used for those interviewed who were involved in the construction and passing of Race Relations legislation.

Summary/Aims - The primary aims of the research are as follows: A study of equality mainstreaming in higher education in Britain with a focus on Equality Impact Assessments (EIAs).

- 1) What are the perceptions regarding the rationale and aims of EIAs from various social actors involved in the design,
- 2) Implementation and monitoring of the legislation in Britain?
- 3) Have the aims of the legislation in Britain been met?

Themes/questions:

- 1) Primary factors influencing the development of British anti-discrimination legislation.
- 2) Hopes/aspirations behind the Race Relations Act 1976.
- 3) Hopes/aspirations behind the Race Relations (Amendment) Act 2000. Different to previous anti-discrimination legislation?
- 4) 4th generation anti-discrimination laws (Fredman) – current positive equality duties. Effective in achieving substantive equality?
- 5) Weaknesses of the positive duties?
- 6) Role of other provisions/approaches to strengthen positive equality duties e.g. affirmative action provisions or value driven approach.
- 7) Equality Impact Assessments – purpose of EIAs?
- 8) One method of implementing the positive duties. – procedural obligation or effective method of achieving broader substantive equality?

Appendix B

Interview schedule used when interviewing senior management and other staff with an equality remit within the case study institution.

Summary/Aims

The primary aims of the research are as follows: A study of equality mainstreaming in higher education in Britain with a focus on Equality Impact Assessments (EIAs).

- 1) What are the perceptions regarding the rationale and aims of Equality Impact Assessments from various social actors involved in the design, implementation and monitoring of the legislation in Britain?
- 2) Have the aims of the legislation in Britain been met?

Themes/Questions:

General:

- 3) What do you consider is meant by the term "equality mainstreaming"?
- 4) What is your understanding of the current positive equality duties?
- 5) What do you feel are some of the strengths and weaknesses of the positive duties in achieving substantive equality within higher education?
- 6) How important are equality and diversity policies in higher education?
- 7) What kind of measures do you feel are most important in achieving equality in higher education?
- 8) What, in your view, is or should be the purpose of Equality Impact Assessments (EIAs)?
- 9) EIAs as one method of implementing the positive duties. – Are EIAs merely a procedural obligation or effective method of achieving broader substantive equality in the Higher education sector?
- 10) In your view, what factors influence whether and how effectively an institution complies with the statutory duties?

Specific to the case study institution:

- 1) What is your view of how far the University has come with regards to equality mainstreaming?
- 2) What do you feel the University has done particularly well with regards to mainstreaming equality?
- 3) What are the key priorities at the University which you feel need to be addressed?

- 4) What is your view regarding how EIAs have been used at the University in order to mainstream equality?
- 5) Have there been any factors over the years which you feel have particularly helped or hindered the University's ability to effectively mainstream equality?

Appendix C

Interview schedule used when interviewing members of disabled and BME staff at the case study institution (amended accordingly).

Summary/Aims

The aims of my research are to look at what the law requires with regards to equality and diversity and then to see how the law is being implemented and how this is affecting staff and students (particularly BME and disabled staff and students) at the University.

Themes/Questions:

- 1) Do you feel that the University equality/race/disability issues seriously?
Please explain your answer
- 2) What factors do you think influences whether the University takes equality/race/disability issues seriously?
- 3) From your perspective, what would be the main strengths and weaknesses with regards to equality and diversity at the University?
- 4) What have been your own experiences with regards to equality and race/disability issues at the University?
- 5) Do you have any specific examples of where the University has dealt with an issue particularly well, or particularly badly?
- 6) Is there anything more you feel the University could be doing with regards equality/race/disability issues?
- 7) Please feel free to mention any other issues may not have specifically asked about above.

Many thanks for taking time out to help me with my research. It is much appreciated!

Mel

Appendix D

Interview schedule used when interviewing BME and disabled students at the case study institution (amended accordingly).

Summary/Aims

The aims of my research are to look at what the law requires with regards to equality and diversity and then to see how the law is being implemented and how this is affecting staff and students (particularly BME and disabled staff and students) at the University.

Themes/Questions:

- 1) Do you feel that the University takes equality/race/disability issues seriously? Please explain your answer
- 2) What factors do you think influences whether the University takes equality/race/disability issues seriously?
- 3) From your perspective, what would be the main strengths and weaknesses with regards to equality and diversity at the University?
- 4) What have been your own experiences with regards to equality/race/disability issues at the University?
- 5) Do you have any specific examples of where the University has dealt with an issue particularly well, or particularly badly?
- 6) Is there anything more you feel the University could be doing with regards equality/race/disability issues?
- 7) Please feel free to mention any other issues may not have specifically asked about above.

Many thanks for taking time out to help me with my research. It is much appreciated!

Mel

Appendix E

CONSENT FORM

Title of Project: Equality Law in Practice

- Thank you for agreeing to take part in this interview
 - The information we obtain today is to inform my research (as part of my PhD) regarding staff and student experiences at the [case study institution], particularly from BME backgrounds and disabled staff and students.
 - All the information you supply me with will be kept **confidential** and will remain **anonymous** at all times – **no-one** else will know what you have said or even that you have taken part today.
 - The conversation will be tape recorded to help me remember what has been said – **no-one** else will be able to listen to it.
 - You are free to leave the session at any time – you do not have to give a reason.
 - You do not have to answer any questions if you not want to.
-

- I have read and understand the information above and have had the opportunity to ask questions.
- I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason.
- I understand that the interview discussion will be taped and transcribed and give my permission for this.
- I give my permission for anonymous quotes from the interview to be used in the report.
- I agree to take part in the above study.

Name

Date

Signature

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