From enforcement to engagement: The role of the EHRC and Higher Education Institutions in considering the lived experience of disabled people

Abstract

This paper is based on the findings of a doctoral participatory research study which explored how the lived experience of disabled people is, and could be, considered in the design and delivery of equality and diversity training in UK Higher Education Institutions (HEIs). The paper considers how, learning from the lived experience of disabled staff in HEIs, equality and diversity training can be enhanced to provide spaces in which all staff can discuss, and improve, the experience of disabled staff and students on University campuses. The paper will introduce a conceptual map of the Affirmative Model of Disability (Kember, 2020) as a lens through which to consider the Equality and Human Rights Commission (EHRC) and HEIs approach to equality and diversity training, and presents the views of disabled staff, working in Higher Education. The paper will suggest that the role of the Equality and Human Rights Commission (EHRC) and HEIs is not to 'enforce' (2020) fair treatment, as announced by the Minister, but is to establish a culture of 'freedom, choice and opportunity'.

Introduction

Liz Truss, Minister for Women and Equalities (2020,) in her 'Fight for Fairness' speech, suggested it was 'appalling' that 'some employers overlook the capabilities of people with disabilities (sic)'. Furthermore, the Minister said that, working with a new series of commissioners, she would look beyond the 'narrow focus of protected characteristics', as set out in the Equality Act 2010, in 'enforcing fair treatment for all'. The speech specifically referenced unconscious bias training with the Minister announcing this would no longer be used in the Government and Civil Service as such interventions were, she suggested, thought to reinforce 'stereotypes and exacerbating biases' (2020). Ben Bradley, Member of Parliament for Mansfield, endorsed the approach set out by the Minister, describing participation in unconscious bias training as 'ticking a diversity box' and calling for such training to be 'banned' (Dixon, 2021: 11). Each of the five commissioners, appointed by the Minister to join the EHRC, have an interest in equality and diversity issues with Su-Mei Thompson seemingly representing the views of disabled people. Thompson (2020) opened the 'Reframing Disability summit, by saying that 'organisations need to be meaningfully engaging with disability charities and disabled people to ensure they are taking into account insights and views of people with lived experiences and not just their own assumptions of what works for them'.

A conceptual map of the Affirmative Model of Disability

The Affirmative Model of Disability builds on the invitation from Shakespeare (2006: 2) that researchers explore the 'lived realities' of disabled people. The model provides a lens through which to further explore and research the life style and life experience, equal treatment in society and positive social identity of disabled people. A conceptual map of the Affirmative Model of Disability, figure 1, is a series of concentric circles with affirmation at the centre. The first circle denotes the life style and lived experience of the individual. The second circle frames the 'social imaginary' (Taylor, 2004: 23), the way in which disabled people experience themselves in relation to others. The outer enveloping circle provides the political and legal context, facilitating 'full and effective participation and inclusion in society on an equal basis with others' (United Nations, 2006: 5).

The Affirmative Model

Life style and life experience

Positive social identities
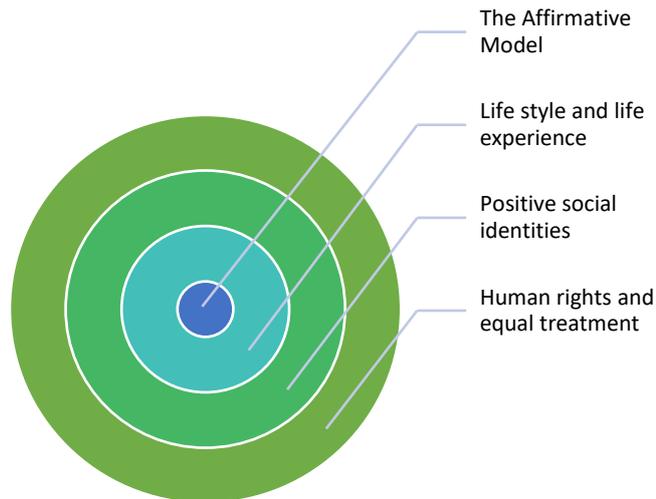
Human rights and equal treatment

Fig. 1 A conceptual map of the Affirmative Model of Disability (©Kember, 2020)

Martin (2017:5) would support the 'Fight for Fairness' approach, having suggested that the way in which disability is defined in the Equality Act promotes ableism, being 'equated to descriptors of ways in which impaired bodies deviate, inconveniently, from assumed normative corporality'. The comment from Martin is not surprising as the Equality Challenge Unit (ECU) were campaigning in 2015 for the Government to recognise the role of HEIs in developing 'equality and diversity expertise' (2015: 41). In the same year the Department for Business, Innovation and Skills (BIS) admitted that the recommendations in the green paper, 'Fulfilling our potential: Teaching Excellence, Social Mobility and Student Choice', were based on an incomplete data set which failed to consider the views of disabled people.

There is some evidence, however, of a shifting discourse, for example comments made by the recent Transport Secretary, Chris Grayling. Revised Department For Transport (DfT) parking guidance for Councils, referencing invisible disabilities, would, Grayling said, 'make a real difference to people's lives' (Swerling, 2019: 1).

The Index for Inclusion, proposed by Booth and Ainscow as 'a singular approach to development' (2011: 12) outlines how policy development, when part of an integrated process, can be an enabler of cultural change. Offering a 'supportive process of self-review and development as an alternative to one based on inspection' (Booth & Ainscow, 2011: 19), the index provides a planning framework and a series of indicators for designing inclusive learning environments. While their work focusses on developing learning and participation in schools the approach suggested by Booth and Ainscow could equally apply to HEIs. Comprising three dimensions, policy, practice and culture, the index invites educators and policy makers to consider, while acknowledging the progressive challenge, how policy should support evolving practice which enhances the lives of both staff and students and, in turn, leads to cultural change.

The role of Higher Education Institutions

The position of educational institutions, including universities, in informing, or indeed, influencing public opinion has been a factor in the historical development of perceptions of disability. Contested ideas about industrial progress and the betterment of society to the contemporary 'woke' (*a state of being aware, especially of 'the struggles for recognition led by historically oppressed*

populations' (Kanai & Gill, 2020:13)) and cultural appropriation narrative, were, and are, initiated, debated and theorised in universities, places where, historically, the social elite gathered. Kirton and Greene (2016: 238) describe the UK HE sector as minimalist or partial in its adoption of equality policy, compliant with legislative requirements yet scant in regard to the root causes of discriminatory practice and with 'no conception of a wider social justice concern for equality and diversity'.

Mindful of the increasingly competitive HE landscape, there is a developing tension between quality and equality, leading HEIs to focus on measurable outputs. One such indicator of performance is training by numbers, a term ascribed to HEIs who focus solely on measuring the number of people, or percentage of staff, who have completed training, in order to satisfy audit or legislative requirements. These institutions are described by Johnson Morgan and Finkelstein (2017: 147) as 'becoming mired in their own processes', viewing equality and diversity training as a 'progressively tick-box exercise' (2017: 146). The apparent simplification of, indifference to, and poor engagement with, equality and diversity issues by Government and senior HE individuals poses a significant impediment to those engaged in translating legislation and policy when designing and facilitating impactful Equality and Diversity awareness and training (Everett, 2017).

Exploring the lived experience of disabled people

At its heart the lived experience could be described as a self-given feeling, a sense of being and consciousness of life, which becomes objective only in thought. In considering the lived experience of disabled people, Brown and Brown (2003: 57) write simply that disabled people 'live with their disabilities every moment of their lives. It is a personal experience'. Brown and Brown contend it is not possible for non-disabled people to appreciate the experience of disability, regardless of how much that individual might learn, read or attempt to understand. They suggest that an appreciation of the lived experience of being a disabled person can 'dramatically affect what happens to people with disabilities (sic)' (Brown & Brown, 2003: 57). A lived experience (adopted from the French *le vecu* meaning real life) is, by its very nature, unique to every individual, capturing the essence and reality of every dimension of life, informed and shaped by the diversity of physical, psychological and sociological experience. The lived experience, informed in part by the social imaginary, is how individuals experience life and how they imagine their social existence in relation to others. The images, stories and legends, shared among groups, create common understanding, purpose and legitimacy (Rawski & Conroy, 2020).

Equality and Diversity training in UK HEIs

The role of the professional staff developer, or trainer, is essentially about facilitating a meaningful learning experience, they have a duty of care to their audience of learners, a responsibility to do far more than simply inculcate institutional dogma through constant repetition. Their role is to create an environment in which learners can question and challenge perceived wisdom, work with complexity, interpret and understand social phenomena and assist in the application of new knowledge in their own environments. Cleaver et al. (2014: 28) describe this as a process of 'contextual illumination', making sense of the world with a desire to make positive contributions that will impact on wider society with the aim of transforming socially unjust policies, beliefs and practices. It is fair to state that HEIs employ creative, articulate and intelligent individuals from a multiplicity of backgrounds who, if the environment and culture permits, can enrich the knowledge

base, innovative outputs and experience of all who live, study, work in, and benefit from, HE. The design of 'readily accessible research-informed and evidence-based practice to raise awareness, build confidence, promote engagements and inform future direction' (Caruana & Ploner, 2010: 2) is particularly important in HEIs where a lack of confidence and understanding among academic staff promulgate a resistance to change (Equality Challenge Unit (ECU), 2015).

In their report of a survey of 557 academic staff the ECU (2015: 1) write of the importance of Equality and Diversity training which provides academic staff with the confidence to challenge 'dogmatic views' while reducing the institutional risk of litigation resulting from discrimination. The ECU (2015: 7) quote one survey respondent as saying 'it is important to reflect on how to behave with respect' with others acknowledging the need for alternative approaches that develop an appreciation of equitable treatment of all students.   In contrast the ECU report includes the views of some academics for whom 'equality and diversity was irrelevant' and a 'distraction for intelligent people from work of value' (ECU, 2015: 8).

The challenge to the professional staff developer in HE is, in part, to acknowledge the diversity of views when working with both the academic and professional services communities and to challenge hegemonic notions of equality and diversity. The ECU report, moreover, suggests that the dominance of the academic voice in the social structure of a University leads to a tendency to view equality and diversity as an issue of concern only when working with the student population, creating the opportunity to broaden such limited views through training, promoting equality and diversity for all.

Participatory study

This research study, conducted following ethical approval from the University of Hull, was medium in scale, with participants drawn from staff development practitioners, academics and professional services staff working in Higher Education. The study, figure 2, adopted a multi-method, sequential approach, which comprised a survey of staff development practitioners, observations of four equality and diversity training workshops and in-depth interviews with members of Disabled and Neuro-diverse staff networks. The survey of 107 HEIs elicited responses from 22 staff development forum (SDF) members, 20.5% of the available sample. Invitations to observe four equality and diversity training workshops, hosted by North East Universities, resulted from the survey. Collages, assembled from each observation, provided a partial visual representation of the images, text, language, stories and metaphors used by both facilitators and participants at the workshops. Interview participants selected a personal object to represent their lived experience of disability. These objects provided an opportunity for hearing valuable personal accounts of each participants' experience of being disabled, creating a useful segue from which to explore the collages. These interviews, while small in number, were rich in their exploration of the lived experience of disabled people and enabled an in-depth analysis of views.
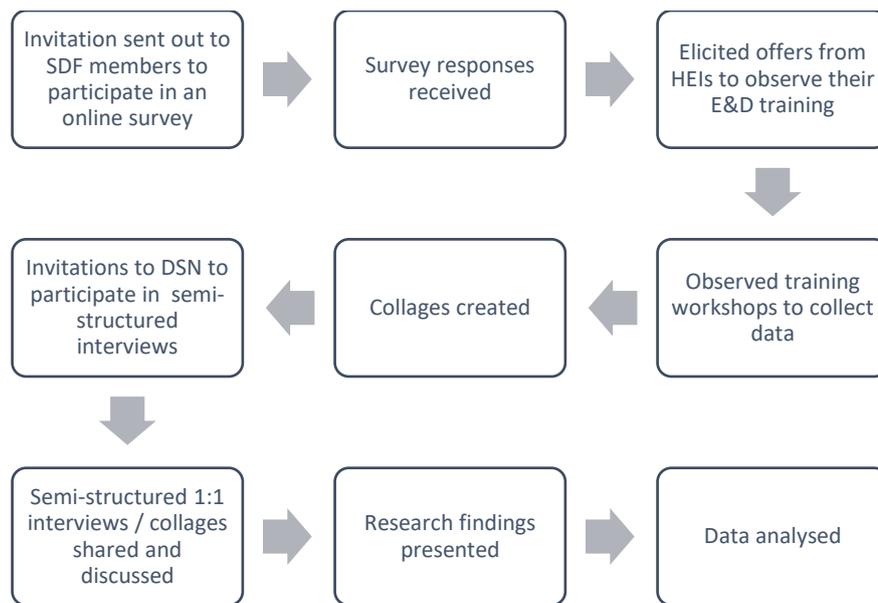
Fig. 2 Research phases.

Compliance vs engagement: Research findings

In considering the rationale for providing equality and diversity training, the study found that training is the principal method by which Universities seek to demonstrate compliance with the Equality Act (2010). This is borne out by the majority of survey responses, which stated a primary purpose of training was to comply with legislation with institutional responsibility for training managed by, among others, Human Resources and Governance departments. Interestingly, while compliance was a key factor, not all Universities managed this through mandatory participation, for example, two of the workshops were promoted as optional, the remainder as mandatory.

The survey revealed a mixed picture about expected levels of participation. Almost half of respondents indicated they had no defined performance target for staff completion of training despite having identified achievement as important while six were unable to access any completion or participation data. Furthermore, institutions for whom 100% compliance was a target reported a varying proportion of staff completing training. This endorses the suggestion from Kirton and Greene (2016), that setting arbitrary targets for training completion is, in itself, the way in which HE institutions satisfy external scrutiny. Interview participants talked about how, when equality and diversity training was mandatory, this, in their experience, influenced the engagement with and impact of the activity. Participants held strong views about the way in which institutions, including HEIs, seemingly take a risk based approach to compliance, endorsing the findings of Kendall (2018) that equality and diversity training was of little relevance for some academic staff. Three of the four interview participants spoke about the term 'tick-box' (Johnson Morgan & Finkelstein, 2017: 147) to describe their perception of how equality and diversity training is framed.

> Whenever anyone refers to the ticking of boxes you know they are not speaking about it in a neutral way. There is never a positive form of box ticking but I don't know another way round it because, if you ask any individual in the corridor 'do you understand what equality and diversity means' they will always say yes. So, if you want it to be the case that all employees in an institution have addressed or at least thought about, or at least connected

with, particular analyses then it's got to be compulsory. Mandatory training can be one thing but there is also something cultural that has to happen, that's deeper, that's kind of lived (Participant c)

I think all businesses tend to tick boxes. I think they have to now, I mean regulations and laws are so strict now that they [organisations] have to be seen to do it [equality and diversity training] (Participant a)

It's probably quite frustrating to be obliged to do mandatory training and then be told 'but that's not it, you've not done it yet' because [equality and] diversity is a process, it's not an end product (Participant c)

[Staff] see it just as something they have to do, yeah (sic), they just tick a box (Participant d)

There are people who skip through, go straight to the multiple choice questions and just try their luck (Participant d)

In considering mandatory participation, interview participants also reflected on how equality and diversity training might support cultural change in HEIs (Booth & Ainscow, 2011). The need to enhance inclusive practice, identified by almost all survey respondents as a key purpose of training delivery, is noteworthy. There is a juxtaposition between mandatory participation, which this study suggests is a method of satisfying external legislative scrutiny, and the desire to change the culture of an institution.

The study suggested the prevailing purpose of equality and diversity training in HE is to comply with legislative requirements. While a small sample from which to gauge this assertion the defined objectives of each observed workshop provide opportunity for further analysis. Two of the events, C and D, categorised as awareness training and both optional, specifically referenced the Equality Act 2010, their objectives being to enhance participants understanding of the legislation as it relates to disabled people. Workshop A had practical objectives while Workshop B was the only event, of those observed, whose main objective was to influence cultural change. One function of establishing clear objectives is in order that potential participants can make an informed decision about whether to attend a workshop described as optional. It is, therefore, interesting, that participation at Workshop C was similar to that of the mandatory events. Although this could be justified by the additional attraction of the objective to explore facilitating learning for disabled students, it does imply that staff in HE are interested in learning about equality and diversity as it relates to their role. Building on the work of Kendall, (2018) and Brown and Leigh (2018), the study found that academic staff in UK HEIs are more likely to engage in optional equality and diversity training. Academic staff are motivated to learn when training content is practical, rather than that which is generic in nature.

Evaluation of equality and diversity training provides further evidence to support the assertion that HEIs provide training to satisfy external scrutiny. All bar one survey respondent confirmed the preferred indicator of success as being the percentage of staff who had completed training, a simple numerical statistic collected to ensure HEIs demonstrate compliance. Furthermore, more than half of respondents noted that the number of staff attending equality and diversity training provided data for institutional submissions towards external awards including Athena Swan (a charter mark awarded to HEIs who demonstrate progress towards gender equality). The use of quantitative and qualitative data collection, to assess the impact and effectiveness of training, is of interest. A

quarter of survey respondents did not conduct any form of post event evaluation of their equality and diversity training; of those who did, almost all favoured a post event reaction sheet, the most simplistic form of evaluation. Where institutions are concerned to assess or measure the impact training may have had on changing practice or culture one might expect to see evaluation in the form of longitudinal studies, impact case studies and interviews with staff, none of which were in evidence in this study.

When it comes to the purpose of equality and diversity training in Higher Education, the main finding, drawn from the data analysis, is that HEIs provide training as a means of demonstrating legislative compliance to external stakeholders. One school of thought might be that, in comparison to other sectors, the reputation and league table position of HEIs is determined by a quality assurance regime, not least that prescribed by the EHRC. For example, attainment of the Athena Swan charter, while self-audited, is both a public demonstration of compliance and a requirement of many HE funding bodies. While a secondary stated purpose, drawn from the survey responses, is to embed inclusive cultures in Higher Education, the study has found little evidence to support this claim.

Enhancing equality and diversity training: Research findings

There is an array of traditional methods of delivery of equality and diversity training in HE, including contextualised simulations, drama-based training, workshops, quizzes and online courses, all of which had been experienced by interview participants. The survey presented nine delivery methods from which to select. Not surprisingly, the most frequent method of delivery, used by all but one of the respondents, was online courses with workshops offered by three-quarters of HEIs. The survey resulted in information about three additional modes of facilitation, action-learning sets, coaching and bespoke training, demonstrating HEIs offering a broad range of activity with online courses and workshops favoured by the majority.

In considering the various forms of equality and diversity training, interview participants discussed experiences that, in their view, were particularly thought provoking and engaging. Two of the activities centred on simulation workshops which were participatory, one facilitated by people with specific learning differences and the other by a professional services facilitator. The first involved small group activities which required the audience to communicate, both verbally and non-verbally, with each other, highlighting the difficulties experienced by people for whom communication was challenging.

> There is a lot to be said for people together in a workshop exploring ideas in a fearless way (Participant c)

The second was a theatrical group activity in which participants had assumed a persona. Participants had cards on which an identity was described, for example, a man with a hearing impairment. Participants were then tasked with adopting the identity and engaging in a range of activities.

> People literally stopped and were looking almost embarrassed, it made you really think about the practicalities of inclusion (Participant d)

It is interesting to note that simulations and drama-based activity involving disabled people, described as leading to 'really deep engagement' (Participant c), were the least frequent modes of

delivery, used by only one in ten institutions, yet are those which enable a depth of learning.   It is fair to say that drama-based training, in particular, may be less frequently utilised in HE given the significant costs associated with this form of training. The format requires specialist design and facilitation and the cost of employing actors skilled in non-scripted activity is significant.

Inviting disabled people to share their social imaginary at training events may afford participants the opportunity to contemplate the lived experience of others. Such activity requires sensitive facilitation, to ensure participants are able to distinguish between the individual experience and that of others with similar identities. Interview participants endorsed this approach in recommending the inclusion of case studies, live and pre-recorded, suggesting that disabled people speak at equality and diversity training events. Each participant offered a range of creative suggestions and spoke with enthusiasm, about how hearing real life experience elevated the impact of training, creating legitimacy and prompting significant opportunities for personal and organisational reflection and consideration of changes to practice.

> Theatre role play training could be really powerful and have a big impact, bringing it [disability] to life. The way that people react to it shows how such things can stop people and make them think. It puts people into someone else's shoes that they wouldn't normally step into (Participant b)

> Talking heads videos give other people an insight, humanising it [disability], making it real, making it accessible. What's fantastic about that is that you are including or valuing your staff so for them it's going to be incredibly powerful and affirming (Participant b)

> Case studies would make people understand more because it's real, it's what someone is living with rather than theoretical (Participant a)

The dominance of online provision, while logical given the limited resource required post development, adds weight to the suggestion that HEIs offer equality and diversity training to provide evidence of compliance to stakeholders.   Furthermore, that the prevalence of online courses in HE 'marginalise[s] the voices of disabled people' (Kikabhai, 2018: 176). Hurst contests the view that online courses 'facilitate learning' (2006: 158). He suggests online courses be used to complement other forms of training delivery. Interview participants described online courses as helpful supplements while acknowledging the limitations and reduced impact of online provision as a sole method of equality and diversity training delivery in Higher Education.

Online training will generally incorporate a short test, or assessment, which users have to pass in order to be competent. The passive and mechanical nature of online learning was considered by Participant d who described some users as 'people who skip through and 'just try their luck' with the end point assessment. The exploration of the extent to which online equality and diversity training in HE can, or does, embody the lived experience of disabled people was peripheral to this study, opening up a new line of inquiry for further research. The study found that online equality and diversity training courses, the least effective form of training, are the most prevalent in the sector. Furthermore, the study found that drama-based training and contextualised simulations rarely used in the sector.

From enforcement to engagement: Concluding remarks

In summary, the increasingly competitive and financially challenging HE landscape, and EHRC remit to enforce equal treatment compound the 'progressively tick-box' (Johnson Morgan & Finkelstein,

2017: 146) nature of equality and diversity training. For the professional practitioner, the most effective forms of equality and diversity training delivery are drama-based training, contextualised simulations and the inclusion of guest speakers in training events. These methods are less frequently utilised in HE, given their cost and complexity. This tension between compliance and training effectiveness is likely to increase thus compounding the challenge to embed equality of opportunity for all disabled people, in the culture of UK HEIs.

This paper has highlighted the way in which the Government and Higher Education Institutions influence debate, in particular discussion about people with a hidden or invisible disability (Buitendijk et al., 2019). If, as suggested, case studies and guest speakers are to feature in equality and diversity training in Higher Education then the confidence to disclose the nature of a disability by those invited to participate becomes a factor. Brown and Leigh (2018: 987) note that 'Invisible, less known or contested conditions are dismissed as a fabrication, malingering and an act of a fundamentally lazy or overwhelmed worker seeking validation', further highlighting the need for consideration of, and appreciation for the lived experience of disabled people. Despite the scale of this research, the findings raise important questions of relevance outside the HE sector and the field of disability studies. The public sector equality duty (Equality Act, 2010) extends beyond Higher Education to all public sector organisations having both resonance and applicability with trainers, managers and customers in other institutional settings. Public sector organisations including universities, and Government, funded, at least in part, by the public, are accountable to wider society. As institutions publically promoting equality and inclusion, social responsibility and ethical integrity, through their published mission and values statements, Universities should be leading the way in terms of inclusion and zero tolerance of discrimination in all its forms.

Acknowledging that disability is a complex, individual, and emotional lived experience, this paper contributes to the growing body of work around intersectionality. While confined to the exploration of the lived experience of disabled people, the paper raises questions about links between disability, gender, age, class or ethnicity, be that from the perspective of research participants, facilitators of training or those attending training events. This paper seeks to open up new opportunities, both in research and activism, for further exploration of the lived experience of disability through multiple lenses, and within increasingly diverse and complex institutional and social contexts.

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