



This work has been submitted to NECTAR, the
**Northampton Electronic Collection of Theses and
Research.**

<http://nectar.northampton.ac.uk/4396/>

Creator(s): Crofts, M. and Pilkington, A.

Title: The politics of equality and diversity in Higher Education

Date: 24 July 2012

Originally presented to: 5th Equality, Diversity and Inclusion
International Conference

Conference URL: <http://www.edi-conference.org>

Example citation: Crofts, M. and Pilkington, A. (2012) The politics of
equality and diversity in Higher Education. Paper presented to: *5th
Equality, Diversity and Inclusion International Conference 2012,
Toulouse, France, 23 - 26 July 2012.*

Version of item: Presented paper

The Perceptions and Politics of Equality and Diversity in Higher Education.

Melanie Crofts and Prof. Andrew Pilkington

Purpose

The aim of this paper is to explore the perspectives of various social actors regarding anti-discrimination legislation and equality issues within a case study setting. The purpose of conducting interviews with several actors was to explore whether and how equality legislation, in particular the positive duties, were being interpreted.

Design/Methodology/Approach

Previous research looking at the issue of different social actors in the field of equality and diversity has drawn upon Bourdieu's notion of the field, meaning "semi-autonomous, relational and multi-dimensional social spaces." (Özbilgin, M and Tatli, A (2011) p1232) In research conducted by Özbilgin and Tatli "the field of equality and diversity" is conceptualised "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." (Özbilgin, M and Tatli, A (2011) pp1232 – 1233) While this research will focus on the relationships between various actors the analysis will comprise a micro level analysis, focussing on the various social actors within a specific case study, a Higher Education Institution. Interviews were therefore conducted with members of the senior management (Vice Chancellor (VC), Pro

Vice Chancellor (PVC), Head of School (HoS), and Director of Human Resources (DHR)) within the case study institution in order to establish management perceptions of equality and equality legislation. Interviews were also conducted with other members of staff who had an equality remit within their role (Human Resources Manager (HRM), Equality and Diversity Officer (EDO) and Senior Union Member (SUM)) to ascertain whether there were alternative perceptions evident.

Findings

The Equality Act 2010 in the form of the positive duties requires that there is an understanding of substantive equality. The role of management has been identified as key in establishing the priorities of an organisation and whether and how equality is implemented. However, it appears that management within the case study institution is operating with a limited view of equality in the form of formal equality. The pervasiveness of formal equality, combined with the view that there are no significant equality issues within Higher Education, or the case study institution more specifically, has meant that management is not sympathetic to the legislation and equality issues are marginalized. This has led to a failure to adequately address the requirements of the Equality Act and institutional discrimination within the case study institution and ergo within Higher Education more generally.

Research Limitations

Interviews with staff and students are not the primary focus of this paper. However, research is being conducted regarding the perceptions of Black and

Minority Ethnic (BME) and disabled staff and students at the case study institution and preliminary results have demonstrated that the view from the 'grass roots' is that there are some considerable issues regarding disability and race discrimination at the case study institution. This aspect of the research is on-going and could be discussed by participants at the EDI Conference 2012.

Originality/Value of the Paper

This paper's originality lies in the micro level analysis of social actors within a case study setting within the specific area of Higher Education. The value lies in its attempt to highlight the conflict between management perspectives of equality and the requirements of the legislation and what is necessary in the achievement of substantive equality.

Key Words

Substantive Equality, Formal Equality, Higher Education, Management Perspectives, Positive Duties, Discrimination.

Exploring management perspectives when compared to those of other members of staff within the case study institution is significant as perceptions of equality may differ depending on the role and status of the individual. Previous research has found that “[t]here appeared to be a considerable gulf between the views of staff...and the perceptions of their senior managers.” (Deem, R et al (2005) p6) This will be discussed and the implications considered within the case study.

The role of management has been regarded as key in providing the leadership required and sending out the message that equality issues are significant in order to ensure that legislation is adhered to, not just by the letter, but also the spirit. “This top-down commitment and support was regarded by line managers as extremely important for leading the cultural change which was felt necessary in order to achieve equality for all...” (Greene, A. et al (2005) p36) The same may be said of the role of management within Higher Education Institutions where “[t]he extent and importance of managers in higher education has increased considerably in recent years as UK higher education has expanded...and the commitment of senior managers to equality of opportunity is clearly of considerable significance...” (Deem, R et al (2005) p82) This has been echoed in numerous pieces of research looking into equality within the Higher Education context, particularly when focussing on specific equality issues, for example in relation to Black and Minority Ethnic (BME) student achievement. “There should be a clear expression of ownership of the issue of BME attainment and success from the very top...” (Singh, G (2009) p48) 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 "Having a senior member of staff to lead a project was found to facilitate [staff buy-in], but their commitment needed to be more than tokenistic to be effective." (Berry, J and Loke, G (2011) p15) 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" (Berry, J and Loke, G (2011) p26) and further that "engaging senior managers was recognised as essential for the embedding of change at whatever level, and for sustaining the momentum and sustainability of their work. Demonstrating high level academic support for the agenda also gave it credibility and visibility across the institution, promoted staff interest and buy-in to the changes being effected and thereby contributed to cultural change." (Berry, J and Loke, G (2011) p47)

The importance of the role and commitment of senior management was also echoed by the participants in the case study institution; "I think that overall how seriously the institution thinks it [compliance with the duties] is. I think you've got to have an institutional buy-in at senior level, no question about that. You've got a Vice Chancellor who is personally committed" (PVC); "...it depends how much push you get from the top. ...Certainly it depends on how it is viewed from the top" (DHR); "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." (HoS)

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 [is] 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 [Schools and Departments] that this is what they are supposed to be doing..." (PVC); "It's owned by the senior management team of the university." (HoS)

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" (HRM); "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" (SUM); "... 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 HR function as well, so it's not just the Directors of HR or the management of HR, it flows from who's supervising and managing them..." (EDO)

Management perspectives and commitment clearly have an impact on establishing the priorities for an institution thereby determining how equality issues are dealt with. The question arises, however, as to whether management perspectives of equality and equality issues within the case study institution are aligned with those at the 'grass roots' level of the institution and those tasked with implementing equality legislation at the case study institution.

Understanding Equality

Equality is a concept which is not necessarily a straight forward one to comprehend, or to agree on in terms of meaning. "...we all have an intuitive grasp of the meaning of equality and what it entails. Yet, the more closely we examine it, the more its meaning shifts" (Fredman, S (2001) pp1 – 16)

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. Clearly this could create issues within organisations where management and other members of staff have different views. 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 starting point here is to briefly consider different notions of equality. It is not the aim to provide a comprehensive and/or philosophical consideration of the meaning of equalityⁱ, rather to provide some context to the perceptions of equality as expressed by management in the case study institution in order to assess how these may affect compliance with the law.

Fredman identifies 3 main notions of equality, formal (equal treatment), substantive (equality of result) and equality of opportunity. (Fredman, S (2001) pp1 – 16) Put simply, formal equality is the notion that in order to achieve equality one must treat people equally and has been aligned with a liberal interpretation of equality. Some academics (See for example Castagno, AE (2009) pp755 – 768) have also suggested that the notion of equality of opportunity also falls within a liberal approach to equality as neither of these perspectives on equality requires that there is a consideration of the equality of outcomes. “The liberal conception of formal equality is one of consistency – likes must be treated alike... The concept of consistent treatment ... embodies a notion of procedural justice which does not guarantee any particular outcome.” (Barnard, C and Hepple, B (2000)p562 – 563) Formal equality has been reflected in British anti discrimination law in the form of a prohibition on direct discrimination.ⁱⁱ “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" (Forshaw, S and Pilgerstorfer, M (2008) p348)

Equality of opportunity is also addressed to some extent by the British law relating to indirect discrimination.ⁱⁱⁱ 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 such discriminating policies or practices should improve equality of opportunity and remove the barriers prohibiting such equality of opportunity. "It [indirect discrimination] recognises that treating individuals in the same manner... might create inequality because of differences between individuals exhibiting particular protected characteristics." (Forshaw, S and Pilgerstorfer, M (2008) p351)

The final approach identified by Fredman is 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 discrimination 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." (Fredman, S (2001a) p145) This notion of equality 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. Therefore substantive equality requires a consideration of results and outcomes. (Castagno, AE (2009) p761)

The British law in this area has developed to include a positive duty on Public Authorities to promote equality and has also required that Public Authorities adhere to the general duties under the Equality Act 2010 s149. The primary aim of the positive duty has been neatly summarised by Fredman; "At the root of a positive duty... is a recognition 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. ...positive action is required to achieve change, whether by encouragement, accommodation, or structural change." (Fredman, S (2001a) p145)

It is with these 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 by the institution towards equality and diversity issues and the interpretation and implementation of the legislative requirements. What appeared to come across during the interviews is that although there was clearly some understanding around the concept of mainstreaming and a recognition of the need to be proactive, 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.

This interpretation/understanding of equality appeared to be reflected in the views of some of the more senior staff but was also found among union officials 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" (VC); "... it is about trying to get fairness for everybody." (DHR); 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." (HoS) "...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." (SUM) 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.

However, as the equality duties and the requirement to conduct equality analyses (formerly Equality Impact Assessments) 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 and clearly also has an impact on actions taken within the case study institution to go beyond 'treating people fairly'. "Liberalism's focus on equality is solely based on formal/restrictive equality, but critical race theorists have critiqued the standard of formal/restrictive equality on a number of grounds. These critiques include that its focus on sameness is limited because of the persistent and pervasive social construction of difference based on race, class and gender; that although it can remedy the most extreme and shocking forms of inequality, it can do nothing about the business-as-usual, everyday forms of inequality that people experience constantly; and that it masks substantive/expansive equality and pervasive inequality. In its reliance on formal/restrictive equality, liberalism privileges equality of opportunity over equitable outcomes, processes over results, colorblindness [sic] over race consciousness, and individual freedoms over group experiences." (Castagno, AE (2009) p762)

In fact, although a liberal interpretation of equality may be regarded as a relatively common view of equality, particularly amongst the senior management at the case study institution, 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."

(Fredman, S (2001a) p145)

Interestingly this was reflected in the comments of other members of staff in the case study institution. The HRM 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." (HRM) Participant A (a member of academic staff) observed that "...unless you have some kind of 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."

Issues relating to 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 issues and identifying areas

where there's disproportionate adverse impact and taking action on them... I think these are very important positive duties..." (EDO)

It seems to be the case that participants not only typically drew upon a liberal notion of equality but also exhibited a lack of understanding of substantive equality issues and the notion of positive duties. The EDO expressed this well "... people still actually 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 issues in terms of the concept of direct discrimination..." (EDO) "I think people who aren't in HR struggle with what it [equality impact assessing] means. ...I'm sure staff aren't aware of the duties." (DHR) Here the DHR seemed to imply that those outside HR struggle with the concepts of equality impact assessing and the positive duties. The HRM went further and expressed the opinion that she thought even those *within* HR 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 HR are just paying lip service... They have a brief understanding of what E&D is, but they don't really understand." (HRM)

This acknowledgement is ironically confirmed in the interview with the DHR and HRM when both confuse the notion of positive action as that of positive duties. The DHR 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." (DHR) There was clearly some confusion here as she was 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. Similarly the HRM, when asked what her understanding of the positive duties were, replied "Okay, I just want to make sure we're talking about the same thing, are you talking about positive action?" (HRM) There was clearly some misunderstanding regarding the role of the positive duties within the case study institution amongst senior managers who were responsible for leading on the implementation of the law.

Whether the view that equality issues equated 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 that is reaffirmed by the participants of research reported here." (Morrison, M. (2006) p170) 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." (EDO) As the DHR 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." (DHR) 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 (or possibly the will) 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 in the way the requirements of the law are implemented by those tasked to do so. It has been argued that if a formal interpretation of equality is taken, achieving "real" or substantive 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..." (Castagno, AE (2009) p766)

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” (Fredman, S (2001a) p145)

Higher Education – Problem, what problem?

During the course of the interviews, 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. “It [equality legislation] 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.” (HoS) 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.” (Hey, V et al (2011) p4)

A common view was that universities were somehow different to other Public Authorities, in terms of being liberal meritocratic institutions characterised by academic freedom. This meant that 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. Deem et al confirmed this belief in their research and found that access to universities and success was viewed to be on the basis of merit and that Higher Education Institutions were fundamentally based on notions of justice and fairness. (Deem, R. et al (2005) p11) This view has of course been challenged by much educational research. The view that Higher Education Institutions "hold notions meritocracy which assume that intelligence per se ... has little to do with social factors. ... this ignores the role of various social factors in determining educational attainment." (Shaw, J. (2009) pp322 and p327) 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" (Brink, C (2009) p34)

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 Universities doing

very well? Why should we need legislation?" Here is the Head of School; "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." This view is replicated elsewhere, "[w]e 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." (PVC) 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." (HoS) 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." (Singh, G (2009) p6)

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 issues much more difficult. Here is the DHR, 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 don’t. There is a danger that arrogance creeps in. The HE sector and its culture is quite unique.” (DHR)

There were, however, also some inconsistencies in the view that Higher Education does not have any significant equality problems. There was acknowledgement that other Higher Education Institutions may have certain more “visible” issues. “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?” (VC) This view seems to suggest that there are no equality issues/problems (in this example specifically with regards to race) unless there are visible issues, 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 was 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 discrimination unfairly in relation to gender or race." (VC)

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." (PVC) The view that the visibility of the "problem" is linked to the action which is taken, particularly with regards to disability issues, was also expressed by the EDO. "The dominant equality strand ... certainly in the 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." (EDO)

However, it was also acknowledged that, despite the comments made by the Vice Chancellor above, there *were* some issues 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." (VC) "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 School. ...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." (HoS)

An additional issue 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..." (PVC) These quotes therefore reflect that there *were/are* concerns regarding issues 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 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..." (EDO) These comments from management and the suggestion that there is some concern regarding BME achievement, do not sit squarely with earlier statements that there were not evident problems

regarding discrimination 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.

The feeling from staff and students on the “shop floor” of the institution however, has demonstrated that the view from senior management differed quite substantially from members of staff who were not in senior management positions and some staff had the perception there were some quite significant equality issues which were not being addressed by the institution. This was also reflected by the views of some students. For example, “...gender is not on the agenda at all...” (EDO)

Such a difference in terms of the perceptions of equality issues and discrimination do not appear to be unique to the case study institution. “There appeared to be a considerable gulf between the views of staff in the six institutions and the perceptions of their senior managers. ...The view from the grass roots and the view from the senior management vantage point for our respondents, certainly seems very different.” (Deem, R. et al (2005) p6 and p107)

To conclude it may be observed that there appears to be a perception from senior management within the case study institution (and Higher Education more generally) that there are no longer significant equality issues 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 issues is seen as a heavy handed and unnecessary approach. If the general opinion within the institution (and possibly across the sector) is that there is not really an issue to be addressed, then arguably this will have an impact on how equality issues are dealt with and the focus which is afforded to them. What might be argued is that the view that equality issues are 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” (HoS) 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. “...people with power, those with more, are not going to respond to claims that they should give up some of what they have when those claims are made merely on the grounds favouring equality. Or it may be that equality is too abstract or too vague to win political support. Whatever the reasons, it may be that people do insist on further support and reject arguments made simply in the name of substantive equality.” (DeMarco, J (2001) p199)

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 Equality Act 2010. However, it might be said that the positioning of the EDO

within the case study institution, which was outside of the 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 issues. Even the Senior Union Member 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 an isolated, lone voice which ran counter to management perceptions of equality and the problems encountered 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 had 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 stronger actors, with neo-liberal agendas were able to twist the arm of the weaker actors who subscribed to more substantive approaches, and had greater legitimacy..." (Özbilgin, M and Tatli, A (2011) p1245)

The impact of a combination of a formal approach to equality and the perception that there are no issues leads to a marginalisation of not only the EDO, but equality and diversity generally, 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" (Morrison, M. (2006) p175 – 176) However, as has been highlighted by research in the US relating to schooling, "[m]ost educators at Spruce tend towards either the conservative belief that change is not needed or the more liberal belief that change is slow to come.... The teachers and administrators at Spruce who ascribe to the more conservative ideology believe that the school is doing a good job meeting the educational needs of its students. For these teachers, any change towards greater equity or even recognition of diversity is unnecessary and may, in fact, only serve to create divisions among the faculty and perhaps the larger school community. ... Ultimately, however, both the conservative ideology that change is unnecessary and the liberal ideology that change is slow to come have the same result even though they stem from very different perspectives about the current situation and the need for change. Specifically, the result in both is that very little is done to work towards greater equity in educational settings such as Spruce." (Castagno, AE (2009) p764) It might be argued that this could just as well apply to the case study institution within a Higher Education setting.

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, equality issues 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 issues seriously, even where the data suggests there may be a problem. (Pilkington, A (2011) pp113 – 114) “When equality is understood as equal treatment and equality of opportunity, unequal and inequitable outcomes are not a catalyst for action.” (Castagno, AE (2009) p764)

This inaction and evidence 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. Arguably this means that “[a] clear message from the research is that universities have tended to lag behind many other public institutions in facing up to the issue of institutional racism that was highlighted in the Macpherson Report.” (Singh, G (2009) p47)

ⁱ For a more detailed expositions and discussions of the meaning of equality see for example; Fredman, S (2001) ‘Discrimination Law’ OUP, Bamforth, N (2004) ‘Conceptions of Anti-Discrimination Law’ OJLS Vol. 24 p693, Morris, A (1995) ‘The Normative Foundations of Indirect Discrimination Law: Understanding Competing Models of Discrimination Law as Aristotelian Forms of Justice’ OJLS Vol. 15 p199, Fredman, S (2001) ‘Equality: A New Generation?’ ILJ Vol. 30 p145 (accessed via Lexis 09/03/2011), Knight, C (2009) ‘Describing Equality’ Law and Phil p327

ⁱⁱ 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.

ⁱⁱⁱ 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.

Bibliography

- Bamforth, N (2004) 'Conceptions of Anti-Discrimination Law' *Oxford Journal of Legal Studies* Vol. 24 p693
- Barnard, C and Hepple, B (2000) 'Substantive Equality' *Cambridge Law Journal* Vol. 59 No. 3 pp562-58
- 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 16/04/12)
- 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
- 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
- Deem, 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
- DeMarco, J (2001) 'Substantive Equality: A Basic Value' *Journal of Social Philosophy* Vol. 32 No. 2 pp197 – 206
- Forshaw, S and Pilgerstorfer, M (2008) 'Direct and Indirect Discrimination: is there something in between?' *Industrial Law Journal* Vol. 37 No. 4 pp347 – 364
- Fredman, S (2001) 'Discrimination Law' OUP Oxford
- Fredman, S (2001a) 'Equality: A New Generation?' *Industrial Law Journal* Vol. 30 p145
- Greene, A, Kirton, G, Dean, D (2005) 'Involvement of Stakeholders in Diversity Management: A Case Study of a Government Department' PSO Report
- Hey, V et al (2011) 'The Experience of Black and minority Ethnic Staff in Higher Education in England' Equality Challenge Unit
- Knight, C (2009) 'Describing Equality' *Law and Philosophy* p327
- 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 p199
- 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
- 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
- Pilkington, A (2011) 'Institutional Racism in the Academy: A Case Study' Trentham Books
- Shaw, J. (2009) 'The Diversity Paradox: Does Student Diversity Enhance or Challenge Excellence?' *Journal of Further and Higher Education* Vol. 33 No. 4 pp321 – 331
- 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 (Accessed 16/04/12)
- SQW Ltd (2005) 'Evaluation of the Equality Challenge Unit: Report to HEFCE by SQW Ltd' http://www.hefce.ac.uk/pubs/rereports/2005/rd27_05/ (Accessed 16/04/12)

Legislation

Equality Act 2010

s13

s19(1)
s149