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The Impact of the Formal Equality Stance on Institutional Processes and Legal Compliance in Higher Education.

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Purpose

The aim of this paper is to build on a previous paper which explored the politics and perspectives of various social actors regarding anti-discrimination legislation and equality within a higher education setting. This paper will discuss the *impact* of the politics and perceptions on compliance with legislative requirements as reflected through the equality processes within a case study institution. In considering this, the question which will be borne in mind is: does the tendency towards adopting the formal equality stance also impact on the case study's equality processes and, in turn, their response to the Public Sector Equality Duty (PSED)?

Such an analysis could have wider implications on how equality and compliance with the law is dealt with in other Higher Education Institutions (HEI).

Design/Methodology/Approach

The previous paper relating to the politics and perceptions of social actors within a case study Higher Education Institution was based on a micro level analysis, focussing on the various social actors within a specific case study, a HEI. Interviews were 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)).

It is the aim of this research to move away from considering the experiences and perceptions of social actors, to considering the processes¹ 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.

The time frame which was applied was from September 2008 until April 2012. The reason for this time frame was 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. The following academic year, therefore, provided a neat starting point. The end point of the analysis was chosen for two reasons. Firstly, the Equality Act 2010 (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

¹ Committee structures which are in place to look at equality issues, the role of the Equality and Diversity Officer

led to the redundancy of the remaining EDO. The end date of April 2012 therefore allowed for this restructure to be discussed and analysed.

Document Analysis

In order to examine the processes a number of documents were analysed.² These documents consisted of minutes and terms of reference for relevant committees and various consultation documents and responses relating to a restructuring of equality provision at the case study institution.

The following documents were used and analysed:

- 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)³
- Various email communications
- Consultation documents and responses to consultation
- Various reports
- Case study institution's website

These documents were chosen for analysis due to the committees having responsibility in some form or another for equality issues or the documents were related to equality restructuring at the case study institution.

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."⁴ The main approach used to analyse the documentation was a 'summative'⁵ content analysis. The aim was to identify key words within the documentation 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."⁶

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

² A combination of content and discourse analysis were utilised

³ The role of these Committees will be explained in the section below relating to processes.

⁴ 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

⁵ Ibid, p1283

⁶ Ibid, pp1283 - 1284

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)⁷ I only analysed those sections of the minutes which referred 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 paper. Secondly, where the committees were specific equality committees⁸ I used those sections of the minutes which related to the areas I was focussing on, such as the restructuring of the equality provision or compliance with the PSEDs.

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.

Theoretical Underpinnings

Gap and Impact Studies

Gap studies emphasises the disparity between 'law-in-books' and 'law-in-action' as articulated in 1910 by Roscoe Pound.⁹ 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.¹⁰ In essence, Pound argued 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."¹¹ Therefore the consideration of the 'law in books' as opposed to the 'law in action' which will be conducted in this paper does not correspond exactly to Pound's view but will still provide useful concepts to assist with the analysis of the implementation of the PSEDs as reflected in equality processes in the case study institution.

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.¹² "What Gap Theory alerts us to is that the de jure position is one thing, the de facto practice sometimes quite another story."¹³ 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

⁷ HRGC, SEC, ASC

⁸ EAC, EWG, EC

⁹ Pound, R (1910) 'Law in Books and Law in Action' *American Law Review* Vol. 44 pp12 - 36

¹⁰ 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

¹¹ Pound, R (1910) op cit. p15

¹² 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.

¹³ Brownsword, R (2006) 'An Introduction to Legal Research' www.wellcome.ac.uk/assets/wxt030897.pdf (accessed 19/02/08) p19

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, via institutional processes, 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...",¹⁴ 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 costs of compliance are higher than the costs of non-compliance."¹⁵ 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, via a consideration of the institutional processes, 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 to a consideration of the particular theory 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 Critical Race Theory (CRT). As this paper 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).

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 rather, it is a developing perspective with constant changes and debate."¹⁶ 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.¹⁷ CRT situates race as the primary factor of oppression.¹⁸ 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 paper is, can CRT provide an adequate explanation for the findings within this research?

¹⁴ Ibid, p19

¹⁵ Ibid, p20

¹⁶ 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

¹⁷ Hylton, K 'Critical Race Theory: An Extended Introduction' in Pilkington et al (Eds.) (2009) op cit. p86

¹⁸ Gillborn, D (2008) 'Racism and Education: Coincidence or Conspiracy?' Routledge p1

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 paper 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..."¹⁹ This form of racism is said to permeate all hierarchical domains within society and reinforces White supremacy²⁰ within these structures,²¹ 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."²² This view of racism is helpful in terms of an analysis of the PSEDs given that it is such forms of 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...."²³ 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.²⁴ 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.²⁵

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

¹⁹ 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

²⁰ "...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

²¹ DeCuir, J.T. and Dixson, A.D. (2004) "So When it Comes 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 p27

²² Hiraldo, P (2010) 'The Role of Critical Race Theory in Higher Education' *The Vermont Connection Vol. 31* pp53 – 59 at p55

²³ 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

²⁴ 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

²⁵ Ibid, p67

time to time, be counted among the interests deemed important by the courts and by society's policymakers."²⁶

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."²⁷ 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.²⁸ Delgado and Stefancic explain that after a contradiction closing case any gains are slowly worn away "by narrow interpretation, administrative obstruction, or delay"²⁹ with the consequence that the circumstances slowly return to the position they were in prior to the contradiction-closing case.

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 paper. Although there are other criticisms of CRT,³⁰ the main focus shall be on CRT's relationship with other types of oppression, such as those based on gender, sexuality and, for the purposes of this research, disability. As was mentioned previously for CRT, race is the primary factor of oppression.³¹ 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.³²

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."³³ 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

²⁶ Bell, D (1980) 'Brown v Board of Education and the Interest-Convergence Dilemma' *Harvard Law Review Vol. 93* pp518 - 533 at p523

²⁷ 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

²⁸ Gillborn, D (2008) op cit. p33

²⁹ Delgado, R and Stefancic, J (2001) 'Critical Race Theory: An Introduction' New York University Press p24

³⁰ 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 Theory and Racialisation in post-7/7 Racist Britain' *Journal for Critical Education Policy Studies Vol. 5 No. 1*

³¹ Gillborn, D (2008) op cit. p1

³² Cole, M (2009) op cit. pp33 - 37

³³ 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

and disability as separate entities which are equally significant factors of oppression.

Background

In order to be able to analyse the impact of the politics and perceptions of management within the case study institution on the processes and legal compliance with equality legislation, it is necessary to provide a brief recap of the findings relating to management perceptions of equality.

The importance of the role and commitment of senior management in advancing the equality agenda within higher education was highlighted as significant within the literature³⁴ and was reflected by participants in the case study institution. 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 and is therefore not necessarily surprising. However, management perspectives and commitment have an impact on establishing the priorities for an institution thereby determining how equality is dealt with. It was therefore necessary to look at the management's understanding of equality as this provided an explanation as to priorities set, actions taken and the possibility of differences in opinion regarding what action the institution had taken by way of achieving equality and complying with anti-discrimination legislation.

What appeared to come across during the interviews was 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. 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 as 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"³⁵ "... it is about trying to get fairness for everybody."³⁶ 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."³⁷ "...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."³⁸ 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

³⁴ See for example 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; 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) p15; Fullick, L (2008) 'From Compliance to Culture Change: Disabled Staff Working in Lifelong Learning' Summary Report NIACE pp1, 7 and 15; Ewens, D et al (2011) 'Enabling Equality: Further Disability Equality for Staff in Higher Education' ECU and Leadership Foundation for Higher Education p9

³⁵ VC

³⁶ PD

³⁷ HoF

³⁸ UO

management background, or other participants, such as the Union Official and the Personnel Manager within the case study institution.

However, as the PSEDs 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 was argued that the view taken by participants regarding the meaning of equality had an effect in terms of how the duties were 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'. 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..."³⁹

In addition, 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] 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."⁴⁰

The primary conclusion which was drawn was that managers, as well as some other members of staff within the case study institution, viewed equality along formal lines. This meant that, along with a perception that there were no equality issues which needed to be dealt with, they were less likely to 'see' the problems relating to discrimination within the case study, this was particularly where there were instances of institutional discrimination, as highlighted by the experiences of Black and Minority Ethnic (BME) and disabled staff and students. Senior managers who were expected to lead on the implementation of the PSEDs viewed 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 meant concerns raised by BME and disabled staff and students were not apparent to them.

What was clear was 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

³⁹ EDO

⁴⁰ HoF

EA 2010. In other words, the EDO was battling against the institutional flow⁴¹ 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."⁴² This therefore made the role of the EDO, and what they are trying to achieve, unique within the institution.⁴³ The EDO, on the whole, was an isolated, lone voice which ran counter to management (as well as other members of staff) perceptions of equality within the case study.

Assessing Equality Processes – Continuity and Change

The aim of this section of the paper 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. 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, in particular race and disability, 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 at the case study institution. Similarly, considering the changes in the role of the EDO can also provide useful insights into the priorities and commitment to equality.

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.⁴⁴ 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 Chancellor. In addition to the Senate and Governor representatives, the composition of the committee was made up of senior management⁴⁵ as well as trade union representation⁴⁶ and the EDOs.⁴⁷ 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] obligations under legislation... establish and receive reports

⁴¹ Ahmed, S (2012) 'On Being Included: Racism and Diversity in Institutional Life' Duke University Press p186

⁴² Ibid. p186

⁴³ See Ibid. for a detailed account regarding this issue.

⁴⁴ For a more comprehensive analysis of the change which occurred up to this point, please see Pilkington, A (2011) 'Institutional Racism in the Academy: A Case Study' Trentham Books pp115 - 118

⁴⁵ Pro Vice Chancellor, Director of Educational Partnerships and Lifelong Learning, Personnel Director, Director of Student Services, Heads of the Faculties (or nominee).

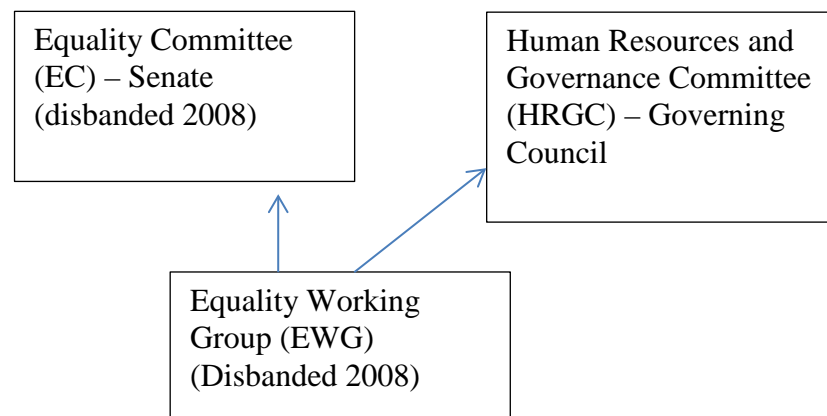
⁴⁶ Students' Union, UNISON and NATFHE (later UCU)

⁴⁷ Equality Committee (19th November 2003)– Composition, Membership and Terms of Reference

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."⁴⁸

The second committee which dealt with equality was a sub-committee of the EC. The Equality Working Group (EWG) was chaired by the Pro-Vice Chancellor and consisted of senior managers,⁴⁹ trade union representation,⁵⁰ community representatives,⁵¹ 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]..."⁵²

In addition to these two committees which were specifically focussed on equality and diversity, some equality issues, in particular those concerning staff, were also 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.



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 should be given a higher profile, along the lines of health and safety.⁵³ The paper was proposed due to a concern regarding the dearth of Equality Impact Assessments (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 institution was in breach of its statutory obligations.⁵⁴

Among other things, the discussion paper suggested that consideration should be given to "the creation of a separate independent Equalities and Diversity

⁴⁸ Ibid.

⁴⁹ Heads of Faculties or nominated associates and Heads of Departments (or nominated representatives)

⁵⁰ President of the Students Union, UCU and UNISON

⁵¹ Ability [case study institution town], Lesbian Gay and Bisexual Association, Racial Equality Council

⁵² Equality Working Group (23rd June 2004) Composition, Membership and Terms of Reference

⁵³ UCU (12th June 2007) 'Equalities and Diversities at [the case study institution]: A Discussion Document'

⁵⁴ EWG (14th May 2008) Chairs Agreed Minutes – 16.1 Amendment to minutes of meeting held 8th May 2007.

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..."⁵⁵ 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..."⁵⁶ An external consultant⁵⁷ was brought in to conduct the review and the process focussed on interviewing "the key players involved in support for E&D"⁵⁸ 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".⁵⁹ 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,⁶⁰ "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..."⁶¹ 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."⁶² 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.⁶³ 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.

⁵⁵ UCU (12th June 2007) 'Equalities and Diversities at [the case study institution]: A Discussion Document'

⁵⁶ Vice Chancellor (undated) 'Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation' pp1 - 2

⁵⁷ A recently retired Pro Vice Chancellor

⁵⁸ Case Study Institution (December 2007) 'Report on the Arrangements to Support the Equality and Diversity Agenda at the University...' p2

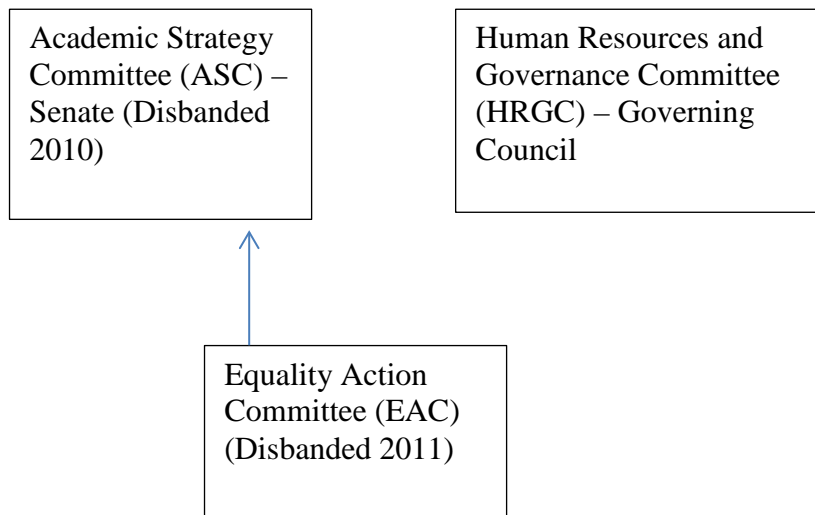
⁵⁹ Ibid.

⁶⁰ When the EDO for staff resigned, the post was not replaced.

⁶¹ Vice Chancellor (undated) 'Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation' p3

⁶² Ibid. p4

⁶³ Ibid.



Therefore there was no specific equality committee which involved either the Governors (who are ultimately legally responsible for compliance at the university) 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..."⁶⁴ 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.

There were a number of other criticisms⁶⁵ 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..."⁶⁶ One EDO made the point succinctly in their response to the report, "Unfortunately I think that the problems with this report emanate from 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."⁶⁷ It might be

⁶⁴ Email correspondence between the UCU representative and the Pro-Vice Chancellor dated 24th September 2008

⁶⁵ Particularly from UCU, Equality and Diversity Officers and other academics and staff at the case study institution.

⁶⁶ UCU (undated) Commentary on the Report Regarding Equality and Diversity Arrangements and Agenda at the University... p1

⁶⁷ EDO (24th January 2008) 'Comments of the "Report on the Arrangements to Support the Equality and Diversity agenda at the University..." p3

suggested that the tendency to view the EDOs as the “problem” should not come as a surprise considering the findings within the previous research mentioned above 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.”⁶⁸ Therefore the barriers to achieving substantive equality within the case study 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.”⁶⁹

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 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.”⁷⁰ In addition, there appeared to be more emphasis placed on the views of the managers who had been interviewed⁷¹ 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.”⁷² 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”⁷³ 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.”⁷⁴ The report on the outcomes of the consultation and recommendations re-emphasised the (flawed?) reasoning

⁶⁸ Ahmed, S (2012) op cit. p186

⁶⁹ EDO (21st April 2008) contained in email dialogue with a Union Representative

⁷⁰ Pilkington, A (2011) op cit. p115

⁷¹ See Ibid. for examples

⁷² ‘UCU (undated) Commentary on the Report Regarding Equality and Diversity Arrangements and Agenda at the University...’ p3

⁷³ Case Study Institution (December 2007) ‘Report on the Arrangements to Support the Equality and Diversity Agenda at the University...’ p1

⁷⁴ Ibid. p3

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,⁷⁵ "...all respondents agree that equality and diversity is an issue for which all members of the university must take responsibility and therefore the further development and resourcing of a special unit for Equality and Diversity would probably run counter to this approach."⁷⁶

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..."⁷⁷ 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.

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 (SEC), 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."⁷⁸ 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 EDO⁷⁹ 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.

⁷⁵ Pilkington, A (2011) op cit. p118

⁷⁶ Vice Chancellor (undated) 'Future Arrangements for Equality and Diversity in the University...: A Report on the Outcomes of a Consultation' p5

⁷⁷ University Executive Team - Case Study Institution website (accessed 24/05/13)

⁷⁸ Clerk to the Committee – email communication sent 18th October 2011

⁷⁹ The EDO was made redundant in the restructuring of Professional services – this will be discussed further later

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. This started with the abolition of committees with membership consisting of governors and chaired by Vice 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."⁸⁰ 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."⁸¹ The disbanding of this committee was also significant as when there was a further restructuring within the University (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."⁸²

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.

Student Experience
Committee (SEC) -
Senate

Human Resources and
Governance Committee
(HRGC) – Governing
Council

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..."⁸³ and the list goes on.

⁸⁰ Clerk to the Committee – email communication sent 13th February 2012

⁸¹ Ibid.

⁸² HRGC (8th March 2011) Deputy Chairman's Minutes of the Meeting p1

⁸³ Student Experience Committee (2nd November 2011) Terms of Reference 2011 – 12

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.”⁸⁴

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 institution, nor 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”⁸⁵ among other things. It is also worth noting that amongst the original composition⁸⁶ and the amended composition⁸⁷ (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 of the committee. 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.⁸⁸

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

⁸⁴ Ibid.

⁸⁵ Equality Action Committee (undated) Terms of Reference

⁸⁶ 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 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.

⁸⁷ 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.

⁸⁸ 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.

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.

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 research 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."⁸⁹ 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..."⁹⁰ 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.

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...*"⁹¹ 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

⁸⁹ Case Study Institution (June 2011) 'Professional Services Review: Consultation Document on Professional Services Restructuring at the University...' p1

⁹⁰ Ibid. p4

⁹¹ Ibid. p10 (emphasis added)

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.”⁹² It was within this consultation document that the proposed 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.”⁹³ In relation to staff, it was stated that, “The current HR Business Partnering Team and HR Policy and OD Team will be reconfigured 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.”⁹⁴

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 University. 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...”⁹⁵ The post was confirmed as affected by potential redundancy in a document issued in September 2011.⁹⁶

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 as well as other individuals within the case study institution as well as the EDO.

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

⁹² Case Study Institution (22nd August 2011) ‘PSR Collective Redundancy Consultation Paper’ p1

⁹³ Ibid. p5

⁹⁴ Ibid. p4

⁹⁵ EDO (01/09/11) Email communication to Equality mailing List

⁹⁶ Case Study Institution (September 2011) ‘Collective Consultation – Posts Affected/Not Affected’ p4

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, 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."⁹⁷

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.

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."⁹⁸ In addition, when considering the

⁹⁷ Case Study Institution (18th October 2011) 'Outcome of 30 Day Collective Consultation: Professional Services Review' p7

⁹⁸ HoF

publication of the case study institution's equality data and objectives, as were required in order to demonstrate compliance with the new PSED, it is unlikely that the case study institution would be regarded as being legally compliant with the new duties. 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, were not 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 2011.⁹⁹ 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 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.¹⁰⁰

In short, the leadership under the new structure with regards to managing equality and diversity rested on a Head of Faculty (who took a formal approach to equality and did not believe that there were significant equality issues which needed addressing within HE and was off with a 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 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.

⁹⁹ "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

¹⁰⁰ 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.

Conclusions

Previous research considered the views and perspectives of equality of various social actors within the case study institution. Conclusions were drawn suggesting that a formal equality stance was adopted by management, and possibly other members of staff at the case study, and this meant that concerns which were highlighted by BME and disabled staff and students were not being addressed. In short, it is suggested that over the period covered by this paper, compliance with the legislative requirements relating to equality (focussing on the implementation of the general and specific duties) 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.¹⁰¹ It is argued that the formal equality stance adopted by management at the case study institution 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 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 paper 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.

The findings of this paper suggest that the hypothesis offered by Gap Studies that "there will be some disjunction between the law-in-books and the law-in-action..."¹⁰² 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."¹⁰³ 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 and therefore the PSEDs were not seen as necessary, 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

¹⁰¹ See Pilkington, A (2011) op cit. pp79 - 118

¹⁰² Brownsword, R (2006) op cit. p19

¹⁰³ Ibid, p20

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 institution for non-compliance can be said to have been greatly reduced. “[S]ince the formation of the Coalition Government in May 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.”¹⁰⁴

In summary, the findings reflected in the data at the case study institution suggest that the formal equality stance is prevalent. The institutional barriers 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.

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 and other equality dimensions 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. 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 and processes implemented to address institutional racism are also visible within the case study institution. It is submitted that after the Macpherson Report (which is suggested by Gillborn to be a contradiction-closing case)¹⁰⁵ 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 institutional racism and discrimination more broadly.

¹⁰⁴ 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

¹⁰⁵ See Gillborn, D (2008) op cit. pp118 - 145

The concepts coined by CRT are 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 previously.

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