A collection of essays from the Equality and Diversity Forum and EDF Research Network

SHAPING THE FUTURE OF EQUALITY, HUMAN RIGHTS AND SOCIAL JUSTICE

BEYOND 2015

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Equality and Diversity Forum
Tavis House
1–6 Tavistock Square
London WC1H 9NA

Tel + 44 (0) 20 303 31454
email info@edf.org.uk
website www.edf.org.uk

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Foreword

Marie Staunton CBE, Chair of the Equality and Diversity Forum

The Beyond 2015 conference in February 2015 created a space, a still point in the turning world of policy. A time to stop and reflect just before the election kicked off with its flurry of promises. Why are some inequalities so intractable; some traditional rights so difficult to defend? The essays in this collection are a further opportunity to reflect on these questions.

UK society is challenged by many entrenched problems such as occupational segregation, minorities at the bottom of the socio-economic pile and the existence of a cohort of young people who lost out from austerity and require a better future. However much politicians at the top may try, changing attitudes within institutions and at the frontline of service delivery is hard; rules and guidelines alone do not change the microclimate inside organisations.

How can we help the new government of May 2015 to meet those challenges? What research is needed to produce evidence-based policy? We know that during the last administration, strong evidence saved the Public Sector Equality Duty from the government's bonfire of the red tape. Through the Beyond 2015 project we have brought researchers together with the frontline NGOs who have direct contact with citizens affected by government policies across the equalities strands. And we've learnt that a bedrock of respect for human rights in the health service, in care homes, in policing, in mental health, and at work, is needed to protect us all from abuse and to remove barriers to inclusion and growth.

The relationship between policymakers, research and the third sector is key. According to Hughes, successive governments have failed to make progress on intractable social problems because of poor channels of communication between these sectors.[1] The absence of adequate communication about how complicated people's lives are in the 'real world' means that good policy intentions lead to confusion and inefficiency on the ground, with those intentions being muddled as they trickle down to the front line. The Equality and Diversity Forum (EDF) and the EDF Research Network have published these essays to bring more service user insight into the thinking of policymakers and researchers. EDF, with its links into the NGO sector and government, and the Research Network are in a position to connect decision makers with the right research at the right time.

And we've learnt lessons about what drives change from the last five years. Some moves forward have been side effects rather than objectives of policy – a by-blow of auto enrolment will be better pensions for women and ethnic minorities. Others have been a consequence of changed public attitudes. Same sex marriage is a prime example. As Prime Minister, David Cameron's support for equal marriage appealed to wider public opinion over the heads of some in his party who were using a narrative about traditional values.

From the research and opinion surveys that EDF's sister organisation Equally Ours has done, we know that an appeal to higher values can be effective in moving the undecided to the side of human rights and equalities. But public opinion moves forward jerkily – for example, it is divided on attitudes to disability. The Paralympics created superheroes out of some people with disabilities yet research by the Employers

1. Hughes, N. (2013) *Connecting Policy with Practice: People Powered Change Insights from the Connecting Policy with Practice Programme in 2013.*

Network on Equality and Inclusion showed that unconscious bias against people with disabilities has actually increased by 8% since the Games.[2]

The Beyond 2015 project has brought together researchers, academics, NGOs, lawyers, and activists to share perspectives on attitudes to equalities, human rights and social justice. Our task was to come up with practical ways of working together 'Beyond 2015' to create a society where everyone can fulfil their potential and make a distinctive contribution; a society where diversity is celebrated, people can express their identities free from the threat of violence and everyone is treated with dignity and respect; a society where your chance to flourish is not limited by who you are or where you come from. The contributions in this report give us all some very practical ways to achieve this.

2. www.enei.org.uk/news.php/691/unconscious-bias-against-disabled-people-is-higher-now-than-before-the-paralympics

Introduction

Dr Moira Dustin, Director of Research and Communications, EDF and Coordinator of the EDF Research Network

— What happens if you apply human rights to the work of a particular NHS trust?
— How might the concept of 'heritage' be used to promote social justice?
— What can the rest of the UK learn from the way the Public Sector Equality Duty is being implemented in Wales?

These are just three of the questions posed in this publication, chosen at random from the diverse contributions in it. The questions may not immediately appear to have a unifying theme but in fact they – and the publication – have two: all the contributors have a keen interest in improving the lives of disadvantaged and marginalised people; and all the contributions were selected because they tried to do this, at least in part, by making connections – connections between countries, sectors, organisations and experiences.

The collection is part of the Equality and Diversity Forum and EDF Research Network Beyond 2015 project (see appendix for details). The project's subheading is 'shaping the future of equality, human rights and social justice' and that sums up what we hope to do in this publication. But it's not a collection of academic or legal papers. Nor is it a campaigning publication or one written to inform a specific sector. It is not about proposals for new laws and regulations – important though they may be. Instead, it focuses on using what we know to think about where we want to go – while always remembering that there

is no single 'we' but many coinciding and sometimes conflicting identities and interests that need to be welcomed to the decision-making table.

Contents

The collection opens with a few pieces thinking about the concepts and values employed to understand discrimination and create a more equal and just UK society. The main body of the collection consists of pieces that address the levers and structures of change, whether that is change through policy, legislation, regulation, or evaluation. This section also looks at some of the different paths taken in Wales, Scotland and Northern Ireland, and considers the equality and human rights institutional architecture in Europe and its role in changing what happens in the UK. We conclude with a section called 'making it happen,' where contributors explore some of the concrete scenarios in which equality and human rights can be promoted – whether that is specific sectors, organisations or locations.

Of course the sections' themes overlap, and the contributions – excellent and diverse as they are – only touch on the many priorities, concerns and approaches that need addressing, but we hope they show the possibility for bridging agendas, sectors and countries to make the most of everyone's experiences.

And even in this relatively short publication, it is striking that certain subjects and themes recur: the untapped potential for using existing policies and legislation such as the Public Sector Equality Duty and positive action; the importance of values such as dignity in underpinning and reinforcing activities; the impact of the wider economic and political context and measures that ostensibly have little to do with equality and human rights.

Where and what next?

We called the Beyond 2015 project 'the start of a discussion' and that's how we see it. EDF and the EDF Research Network are thinking about how to use the project materials and your feedback to shape our work in connecting equality, human rights and social justice agendas more effectively as we go forward from 2015. In the short-term, we invite your comments and views on the essays that follow – and on the project's themes in general – and will post them on the Beyond 2015 portal.[1] However, the collection and the Beyond 2015 project have highlighted the need for deeper thinking about the relationship between human rights and equality – as frameworks, as narratives, as levers for change. And this is something which will be on the EDF agenda as part of the longer term follow-up to this project.

Thank you

Finally, I would like to thank all those who took time to contribute these excellent articles. I would also like to thank the Nuffield Foundation and the Baring Foundation for supporting this project. And thank you for dipping into this collection of essays. We hope it makes a very small contribution to shaping the future of equality, human rights and social justice in the UK, but most of all we hope you find it a good read.

1. See www.edf.org.uk/?cat=112 and/or email your comments to info@edf.org.uk.

PART ONE: VALUES AND CULTURE

Is this as good as it gets? Descriptive representation and equality in UK policy

Asif Afridi

Introduction

Community engagement, empowerment, participation and involvement – these are common words in the UK social policy lexicon and are used almost interchangeably, as if their meanings are self-evident and their purpose uncontested. Yet, for many social groups reliant on influencing the policymaking process to address inequalities in their lives, this is often far from the case. Underlying each of these concepts is the problematic issue of *representation*: who is represented, how and by whom; what does 'representation' mean; what type of equality does it achieve; and to what extent can 'representation' be achieved in contemporary society?

For those of us in the voluntary sector working to promote equality and human rights in the UK, the issue of 'representation' can be the difference between getting our point across to policy makers and not being heard at all. Are our organisations' concerns or those of our members or groups we represent considered worthy of representation and a seat at the policy making table?

The quest for 'representation' and inclusion at the policy-making table is of course an issue that concerns a wide range of non-governmental organisations (NGOs), not just those concerned with equality and human rights. Yet when it comes to equality-focused NGOs, the issue of 'representation' takes

on an additional meaning. Issues of *identity* and *authenticity* come to the fore. For many years in the UK 'identity-based representation' (Gilchrist et. al. 2010) has been used as a model to represent the vulnerable and excluded in society in the public policymaking process. For example, in the context of ethnicity and 'race', individuals or community groups have represented other people from their ethnic group in public policymaking and have contributed to political decisions made on their community's behalf.

This has been a hard-fought and necessary development in response to inequalities faced by those communities in areas like education, housing and employment. Yet it has also led to a situation in which the *equality* of engagement in policy-making processes is judged principally by whether representatives from particular diverse social groups have a seat at the table. Do we have an African-Caribbean representative? Check. Do we have an Indian representative? Check. Do we have an Eastern European representative? No. Right we'd better get one.

This of course, is an important step towards improving access for traditionally excluded groups in the policy-making process. Pitkin (1967) wrote about how achieving 'descriptive representation' means that a representative should be descriptive of the represented concerning particular chosen attributes – such as 'values' or 'identities' (O'Neill 2001, p. 489). This is largely the situation we still aspire to in the UK's current policymaking machine. In the 1970s and 80s in particular a range of gender, disability and 'race' activists in the UK paved the way for our now (commonly accepted view) that representative bodies that don't include women, black and minority ethnic people, disabled people for instance, are unrepresentative and not sufficient.

Yet writing some 50 years ago Pitkin also emphasised that descriptive representation of this type should not be seen as the end game. We can aspire to more than 'descriptive representation'.

What matters is what the representative *does* – not who he or she *is*. For example, does the representative do a good job of advancing the policy preferences that serve the interests of the represented? The question is – is the current set-up as good as it gets? Should we be aspiring to more? If so, what might that look like?

This short paper offers some personal reflections on these questions in the context of the current UK policymaking machine. I propose that there is benefit in seeing descriptive representation as both an important step, but also a relatively conservative aim and not always in the interests of the populace. I also offer a few ideas about how we might improve upon this situation in the future.

Is this as good as it gets?

We have come a long way since the UK of the 1960s where the public's engagement in the policymaking process was relatively perfunctory and unrepresentative of the broader populace. In the field of 'race' equality for instance, decades of public policy informed by a largely 'multicultural' approach have led to a situation where public agencies do largely recognise when the public engagement mechanisms they are using are unrepresentative of those they serve and take steps to address this (e.g. by undertaking outreach to find representatives of particular minority communities). By having somebody from a particular background in the room, at the decision-making table, there is a greater chance that decisions will be made that respond to the needs of that group. As Anne Phillips (1998) and others have suggested, this type of 'politics of presence' is a good thing – if not least as an important symbolic gesture that recognises the value of fair access to our democratic structures.

Yet it does feel, at times, that we have been sold a promise of representation that consistently under-delivers on our aspirations. Using 'identity' (be that cultural, religious etc.) as a guide to

who should be represented and what it is they (and others like them) believe can be a useful heuristic device, but can seem a bit too simplistic. Yes it makes the job of understanding what the excluded and 'hard to reach' in society need a bit easier for policy makers and it plays an important role in ensuring that many of these people get a voice. But at the same time it can lead to ignoring significant swathes of the population that aren't represented effectively by community leaders and others that aim to represent their interests. Also, as our society becomes increasingly diverse and globalised (take cities like Birmingham and London for instance with people from 150+ nationalities in residence), the job of finding a sufficient number of representatives from particular social groups and getting them around the policy-making table at the same time becomes a feat of epic administrative proportions.

This, of course, is not breaking news for many. Indeed the 2010–2015 Government identified some of these tensions in their Equality Strategy which they launched in 2010:

> This strategy sets out a new approach to equalities, moving away from the identity politics of the past and to an approach recognising people's individuality… No one should be held back because of who they are or their background. But, equally, no one should be defined simply by these characteristics… (HMG 2010, p. 6)

But as somebody that has been involved in the field of equality and human rights activism in the UK, what really strikes me is the limitations we've faced in imagining what a better approach to representation might look like. Despite our dissatisfaction with tokenism and despite our resistance to being 'put in a box' by others who see us only in terms of our skin colour or culture for instance, the representation game is still largely played on

those terms. Representatives are happy if they secure a seat around the table and believe this is the best way to get their point across. They are asked to put forward claims on the basis of particular identities – irrespective of whether this limits the potential to identify shared needs and shared visions for the future across people from different identities and backgrounds. Claims based on a cultural entitlement can hold more weight in the policy-making process. This can be used as important leverage, but at the same time it can stifle critical and open discussion between different communities and can inhibit our capacity to imagine a future based on our shared humanity.

At its worst this type of descriptive representation can limit our potential to imagine the complex and dynamic nature of people's identities and as a result the varied nature of people's needs and interests. Identifying 'groups' of people can be incredibly important for the purposes of solidarity and campaigning and to generate research that demonstrates the social patterning inequality. Yet when this is at the expense of enforcing a type of false homogeneity and simplicity on the descriptions of inequality people experience this can be damaging. It can also be damaging when those that have access to policymakers as representatives are only from powerful sections of a particular community or theme. Take for instance our efforts to consult and involve groups on issues of religion or belief equality policy. Typically we have involved powerful leaders from organised religious groups but have not involved, as a matter of course, other groups that may be affected by the role of religion or belief in public life (e.g. lesbian gay and bisexual people or minority religious groups and those with non-religious beliefs).

Whilst this is happening, we can also see that material conditions for the most excluded in society (including those with representatives present in the policymaking process) have not improved as much as they need to. It can feel, at times, like going

through the motions. We put our point across about a particular issue of inequality but have a niggling doubt in the back of our minds that our message won't stick with the decision-makers that need to hear it.

This, for me at least, is partly an issue of aspiration. Fair access to the decision-making process is about more than whether everyone has the opportunity to participate – it's about how people are treated in that process. Do they feel they are listened to and that their views are responded to, that they are acting with autonomy and able to discuss what they feel is important? And ultimately, is the discussion likely to lead to progress in addressing structural inequalities in society? People may be invited to participate but may not be able to participate on their own terms. For instance the antagonistic nature of policy lobbying associated with the Westminster model of politics and dialogue won't necessarily appeal to many. These more *substantive* issues of representation need to play a bigger part in what we expect from the policy making process in this field.

Our (often low) conditioned expectations about what representation can achieve aren't helped by the 'tick box' nature of public engagement and consultation processes. We appear to have reached a point where the practice of 'representation' and 'community engagement' on issues of equality has become an almost technocratic exercise, with little known about its original purpose and whether we're achieving it. It can become a numbers game. We know that we need to consult and involve X number of diverse groups, we know that it's important that we should try to avoid the 'all-white, all-male' panels or boards of the past – but we don't know if we're achieving what we should be once we've done this.

I hope this isn't as good as it gets. We need to expect more and to ask for more.

What would 'better' look like?

The purpose of representation

Public authorities across the country are facing increasing pressure on the public resources at their disposal to engage members of the public and NGOs in the policymaking process. This is a great opportunity to be more focused and strategic about the purpose of equality-related representation and engagement activities. This would involve a recognition that 'ticking the box' and getting the 'numbers' right in terms of representation won't be enough. This can be an important symbolic gesture and can sometimes be an indicator of more equal access for excluded groups to the policymaking process, but we shouldn't stop there. Arguably, the underlying purpose of improved representation is about addressing structural inequalities faced by groups in society. The extent to which representatives and the policymaking process as a whole are able to serve the interests of the represented and address inequalities that they face becomes an indicator of whether the purpose of representation has been achieved.

Assessing impact of representation

Policy evaluation has become more streamlined in recent years, with increased used of randomised controlled trials and field experiments to assess the impact of different interventions. Yet when it comes to the practice of engagement and representation practice in the field of public policy, evaluation is relatively rare. Whilst recognising the challenges of understanding 'causation' in the policymaking process, there are compelling arguments for undertaking longitudinal, comparative studies to understand 'what works' in achieving more meaningful representation for traditionally excluded groups in the policymaking process. The indicators we use to assess impact need to be reflective

of 'representation' in its wider sense (not just whether representatives look like the wider population).

Innovation

One area of innovation that merits further attention is approaches to 'dialogue'. A key challenge for the policymaking process is developing models of dialogue that respond to our demographically 'super-diverse' society. These models of dialogue will need to promote discussions that go beyond notions of solely 'identity-based' positions of entitlements and rights. Participants should be encouraged to critically discuss and negotiate with themselves and with each other the role that 'culture' and other aspects of their identity play in the claims about entitlement that they make (brap, 2012). This is an important first step to making shared decisions between different groups about: how scarce public resources should be invested; the values and practices that we want to project as a society; and the basis upon which different social groups can come together to take collective action to address inequalities in society (that ultimately affect us all). And in fact we consistently find that there is no short-cut to this type of dialogue. The imposition of 'British values' through public policy (e.g. recent instructions for primary schools to teach British values in England) presupposes that we have already managed to have this type of discussion. Yet we are still searching for the type of inclusive and progressive models of dialogue required for twenty-first century policymaking in our diverse and globalised country.

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Probing the gap between equality and human rights

Faith Marchal

A problem that has perplexed me for some time is that what was once a strong conceptual link between equality and human rights – so eloquently articulated in the 1948 Universal Declaration of Human Rights[1] – has been strained, if not altogether broken, in recent years. There seems to be a widening gap between the two concepts in people's perceptions, and this paper suggests why this might be the case, and what we can do to put them back together again.

Let me start by providing some background to this problem, and why I think it *is* a problem. From 2000–2012 I was an equality adviser in the UK's higher education sector. During that time anti-discrimination law expanded to protect people not only on grounds of sex, race and disability but also religion or belief, sexual orientation and age. The Equality Act 2010 extended protection still further to include grounds of pregnancy and maternity, marital and civil partnership status, and gender reassignment. Fortunately, my counterparts and I had plenty of help as we grappled with implementing the rapidly changing legal environment in our institutions: there were many opportunities for us to meet and share accounts of which approaches worked well, and which didn't. We also had expert assistance: the Equality Challenge Unit helped define good practice in the higher education sector, and a number of other organisations promoted the benefits of equality and diversity at work.[2]

By contrast, human rights – specifically, how the Human Rights Act 1998 should be implemented – seldom featured in training courses and seminars offered to equality practitioners. A notable exception was a conference early in 2001 organised by the Directory of Social Change, where I learned that for the first time in English law, people now had positive and prescribed rights thanks to this Act. When the three existing equality commissions were wound up a few years later, the commission that replaced it included human rights in its title, so I looked forward to seeing some further guidance. By 2008, however, I discovered that – in stark comparison with the wealth of equality guidance – there was little if any human rights guidance tailored to the higher education sector. This remains the case.

So I decided to embark on post-graduate human rights studies. It turned out that although international human rights law was well-covered, the programme of study was largely theoretical, its focus elsewhere. It was as though human rights problems only happened in the proverbial 'far away places with the strange sounding names'.[3] There was little if any discussion of human rights *issues* here in the UK although human rights *abuses* – such as human trafficking, violence against women, rendition and torture – were regularly in the news. It was as though equality and human rights were on separate trajectories.

Different starting points

Since the 1960s and 70s, equality legislation in the UK has been the mechanism by which we in the UK are protected by the state from unfair discrimination, based on our sharing one or more 'protected characteristics'. Equality legislation is essentially concerned with our civil rights: it protects us from direct and indirect discrimination – whether witting or unwitting. Despite the attempt by the Cabinet Office to brand equality legislation as so much 'red tape',[4] and despite the sharp reduction of discrimination

cases taken to Employment Tribunals following the introduction of applicant fees, equality legislation is nevertheless recognised as the primary means of redress when we are unfairly treated.

The roots of this go back to the 19th century when campaigners including the emerging trade unions were fighting the exploitation of workers by their employers, particularly the most vulnerable, such as young children and people employed in dangerous occupations. The employee rights that we now enjoy, even if they have not all been fully realised – such as the right of equal pay for work of equal value regardless of gender – are the result of restrictions and requirements placed upon employers by the state, *not* the result of workers having rights 'by right', that is, positive rights.

By contrast, human rights legislation comes from the notion that we have rights because we are human beings.[5] The principles underpinning this notion have been articulated for centuries, though human rights *law* is considerably more recent. Human rights do not depend on our having earned them: they apply – or should apply – to everyone, however humane or inhumane a person's actions may have been towards their fellow humans. This can be hard to accept, particularly when we are repeatedly confronted with footage of people committing horrific crimes on our television screens. Human rights law asserts that people – regardless of their group affiliation, guilt or innocence – have the right of protection from the unfettered power of the state, and this is a key difference from equality law. In effect, human rights law imposes *limits* on state power over the individual, with states regularly monitored for their compliance with a range of international conventions and other United Nations instruments.[6]

One outcome of this crucial difference is that although equality law is generally seen as there to assist 'us' if we need it,[7] human rights law – specifically, the UK's Human Rights Act 1998 – is regularly misrepresented in the mass media as something applying only to 'them', indiscriminately lumping together

asylum seekers, illegal immigrants, the poor, the homeless, welfare recipients, prisoners, and others with whom 'we' find may it difficult to empathise. Worst of all, it has been branded a 'charter for terrorists' – a toxic, damning indictment of law that is there to protect our fundamental rights, as human beings, to decent treatment. This kind of coverage cynically preys on and exploits the general public's worst fears.

Despite the key role British lawyers played in drafting the European Convention on Human Rights, and although the UK was among the first countries to ratify it, the notion of human rights is also regularly misrepresented as a European imposition. The net result is that although human rights law has never prevented the British courts from imprisoning criminals convicted in a court of law, public perception is that the UK has become a soft touch and that human rights are there to protect the guilty, possibly even at the expense of the innocent. Given existing media coverage, it is not hard to understand this sentiment, when criminals from other countries who – if on deportation to their home countries are likely to be subjected to torture – can instead languish for years in British prisons at taxpayers' expense.

Another outcome is that such lopsided media coverage has distorted public perceptions of British human rights law to the extent that many people find it easier to respond to humanitarian crises abroad than to recognise the actuality and prevalence of human rights abuse at home. In the heat of such toxic coverage and in the relative lack of positive stories in the media, it is easy to forget that the Human Rights Act exists to provide redress through British courts, if our own human rights are abused. We also tend to forget that human rights abuse can happen anywhere – from a prison cell to a care home to behind our own front doors – at any time, and to anyone. Thus, our rights need to be defended *and* promoted everywhere, all the time, and by everyone.

'What is to be done?' – and other ways to ask this question

In times when the perceived threat of terrorism is high, our understandable desire for security in our daily lives is pitched *against* our desire for the rights and liberties we take for granted, including our right to privacy. There is a persuasive argument that we cannot have security without the significant erosion of our rights and liberties – an argument used to justify mass surveillance and data capture of people who are not under suspicion of anything at all. The argument is buttressed by the notion that innocent people should have nothing to fear, nothing to hide. The attendant risk, though, is that unless we are careful, there will be nowhere to hide, that is, no remaining barriers against unwarranted state intrusion into our personal and private lives. As Benjamin Franklin predicted over 250 years ago, if we privilege security over liberty, we could wind up with neither.

What about the commonalities between equality and human rights? What I think they have in common is that they have such a constructive and positive effect on people's everyday lives at work and in wider society that they are too often ignored, that is, unless things go unexpectedly and horribly wrong.

Some campaigning groups have recognised this and have transformed how they convey their equality and human rights messages. For example, Liberty's on-going *Common Values* campaign, launched in 2008, uses leaflets, brochures and a website to illustrate how the Human Rights Act can assist people in their everyday battles to achieve fair health care, equality of opportunity, and respect for privacy and family life, among other things. The British Institute of Human Rights has for several years taken human rights 'road shows' around the country, promoting similar messages. More recently, Equally Ours has devised guidance on how we can frame discussions on human rights in positive, constructive language. [8] These initiatives could go some way towards

remedying the situation, though they need to receive much wider exposure, ideally in schools, colleges and community centres.

Arguably, we would not have equality under the law, or indeed any of the human rights we take for granted – such as the right to life, liberty and security of person, the right to recognition as a person before the law, the right to a nationality, and indeed the right not to be unfairly discriminated against – without the efforts of people prepared to stand up and defend those rights. Rather than wringing our collective hands and asking ourselves 'what is to be done', let us ask ourselves what we – individually and collectively – can *do* to help bridge the existing gap. To start with, we can speak in the active voice. We can join one or more campaigning organisations. We can write to our Members of Parliament. We can help raise awareness of the practical problems faced by people who need help. We can volunteer with those organisations who seek to provide that help. We can protest misrepresentation of equality and human rights in the media.

Only people can abuse our rights, and only people can promote and defend them. People power could be our best hope: indeed, it could be our only hope.[9]

Endnotes

1. Articles 2 and 7 of the Universal Declaration are specific about this. Article 2 states: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.' Article 7 states: 'All are equal before the law and are entitled without any discrimination to equal protection of the law.'

2. Such organisations included (and still include) Opportunity Now, Race for Opportunity, Stonewall and Working Families, among others.

3. This line is from the American hit song, *Far Away Places*, by Joan Whitney and Alex Kramer. Since its publication in 1948 – coincidentally, the year of the Universal Declaration of Human Rights – it has been recorded by artists as diverse as Bing Crosby, Dusty Springfield, Sam Cooke, and Willy Nelson.

4. The Red Tape Challenge website 'themes' include 'Equalities': see www.redtapechallenge.cabinetoffice.gov.uk (accessed 28 January 2015). Interestingly, there is no obvious 'human rights' theme on that site.

5. Notions of who fully 'counts' as a human being have considerably changed over time! The United States' original Bill of Rights did not count slaves or Native Americans at all, and women did not enjoy the full range of civil and political rights until the 20th Century.

6. For a comprehensive list of international human rights instruments, see the annexe in Steiner, H., Alston, P. and Goodman, R. (2007), pp. 1465–1472. *International Human Rights in Context: Law, Politics, Morals.* Oxford: Oxford University Press.

7. This is not to say equality law has had a totally uneventful ride. Elements of the Equality Act 2010 have been modified or have not been enacted, and there is also the Cabinet Office's Red Tape Challenge mentioned above. However, unlike the Human Rights Act 1998, there is no public or political clamouring to scrap the Equality Act altogether.

8. See Liberty's website, www.liberty-human-rights.org.uk/campaigning/common-values and the British Institute of Human Rights' website, www.bihr.org.uk. See also *How to talk about human rights*, Equally Ours' guide provided to delegates at the Equality and Diversity Forum's February 2015 conference, 'Beyond 2015.' This guide is also online at www.equally-ours.org.uk/resources/guide-talking-human-rights/

9. For inspiring examples of activism by 'those who refuse to be silenced', see Crawshaw, S. & Jackson, J. (2010). *Small Acts of Resistance: How Courage, Tenacity, and Ingenuity Can Change the World.* New York: Union Square Press.

New perspectives on heritage: equality and cultural belonging in Scotland

BEMIS Scotland

Introduction

> We need to see cultural heritage within the wider human rights framework (Silverman and Ruggles, 2007, p. 50)

Heritage is generally viewed as a vehicle to access, remember and celebrate the past in a static way. This article proposes an alternative conception of heritage, connecting it with equality, multiculturalism and active citizenship to make it a driver for social justice. It argues that heritage is not simply a record of the past, as it is popularly accepted, but it is a cultural and dynamic process. Heritage is about the present and the future; it lives in the present and is received, practiced and consumed by people today. The article builds on the work of BEMIS – the national Ethnic Minorities led umbrella body in Scotland – specifically the Multicultural Homecoming 2014 initiative discussed further below, to argue that promoting social inclusion and enhanced cohesion among multi-ethnic societies can be achieved with an innovative approach to cultural heritage. The final section shows how 'heritage', as redefined, is being used to promote social change in Scotland today.

Heritage: definitions and debates

'Heritage' is often presented as an enclosed world that cannot be entered, that is stable and 'authentic', and within which objects, places and practices have intrinsic and fundamental values. This 'leads to a focus on the physical fabric of heritage. However, a cultural shift in understanding heritage occurred with the development of the concept of 'intangible heritage'. Intangible cultural heritage (ICH) is defined as 'heritage that is embodied in people rather than in inanimate objects' (Ruggles and Silverman, 2009, p. 1). As UNESCO defines it:

> Cultural heritage does not end at monuments and collections of objects. It also includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts (UNESCO, 2009, p. 3).

The 2003 Convention for the Safeguarding of Intangible Cultural Heritage defines ICH in more details as follows:

> The 'intangible cultural heritage' means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity (UNESCO, 2003, article 2).

Far from focusing on people as 'performers', this notion of cultural heritage draws attention to people as 'makers' and 'active agents' of a culture. This is particularly important as it challenges the fixed, intrinsic and static vision of traditional heritage and favours a more dynamic, living and vibrant concept of heritage: 'intangible heritage is constantly changing and evolving, and being enriched by each new generation' (UNESCO, 2009, p. 6). Thus, ephemerality takes its legitimate place alongside permanence.

The politics of heritage

> It is axiomatic that (…) all heritages are thus an actual or potential political instrument, whether that was intended or not (Tunbridge and Ashworth, 1996, p. 46).

The dominant western discourse about heritage, called 'Authorised Heritage Discourse' (AHD) has been defined as:

> the creation of lists that represent the canon of heritage. It is a set of ideas that works to normalise a range of assumptions about the nature and meaning of heritage and to privilege particular practices, especially those of heritage professionals and the state. Conversely, the AHD can also be seen to exclude a whole range of popular ideas and practices relating to heritage (Harrison, 2010, p. 27).

Thus, it can be inferred that AHD, as an instrument of power, is utilized and managed by a restricted group and it is used to both control the general public and to exclude it from having an active role in heritage. This has significant repercussions on civic society, identity and the ways these engage with dominant ideologies: 'the power to control heritage is the power to remake the past in

a way that facilitates certain actions or viewpoints in the present' (Harrison, 2010, p154). Since the concept of heritage is culturally (and ideologically) constructed, there are many possible heritages, meaning that promoting one object, practice or site as heritage always implies neglecting another. This process of selection excludes civic society and the alternatives ways in which it would understand heritage, whilst it favours and promotes values of elite social classes. It is important to note that Authorized Heritage Discourse (official heritage) does not simply involve national or global arenas, but also and foremost impacts upon local settings.

Heritage, identity and representation: toward Democratic Active Citizenship

Heritage Studies addresses two main processes:

> The first concerns the ways in which ideas and ideals about official heritage, or authorised heritage discourses, are involved in the production of a 'heritage industry' that controls the distance between people and the past. The second involves the production of identity and community at the local level, which relates both to official and unofficial practices of heritage and has the potential to transform society (Harrison, 2010, p173).

This latter point is particularly significant as it is often overlooked by the practices surrounding production and management of official heritage. Heritage has the potential to affect the ways a society relates to its past, or the ways in which shared experiences are understood; further, it has an impact on what is chosen to be remembered and what is ignored. All this has a huge effect on the ways a society perceives its present and its identity/ identities.

Identity (and identities) is a crucial value of a society and is strictly bound up with politics (an example might be the case of

sectarianism in Scotland). Heritage enables us to engage with debates about identity; it is part of the way identities are created and disputed, whether as individual, group or nation state. If heritage is controlled by hegemonic interests, it can be inferred that heritage is produced, managed, controlled, commodified and commercialized to provide, mainly, a national identity.

There is a significant issue here at the level of representation. Current policies and practices surrounding heritage operate as gatekeepers to the process of making and producing heritage. Thus, civic society is excluded from playing an active role in relation to heritage, and is confined to being passive recipient of heritage products, sites and practices (ideologically engineered) which have to be uncritically accepted (Howard, 2003, p. 33). The French philosopher Pierre Bourdieu postulates the existence of a 'cultural capital' which is 'not concentrated in the hands of a few official agencies but dispersed among many producers and curators, especially in democratic societies. In this conception, producers of heritage convey a multiplicity of quite different and even competing 'ideologies', even in the interpretation of the same heritage, rather than a particular coherent political programme intended to support any distinctive prevailing view of society' (Tunbridge and Ashworth, 1996, p. 49). Bourdieu's perception of cultural capital re-draws power relations in the 'making' of heritage and places heritage in the hands of the broader civic society.

Over fifty years ago, eminent Western theorist Claude Lévi-Strauss advocated for greater and more equal representation of all cultures in the formulation and general approach to heritage. The implications of such a view are significant at the level of democracy, active citizenship, identity, cultural difference, intercultural and inter-ethnic dialogues. Here it is important to highlight the crucial connection between active citizenship and heritage. A democratic active citizenship model proposes an alternative vision of citizenship, global and cosmopolitan,

where content and practice are underpinned by human rights principles and social justice. *Democratic Citizenship* concerns itself with rights, responsibilities and action; it promotes an active citizen who is not solely aware of her rights, but able to act upon them. This has profound implications as mere empathy has to be replaced with responsibility and outrage to make people 'act' for a more equitable and sustainable society.

Democratic Citizenship focuses on horizontal ties (responsibilities among individuals) and calls upon an ethical understanding of civic society. The greater representation invoked by Lévi-Strauss in the formulation and approach to heritage implies more 'active' citizens, it signifies greater ownership of actions, enhanced participation in civic society and a greater democratic approach to the past. Heritage is much more than a few stones and relics: it bears witness to the actions of people, to centuries and values. Heritage proposes interpretations of history and serves as a stepping stone to locate our place in the universe. To breed grounds for more active citizenship it is necessary to engage civic society in the dialogue with the past. From passively accepting the 'selected' history to celebrate and include in the heritage repertoire, civic society must be enabled to actively engage with the past. Cultural Heritage 'is a concept that can promote self-knowledge, facilitate communication and learning, and guide the stewardship of the present culture and its historic past' (Silverman and Ruggles, 2007, p. 3).

Heritage: multiculturalism and social inclusion

Cultural heritage, buttressed by an active participation of the wider civic society, can bring about social inclusion and advance equality and diversity in a society. The social potential residing within the concept of heritage must not be underestimated. The processes of 'selection' and 'interpretations' of the past must address the cultural diversity which is inherent in the history of any nation.

> Interpretation of the past can be opened out so as to recognize the roles played by minority groups in the national story, to engage them more fully in celebration of the nation's achievements, and to recognize injustices done to them in the past (Silverman and Ruggles, 2007, p. 42).

Cultural heritage instruments, at international, national and local levels, have significant implications and play key political roles with a major impact upon society. Whilst minority groups feel suppressed and excluded by the official heritage discourse promoted by governments; dominant groups feel threatened by the raising profile of minorities' cultures. This opposing dynamic is counterproductive; it breeds division, social exclusion and discrimination. In addition, we must not forget that 'cultural heritage operates in a synchronised relationship involving society (that is, systems of interactions connecting people), and norms and values (that is, ideas and belief systems that define relative importance)' (Bouchenaki, 2007, p. 106–108). Thus, cultural heritage is erroneously associated with national narratives. We should approach heritage as a 'shared memory' rather than a 'common memory'.

This distinction is crucial to our understanding of multiculturalism. To the detriment of social inclusion, discourses of national heritage often focus on normative cultures that are presented and understood as contained, coherent and homogenous in essence (Handler, 1998; McCrone, 2002) and Britain is no exception (Jones, 2006, p. 150). In essence, in the specific case of Britain, cultural difference is associated with 'non-white' communities; whilst Britishness represents the 'norm' against which difference is measured. It is necessary to question this view and the notion of a 'core' normative and homogenous culture around which minority cultures can be acknowledged and celebrated. Cultural difference is *not* something marginal to celebrate whilst the mainstream national narrative embodies the 'common' heritage.

Cultural diversity must be approached as integral to the history and the culture of Britain.

Heritage is and has always been used as a political tool to advance a number of causes. Thus, it is imperative to use its potential to combat social exclusion and to promote multiculturalism as inherent to the history of a country. Heritage can play a key role in developing social cohesion and producing an integrated cultural strategy. 'Once it is accepted that heritage resources can be used in an active political way it is a simple step to apply them to the problems of social exclusion' (Jones, 2006, p. 102). Whilst globalization seems to be threatening cultural diversity, it can also be seen as fostering more cultural awareness and interchange. Multiculturalism is necessary to achieve social, economic, cultural, political, moral and spiritual growth. Indeed, the Universal Declaration on Cultural Diversity maintains that cultural diversity is the 'common heritage of humanity, (…) and a source of exchange, innovation and creativity' (Silverman and Ruggles, 2007, p. 36). And the EU's cultural programme 2007–2013 sought to foster intercultural dialogue, to promote cultural diversity by engaging with a shared cultural heritage.

Heritage stimulates and acts as a means of political struggle. It is 'a touchstone around which people can muster their arguments and thoughts' (Harrison, 2010, p. 191). Heritage formation, when initiated and realized democratically by the broader civic society, and when it addresses a 'shared memory' where multiculturalism is a core value, can successfully bring about social transformations.

Scottish heritage, equality and collective belonging

As a sequel to this general and theoretical discussion of the meanings of heritage and its relationship with multiculturalism, active citizenship and social inclusion, this paper turns to focus on the Scottish context. Indeed, the most effective way to engage

with wider and global issues is through localism. Scotland is experiencing exciting times on numerous levels: to date, its performance in matters of equality has achieved high standards in relation to other European contexts. Indeed, whilst there is still a lot of work to do concerning diversity and equality, in the last few years Scotland has significantly advanced its equality and human rights agendas and has made substantial progress in policies, practices and approaches. Institutional support, political will, a vibrant and active third sector, and its diverse cultural and ethnic communities, make Scotland a country receptive for change, innovation and progress. This is a time of opportunities for the country to bring about real social, economic, cultural and ideological changes.

This climate of novelty, fresh start and potentials represents a real chance for the diverse communities of Scotland to draw new horizons – we hold the right cards to make a difference, to shape a bright future for our country. What is needed is a strong civic sense, individual and collective responsibility, a strong identity and a sense of shared belonging. These are crucial components to make a difference – to allow for a sustainable and durable change.

It is at this point that 'heritage' becomes important; this is the time to re-consider old misconceptions of heritage and to acknowledge the numerous, innovative ways heritage can be understood. More importantly, the connection between heritage, multiculturalism and active citizenship, must be taken into consideration as a stepping-stone to drive forward social change. 'The goal is to win social justice. We need to see cultural heritage within the wider human rights framework' (Silverman and Ruggles, 2007, p. 50). Indeed, the human rights dimension draws attention to people's rights and responsibilities in relation to their heritage. Citizens' active participation in selecting and interpreting a shared cultural heritage is a first step toward social inclusion and change. Thus, a more participatory, democratic approach to heritage can

pave the way for a workable multicultural model and, ultimately, for social justice.

In pursuit of a successful multicultural model with responsible and active citizens, BEMIS has and continues to re-debate and promote a cultural shift in understanding the context of heritage and intangible cultural heritage. Specifically, it aims to initiate a dialogue about heritage(s) in Scotland, to prompt debates and spark the community's participation in this matter. To provoke a re-thinking about heritage it is imperative to invite the broader civic society to engage with this process. Thus the role of the third sector – for its strong community ties – is instrumental in this. BEMIS is committed to driving this concept forward and to sharing such views both horizontally and vertically. The foundations for the project were laid with the Multicultural Homecoming initiative.

Multicultural Homecoming: Cultural expression as an avenue to active, diverse citizenship

Multicultural Homecoming 2014 was administered and led by BEMIS and consisted of a series of national events led by key stakeholders including GRAMNet (Glasgow Refugee, Asylum and Migration Network), The Scottish Football Association and The Scottish Government, and with the involvement of 43 local community projects across Scotland. Participation via the small grants scheme of the programme reflected the diversity of modern Scotland's mosaic of ethnic and cultural minority communities.

Cultural expression as a conduit for integration, celebration of diversity and promotion of active citizenship were central themes within the Multicultural Homecoming programme. These 'Positive Cultural Interfaces' that the programme facilitated sought to provide a new dimension for interaction, experience and recognition for our diverse communities. In short, Scotland's heritage and traditions are a 'Living Tradition' – our diverse

communities enrich Scottish identity and become part of her story and future. In this sense we shift the dynamic of internal and external interpretation beyond traditional concepts of 'us' and 'them' or classifications such as black/white/immigrant and move into the realms of diverse active citizenship.

This style of engagement allows diverse citizens to set their own agendas, to take charge of their own narrative, future, belonging and perceptions. For too long, ethnic minority communities have been expected and perceived to live in isolation of the broader civic framework as a separate entity identified via their names, religion, skin colour or geo-political allegiance: ethnicity as a classification rather than a description.

We are not apart. We are not going anywhere. We are Scotland, we are diverse and we will create our individual and shared future as equals.

THIS is the TIME to re-consider OUR past and to shape our FUTURE. THIS is the TIME to make a CHANGE.

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Generating solidarity around human rights, equality and social justice

Dr Sarah Cemlyn and Dr Karen Bell

Although human rights, equality and social justice are closely aligned, the relationship between them is rarely analysed or articulated. This paper considers this relationship and argues that strengthening their connections and generating solidarity could synergistically improve the outcomes for each. Such convergence would require some refocussing, including a stronger emphasis on socio-economic rights within human rights discourse. Our analysis indicates that such an emphasis could be electorally popular.

The struggles for social justice, equality and human rights have achieved different degrees of acceptance in UK legislation. Human rights are currently embedded in UK law through the Human Rights Act 1998 (HRA), incorporating the European Convention on Human Rights (ECHR), though the Conservative Party plans to abolish this legislation and, if required, to withdraw from the ECHR (The Guardian, 2013). Similarly, equality, insofar as it is equated with non-discrimination, is also legally enshrined in law through the Equality Act 2010. Though widely viewed as progressive, it does not include economic inequality as a 'protected characteristic'. The Coalition Government dropped the proposed strategic duty on public bodies to 'have due regard to the need to *reduce* the *inequalities* of outcome that result from *socio-economic* disadvantage', declaring a preference for 'fairness' i.e. equality of opportunity, rather than equality *per se* (The Guardian, 2010). There is no legal endorsement for the principle of social justice.

Focussing on socio-economic rights could be a vehicle for strengthening human rights and also work on social justice and equality. Some argue that human rights innately include economic, social, civil, political and cultural rights, and that all are equally important and interconnected (e.g. Whelan and Donnelly, 2007). However, different human rights dimensions or 'generations' have been emphasised i.e. 'first generation' civil/political rights; 'second generation' socio-economic and cultural rights; and 'third generation' collective, participatory and solidarity rights. Critiques claim this model is oversimplified and ideologically inspired, and leads to preference for certain rights, typically first-generation rights, marginalising social and economic rights as unrealistic aspirations in the Western-dominated global order (e.g. Evans and Ayers, 2006). Some commentators argue that rights are indivisible (e.g. Lusiani and Saiz, 2013), or interdependent (e.g. Nickel, 2008), so governments cannot pick and choose which to implement. However as O'Connell (2012) points out, socio-economic rights have become the 'Cinderella' group, with a frequent lack of recognition and judicial enforcement at national level. Some argue that this is because socio-economic rights lack judicial enforceability and are costly (e.g. Cranston, 1972); vague and contestable (e.g. Wall, 2004); and impact on government planning by enabling judges to allocate State resources (Mureinik, 1992). Alternatively, others point out that many such arguments could question the justiciability of civil and political rights, but solutions are found or costs accepted. Civil and political rights have a financial cost (e.g. the right to a fair trial); can be vague and contested (e.g. freedom of expression); and require judges to participate in resource allocation (e.g. awarding damages costs when individuals have been harmed by State parties) (Shue, 1996).

Social justice is equally a multi-faceted notion with diverse philosophical underpinnings, political connotations and

theoretical debates (see Craig et al, 2008), including the relative importance of distribution and recognition. The social justice of distribution focuses on ensuring that all people have access to sufficient resources to lead fulfilling lives, and on overcoming gross inequalities. One principle of Rawls' (1971) seminal theory was that redistribution should redress inequality. This links closely to socio-economic rights, although generally not conceptualised in rights terms. The social justice of recognition emphasises identity, respect and equal rights to participation. People who have devalued statuses, and whose identities are not acknowledged with respect can claim their rights to social and political recognition and participation (Fraser, 2003; Lister, 2006; Young, 1990). Here there is affinity both with equality and holistic approaches to human rights, linking with civil and political rights and participatory and non-discrimination rights.

Behind the HRA lay an intention to promote a 'human rights culture' , so that 'individual men and women should understand that they enjoy certain rights as a matter of right, as an affirmation of their equal worth, and not as a contingent gift of the state' (Joint Committee on Human Rights, 2003, p. 5). This conception did not include socio-economic rights, however, except insofar as the provision of services such as social care should respect the civil rights within the HRA, such as treating people with dignity (Macdonald, 2007). It also did not claim links to social justice or equality. Some of the cultural discourse around human rights has undermined these links, for example, the media focus on 'undeserving cases', perpetuating myths that 'law-abiding' citizens do not benefit much from the HRA and that the rights of the least worthy attract the greatest legal protection (Liberty, 2006). The HRA has also been seen as obstructing the investigation of serious crime, including terrorism, and yet also as ineffective in preventing the associated erosion of civil liberties in combating terrorism (Ewing, 2010). Hence, government policy and media coverage

have reinforced each other in undermining the possibilities for equality, social justice and human rights.

Yet, two studies for the Equality and Diversity Forum (EDF) analysing evidence about public attitudes to human rights (Bell et al, 2012a; 2012b) found that UK public attitudes remained positive. The public broadly supports notions of social justice, equality and human rights, when given sufficient information, though may articulate some contradictory opinions. Even so, the studies indicated a low level of awareness of, and understanding about, human rights and entitlements under current legislation (e.g. Attwood et al., 2003), and a perception that while human rights protections are legitimate for the dominant majority, they are sometimes inappropriately 'taken advantage of' by unpopular minorities (MOJ, 2008; MOJ, 2010a; MOJ, 2010b; Kaur-Ballagan et al., 2009; Liberty, 2011; Equally Ours, 2013). However, despite such reservations, there were generally positive associations with the term 'human rights'.

Moreover, studies generally suggest strong support for socio-economic rights, though often not framed as such. In two studies, a high proportion of respondents thought people should have free health-care (86% in 2004; 93% in 2006) and access to free education for children (84% in 2004 and 91% in 2006) (Home Office, 2004; DCLG, 2006). Where opportunities are given to deliberate about human rights, support for social and economic rights increases. Kaur-Ballagan *et al* (2009) found that, in deliberative workshops, public perceptions of the 'most important rights' were education, health, free speech and equality. In another deliberative exercise (MOJ, 2010a), participants initially showed low awareness of the content and legal protection for social and economic rights. However, after receiving information about socio-economic rights in international law, and learning that current public services are not constitutional entitlements, participants became concerned they could be eroded or withdrawn,

prompting greater support for legislative provision, and for clarifying fundamental entitlements, such as access to free healthcare, benefits, social housing and pensions, as more relevant to their daily lives than civil and political rights (MOJ, 2010a).

Such enthusiasm for social and economic rights has lessons for strategies designed to increase understanding of human rights amongst the public, create more favourable attitudes, enhance resilience to negative media messages, and hopefully support greater collaboration across social justice campaigns and in turn influence policy. Debates need to be related to people's every-day lives and to emphasise that human rights legislation does and/or should include socio-economic rights. As the Joint Committee on Human Rights asserted (2008) '[these rights] … touch the substance of people's everyday lives, and would help correct the popular misconception that human rights are a charter for criminals and terrorists'.

Multiple factors influence public attitudes, including demographic, economic, social, cultural, social-psychological and political (Bell and Cemlyn, 2014). Attitudes can be changed through linking to widely held values. Barrett and Clothier (2013) found that the top seven values of people in the UK are caring, family, honesty, humour/fun, friendship, fairness and compassion. Whilst these values link to some civil and political rights, the caring, fairness and compassion elements also resonate strongly with socio-economic human rights, equality and justice. Social movement studies demonstrate that, to change attitudes and build campaigns, it is important to frame debates so that they are capable of convincing others that the cause is just and important, by diagnosing problems in a way that resonates with those affected and connecting with people's current needs (e.g. Brulle et al, 2012).

Social class, educational level, deprivation and political context also help form attitudes. Vizard (2010) points to the relative

importance of 'socio-economic' factors (highest educational qualification, social class, income and area deprivation) rather than 'identity-based' characteristics (such as gender, ethnicity and religion) in terms of positive attitudes towards human rights. Having fewer educational qualifications and lower incomes correlated with less support for human rights. Focussing on socio-economic rights would speak to the agenda of these groups.

Within functionalist theories (e.g. Katz, 1960) attitudes are determined by the functions they serve, generating favourable attitudes towards that which aids us. Therefore, if human rights discourse focuses on every-day needs, its principles gain wider support (Equally Ours, 2013). Previous findings indicated that a third of the public felt that human rights were not relevant to their daily lives (MOJ, 2008), perhaps because those framed as individualised, civil and political rights are not needed for the majority in daily life, whereas social and economic rights are relevant to broad sections of the population, especially in times of austerity. Cuts to welfare, wages and public services, under austerity programmes, have affected the UK population, especially marginalised groups, in terms of the whole spectrum of human rights and are 'exacerbating already widening inequalities and ingrained discriminatory practices' (Lusiani and Saiz, 2013, p. 22). However, austerity can also enhance awareness of the need for socio-economic rights, and may lead to people seeing common cause in their mutual difficulties, as with the Indignados in Spain (Likki, 2013) and now Podemos, the UK 'People's Assembly Against Austerity' (PAAA, 2014) and Syriza in Greece. The latest British Social Attitudes Survey found that 58% of people think it is extremely important that a democracy protects its citizens against poverty; that benefits are seen to be an important part of this; and that 56% of people do not think unemployment benefits are enough to live on when told how much they are (NatCen, 2014). In the current and foreseeable economic context, there is an opportunity to link human rights

more clearly to those social justice movements which critique the current configuration of austerity measures and promote increased equality instead – where resources are deployed for human good rather than profit for the few.

Therefore, making advances concerning human rights, equality and social justice could be a popular move for a future government. We might assume that such an agenda would resonate more with the left. Yet opposition to human rights can arise from left-wing radical groupings who consider that the pursuit of human rights is irrelevant, or even diversionary, from the goal of social justice and greater equality, perceiving human rights as having been co-opted or corrupted by dominant interests, or limited to commodified versions (Cemlyn, 2008). In the UK, human rights have often seemed to be more about supporting a choice agenda than achieving basic rights for all. Some perceive human rights discourse as an alternative to the collective securement of rights, as articulated by trade unions (EDF, 2011). Therefore, just as some legal justice practitioners and analysts shy away from socio-economic rights, a number of social justice activists and commentators scarcely mention human rights (e.g. Ferguson and Lavalette, 2006). Showing how human rights claims can be used to combat social and economic deprivations and inequalities and help overcome day-to-day problems, could create more convergence between the left, economically disadvantaged groups and human rights advocates, building cross-linking solidaristic campaigns. Gavrielides (2010) highlights the additional value that human rights offers to the equality agenda by tackling the systematic violations of the human rights of minority groups who would otherwise feel excluded and unfairly treated by society as well as enabling a broader approach to equality issues, reaching more communities than equality legislation alone.

Hence, if equality and social justice campaigners would embrace a holistic human rights discourse, this would strengthen

their support. Similarly, if human rights campaigners were more explicitly to link the struggle for human rights to that of social justice and equality by reasserting socio-economic rights, this could provide a convincing and mobilising agenda for social change.

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PART TWO: LEVERS FOR CHANGE

Making reflexive legislation work: stakeholder engagement and public procurement in the Public Sector Equality Duty

Professor Hazel Conley and Dr Tessa Wright

Introduction

Perhaps the most innovative development in equality and diversity in the past 15 years has been the move to introduce responsive or reflexive legislation. The public sector equality duty (PSED) is an example of responsive legislation enacted in the UK, representing a move away from top down, reactive law that depends on discrimination having already taken place to a form where those who have a direct stake in the PSED's outcomes have a role in ensuring its success. In the public sector equality duties covering race, disability and gender, prior to the Equality Act 2010, service users and public service workers, or their collective organisations, had a regulatory right to be consulted, providing a tool to hold public authorities to account if they failed to consider the equality impact of their decisions. However the role of stakeholders is absent from the Equality Act 2010 and the specific duties in England. Powers to hold public authorities to account through the PSED are particularly important in relation to the procurement function, given the increased out-sourcing of public services, which worsens workers terms and conditions and has been shown to adversely affect women and ethnic minority workers and reduce the quality and reliability of public service provision. While the PSED in Wales and Scotland contains

specific duties in relation to procurement, in England the procurement function is only covered by the general duty. Nevertheless, this paper uses illustrative evidence to argue that equality objectives can be pursued in the procurement of public services, through building requirements relating to equality for workers and for service users into tendering processes and contracts. For these to be effective, though, there is a need for involvement of stakeholders, including trade unions and civil society, in scrutinising contract terms and monitoring outcomes. The paper provides a theoretical and empirical argument for the reintroduction and strengthening of statutory consultative rights for stakeholders in the PSED.

Responsive/reflexive legislation and local democracy

The concepts of responsive and reflexive legislation were first postulated by Nonet and Selznick (1978/2001) and Teubner (1983) respectively. As part of a wider theorisation of evolutionary law, Nonet and Selznick argued that the development of legal systems would follow a path that led from a form in which the law is restrictive and designed to support the interests of powerful elites to one in which the law is used to redistribute power and is more responsive to the needs and interests of citizens. Building on these ideas, Teubner introduced the concept of reflexive legislation in which the law provides a catalyst for self-regulating social systems in which organisations, institutions and citizens are brought together on more equal terms to negotiate outcomes. The democratising potential of responsive and reflexive legislation is clear (Selznick and Cotterrell, 2004; Conley and Page, 2015). However, as McCrudden (2007) notes, if reflexive law simply encourages consultative pluralism without it resulting in positive outcomes, the potential for meaningful progress towards local democracy is limited. The engagement of citizens is, on its own, not enough. Their power to hold organisations, institutions and the state to

account must be clear in reflexive legislation if its democratising potential is to be realised.

Responsive/reflexive legislation, equality and civil society

In the UK responsive and reflexive legislation have been most closely related to equality. O'Cinneide (2004) provides a useful and detailed review of the early attempts to introduce equality legislation based on positive duties. The Northern Ireland Act (1989) and subsequent legislation is considered to be the forerunner of the application of positive duties in relation to fair employment practices. McCrudden (2007, p. 266) notes that 'A fundamental pre-condition for the operation of reflexive legislation in the Northern Ireland context has been the role given to a well-informed and truculent civil society'. The duty to consult was particularly important in the public sector equality duties, which were broadened to include public service delivery as well as employment, meaning that user groups and employees could hold public authorities to account for equality in the delivery of public services. The development of positive duties in England, Scotland and Wales at first seemed to adopt these principles, albeit in a rather incremental way. The first of the public sector equality duties, the race equality duty included an 'expectation' that ethnic minorities would be consulted. The second duty, the disability equality duty, contained a strong emphasis on the involvement of disabled people. The final duty, the gender equality duty, required consultation with women's organisations and included a specific reference to trade unions (Conley and Page, 2015, p. 47). All of these requirements were contained within the specific duties attached to each of the separate duties.

The enforcement mechanisms available to stakeholders, essentially ultimately judicial review, have been the subject of criticism and clearly required some greater thought (e.g. Fredman, 2011).

Disappointingly, rather than strengthening this crucial element, it was substantially weakened in the Equality Act 2010, with the much reduced emphasis on specific duties in s.149. However the powers to impose specific duties on public authorities have been devolved to the Scottish Parliament and the Welsh Assembly and in both of these countries the specific duties are far more extensive and detailed than in England with a greater emphasis on participation of civil society (Chaney, 2012). A further criticism of the review of the equality legislation and the Equality Act 2010 is that there are no provisions to extend positive equality duties to the private sector (McCrudden, 2007; Hepple 2011). The procurement function is, nevertheless, clearly covered by the general equality duty (McCrudden, 2012), and in this way public authorities can influence the practice of private contractors.

Stakeholder participation and public procurement

Efforts by stakeholders to incorporate equality objectives into procurement processes have gained political support at certain points in recent years. For example, during the 1980s contract compliance requiring contractors to undertake equality measures was adopted by some local authorities, particularly in relation to race equality, with bodies such as the former Greater London Council (GLC) active in this area (Dickens, 2007; Tackey et al., 2009; Orton and Ratcliffe, 2005). This practice was politically contentious, however, and legal changes introduced by the Conservative government in 1988 prevented local authorities from taking into account 'non-commercial' factors in the awarding of contracts. The rules were changed in 1999 (Dickens, 2007, p. 485) following the election of a Labour government in 1997 when there was a renewed interest in using procurement to achieve equality outcomes (McCrudden, 2009). As the first of the equality duties, the race duty gave a spur to action by public authorities, and the consultations leading up to the Equality Act 2010 provided

a further opportunity for stakeholders to push for action on procurement, which gained support from government and included the recommendation for a specific duty on procurement (GEO, 2009; 2010; OGC, 2008, p. 5).

In their more detailed treatment of specific duties both the Scottish Government and the Welsh Assembly have introduced duties that cover procurement. Additionally, the Scottish Government passed the Procurement Reform (Scotland) Act 2014, which is being implemented through regulations expected to be in place by the end of 2015. Although not specifically focused on equality, the enabling Act contains a sustainable procurement duty, with a requirement on authorities letting public contracts to consider how the procurement process can improve the economic, social, and environmental wellbeing of its area. Public authorities in England and Wales are also required to consider economic, social and environmental benefits in their commissioning and procurement under the Public Services (Social Value) Act 2012, in effect from January 2013.

Similarly, the 2014 EU Procurement Directive (Public Sector) includes provisions on social benefits, which enable public authorities to invest public finances in a way which promotes social, economic and environmental development, and good quality employment and services, contained in Article 18 (2). However, during consultation on the transposition into UK legislation through the Public Contracts Regulations 2015, trade unions expressed concern that the UK is taking a minimalist approach, proposing only guidance and standard contract conditions, instead of clear regulations stating that contracts must include clauses complying with Article 18 (2) (Prospect, 2014).

The use of public procurement as a strategy to address gender inequality in employment has been recommended by a number of expert reviews, including as a means to reduce the gender pay

gap (Women and Work Commission, 2006). A House of Commons inquiry into women's inequality in employment recommended that the government should use its procurement policies to promote better gender representation in certain sectors (Business Innovation and Skills Committee, 2013, p. 67). Construction continues to be one of the sectors with the lowest female representation, and the report noted the 'best practice' shown by the Women into Construction (WiC) project which was established to increase women's opportunities to work on the construction of London's Olympic Park.

Our research has identified that procurement demands placed on private contractors by public bodies can provide powerful incentives for employers to tackle women's underrepresentation in the construction sector (Wright, 2014). The Olympic Delivery Authority (ODA), responsible for the construction of the Olympic Park, set targets for the employment of underrepresented groups in the contractor workforce, specifically for women, disabled people and those from Black, Asian and Minority Ethnic (BAME) backgrounds. These were supported by equality schemes, drawn up in response to the ODA's responsibilities as a public body under the public sector equality duties (Thrush and Martins, 2011). Equality objectives were therefore built into the contracts of main contractors on the Olympic site, monitored by the ODA's delivery partner, with main contractors responsible for monitoring compliance by sub-contractors (Wright, 2013). Although the target of 11% for women on the Olympic site was not met, achieving only 5% – only those working on the Olympic Park were counted, which excluded women based at the headquarters of the contractors in professional or administrative roles (Thrush and Martins, 2011) – women made up 3% of the manual trades workforce at its peak, an improvement on the national average of around 1%. Additionally women accounted for 6% of apprenticeships, compared to the industry

average of one to 2% female apprentices (Thrush and Martins, 2011, p. 6).

The WiC project, working on the Olympic Park, supported contractors in meeting the gender targets, which it did through negotiating placements and employment opportunities for women with contractors and preparing women to take up these opportunities. Following the end of the Olympic Park construction, the project received industry funding to continue to work across London from 2011. Our evaluation of the project's activities up to 2014 concluded that procurement requirements, both on the Olympic build and in other construction projects with public sector clients, were influential in encouraging contractors to consider increasing female employment. The WiC project was able to persuade employers to offer work experience or employment to suitably qualified female applicants, who were frequently overlooked by the recruitment practices common in the industry, often informal or discriminatory and likely to exclude women (GLA, 2007; Wright, 2014).

Conclusion

The WiC project is an example of a civil society organisation working with private sector construction contractors to address gender underrepresentation, in order to meet public sector client requirements on workforce diversity local labour and training. Many contractors working with WiC are operating local authority or social housing contracts, where the clients are seeking additional 'social value' for their spending. However, there is scope for far greater action by public authorities to interpret both the public sector equality duty and the social value legislation in a way that recognises that the social well-being of an area can be improved through setting employment targets that support unemployed or low paid women to gain better paid work in construction (EHRC, 2013).

The social value legislation has been generally welcomed by the TUC, although emphasising the need to ensure that social value is defined broadly and in dialogue with public service users and trade unions, among other stakeholders (Dykes, 2012). While the more recent social value law offers a new opportunity and impetus to campaign for contracting processes to support the living wage and local employment, training and apprenticeship schemes (Sweeney, 2014) there is a drift from a focus on equality. We believe that this should not detract from or be considered a substitute for the requirements under the PSED to pay due regard to eliminating discrimination and advancing equality for those with protected characteristics.

Public services union UNISON has produced guidance for branches to ensure equalities considerations are taken into account in procurement processes. While the union believes that the maintenance of in-house services represents the best way to deliver equality for staff and service users, it recognises the scale of outsourcing of public services and notes that 'it is essential that organisations which deliver services on behalf of the local authority are required to reflect and perpetuate the equality principles adopted by the Council in question' (UNISON, 2013, p. 14). Unions, and other civil society stakeholders such as WiC (now a community interest company), have a crucial role to play in holding public authorities to account in their procurement processes. Central to their role is establishing both a social justice and a business case for the inclusion of equality requirements in procurement (EHRC, 2013), determining the scope and objectives of the contract to be let, and monitoring its outcomes, particularly where requirements are included relating to employment standards, training or apprenticeship opportunities and workforce diversity. However they need stronger legislative tools to fulfil these roles effectively.

If reflexive legislation is to reach its potential in relation to equality and local democracy in the UK, the reintroduction of clear statutory consultative rights for stakeholders on the application of the PSED is essential to strengthen existing voluntary actions of those seeking to reduce inequality in the workplace and public service delivery. It would support activities of trade unions and other civil society organisations in ensuring that contracted-out services properly considered equality issues for staff and service users, through involvement in determining the scope of contracts and monitoring their operation. Furthermore, a specific duty in relation to procurement would, as the example of the WiC project in the construction sector illustrates, begin the extension of reflexive equality legislation to the private sector.

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Shifting the starting blocks: an exploration of the impact of positive action in the UK

Dr Chantal Davies and Dr Muriel Robison

Introduction

Despite laws in Britain permitting positive action to combat disadvantage faced by minority groups in employment since the mid-1970s, the subject has notoriously been a neglected and highly controversial area in the UK. In 2010, the existing positive action provisions for the individual protected characteristics were to some extent transposed into the Equality Act 2010 (section 158, Equality Act 2010). Whilst the previous legislation had been based on an accepted 'equality of opportunity' approach, the new section 158 could be seen as a broadening out of positive action moving towards an 'equality of results' paradigm (Burrows & Robison, 2006). More recently, with the implementation of section 159 of the Equality Act 2010 in 2011, positive action in the UK has moved into new territory permitting organisations to utilise preferential treatment (using McCrudden's taxonomy of positive action) in the form of 'tie-break' provision in recruitment and promotion. Although sections 158 and 159 are voluntary provisions, it may be that the Public Sector Equality Duty could arguably require public bodies at least to have due regard to positive action initiatives pursuant to the section 159 obligation.

Notwithstanding the potential provided by sections 158 and 159 of the Equality Act 2010, it still appears that organisations

prefer to steer clear of this opportunity to address disadvantage suffered by protected groups. One notable exception is the recent announcement of the Judicial Appointments Commission regarding their intention to use the 'equal merit provision' in recruitment exercises from 1 July 2014 in order to seek to ensure diversity within the judiciary (Judicial Appointments Commission, 2014; Malleson, 2009). Work carried out for ASLEF (Robison, 2012) has indicated that unions in male dominated sectors are seeking to encourage employers to engage with positive action initiatives. Whilst there is a body of work considering the theoretical importance of positive action in the UK (see inter alia Barmes, 2009; Burrows & Robison, 2006; Johns et al, 2014; McCrudden 1986; Noon, 2012), there is a lack of empirical exploration of the practical implications of these provisions. Qualitative study to determine the utility of the positive action provisions is considered both timely and necessary as we approach the fifth anniversary of the Equality Act 2010.

This paper will briefly explore the theoretical context of the current positive action provisions in Britain. It will also discuss the design of a small-scale qualitative study currently being carried out by the authors looking at the experiences of a purposive sample of public, private and voluntary sector employers in England, Scotland and Wales in light of the potential for positive action.

Positive action and the Equality Act 2010

Sections 158 and 159 of the Equality Act have extended the circumstances in which positive action may be taken in respect of protected groups. European law permits a wider scope for positive action measures than those contained in the antecedent equality legislation, although it is also framed in terms of positive action and does not extend to permit positive discrimination. The Explanatory Notes to the Equality Act 2010 (paragraphs 517 and 521) indicate that the intention is that these provisions will

allow all action which is permitted by European law (see Burrows and Robison, 2006).

Positive action: general provisions

The positive action provisions of section 158 of the Equality Act permit employers (and other organisations covered by the 'work' provisions of the Act in Part 5) to take action targeted at the protected groups, so long as it is a proportionate means of achieving certain stated aims. The stated aims are:

a. enabling or encouraging persons to overcome or minimise disadvantage;
b. meeting the different needs of the protected group;
c. enabling or encouraging persons in protected groups to participate in an activity (section 158(2)).

Thus proportionate measures to alleviate disadvantage experienced by people in protected groups, to meet their particular needs or to address their under-representation in the workplace in relation to particular activities are permitted, but only where a person (P) reasonably thinks that:

a. Persons who share a protected characteristic suffer a disadvantage connected to that characteristic,
b. Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
c. Participation in an activity by persons who share a protected characteristic is disproportionately low (section 158(1)).

While some evidence or objective justification will be required to support the employer's belief that one of these conditions applies, the parliamentary debate during the passage of the Equality

Bill would suggest that the threshold for proof is relatively low. A proposal to replace 'reasonably thinks' with 'can demonstrate' when this clause was debated in the House of Lords was rejected because it would suggest that undisputable statistical evidence is required, and could deter employers who had identified a need to tackle disadvantage or under-representation from contemplating positive action measures (Hansard, 2010). Instead, the Equality and Human Rights Commission (EHRC, 2011) Code of Practice on Employment (paragraph 12.14) suggests that it will be sufficient for an employer to rely on the profiles of their workforce and knowledge of other comparable employers in the area or sector, or national data such as labour force surveys for a national or local picture, or qualitative data such as consultation with workers and trade unions.

The need for proportionality in this regard is a principle derived from European law which requires:

> that derogations must remain within the limits of what is appropriate and necessary in order to achieve that aim in view and that the principle of equal treatment be reconciled as far as possible with the requirements of the aim thus pursued (Briheche v Ministre d l'Interior, de l'Education and de la Justice, 2004 at paragraph 24).

In assessing whether positive action measures are proportionate in the particular circumstances, the Explanatory Notes (2010) state that this will depend, among other things, on the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering the disadvantage (paragraph 512).

Regulations can be made setting out action which does not fall within the scope of the proportionality principle, according to the Explanatory Notes (2010), in order 'to provide greater legal

certainty about what action is proportionate in particular circumstances' (paragraph 513).

The EHRC's Code of Practice on Employment (2011) (paragraphs 12.13 to 12.36) includes a number of examples of the types of action which employers can take and these include targeting advertising at specific disadvantaged groups, providing training opportunities in work areas or sectors for the target and the provision of support and mentoring.

Positive action in recruitment and promotion

The antecedent legislation did not allow for positive action in recruitment and promotion. Section 159 introduces limited provisions which can be relied upon at the point of recruitment. The effect of section 158(4) is that employers cannot rely on the general provisions in relation to recruitment and promotion, but must rely on section 159. This exception allows employers to take a candidate's protected characteristic into account when offering employment or a promoted post, if certain conditions are met. A candidate in a protected group can therefore be favoured over another candidate in certain circumstances. The conditions are:

1. the candidate is 'as qualified as' another candidate to be recruited or promoted (section 159(4)(a)); The Explanatory Notes (2010) explain that:

   …the question of whether one person is as qualified as another is not a matter only of academic qualification, but rather a judgement based on the criteria the employer uses to establish who is best for the job which could include matters such as suitability, competence and professional performance. (paragraph 518).

This means then that consideration is required in the context of an objective selection process which assesses skills, qualifications and experience overall.

2. The employer 'reasonably thinks' that the protected group is at a disadvantage or is under-represented (section 159(1));
3. The action is with the aim of enabling or encouraging protected groups to overcome or minimise the disadvantage or participate in that activity (section 159(2));
4. The action is a proportionate means of achieving those aims (section 159(4)(c));
5. The employer does not have a policy of automatically treating persons in the protected group more favourably in connection with recruitment or promotion (section 159(4)(b)), that is, according to the Explanatory Notes, 2011 (paragraph 526) that each case must be considered on its merits.

Where these conditions are met, employers can give 'weight' to a particular protected characteristic, in order to increase the proportion of their workforce belonging to the protected groups, and take it into account when making the decision, in a tie-break situation, to recruit or promote a candidate.

One example given in the Explanatory Notes (2010 at paragraph 521) is of a police service giving preferential treatment to a candidate from an under-represented ethnic minority background where other candidates not from that background were as qualified. In the parliamentary debates on clauses, the example of a primary school with only female teachers was used, where this allows a male teacher who is as qualified as a female teacher to be appointed in preference to address the under-representation.

The indications are however that employers prefer to avoid the use not only of these measures in the recruitment and selection procedure, but also positive action measures in general. Despite attempts by Government to extend the circumstances when

positive action measures are utilised in order to achieve 'full equality in practice', and to avoid, as Baroness Thornton put it during the passage of the Bill through the Lords, 'a chilling effect on the willingness of employers to use positive action measures' (Hansard, 2010 Col. 692), it would appear that these provisions are relied on just as infrequently as the more limited provisions of the antecedent legislation.

Time for a new approach?

The Equality Act 2010 debate has generally focussed on theoretical discussion around the legal and policy consequences of the legislation. In recent years important decisions around the development of the equality legislation have increasingly been based on anecdotal evidence provided during consultation processes, limited quantitative analysis or more general theoretical exploration. As Sir Bob Hepple states in relation to the Government's move towards deregulation in the employment sphere, such measures are 'based not on independent impartial research, but instead rely on anecdotal 'evidence' and pressures from business organisations that have an interest in the results' (Hepple, 2013, p. 213). The authors argue that evaluation of the equality legislation must be based upon rigorous empirical evidence and qualitative analysis. The efficacy of supporting legislative development through solid socio-legal study can be seen most keenly in the recent work commissioned by the Equality and Human Rights Commission in relation to caste discrimination (Dhanda et al, 2014). The importance of empirical study for the development of law, practice and policy was recognised by Bradney (2010) who expounds:

> Quantitative and qualitative empirical research into law and legal processes provides not just more information about law; it provides information of a different character from that which

> can be obtained through other methods of research. It answers questions about law that cannot be answered in any other way (p.1033).

The only way to engage in any meaningful discussion of the utility or development of positive action within the UK and indeed Europe is to consider how the current provisions of the Equality Act 2010 in this regard are utilised in practice. As a non-mandatory provision, section 159 in particular can only really be analysed in light of how the law is being utilised by employers across the UK. If it is the case, as articulated by Johns et al, (2014), that there is a 'muted' response to the tie-break provisions in recruitment and promotion, surely there needs to be further exploration as to why this would appear to be the prevailing attitude. We can speculate as to the reasons why organisations are not utilising such provision. Is it simply related to the lack of publicity the provisions have received? Is it due to a lack of understanding of the provisions by most organisations? Or is it something more fundamental such as a distrust of the new paradigm of equality in the UK which may be suggested by the application of section 159 (Noon, 2012)? Anecdotal accounts suggest that any reticence in this area may be down to a lack of obligation on employers to take such measures, no matter how under-represented a particular group is within the particular workforce. Equally, the administrative burden of implementing a robust system of positive action may be considered unworthy of pursuit particularly given the fear of a challenge from the unsuccessful candidates.

Without exploring the ground level attitudes of those responsible for recruitment and promotion practice in the UK, it is impossible to fully analysis the possible new dawn of positive action as a social phenomenon. Ultimately, whilst doctrinal analysis is often well suited to finding a solution to legal problems

(Hutchinson, 2013), in many circumstances a socio-legal approach is the only way to determine how the law applies in practice.

It is often easier to wrestle with difficult theoretical questions via the doctrinal approach. At most, we make conjectural reference to the more embedded use of positive action and permissive equality in other parts of the world such as the USA, Australia, Canada and South Africa. Even within the European context, we comfortably refer to the case law from the ECJ against member states who have sought to introduce a new paradigm of positive action (see inter alia: Kalanke v Bremen, 1995; Badeck v Landesanwalt beim Staarsgerichtshof des Landes Hessen, 1999). Comparative study thus provides important evidential implications for practice. However, when faced with a recognised lack of quantifiable evidence on the attitudes of employers in Great Britain towards positive action (e.g. Noon, 2012), we are unsure how to collect any meaningful data. The difficulties of creating a qualitative study which will answer fundamental questions such as the extent to which positive action is being used and the attitudes of those responsible for recruitment and promotion in Great Britain towards the new approach towards equality, are well recognised. Nevertheless, the authors have attempted to formulate a methodological framework within which to seek an evidential base in order to expand dialogue in this area.

The methodological framework

In the long-term, the study proposed by the authors will provide a multi-layered, multi and mixed-method exploration of the awareness, use and perceptions of voluntary, public and private employers towards the existing positive action provisions of the Equality Act 2010 (more specifically the use of sections 158 and 159). Purposive sampling will be used to target specific groups

of participants. In particular, human resource professionals within large organisations and owners of SMEs across England, Wales and Scotland will be deliberately targeted. Due to the potential complexity of the subject matter and in order to obtain a fair representation of attitudes, it is believed that participants will necessarily have to be those with responsibility for general employment practice, recruitment and promotion. Initially, a small scoping study will be carried out by utilizing the distribution of a basic questionnaire. This will be disseminated to relevant networks of employers and HR professionals. The questionnaire will allow for both qualitative and quantitative analysis of the relevant data. The aim of the scoping study is to: stimulate debate and provide some early outputs; inform future discussions about the shape, focus and priorities for the development of this work; and be of value to those undertaking research in this area in the future.

Analysis of this initial data from the scoping study will enable the drilling down of specific themes to allow for a further specific broad scale questionnaire to be developed. It is expected that participants at this second stage will again be obtained via collaboration with employer/HR representative bodies. One of the key difficulties anticipated in this regard is ensuring an adequate range of participation based on location, size and sector. Collaborations with representative bodies across the UK will mitigate against this. The final stage of the study will involve a series of individual semi-structured interviews with relevant representatives of a range of organisations. Once again, the format and direction of these interviews will be dictated following analysis and drilling down of the data collected from the questionnaire stage. Data will then be collated and triangulated in order to seek to respond to the core research questions i.e. the awareness, use and perceptions of organisations in relation to the positive action provisions of the Equality Act 2010.

Implications and conclusions

The authors submit that in order to be able to fully evaluate the impact and indeed the necessity for the positive action provisions in the Equality Act 2010, it is vital to have an evidential foundation on which to base any future dialogue around the development of legislative provision for positive action in the UK. In order to truly engage with the model of equality which is most appropriate for the UK (and beyond), we need to understand how existing provisions are perceived and applied and if necessary to determine a relevant business case on which to base future discussion. If, as Barmes (2012) has suggested, we are still at the point of experimentation in relation to positive action in the EU and UK, then theorising can only take the dialogue so far. If we want to locate an appropriate starting line (Noon, 2010), we must ensure the starting blocks are built on solid footings. The authors respectively contend that those foundations must be constructed on ground-level empirical study in the form explored above.

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Making rights real: joining-up is the only way to do it

Jiwan Raheja and Michael Keating

Introduction: Our belief

Arising from the uncertainty about the relationship between human rights and local government, in 2010 a project was launched to explore how a better understanding could improve decision-making and service delivery. It was underpinned by the recognition that 'knowing your community' has to be at the heart of public services through understanding diversity, tackling inequality and balancing the needs of individuals and communities. This may seem obvious but can be difficult to achieve and, surprisingly, is often forgotten. Getting it right is about learning from the successes and failures of others and recognising that solutions will never come from one organisation or sector but demand wider partnerships. Five years on and delivering public services has become harder. At the same time learning from that initial project has moved from a focus on local experiences to an European 'joining-up' to make human rights a lived reality with lessons beyond 2015.

Local and national partnerships

Led by the equalities and cohesion team at the Improvement and Development Agency (IDeA),[1] the human rights and local government project was allied to the Equality Framework for Local Government. Drawing from the national debates that shaped the Equality Act 2010 (and the Public Sector Equality Duty), as well as reflecting on the actual experiences of councils, the Framework

was designed as an assessment tool to strengthen equality practice for the fair delivery of everyday services. Underpinned by how the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion/belief, sex and sexual orientation influence life chances, including physical and legal security, health, education and democratic participation, it was recognised that confidence about human rights would also be vital.

The IDeA therefore commissioned the British Institute of Human Rights, as independent experts, to work with five authorities to develop a better understanding of how national and international obligations influenced day-to-day social care practice (LB Hackney), the development of an Equality and Human Rights Charter (Herefordshire Council), the role of Best Interest Assessors[2] in social care (Oxfordshire County Council), meeting the needs of people with no recourse to public funds (LB Tower Hamlets) and the establishment of a new community services department (Wiltshire Council).

This partnership between local authorities was mirrored by a national advisory board including the Equality and Human Rights Commission, the Department for Communities and Local Government, the Health Ombudsman and the Ministry of Justice. Drawing on these perspectives led to the exploration of ways to integrate frontline experience into national policy making and human rights governance.[3]

Moving to the European stage

The Ministry of Justice showcased the project to the Fundamental Rights Agency (FRA),[4] who subsequently invited the UK to become part of a Europe-wide initiative alongside Belgium, Bulgaria, the Czech Republic, Italy, The Netherlands, Spain and Sweden.[5] The FRA's aim was to create a toolkit based on research from local, regional and national government,

interviews and feedback meetings in the eight EU Member States. Participants included public officials, independent experts, representatives of community and voluntary groups and individual service users involved in a range of work including discrimination complaint offices and social cohesion plans in Belgium, anti-discrimination and asylum seekers in the Netherlands, citizenship and integration in Spain and gender equality in Sweden. Discussions focused on the impact of external influences, the role of the EU and the potential for stronger collaboration between different levels of government and partners in other sectors. Following a workshop in Utrecht at the end of 2011 to reflect on the feedback, the toolkit was piloted with some of the projects above as well as Roma integration in Bulgaria and the Czech Republic, and lesbian, gay, bisexual and transgender issues in Italy.

Arising from this there was general agreement that joined-up governance is key to the implementation of rights by developing cooperation at local, regional, national, EU and international levels (multi-level), as well as different sectors at each level (cross-sector). Government departments and agencies, independent bodies and civil society can work across organisational boundaries towards the goal of making human rights a reality for all. But delivering this has to be shared. If the roles and remit of each sector or level are disconnected, then the risk is that some individuals end up outside anyone's responsibility – opening up a gap between rights on paper and those in everyday life. At the core of joined-up governance lies coordination – as a tool for effective planning, implementation and monitoring by:

— Making access to rights seamless, rather than fragmented;
— Eliminating situations where policies undermine one another;
— Using resources more effectively;

— Creating partnerships between stakeholders from different levels andorganisations; and,
— Helping mainstream rights across all policy areas.

Achieving this is a long-term and ongoing process which the final version of the toolkit launched in 2013 is designed to support (FRA, 2013).[6]

Joining-up rights: what does it mean?

Throughout the toolkit's development, the experiences of hundreds of regional and local officials highlighted the key questions of how to:

— Ensure compliance with national, European and international obligations;
— Coordinate activities, avoid duplication and get support from politicians, senior managers and other leaders;
— Explain rights in ways that relate to everyday life;
— Understand and engage communities and stakeholders; and,
— Identify the right data and people for monitoring and evaluation.

To help answer these questions the tookit is organised under five headings drawing on the learning points and 'tips' from initiatives across Europe with related tools and key terms explained. A taster of some of the content is outlined below.

In 'understanding fundamental rights' the emphasis is on obligations defined in national, European and international law. This means that all EU Member States assume the duty to respect, protect and fulfil rights. As rights are dynamic, evolving as new rules and initiatives are adopted, local officials need to seek expert advice from national administrations, independent bodies, civil society or academia. At the same time it is crucial to

find information independent from political influences such as the collaborative work of EUROCITIES on poverty and exclusion. This network provides an exchange of experiences about projects in different cities, monitors EU policy developments affecting local government and organises meetings, seminars and conferences to share learning.

Joining-up the different levels of government and across sectors helps achieve more inclusive implementation. In times of austerity, 'coordination and leadership' become even more important for understanding the different responsibilities between and within levels of governance to avoid duplication and share resources and information. The Spanish government, for instance, adopted the Strategic Plan for Citizenship and Integration as a central resource for regional and municipal authorities to improve inclusion of migrant groups in education, employment, health and housing as well as raise awareness and promote equal treatment. Cooperation was underpinned by annual action plans outlining jointly financed measures and explaining how their effectiveness would be monitored.

Promoting the ownership of elected representatives has a positive effect, as demonstrated by the Municipal Council of the City of Örebro in Sweden. Under its business and growth committee, a human rights working group of politicians was established to ensure consistency and integration across policy areas. Its main task is to promote the city as a place where all residents are respected by sharing knowledge and driving local activities.

Identifying sustainable funding is essential but can be challenging so using robust data to identify the action required helps reassure managers and politicians by pointing out how the gaps in existing provision can lead to inefficiencies and possible human rights breaches. Articulating the business case for rights creates clarity about value for money. In Belgium, the Social Cohesion Plan for cities and towns in Wallonia supports the promotion of

social cohesion. This often involves transferring funds to one or more of the organisations implementing actions. Coordinating partnerships, a 'Commission for Local Support' provides a participatory tool to ensure the smooth running of the Plan by boosting local projects. More than half of the municipalities have been involved and around €4 million has been allocated to partner organisations.

While rights are a legal obligation, their implementation requires public support. Officials therefore play a central role in providing accurate information and challenging stereotypes. Having a dedicated group of committed people who persistently advocate for rights can make the difference between success and failure in convincing the public. Understanding the local context and engaging with civil society and local communities early on in the process can anticipate and address opposition.

'Communicating fundamental rights' requires cooperation with partners to get the message across to citizens. Herefordshire Council and its health partners produced the Herefordshire Equality and Human Rights Charter to demonstrate the commitment of the police, emergency services, the local hospital trust, and a range of voluntary and community organisations. The Charter was supported by a campaign called 'No Discrimination HEREfordshire' and residents and organisation were invited to sign up their support. Individuals and organisations were actively involved in its design and delivery, for example, a Dignity Code was produced by disability groups.

'Participation and communication' rely on flexibility to strengthen access through practical steps such as timing and location. They also depend on a good understanding of local diversity, needs and aspirations and the creation of safe environments to explore these (sometimes contentious) issues. An example of a successful combination was the Vienna Charter to agree common rules for the future of the city based on what individual citizens

could do to improve living together. Working together was integral to avoid mistakes that could have made people feel disengaged or disappointed that their expectations had not been met. Following the Mayor's invitation, 325 organisations became involved including businesses, cultural and sport associations, employer associations, trade unions, religious communities and political parties. An online forum and a 'Charter Hotline' were set up. 651 'Charter Talks' were organised across the city, at clubhouses, pubs, offices, schools, people's flats, parks and public swimming pools. 8,500 people participated, investing a total of 12,700 hours discussing how to live together as good neighbours. The Charter was launched in November 2012 and published in Serbian, Turkish, Bosnian and Croatian, which, besides German, are the languages most spoken in Vienna.

The sustainable implementation of rights requires 'planning, monitoring and evaluation'. Decision makers need evidence to build a picture of the challenges, demonstrate the need for action, set the right priorities and use resources effectively. In the Czech city of Ostrava, social services are organised by a community planning approach bringing together three stakeholder groups of providers, service users and the city as the funder. With ten working groups, one of which is the 'Roma ethnic' group, four main goals are coordinated: support for existing social services, developing capacity, exploring new services, and supporting related activities.

Without monitoring and evaluation, tensions between different policies can be overlooked and remain unresolved. Policy makers therefore need to identify and analyse the impact at the planning stage to avoid errors. In Spain, the Ombudsman for the Basque country (*Ararteko)* defends the rights of individuals in their dealings with the Basque Public Administration by receiving and handling complaints as well as evaluating policy. For example it initiates actions to ensure that authorities mainstream

equality and non-discrimination on grounds of sexual orientation, promote a culture of non-discrimination within wider society and combat homophobia and transphobia. In the 2011–13 Working Plan, raising awareness and improving education about sexual diversity and gender identity were included. Evaluation and monitoring identified how educational materials make a positive contribution in schools and with parents. This has also helped to ensure the support of the Basque Government.

As these examples indicate the toolkit advocates a joined-up approach to strengthen dialogue and cooperation. This is supported by checklists to help users reflect on their own practice which, on completion, can be returned to FRA to continue the learning process. Details of resources and links to the initiatives of local and national governments, international organisations and NGOs are also provided, for example the International Coordinating Committee for National Human Rights Institutions, the European Network of Equality Bodies, ECCAR – The European Coalition of Cities against Racism and the Eurobarometer surveys of public opinion. Users are able to search by level of organisation and country. The overarching message is 'get involved' to make the toolkit a living resource.

Making rights real: the next steps

Since 2010, public spending cuts, welfare reform and benefits cuts have increased economic inequality and anxiety about faith, ethnicity and identity remains high. Local government has been buffeted by huge reductions in their resources, increasing need and ongoing criticism from the media and national politicians. Despite this, innovative work in local places still happens. Tower Hamlets continues to supports its New Residents and Refugee Forum to meet the needs of vulnerable new arrivals. Wiltshire has a Public Sector Equality and Human Rights Charter, developed with Swindon Borough Council and the Fire Service.

In Hackney 60 members of staff, 20 service users and a local councillor have been recruited as volunteer 'Human Rights with Dignity Champions'. Working in the community they cascade information about rights work with vulnerable people in a way which gives them dignity and respect. They ensure staff are able to translate legislation into their practice and users understand their right to challenge, for example by holding events such as a 'Dignity Day'. The Council supports the champions and, in collaboration with Roehampton University, is currently running the 'Social care, policymaking and human rights' action research project to test the FRA toolkit and encourage its use. The project is designed to create an organisation trained in human rights approaches, supported by practitioner focused and academic papers on policymaking and management for wider debate. The first stage completed in October 2014 involved training events with staff and third sector care providers using the toolkit to explore case studies and good practice examples. The second stage uses an analysis of these sessions to undertake evaluative interviews with policy makers (senior management and elected officials) and frontline staff. Although not yet complete, feedback has been positive and the FRA is encouraging other EU member states to model their training on this initiative.

FRA itself continues to promote this kind of learning, and with the Committee of the Regions,[7] has launched a guide to foster the practical implementation of rights.[8] Initially published in English, it will be translated into 23 languages throughout 2015. Their desire is to inspire local and regional authorities and their partners to be more fully aware of their role in protecting rights when shaping policies and to reinforce their position in the multi-level set-up of Europe. They argue that empowerment at local and regional level is the best way to guarantee respect for rights at the heart of European values.

At a time when human rights are under attack the connections between work on the ground in the UK and experiences across Europe are more important than ever. The drive to build greater confidence that inspired that project in 2010 must continue and its aims remain true. Understanding and engagement with individuals and communities will help to build the momentum of joined-up governance to bring about positive change. This means building on the good work done to date in making policies and services more sensitive to public needs. The principle of joining-up is to learn from peers and help others benefit from what has worked (or not). After all, that's what 'Making rights real' is all about!

In 2014 and 2015 Jiwan and Michael worked closely with FRA to develop new guidance.

Endnotes

1. The IDeA is now part of the Local Government Association.

2. Best Interest Assessments apply to people in hospitals and care homes lacking the capacity to consent to their care or treatment and need to be deprived of their liberty for protection from harm.

3. This took place against the backdrop of the 2010 General Election and the early days of the Coalition Government with its bonfire of the quangos and reductions in funding to local and national government institutions.

4. The European Union Agency for Fundamental Rights (FRA) provides independent, evidence-based assistance and expertise on human rights to EU institutions and Member States: http://fra.europa.eu/en

5. The Ministry of Justice was part of an Independent Advisory Group which also included the Belgian Centre for Equal Opportunities and Opposition to Racism, the City of Utrecht, the Council of Europe, EUROCITIES, the European Commission Directorate General for Regional Policy, the European Union Committee of the Regions, the Swedish Association of Local Authorities and Regions and the United Nations Office of the High Commissioner for Human Rights.

6. Fundamental Rights Agency (FRA) (2013). *Joining-up fundamental rights toolkit for local, regional and national public officials*. Vienna: FRA. http://fra.europa.eu/en/joinedup/home

7. The Committee of the Regions involves representatives of regional and local authorities and the communities they represent in the EU's decision-making process and informs them about EU policies.

8. FRA (2014). *Making rights real – A guide for local and regional authorities*. Vienna: FRA. http://fra.europa.eu/en/publication/2014/making-rights-real-guide-local-and-regional-authorities

Bridging the divide?

Neil Crowther

The rights to equality and non-discrimination are integral elements of the wider framework of international and European human rights law, as reflected for example in the provisions of Article 14 of the European Convention on Human Rights and Articles 20, 21 and 23 of the EU Charter of Fundamental Rights. Furthermore, national and EU anti-discrimination legislation has been expressly framed and interpreted with a view to giving effect to this fundamental right to equality and non-discrimination. So why in so many European Union countries have the agendas of equality and human rights often followed such separate paths and what challenges lie ahead if an increasingly unified approach is to be expected?

These questions lay at the heart of the research project 'Bridging the divide – Integrating the Functions of National Equality Bodies and National Human Rights Institutions in the European Union' (2013) led by Colm O'Cinneide and I.[1] Our focus was on the trend towards integration of the institutional architecture for the protection and promotion of equality and human rights in the European Union (EU). However, the more we investigated, the more it became apparent that the historic separation of these bodies merely manifested a wider gulf between equality and human rights in much of the EU. Equality and human rights were frequently dealt with by different legal frameworks, led by different ministries of government, overseen by different parliamentary committees, regarded as different by duty-bearers and rights-holders. They enjoyed – for the most part – separate and rarely overlapping communities of expertise, whether in the legal

profession, academia or civil society. Sometimes these different communities regarded one another with suspicion and actively sought to maintain divisions.

This separation appears to be rooted in the post-World War II evolutionary journey of equality and human rights, and the international institutions involved in promoting them in Europe. While the United Nations (UN) and the Council of Europe (CoE) – both political institutions – have inspired and been the driving force behind human rights law and institutions in Europe, the EU – originally and arguably still primarily an economic union – has been the principle agent when it comes to non-discrimination and equal treatment, particularly in the field of employment. Until fairly recently developments in the fields of anti-discrimination law and wider human rights have taken relatively little account of one another.

The factors motivating the EU and the inspiration lying behind the approach it has taken draw on sources other than the post-war international or European human rights system. The EU's motivation to adopt anti-discrimination measures is driven in equal measure by economic imperatives – that discrimination and its consequences undermines the effective functioning of the common market – as it is by a political commitment to fundamental rights.[2] The EU's model for anti-discrimination law was strongly influenced by that of Britain. Spencer (2005) noted how 'in contrast to common practice abroad, equality and human rights work in Britain has operated in almost entirely different spheres'[3] while Fredman (2003) noted 'in most jurisdictions, equality is firmly embedded within human rights law. By contrast, anti-discrimination law in Britain has emerged from labour law, and pre-dates human rights law by a long way.'[4] De Búrca (2011) notes how 'several of the core concepts and provisions of EU anti-discrimination law were…drawn from the United Kingdom's anti-discrimination laws of the 1970's. These UK laws, in particular

the 1975 Sex Discrimination Act and the 1976 Race Relations Act, were in turn strongly influenced by U.S. law at the time.'[5] Rudolf & Mahlmann (2007) have claimed that: 'British anti-discrimination law was imported from the United States. It has now been exported to Europe through its influence on the directives that regulate discrimination in the European Union.'[6] De Witte (2012) traces the origins of the idea of national equality bodies in the EU to the creation of the Equal Employment Opportunity Commission by the U.S. Civil Rights Act in 1964.[7] The origins of gender equality policy and legislation in the EU have a longer history, dating back to the Treaty of Rome and the foundation of the European Economic Community.

The effect of these separate journeys has been to leave a legacy of difference between the framing, focus and features of the EU's measures to tackle discrimination and to promote equal treatment, and that which has evolved in European and international human rights law and standards.

With respect to the approach to anti-discrimination itself, national and EU anti-discrimination legislation has often been influenced by the need to deal with the group nature of many forms of discrimination and to address specific legal, political and social issues that arise in the context of its implementation. It has evolved into a highly technical regulatory regime which functions in a very distinct and different way from human rights law, which is more individual-focused and relies to a greater degree on the application of broad-brush general principles of law. National and EU anti-discrimination legislation tends to have a narrower reach than the provisions of human rights law that relate to equal treatment: it usually only applies to specific forms of inequality, with, for example, EU law only covering discrimination based on six grounds (age, disability, gender, age, religion or belief, and sexual orientation). In contrast, the provisions of human rights law that relate to equality have a broader scope as they are

capable of applying to all discrimination based on individual 'status.' However, they often provide a lesser level of protection, as objective justification can be a defense to any discrimination.

As a consequence of its focus on group discrimination, indirect discrimination plays a central role in national and EU anti-discrimination law, while it remains a chronically underdeveloped concept in human rights law. It has also given rise to a complex and sophisticated case law that remains largely unaffected by developments in human rights law, while some of its provisions have little if any normative counterpart in the wider realm of human rights law: for example, EU age discrimination law is now well-developed, but there exists very little human rights jurisprudence on this topic.

Conversely, the absence of regard to individual dignity in the model of domestic and European equal treatment law has provided scope for duty-bearers to comply with the law by treating individuals with 'protected characteristics' equally badly. Klug and Wildbore (2005) highlight how

> treating everyone equally badly is not a human rights concept. It is not sufficient to ensure no one is being discriminated against if the consequence is that all groups are treated with an equal lack of respect or lack of opportunity to participate in civic or social life. If equality is the main goal of 'second wave' human rights, dignity is its foundational value; as the first Article of the Universal Declaration on Human Rights proclaims.[8]

For example, when the British Commission for Racial Equality conducted an inquiry into the ill-treatment of black prisoners, the successful legal defence was to say that all prisoners were subjected to the same standards of ill-treatment, irrespective of their ethnic origin.[9]

Important differences persist in relation to the fields of operation and focus of equal treatment and human rights law and practice. Although recent years have seen a growing interest in the role of business in relation to human rights, the equal treatment agenda has long had a strong focus on the private sector in contrast with human rights' primary focus on the State. Moreover, while many EU Member States have unilaterally adopted comprehensive anti-discrimination laws, the EU's anti-discrimination Directives do not yet extend to discrimination outside the field of employment. Negotiations to these ends stalled around the time of the financial crash of 2008 and have yet to restart. The dominant focus on employment discrimination also means that legal practitioners in the anti-discrimination field often have a background in labour law, not human rights law. Non-discrimination is also as a consequence often positioned principally as a concern for human resources professionals.

As has already been mentioned, separate institutional architecture has developed in relation to equality and human rights at the EU level. EU Member States are required by the Race and Gender Equality Directives to designate bodies that have competencies to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct independent surveys concerning discrimination and publish independent reports and making recommendations on any issue relating to such discrimination. Article 13 (1) of the Racial Equality Directive and Article 20(1) of the Recast Gender Equality Directive also provides that '[t]hese bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.'[10] However, the development of national and EU anti-discrimination law, and in particular the expansion of EU equal treatment law since 2000, has exercised a major influence on the establishment and evolution of National Equality Bodies (NEBs) and remains the primary frame

of reference for much of their activities. Separately – and particularly since the adoption of the 'Paris Principles' in 1990 – there has been a rapid proliferation in the number of National Human Rights Institutions (NHRI's) globally, including in Europe.[11] The focus of NHRIs is largely upon promoting compliance by States with international human rights instruments and hence NHRIs typically look to the United Nations human rights system or to the Council of Europe for their frame of reference.

In recent years, a process of convergence between equality and human rights has begun. In the UK, Hepple (2010) has claimed (somewhat over-claimed in this author's view) that the Equality Acts of 2006 and 2010 together marked a 'historic shift' towards the recognition of equality as a fundamental human right, which involved the harmonisation and extension of existing anti-discrimination law within the framework of a 'unitary human rights perspective'.[12] At the pan-European level, the EU's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), the incorporation of equality and non-discrimination rights within the wider rights provisions of the EU Charter of Fundamental Rights, and the EU's impending accession to the European Convention on Human Rights mark the beginning of a potential integration of equality and human rights legal standards. Interestingly, de Búrca (2012) notes how the concepts and provisions of EU anti-discrimination law have begun to shape the growing body of European Court of Human Rights case law on discrimination, while as previously noted the Court of Justice for the European Union has begun to interpret anti-discrimination legislation by reference to fundamental rights principles, including those set out in the EU Charter of Fundamental Rights.[13] Similar developments are taking place at national level: domestic courts are increasingly referring to human rights standards in interpreting national and EU anti-discrimination legislation, and vice versa.

At the institutional level, the EU Agency for Fundamental Rights represents an integration of the equality and human rights agendas that is also playing out in a number of States that are replacing or merging bodies concerned with either equality or human rights with single integrated bodies. This is the case in Poland, England and Wales, Ireland, Denmark, the Netherlands, Belgium and the Czech Republic and has been considered (and thus far rejected) in Northern Ireland.

On one level such integration makes a great deal of sense. Many forms of discriminatory treatment arise out of or are linked to infringements of other human rights, while infringements of other rights such as freedom of expression or the right to a fair trial also often have a discriminatory component. This means that any comprehensive attempt to address issues of discrimination and inequality must also engage with the other human rights issues that play a role in creating the injustices in question, while attempts to promote respect for human rights in general must take account of equality and non-discrimination concerns. For example, unlike its predecessor body (see above), the British Equality and Human Rights Commission was able to combine its equality and human rights remit to successfully challenge the ill-treatment of black people in youth detention facilities, citing both Article 3 of the ECHR and the duties on public bodies arising from the Equality Act 2010.

However, the 'Bridging the Divide' study failed to find a single instance of this logic being the principle reason that bodies were being replaced or merged together.[14] One might expect such unbeatable logic to also affect integration beyond the institutions themselves, for example in relation to lead ministries for equality and human rights, or equality and human rights legislation, but this is rarely if ever the case, with each continuing to be accorded separate treatment.

More commonly, such decisions were driven by financial imperatives, particularly in the context of austerity measures across Europe, national politics, with integration sometimes regarded as a way for States to cut such bodies down to size and to contain their influence. Increasingly it appears the desire of States to establish NHRIs with the potential for accreditation and hence recognition by the United Nations Human Rights system is a key imperative. This latter motive appears to have underpinned the decision to replace the well-regarded Equal Treatment body in the Netherlands with an NHRI and moves to bring the various equal treatment bodies in Belgium under a single umbrella to create a body capable of applying for 'A' accredited status as an NHRI.

Motivations aside, the logic and benefits of aligning equality and human rights do not of themselves create a definite case for such integration. There remain all kinds of rights protections that NHRIs are not commonly mandated to address. For example, many EU States have separate bodies concerned with data protection, independent investigation of the police, inspection of psychiatric facilities and prisons. Many countries also have an independent Children's Commissioner. As one participant in the conference we organised to discuss our emerging findings commented 'Saying equality is part of human rights is like saying soccer is part of ball games.' When consideration is also given to the distinctive history of equal treatment and to the particular approach that has been cultivated in the EU, does it obviously follow that integration is in the best interests of advancing equality? Why do we regard NHRIs as better placed to perform this task than equality bodies? Certainly those bodies that have either been established or which have become integrated bodies have all found difficulties in forging a unified approach.

There is, I believe, a danger that the increasing emphasis placed upon the importance of States establishing national human rights institutions by the international human rights

system could lead to a depreciation of rights protection in some EU Member States. The establishment of a body capable of achieving 'A' accredited NHRI status does not of itself mark an improvement in rights protection overall when the route to this point has involved the closing down of established, well-functioning equality bodies. The process of accrediting NHRIs has not in the past looked at their operating context or at what they have replaced. Yet the increased pressure on states to establish such bodies and the absence of any equivalent accreditation for equality bodies in the EU risks pulling more states in this direction.

In other contexts there appears to be a reverse trend in place, with hostility towards human rights by states and a retreat from human rights as a frame for the actions and advocacy of civil society and philanthropy. In Britain talk of withdrawing from the European Convention on Human Rights has broken into the political mainstream. The toxicity surrounding human rights is a major turn-off to would-be human rights defenders who choose instead to couch their goals in terms of themes such as social justice, anti-poverty, development and – of course – equality.[15] This includes those, such as campaigners for LGBT rights, that have benefited considerably from the European human rights system. On the one hand it is perhaps understandable in such a toxic climate that as a matter of expedience equality advocates should steer clear of publicly associating their work with human rights. Yet in doing so they risk allowing human rights to be weakened further still, consolidating perceptions that human rights exist only as a the last refuge of 'undeserving' individuals, a long way from what Eleanor Roosevelt famously described as 'the small places close to home.'

There are many good reasons to break down the barriers that have emerged between equality and human rights in the European Union. But this should not, in my view, lead inexorably towards integration. As we noted in 'Bridging the Divide': 'equality

and human rights may be dialects of a common language – but mutual comprehension should not be assumed.' Before going down the integration route an urgent conversation is required via which the relative merits of the different approaches to equality and human rights in Europe can be recognized and evaluated. Only by doing so can we avoid throwing the baby out with the bathwater and anticipate a sensible, pragmatic and ultimately beneficial approach to integration to emerge.

Endnotes

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Accountability and independence for public bodies designed to protect and promote equality and human rights

John Wadham

> Accountability for arm's-length bodies is confused, overlapping and neglected, with blurred boundaries and responsibilities. A taxonomy would simplify and rationalise the structure of the state.[1]

Meanwhile

> The Cabinet Office has tightened controls over and monitoring of public bodies to improve accountability, including operating the new expenditure controls system that applies to departments and NDPBs [non-departmental public bodies]: further work needs to be undertaken to establish the impact of these controls, including on accountability.[2]

This paper argues that bodies with a role in holding the government to account, protecting the rights of the citizen or promoting equality or human rights should be sponsored, supported and accountable directly to Parliament and not to government departments or to ministers. In 'Read before burning: Arm's-length government for a new administration', the authors suggest a new classification of such bodies:

> The guiding principle is that the classification is determined by the degree of freedom from executive control on appointments, strategy, decisions and budget, which the body needs to be able to discharge its functions.[3]

Thus:

> The first category is the constitutional bodies like the Electoral Commission, the National Audit Office and the Parliamentary Ombudsman. These are deliberately put at the greatest distance from ministers to preserve the independence which is core to their ability to perform their tasks and to protect them from ministerial interference in the exercise of their judgement. Their primary accountability is to Parliament rather than to the executive.[4]

The National Audit Office, the Electoral Commission and the Parliamentary and Health Service Ombudsman already report to Parliament. The Select Committee on Public Administration has recommended that the Information Commissioner and HM Inspectorate of Prisons should also report to Parliament.[5] The author has had experience of two public bodies where such better arrangements should apply – the Equality and Human Rights Commission (EHRC) and the Independent Police Complaints Commission (IPCC).[6] That experience is the basis of the arguments made here, although there are likely to be other good candidates for the enhanced status recommended.[7]

The EHRC has a distinctive constitutional role in Britain's democratic system in holding the government to account. This was the opinion of Parliament's Joint Committee on Human Rights (JCHR) prior to the Commission's establishment.[8] The JCHR said that the EHRC has a similar role constitutionally to the Electoral Commission, the National Audit Office and the Parliamentary

Commissioner for Administration.[9] The EHRC also requires independence from government in relation to its structures, functions and the exercise of its powers as a requirement of the UN's Paris Principles for National Human Rights Institutions.[10] The EHRC also needs to be seen to be independent: without proper distance the EHRC might be perceived as less likely to take legal action against a government.

In June 2011, when the government was suggesting that it might amend (reduce) the EHRC's powers, Rosslyn Noonan, Chair of the United Nations International Coordinating Committee (ICC) (the international co-ordinating body for human rights commissions), wrote to the Home Secretary stating:

> Given the particular constitutional place of national human rights institutions in the architecture of the State, it is critical that any amendment to their mandate, structure, powers and functions be carried out through a parliamentary process which is open, transparent and with opportunity for public submissions. Secondary legislation does not meet those criteria and places undue power over the EHRC in the hands of the Executive, whose compliance with human rights standards the EHRC is required to monitor.[11]

The Joint Committee for Human Rights took a similar view when it was considering the original proposals for the setting up the EHRC, stating:

> … the standard model of NDPB accountability is [not] a sufficiently outward and visible guarantee of independence from the government to be appropriate to a national human rights commission (or indeed the proposed single equality body, whether or not integrated with a human rights commission).[12]

In relation to the IPCC, the European Court of Human Rights, when assessing the independence of its predecessor, the Police Complaints Authority, and the nature of the government appointment of board members (which follow the same model as the IPCC) said:

> The Court also notes the important role played by the Secretary of State in appointing, remunerating and, in certain circumstances, dismissing members of the Police Complaints Authority. In particular, the Court observes that under section 105(4) of the Act the Police Complaints Authority is to have regard to any guidance given to it by the Secretary of State with respect to the withdrawal or preferring of disciplinary charges and criminal proceedings.
>
> Accordingly, the Court finds that the system of investigation of complaints does not meet the requisite standards of independence needed to constitute sufficient protection against the abuse of authority and thus provide an effective remedy within the meaning of Article 13. There has therefore been a violation of Article 13 of the Convention [the right to an effective remedy].[13]

The 'Police Oversight Principles' developed by police oversight bodies across Europe (and modelled on the Paris Principles) also recommend that police oversight bodies like the IPPC are accountable to parliaments and not to the executive.[14]

In 2014, Nick Hardwick, then Chief Inspector of Prisons, illustrated the problems with the current arrangements between independent inspectorates and their sponsors:

> Told MoJ ministers & officials I won't be reapplying for my post. Can't be independent of people you are asking for a job.

This was his response in a tweet after Chris Grayling (then Secretary of State for Justice) made public his decision not to renew Hardwick's five-year contract after it's expiry in July 2015.[15]

The Public Accounts Committee reviewed the issue of the independence of the criminal justice inspectorates in March 2015 and concluded:

> There is a risk that the independence of the inspectorates is undermined by the current arrangements for appointing Chief Inspectors and setting their budgets. Chief Inspectors were clear that the independence of how they conducted inspections was not in doubt. However, decisions on the appointment of Chief Inspectors, the length of their tenure, and the size of their budgets, are taken by the relevant secretaries of state responsible for the sectors under inspection, rather than by bodies independent of that responsibility, such as the Cabinet Office or Parliament. Current arrangements potentially pose a significant threat to inspectorate independence.[16]

and

> Changes made by the Home Office to the publication arrangements for reports by the Chief Inspector of Borders and Immigration undermine his independence and have delayed publication of his reports. The Chief Inspector of Borders and Immigration is in a unique position amongst home affairs and justice inspectorates of directly inspecting his own sponsoring department, the Home Office. The independence of the inspectorate relies on the actions of the Chief Inspector, principally through preparation of well-evidenced and thorough reports. But this independence is undermined by current arrangements whereby the Home Secretary now decides when to publish his reports. Since the inspectorate was established

in 2008, the Chief Inspector decided when to publish his own reports, but this changed from January 2014 to the Home Secretary in the light of legal advice sought by the Home Office on how to interpret the UK Borders Act 2007. Contrary legal advice suggests that the Home Office's interpretation is neither the obvious nor the only interpretation.[17]

The IPCC: examples of the need for greater independence

Immediately after the shooting of Jean Charles de Menezes at Stockwell underground station the Chief Constable of the Metropolitan Police, Sir Ian Blair wrote a letter to the Home Office (the IPCC's sponsor) stating that 'the shooting that has just occurred at Stockwell is not to be referred to the IPCC and that they will be given no access to the scene at the present time.'[18] Despite the fact that this refusal by the police to give the IPCC access was unlawful, the IPCC then had to enter into three-way negotiations with its sponsor (the Home Office) and the police before access was granted, leading to a delay of three days.

In the same case the Deputy Chair of the IPCC was summoned one early evening to see one of the three Permanent Secretaries of the Home Office to discuss the merits or otherwise of its decision to disclose crucial information the next day to the family of the deceased at a time when the media was awash with speculation and erroneous accounts of how Jean Charles de Menezes had died.[19] The IPCC ignored the advice proffered but the fact that the Home Office felt it could take such a step creates its own difficulties and conflicts. It was, of course, this same Home Office that would later decide whether or not the Chair, Deputy Chair and other Commissioners would be re-appointed to their posts.

A last example from the IPCC, follows the investigation of the shooting of Azelle Rodney by the Metropolitan Police. It was clear to the IPCC that, for legal reasons, there had to be a formal inquiry

into his death under the Inquiries Act 2005 (rather than merely an inquest). However, when the IPCC put this to the Home Office, the feedback from the sponsor unit (also in the Home Office) was that the IPCC was wrong about the law and that no formal inquiry was required.[20]

These examples suggest that there are two separate problems with the current constitutional arrangements. The first is that the government sponsors for these bodies are too closely concerned with the substance of what they do, rather than with ensuring financial and other procedural accountabilities. There is an obvious conflict of interest in, for instance, the Government Equalities Office (the sponsor for the EHRC), having both a governance and a parallel (and sometimes conflicting) policy role. Secondly, and more fundamentally, there will always be significant conflicts of interest between such bodies and their government masters because these bodies have a duty to hold government to account and in many cases, to litigate to ensure compliance.

The EHRC: examples of the need for greater independence

The EHRC suffered from similar pressures from sponsoring civil servants and ministers to those discussed above. Under the Labour government, the author's experience was that sponsor ministers encouraged the EHRC to use its investigatory powers in specific and particular areas.[21] Although these suggestions were generally viewed as helpful and the resulting reports were important, they originated from the very same people who decided on the appointments and re-appointments of the board and the budget of the organisation as a whole. How happy would the government sponsors have been if the EHRC had refused their suggestions?

The EHRC was caught by budgetary restrictions at the beginning of the period of austerity in the public service immediately

following the 2010 election of the Coalition Government. The government went further than many expected in imposing cuts in the budget by assuming that the EHRC was merely another part of the government and that the EHRC would be obliged to follow the recruitment freeze imposed by government on its own departments. Permission from the government had to be obtained before vacant posts could be filled and was only usually permitted by recruiting staff from elsewhere within the civil service. This of course raised issues of independence and also assumed that staff seconded or transferred from government departments would be able to easily switch their loyalty to a body whose function required a critical assessment of fundamental government policies.[22] This in turn created tensions with the United Nations Paris Principles.[23] It also raised questions about whether such a restriction on recruitment was indirectly discriminatory (given the age and ethnic minority profile of the majority of civil servants) – a difficult issue for an equality body set up to promote greater fairness and diversity.

At the most fundamental level one of the EHRC's primary functions was to promote human rights (and specifically the Human Rights Act 1998)[24] but at the same time its most senior sponsor was the Secretary of State at the Home Department, the Rt Hon Teresa May, whose party is on record as intending to 'scrap the Human Rights Act'.[25] It was her department's civil servants (as the sponsors) that had the job of helping the EHRC to do its job, decide its budget, advise her on the appointment or re-appointment of its Commissioners and Chief Executive. Crucially, they also had responsibility for authorising publication of the Commission's formal review and report of the UK's human rights record. Publication of the report was initially delayed in order to correct inaccuracies it contained – and in fact EHRC staff found civil servants very helpful in making suggestions to improve the content, and felt that the report was much better as a result

of their input. The report was finally published in March 2012[26] and immediately met with detailed and hostile criticism from some sections of the media – criticism of both the report and the Commission itself.[27]

It is important that bodies that have a constitutional and democratic role in ensuring that other public bodies, including the government, comply with the law including human rights obligations are – and are perceived to be – completely independent from any government influence. Parliamentary accountability would provide them with the appropriate independence to fulfil this role impartially.

Under the current arrangements, the Government department that sponsors such non-departmental public bodies often has a policy role that overlaps with the work of the body in question and ministers and officials often have a particular interest in the substance of that body's work, not merely in issues of governance and financial accountability. There are no mechanisms to ensure that this does not lead to attempts at different levels to interfere or influence the independent body's actions. There is a risk that the short-term agendas of government are given precedence over long term and necessary changes to the bodies being regulated or inspected.

Chairs, commissioners and chief executives that are appointed (and subject to re-appointment) by government[28] can be presented with real difficulties and conflicts of interest which, in high profile or controversial cases, can cause considerable soul searching and do not always create the rights circumstances for independent decision making.

It is also likely that a more politically plural board would result from greater independence in the appointments process as appointments would no longer be made by the majority administration and longer term consistency could be established. In addition, the EHRC had four different sponsor departments in

its first few years merely because it had to follow its lead minister – the minister for equality – as she or he was relocated, and that minister also had a series of other, larger responsibilities which were attached to a series of different major departments of state.

It is important to note that in the United Kingdom the practice of reporting to Parliament is being effectively used elsewhere for human rights commissions. For instance, The Scottish Human Rights Commission reports directly to (but remains independent from) the Scottish Parliament and has its budget set by the Scottish Parliament.

In England, the Office of the Children's Commissioner has been made more accountable to Parliament in addition to increasing the powers of the office. However these changes stop short of making the Commissioner directly accountable to Parliament (rather than to a government minister).[29]

Conclusion

The new government after May 2015, however it is made up, should be encouraged to enhance the theoretical and practical independence of those bodies which promote and protect rights, remove the ability of the government to influence them 'informally' and ensure that they are accountable directly to parliament. The review by the Public Bodies Review Team of the classifications of arm's-length bodies and the report from the Public Accounts Committee provide a perfect opportunity to do this although the specific legislation which creates those bodies will require significant amendment.

Endnotes

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3. Institute of Government, July 2010, p. 55.

4. Op. cit., p. 56.

5. Public Administration Select Committee (2014), Op. cit.

6. The author was previously the Group Director, Legal and was General Counsel of the Equality and Human Rights Commission from 2007 to 2012. He was the Deputy Chair of the Independent Police Complaints Commission until 2007.

7. Such as the Chief Inspector of Prisons, the Children's Commissioner and others.

8. Joint Committee on Human Rights, *Eleventh report of session 2003–04*, 2 April 2004, and *Sixteenth report session 2003–04*, 21 July 2004.

9. Ibid, *Eleventh report*, paragraphs 113–143 and *Sixteenth report*, paragraphs 44–52.

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12. Joint Committee On Human Rights, *Sixth report of session 2002–03*.

13. *Khan V UK,* 12 May 2001, paragraphs 47 and 48.

14. European Partners Against Corruption/European contact-point network against corruption (2011). *Police Oversight Principles*. European Partners Against Corruption.

15. *The Guardian*, 2 December 2014.

16. Public Accounts Committee (2015). *Inspection in Home Affairs and Justice*, recommendation 1.

17. Ibid, recommendation 2.

18. *The Daily Telegraph*, 8 November 2007, the letter ('Letter from Sir Ian Blair to Sir John Gieve following the shooting of Mr Jean Charles de Menezes') is available on the Home Office National Archive website webarchive.nationalarchives.go.uk.

19. IPCC (2007). *Stockwell Two: An investigation into complaints about the Metropolitan Police Service's handling of public statements following the shooting of Jean Charles de Menezes on 22 July 2005*. IPCC.

20. The public inquiry was subsequently held finding that the shooting was unlawful and implicitly criticising the IPCC's initial investigation. See *The Azelle Rodney Inquiry report*, 5 July 2013, available at http://azellerodneyinquiry.independent.gov.uk/docs/The_Azelle_Rodney_Inquiry_Report_(web).pdf. A police officer has been charged with murder and the trial is pending (*The Independent*, 30 July 2014).

21. The then sponsor minister suggested three inquiries and these became the EHRC's first three inquiries: *Sex Discrimination in the Finance Industry, Race Discrimination in the Construction Industry and Recruitment and employment in the meat and poultry industry.*

22. For instance, the EHRC's assessment of the government's financial decisions and the extent that they properly took into account the public sector equality duty: EHRC (2012). *Section 31 Assessment of the Spending Review.*

23. '2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.' (OHCHR, 1993, Op. cit).

24. Section 9, Equality Act 2006.

25. For example, 'Tories to Scrap the Human Rights Act', 30 September 2013, BBC (www.bbc.co.uk/news/uk-politics-24338921) and 'Home Secretary Theresa May wants Human Rights Act axed', 2 October 2011, BBC (www.bbc.co.uk/news/uk-politics-15140742).

26. Equality and Human Rights Commission (2012). *Human Rights Review: How fair is Britain? An assessment of how well public authorities protect human rights.* EHRC.

27. 'It's time to shut down this factory of meddling and nincompoopery', *Daily Mail*, 6 March 2012.

28. The government does not appointment the CEO of the EHRC but has a veto over appointments made by the board of commissioners.

29. Schedule 5, Children and Families Act 2014.

The role of cumulative impact assessment in promoting equality, human rights and social justice beyond 2015

Howard Reed and Jonathan Portes

Introduction

In May 2012, the Equality and Human Rights Commission (EHRC) published a report titled *Making Fair Financial Decisions: An Assessment of HM Treasury (HMT)'s 2010 Spending Review conducted under Section 31 of the 2006 Equality Act.* One of the key issues examined in this EHRC report was cumulative impact assessment. Cumulative impact assessment techniques measure the overall impact of a set of changes to government policies (such as tax or welfare reforms, or changes to other aspects of public spending) on the UK population, analysed according to one or more characteristics (e.g. income level, age, family type, ethnicity, disability, and so on). Rather than looking at individual policy decisions in isolation, cumulative impact assessment helps government and the public to assess the overall impact of government policies on the population as a whole and on specific groups. The government already undertakes cumulative impact assessments around fiscal events such as Budgets, Autumn Statements and Spending Reviews, but not for the main groups of people sharing protected characteristics. This paper analyses the role that cumulative impact assessment might play in promoting equality, social justice and human rights in the UK post-2015.

To achieve this we draw on the findings from a follow-up report which the EHRC commissioned from the National Institute and Social Research (NIESR), working with Landman Economics, in March 2013, to conduct a research project with the following objectives:

1. To explore the various data sources and modelling and methodological issues involved in modelling distributional issues by equality group.
2. To provide a preliminary assessment of the impact of tax, welfare and other spending changes in the 2010–15 period on people with different protected characteristics – in particular the distributional impact of such changes disaggregated by gender, ethnicity, disability and age.
3. By doing so, to provide a 'proof of concept' for further modelling work, whether inside or outside government.
4. To make recommendations with regard to best practice for cumulative assessment and how such assessments might be best conducted in future.

The report from this project was published in July 2014 under the title *Cumulative Impact Assessment* (hereafter referred to as 'the CIA report'). The remainder of this paper discusses the findings from the CIA report and their importance for using impact assessment to promote equality and social justice moving forward from 2015.

Distributional modelling of the effects of tax and welfare policies across the income distribution

The CIA report found that the two main data sources used most extensively by UK Government departments and research organisations for modelling the cumulative impact of tax and social security reforms – the Family Resources Survey (FRS) and the

Living Costs and Food Survey (LCF) – can be used to analyse the distributional impact of policy changes. HM Treasury (HMT) has published distributional analyses of the impact of tax, welfare and public spending measures undertaken since 2010 to accompany most of the Budgets and Autumn Statements in this parliament, most recently in the March 2015 Budget (HMT, 2015). These analyses show the distributional impact of policy measures across the income distribution by dividing households in the UK Living Costs and Food Survey into ten equally sized groups according to their net incomes or expenditure (adjusted for the number of people in the household), and showing the average cumulative impact of the measures in cash terms (gain or loss in pounds per year) or in percentage terms (as a percentage of total household net income).

In the CIA report we conclude that HMT's basic modelling framework for analysis of tax and benefit reforms by income decile is sensible and delivers useful results. However, we suggest three improvements to the methodology used by HMT and other government departments in distributional analysis. Firstly, HMT should be clear about the precise package of reforms being modelled in the decile and quintile distributional charts published alongside fiscal events, as not all policy measures are included in these charts. Where measures have been excluded, it is important to be clear why this is the case, as the choice of the precise package of measures to include can affect the end results substantially. Each Budget, Spending Review and Autumn Statement document which HMT publishes contains a detailed list of the policy measures announced at that fiscal event. It would be useful to have a corresponding list (for example in the Appendix to a distributional analysis document) explaining which measures are included in the headline decile charts, which measures are only included in the wider range of measures modelled at quintile level and which are not included at all. We recommend that this information is presented systematically and in the form

of a detailed and comprehensive table of measures either enacted, or due to be enacted, over the course of the current Parliament. This could be included with each distributional analysis, updated at each fiscal event.

Secondly, to the extent that the selected list of measures for the decile impacts gives a picture that is 'too positive' or 'too negative' this should be acknowledged upfront in the text. To take an example from the CIA report, it seems that the main decile distributional charts in the Autumn Statement 2013 document (HMT, 2013) gave a more positive impression of the overall effect of tax and benefit measures on average household incomes than the Landman Economics modelling, or similar modelling from the Institute for Fiscal Studies, over the same time period. There is thus a danger that people reading the HMT analysis will come away with the impression that they are better off over the course of this Parliament than they actually are. This is a consequence of the fact that the direct tax measures (which are a net giveaway to households across most of the income distribution) are modelled accurately and fully whereas the indirect tax measures and benefit/tax credit measures (both of which take money away from households in aggregate) can only be modelled on a more partial basis. This is due to the greater difficulty of modelling the indirect tax and benefit/tax credit measures and also due to limitations in the LCF and FRS datasets. To the extent that policy reforms after 2015 are likely to continue to move further in the direction established during the 2010–15 Parliament (e.g. additional cuts to the welfare budget combined with reductions in direct taxation), the bias in the modelled distributional impacts of the policy package is likely to continue.

Thirdly, distributional analysis should routinely use the FRS dataset as well as, and in some cases in preference to, the LCF on account of the more accurate data contained in the FRS on several aspects of economic variables and the higher sample size

of the FRS. However, it is useful to retain the option to model the full set of policy changes using the LCF data to make it possible to model distributional effects by expenditure decile (which may give a more accurate account of distributional effects based on long-run incomes than an analysis using deciles based on a 'snapshot' income measure) as well as being able to model the impact of winners and losers from the 'full package' of reforms taken together.

Distributional breakdowns by protected characteristics

The CIA report found that the FRS and LCF data can be used to analyse the impact of policies across many of the protected characteristics across which EHRC has a statutory duty to protect, enforce and promote equality under the Equality Act 2010. Using the FRS, cumulative impact analysis is possible across five of the protected characteristics:

— age;
— disability (defined as 'a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities');
— marriage and civil partnership;
— race;
— sex.

Using the LCF, cumulative impact analysis is possible across the same set of characteristics except for disability (because the LCF does not contain a disability variable).

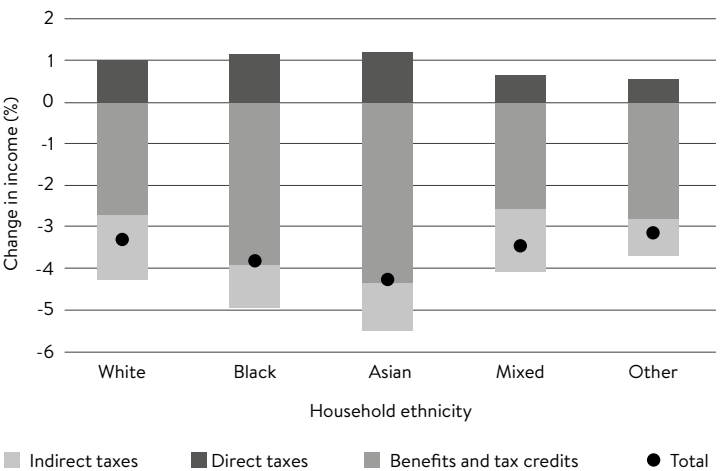
Cumulative impact analysis is not possible for the other protected characteristics, which are:

— gender reassignment;
— pregnancy and maternity;

— religion and belief;
— sexual orientation.

This is because the FRS and LCF datasets which are available to researchers do not contain these variables (although for all of these variables except gender reassignment the underlying variables are collected in the LCF as it is part of a larger dataset called the Integrated Household Survey).

FIGURE 1. Impact of tax, benefit and tax credit changes by ethnicity: Measures announced in 2010–15 Parliament, up to and including 2013 Autumn Statement



Source: Reed and Portes (2014)

The CIA report used the FRS to analyse the distributional impact of policy measures across the 2010–15 Parliament according to age of head of household, ethnicity of adults in the household, marriage/civil partnership status of adults in the household,

presence of a disabled adult and or child in the household, and finally an analysis of distributional impacts by gender at the intra-household level. Figure 1 shows an example of the distributional analysis of tax, benefit and tax credit changes by ethnicity. Chapter 4 of the CIA report contains the full range of distributional analyses across the other protected characteristics.

The CIA report recommended that HMT incorporate breakdowns of the cumulative impact of tax and social security measures according to EHRC protected characteristics into its distributional analysis as a matter of course. Also, we recommended that a disability variable (corresponding as closely as possible to the Equality Act 2010 definition of disability) is introduced into future waves of the LCF to enable analysis of the impact of indirect taxes by disability status. Given that a variable for limiting long-standing illness (LLSI) is already collected as part of the Integrated Household Survey question block in the LCF interview, the easiest way to incorporate a disability variable into LCF would be to make the LLSI variable available on the standard release LCF dataset. However, LLSI would not be an exact match to the Equality Act definition of disability. Given that similar disability variables are available in the FRS and LFS datasets without raising confidentiality issues, it is not clear that including the LLSI variable in the LCF data would cause any particular problems. Alternatively a more detailed set of disability questions – along the lines of those used in the FRS – could be added to the LCF questionnaire.

Pregnancy and maternity could also be analysed using the FRS and the LCF if two variables were introduced into each dataset: (1) a variable to indicate that a household member is pregnant, and (2) the age of baby under 1 in months. We recommend that these changes are made in future datasets.

Religion and sexual orientation are not available to outside researchers in the standard release version of the FRS dataset but could be made available to researchers inside government for the

purposes of impact assessment modelling. We recommend that the necessary steps within government are taken to achieve this.

The LCF could also be used to analyse cumulative impacts by religion and sexual orientation if the additional data collected as part of the Integrated Household Survey were combined with the rest of the LCF data. Again there seems no reason why this could not be done for researchers inside government.

These changes would ensure that the LCF and FRS data were far more suitable for analysis of the impact of tax and social security policies after 2015 than they have been in the 2010–15 Parliament.

Incidence of tax and social security measures within households

The CIA report shows that it is possible to produce distributional analyses at an 'intra-household' and 'intra-family' level. This is particularly useful when looking at the gender impact of tax and welfare benefit changes within couples. However, more research is required on how resources are shared within families in order to conduct a detailed robustness analysis of the sensitivity of the intra-household distributional results to the initial assumptions. This would be a useful project for an academic study in the near future.

Extending and improving the methodology for modelling tax and welfare measures

Moving beyond 2015, there are several methodological improvements with the potential to facilitate major improvements in the quality and accuracy of cumulative impact assessment techniques. Firstly, it would be useful to explore the possibility of linking FRS and LCF data with administrative records inside Government to enable much better analysis of benefit and tax credit receipt as well as linking of survey data with sanctions

and benefit assessment decisions. This would open up many new possibilities for data analysis.

Secondly, it would be useful to add some specific questions on severe hardship are added to the FRS data in particular (e.g. food bank usage, payday lenders etc) and could run alongside the existing material deprivation questions.

Thirdly, the impacts of wealth taxes can be included in cumulative impact assessments by using the Wealth and Assets Survey data and we recommend this as an add-on to current distributional analysis.

Fourthly, consideration should also be given to developing a version of the model which HM Treasury uses to produce cumulative impact assessments of the impact of tax and welfare reforms (the Intergovernmental Tax and Benefit Model, IGOTM) which can run on panel data from the British Household Panel Survey/Understanding Society survey as this would be an essential tool to look at the longer-run impacts of policies and also allow analysis of the impacts of policies on, for example, persistently low income families.

Finally, in the longer term HMT and other departments should be aiming to make more use of dynamic micro-simulation alongside the static models which have been the main focus of this report, and incorporating behavioural effects (e.g. labour supply responses to tax and benefit changes).

Modelling the impact of changes to other public spending

The methodology for modelling the impact of changes to spending on public services such as health, education, social care, social housing and public transport is not as advanced as for the cumulative impact assessment of tax/welfare measures. In order to improve the robustness of distributional modelling of spending plans post-2015, it would be useful to have more discussion within

the research community of what the best strategy for taking this approach forward is. In particular, the CIA report identified the following issues:

— Is it possible to go beyond a crude 'amount spent equals user benefit from public services' methodology to incorporate measures of public service outputs or service quality? Could such measures be added to a dataset (e.g. Understanding Society) even if only on an infrequent basis (e.g. every 3 or 5 years?)
— Should capital spending be included in the spending measures considered in this kind of impact assessment? If so, is there any way of taking account of the time dimension of capital spending compared to current spending?
— Is there any scope for making better use of administrative data on spending by central government or other tiers of government (such as local authorities or devolved administrations)?
— It would be useful for HMT to publish more details of the departmental data used for the spending model.

Implementing improvements in a constrained fiscal environment

It is of course an inescapable fact that decisions on what modelling facilities to develop at HMT and other departments in the post-2015 environment have to be taken against a backdrop of resource and time constraints and a tight fiscal climate. However it should be stressed that the cost implication of (for example) extending HM Treasury's IGOTM simulation model to use FRS as well as LCF, and of producing a wider range of distributional breakdowns, is minor in the wider scheme of things. All the Landman Economics modelling presented in this report was developed on a relatively small budget over a period of a few years.

Conclusions

In presenting our conclusions and recommendations for best practice in cumulative impact assessment post-2015, it is important to recognise that significant progress has been made in recent years by HMT and other government departments in conducting this type of assessment. The fact that major fiscal events are now routinely accompanied by a distributional analysis publication is in itself a substantial improvement on the situation even five or ten years ago. The recommendations for further improvements in this paper are designed to build on the progress made in the last five years and to ensure that in the future the debate over the impact of policy changes across protected characteristics such as gender, age, ethnicity and disability is much more informed by quantitative evidence on the distributional impact of reforms than has been the case in the recent past.

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Improving equality in Northern Ireland

Dr Evelyn Collins

There is a long history of legislation and policies aimed at addressing inequalities in Northern Ireland, as in Great Britain. Some of this, such as the Fair Employment Act 1989, has been successful in tackling discrimination on grounds of religion and/or political belief and addressing underrepresentation in individual workplaces and, indeed, in the Northern Ireland labour market generally.[1] But, while the situation and experience of other groups protected by equality legislation has also improved, to varying degrees, there remains real concern that progress is slow and that much needs to be done to advance equality for all in Northern Ireland (NI).[2]

This contribution aims to highlight the necessity of a real commitment by the NI Executive and other key actors to tackling the wider inequalities in NI; and to identify some of the issues which need to be addressed in order to improve the life chances and opportunities of those experiencing discrimination and disadvantage. It is not a comprehensive treatment of what needs to be done, given the contraints of space, but aims to focus attention on some key themes.

Context

It is clear that determined efforts by the NI Executive are necessary to make an impact on continuing inequalities, not just because it is *the right thing to do* but because Northern Ireland is a society coming out of conflict. Issues of inequality were at

the heart of the community conflict which characterised the history of Northern Ireland, with 'the troubles' growing out of the civil unrest of the 1960s which highlighted, among other issues, issues of discrimination in employment, housing, electoral arrangements and policing on grounds of religion, particularly against the Catholic community.[3]

It is well understood that addressing inequalities was essential to creating and maintaining the conditions for peace in Northern Ireland.[4] There was a particular emphasis on equality and human rights in the Belfast/Good Friday Agreement, the political resolution of the 'troubles', and into the Northern Ireland Act 1998 which followed. It provided for changes such as the introduction of statutory equality and good relations[5] duties on public authorities and the establishment of the Equality Commission for Northern Ireland (ECNI)[6] and Northern Ireland Human Rights Commission.[7]

Not paying attention to outstanding or emerging inequalities has the potential to threaten cohesion.[8] This is entirely unhelpful in the context of building a new Northern Ireland, a Northern Ireland based on equality and good relations between all who live here. Concerns about inequalities are not of course confined to religion and/or political opinion in Northern Ireland. There are clear inequalities on grounds of age, disability, gender, race and sexual orientation across a range of areas. It is imperative that ways are found to address inequality in all its forms.

Age discrimination

There is growing evidence of unjustifiable discrimination and harassment on grounds of age, including in areas such as health and social care, financial goods and services, transport and retail services.[9] This is an area where there is a substantial gap between the legislative framework in Northern Ireland compared to Great Britain where the Equality Act 2010 introduced protection from

age discrimination in respect of goods, facilities and services – which is not yet in place in Northern Ireland.

It is critical that the scope of age legislation is extended beyond the workplace so that individuals have protection against harassment and discrimination when obtaining goods and services, that they have the right to seek legal redress if they, without justification, receive an inferior service or are denied access goods and services on the basis of their age. Legislation would also help to challenge negative stereotypes and prejudice based on age and should help to reduce social exclusion and improve active ageing and independent living by older people. And it would improve transparency and accountability within the financial services sector.

A commitment was made in the NI Executive's Programme for Government 2011–15 to introduce age discrimination legislation in this area and the ECNI, the Commissioner for Older People and the NI Commissioner for Children and Young People have called for the legislation in NI to cover all ages.[10] An announcement by the Office of the First Minister and Deputy First Minister (OFMDFM) on 19 February 2015[11] indicated that a public consultation would take place on policy proposals to prohibit unjustifiable age discrimination against people aged 16 and over by those providing goods, facilities and services. The statutory bodies, and others, have expressed disappointment that the policy proposal will not cover those under 16 years old,[12] but at least a public consultation is anticipated shortly to address this particular gap.

Religion and belief, and sexual orientation

In Northern Ireland there has been protection against discrimination on grounds of religious belief and/or political opinion in employment since 1976[13] and, since 1989, employers have had specific duties to monitor the composition of their workforces and take steps to address undrerepresentation of Catholics or

Protestants. Much has been done over the years to promote good and harmonious workplaces. Protection from discrimination was extended to goods, facilities and services in 1998.

A particular issue which has been raised in public and political debate over recent months relates to the extent to which service providers can refuse service to individuals on grounds of religious belief, political opinion or sexual orientation. The support of an individual with a complaint against a bakery which refused an order to bake a cake iced with a message in support of same sex marriage by the ECNI contributed to the initiation of this debate.[14] Although the Commission's role is to ensure effective application of equality laws, it has been criticised for supporting the case, including by some politicians and religious leaders.[15] The bakery company has been supported by the Christian Institute, which has appealed for public donations to help finance the case through its legal defense fund. It held a rally in Belfast to support the family who run the company, addressed among others by Hazelmary Bull,[16] one of the owners of the guesthouse whose policy on turning away a gay couple was upheld to amount to unlawful discrimination on grounds of sexual orientation by the Supreme Court.[17]

Concerns are being expressed that equality law is 'anti-Christian' and a Private Members Bill to introduce a 'conscience clause' to the Sexual Orientation Regulations to strike a 'balance between the rights of people not to be discriminated against and the rights of conscience of religious believers'.[18] While it appears that this is unlikely to become law[19], it is likely that the debate on these issues will continue in the coming period and there will be a clear need to ensure that there is no diminution in protection from discrimination.

Gender

Northern Ireland has the lowest level of female representation of all the legislatures across the UK, with only 22 of 108 (20.3%)

female Members in the Assembly. Increasing the number of women in public and political life in Northern Ireland is essential – more equal representation of women is not of course just a women's issue; an Assembly more representative of the community is important in terms of legitimacy. Indeed, it is clear that society's needs are better served where there is a diverse political representation and there is evidence that gender balance in parliamentary bodies raises the profile of social policy generally and women's rights issues particular.

There are a number of key barriers facing women in relation to entering into politics. Some of these barriers can impact not only on women's ability to enter politics but equally to remain in politics. Barriers include lack of childcare/work life balance; lack of financial resources; lack of confidence; lack of role models, gender stereotypes and culture; media scrutiny; candidate selection processes; and a decline of interest in politics, by the public generally but which is particularly evident among women.[20]

Not one political party in Northern Ireland has made use of the Sex Discrimination (Election Candidates) Act 2002 which gives wide scope for lawful positive action by exempting political parties from the normal provisions of the sex discrimination law in relation to 'arrangements they adopt for the purpose of reducing inequality in the number of women and men elected.'

Indeed, only 25% of candidates in the Westminster election in May 2015 were women – three parties had no women candidates at all, including the largest party (DUP) and one constituency had no woman candidate standing.[21] It is vital that a robust and comprehensive programme of action to address the under-representation of women in politics is developed.[22] A report by the Assembly and Executive Review Committee on Women in Politics and the Northern Ireland Assembly was published in March 2015, containing a series of recommendations directed both to

political parties and to the Assembly Commission. These recommendations, if implemented, would go some way to addressing the issues.[23]

Education

A further area for focus and attention should be on addressing inequalities in education. We are all aware that education is fundamental to improving an individual's life chances and opportunities in terms of social and economic mobility, and that there is a significant role for education in preparing people for work as well as in shaping their views, their conduct and their relationships with others. While education should not be seen as a solution to all society's problems, it is clear that it has an important role to play.

It is also clear that there are significant inequalities in education – across the various equality strands and also by social class in Northern Ireland. While overall educational standards have improved over the last ten years, key inequalities remain – by community background, by gender, by disability, for Traveller and New Communities children and for looked-after children.[24]

Girls perform better than boys at key stages of education, and the gap has widened in recent years.[25] Catholics have higher attainment levels than Protestants[26] and there is a particular concern about attainment levels of Protestant working class boys. Using the receipt of free school meals (FSME) as a proxy for poverty, only 19.7% of Protestant FSME boys achieve 5 good GCSEs including English and maths, compared to76.7% of non-FSME Catholic girls – a gap of 57 percentage points.[27]

Practical measures are required to address educational inequalities and mainstream equality considerations in order to recognise the diverse needs of all children and their cultures, aptitudes and abilities. The focus of attention should be on ensuring that every child has equality of access to a quality educational

experience, is given the opportunity to reach their full potential and that the ethos of every school is an inclusive one.[28]

Childcare

Childcare is another area that requires attention. Childcare is an equality issue – the full and equal participation of women in the economy necessitates access to adequate and affordable childcare. It is clear that a lack of good quality, affordable childcare is a barrier to employment. Research commissioned by the ECNI highlighted that, while there is a range of forms of childcare, much of it does not cover the hours that working parents require.[29]

In general, the research found that parents face a number of difficulties in both accessing and affording suitable childcare to enable them to enter and maintain employment; and that day care for the 0–2 age group and out of school provision was particularly lacking. It also highlighted other factors contributing to poor access such as inflexible opening hours, high price of childcare, insufficient information about what exists and the help that is available to pay for it.

Additional difficulties arose in respect of childcare provision for disabled children, and childcare in rural areas was severely lacking, made particularly difficult by poor transport links. It was also clear that single parent, minority ethnic, migrant and Traveller families faced additional gaps in provision and difficulties in accessing appropriate and affordable childcare.

The research highlighted that childcare in NI costs nearly half (44%) the average income, compared to 33% in GB and 12% across the EU; and that Northern Ireland has one of the lowest levels of childcare within the UK (Employers for Childcare, 2010), despite an increase in the number of places available since 1996. The research concluded that improvements to childcare provision is central to equality, economic prosperity, poverty

reductions and other government aims and reported that the overwhelming message arising from the research was the need for a childcare strategy as a public policy priority.

Such a strategy was a key commitment of the Programme for Government 2011–2015 and the Office of the First Minister and Deputy First Minister launched a public consultation to inform the development of a childcare strategy in December 2012 by OFMDFM. Responses[30] were submitted in March 2013 but, while a few initiatives have been taken in the intervening period,[31] there has been no follow up by way of publication of a Childcare Strategy, as a draft for consultation or otherwise.

Law reform

Finally, experience demonstrates the critical importance of a strong legal framework of rights and responsibilities to tackle discrimination and promote equality of opportunity.[32] Regrettably in Northern Ireland, despite working on progressing towards a single equality bill a decade ago,[33] there is no single equality legislation in place, unlike in Great Britain, and there are gaps and deficiencies in the legislation that is in place

In reality, the introduction of the Equality Act 2010 in Great Britain served to heighten the already existing need for reform of NI's equality laws. The Equality Commission for Northern Ireland has consistently called for the urgent reform of the equality legislation and has published detailed recommendations for change – both in response to consultation on a Single Equality Bill for Northern Ireland and on its own initiative in respect of the individual equality statutes.[34]

The enactment of the Equality Act in October 2010 has resulted in significant differences between Great Britain and Northern Ireland equality law. Key differences include harmonisation and simplification of equality laws – particularly important in the areas of disability and race. The differences mean that there

are varying levels of protection against discrimination across different parts of the United Kingdom, with less comprehensive and enforceable rights across a number of equality grounds for individuals in Northern Ireland,[35] for example in relation to disability. Improving the legal framework through the introduction of a single equality bill should be a commitment in the next Programme for Government.

Conclusion

Tackling the inequalities set out in this paper are not the only ones which need to be addressed in Northern Ireland. There are many other areas where attention is needed, including employment inequalities, health inequalities, poverty and socio-economic disadvantage and tackling issues such as hate crime. A clear focus on developing and maintaining good relations and building a shared future in Northern Ireland is also critical to building a Northern Ireland based on equality and good relations; there remains work to be done to address the remaining fault lines of our divided society.[36]

Making progress on equality issues in Northern Ireland is not without challenge; the nature and causes of inequalities have been much contested over the years, particularly in respect of religion and political opinion. A zero-sum analysis is often brought to bear – if one side appears to benefit from a particular policy decision or resource allocation then it is assumed that the other side will get less, as if equality is a finite commodity to be distributed.[37] The key challenge in making progress at all is to work towards a society in which all political leaders champion the importance of equality for all, not just in statements of commitment to address inequalities in the Programme for Government for example, but in the delivery of improved outcomes for individuals experiencing discrimination and disadvantage.

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Working in partnership: devolution and the development of a distinctive equalities agenda in employment in Wales

Dr Deborah Foster

Introduction

Since devolution in 1998, the Welsh Assembly Government (WAG) has been proactive in exercising its responsibilities for equalities within its territories (Chaney, 2009; Davies, 2003). The Government of Wales Act 2006 moreover, placed a statutory duty on the Assembly to have due regard for equality of opportunity in everything it did. Although discrimination law in itself is not a function that is devolved to Wales, many of the levers for influencing implementation and policy lie with the WAG. For example, responsibility for equality policies was devolved to regional governments and the regional arms of the Equality and Human Rights Commission (EHRC) under the provisions of the Equality Act 2010, facilitating opportunities for local initiatives (Chaney, 2009; Squires, 2008). This included the ability to enforce 'specific' Welsh Duties, in addition to the 'general' UK wide Public Sector Equality Duty (PSED). Viewed as significantly more prescriptive than the English regulations, these were implemented in 2011 and placed a responsibility on public authorities, in consultation with relevant groups, to publish agreed Strategic Equality Plans with clear time-frames for meeting objectives. Amongst other things, they also emphasised the use of Equality Impact Assessments (EIAs) to provide an evidence base for advancing

equalities, a tool used by the WAG, when it became the first UK administration to publish an EIA of its 2011/12 budget.

This paper will examine how regional politics, policy and employment relations have been influential in shaping the employment equalities agenda in Wales. In contrast to the Coalition Government's position in England, the WAG has been supportive of the original values of the PSED, one of which was to stimulate dialogue amongst key stakeholders to further promote equalities. Discussion will proceed by first examining the distinctive system of employment relations in Wales, which emphasises social partnership and social dialogue. Attention will then be paid to two key policies that have influenced the employment equalities agenda – the development of a network of trade union Equality Representatives by Wales TUC supported by the WAG, and the implementation of the PSED and specific Welsh Duties. The paper will conclude by reviewing the evidence presented and highlighting potential lessons that can be learnt from the Welsh experience.

Social partnership and employment relations in Wales

Equalities and employment in Wales needs to be understood in the context of a distinctive Welsh commitment to the concepts of 'social partnership' and 'social dialogue' in employment relations (Davies, 2003; Foster and Scott, 2007; Bond and Hollywood, 2010; Foster, 2015). The political dominance of Welsh Labour has seen a continued commitment to public service provision and employment, meaning the polity has had a major stake in mediating policy and employment relations in the region. The preference of the WAG has been to do this through social dialogue with employers and trade unions. To enable this the Assembly set up and funded a body called the Welsh Social Partners Unit (WSPU). This occupies a non-political role, providing briefings to employers and trade unions about policy proposals, with the sole aim of facilitating

their participation (Foster and Scott, 2007). The establishment of the WSPU by the WAG also recognised that the social partners have limited resources – financial, political and professional (England, 2004) and that, in effect, the WSPU needs to perform the role of 'midwife' to facilitate dialogue. A recent WAG document sums up well the Assembly's vision of social partnership:

> It has been recognised by employers and Trade Unions alike for some time that senior managers, full time officers and workplace representatives need to have the skills to move from traditional 'adversarial' employee relations to true partnership based on principles agreed at the Workforce Partnership Council namely, openness, shared vision and trust. This is a key element in culture change (WAG, 2012).

The physical proximity of key actors – the WAG, employers, trade unions, the community and the regional arm of the EHRC – has been important in driving the Welsh equalities agenda. It provides opportunities for decision-making that are local and inclusive. Both proximity and social partnership moreover, encourage what O'Brien (2013, p. 488) describes as 'constructive conversations' – essential to the success of the PSED. This positive approach in Wales contrasts sharply with the position taken by the Coalition Government in England, which as part of its 'Red Tape Challenge' in 2012, attempted to portray the Equality Act 2010 and the PSED, as a burden on employers and public authorities, in particular the obligation to engage with employees and stakeholders in drawing up and achieving equality objectives (Hepple, 2011, p. 319).

The configuration of politics and employment relations in Wales has had a particular impact on equalities in employment. This is evident in both the implementation of the PSED and by reference to a recent (2013) initiative between the WAG and Wales TUC. The latter has seen the WAG fund a dedicated equalities

officer based at Wales TUC, charged with developing an active network of *workplace* based trade union Equality Representatives. Capable of representing employees who have equalities concerns on a day-to-day basis, these Equality Representatives are also viewed as important in helping to reinvigorate equalities bargaining in workplaces (see Foster, 2015). The role of workplace Equality Representatives and the implementation of the PSED in Wales, will be discussed further below.

The Role of Trade Union workplace Equality Representatives and the Welsh context

Trade Union Equality Representatives have existed in some UK unions at branch level for a number of years. During the Labour administration of 2005–10, a Union Modernisation Fund was established to help formalise the role of Equality Representatives, providing unions with dedicated resources for recruitment and training (Bennett 2009, p. 511). However, whilst the Discrimination Law Review acknowledged their 'pioneering work' (2007, p. 11), Labour, while still in Government, failed to secure for them statutory rights to have time off to perform their role. The subsequent election of a Coalition of Conservatives and Liberal Democrats in 2010, has since rendered this objective even more unrealisable (Fredman 2011; Hepple 2011).

The role of dedicated Equality Representative was developed to encourage previously under-represented groups to become involved in union activities and equalities bargaining (Bacon and Hoque, 2012, p. 240). A recent survey of TUC trained Equality Representatives (Bacon and Hoque, 2012) found that their influence on union 'voice effects' (how far equality issues are integrated into bargaining agendas), and 'facilitative effects' (the extent to which union support, representation and information helped employees with equality grievances), has been important. However, findings from this and other studies (Bacon and Hoque,

2012; Conley et al., 2011; Foster, 2015) also suggest that fewer than expected new recruits are undertaking the role, because of the absence of time to perform it. Instead, evidence appears to point to Equality Representatives being seasoned union activists, who undertake the job by 'borrowing' time from other union positions that do provide statutory facility time.

In a survey of union Equality Representatives carried out in 2010 in co-operation with Wales TUC, Foster (2015) identified absence of facility time as a major obstacle. In 2011 however, Welsh Labour was elected with a manifesto commitment to fund a full-time Trade Union Equality Network Project Officer based at Wales TUC and has since reached an agreement with the Welsh Workforce Partnership Council, to promote facility time for workplace Equality Representatives. Unable to pass legislation itself to provide statutory facility time, the WAG wrote to employers in 2013:

> I am writing to request that your organisation works with the Wales TUC to support the establishment of trade union equality representatives and enable these representatives to carry out their role effectively. Well trained and established trade union equality representatives can make a real difference within the workplace by resolving issues quickly, avoiding bullying cases, reducing sickness absence, improving staff morale and reducing staff turnover (Jeff Cuthbert, Minister for Communities and Tackling Poverty, August 2013)

This new post at Wales TUC built on a previously funded two year Union Modernisation Fund project – Equal at Work – that had ended in 2010. An initial network of lead equality contacts throughout Wales had been established, but has since been significantly expanded to include approximately 300 representatives. Given that evidence suggests that employer support for

workplace equality initiatives is a key predictor of the likelihood of their success (Gregory and Milner 2009; Kirton and Greene, 2006), the WAG's promotion of Equality Representatives, has been important.

The Public Sector Equality Duty in Wales

How Fair is Wales?, a report published by the EHRC in 2011, found that socioeconomic disadvantage in Wales is interwoven with inequality based on individual characteristics such as disability or ethnicity. Through a number of 'Equality Exchange Network' events with stakeholders, the EHRC subsequently explored how these inequalities might be addressed, and how the PSED might make a difference. In 2013, the EHRC published an independent evaluation of the implementation of the PSED in Wales (Mitchel et al, 2014). This found that Welsh public authorities value the PSED for having raised the profile of equalities in their organisations; for providing structure and focus to equality work; and for encouraging cultures of inclusivity, fairness and respect. The specific 'Welsh Duties' were moreover, valued for providing additional clarity on compliance and training: suggesting that the UK 'General Duties' might not be directive enough. EIAs, criticised by the UK Coalition government in England, were regarded as important tools for embedding equality into service planning and organisational decision-making, whilst providing an evidence base to measure the progress of equality objectives (ibid, p. 5). Other positive outcomes reported include improvements in consultation with staff networks and service users, facilitated by the requirement that all Welsh public authorities have established equality objectives and action plans (ibid, p. 6).

It is interesting to note that organisations surveyed in Wales, whilst believing that they had addressed all three objectives of the PSED – fostering good relations, reducing unlawful discrimination and promoting equality of opportunity – provided more

examples of their involvement in the latter. This might suggest that authorities are responding to compliance requirements, rather than building partnerships with employees and users of services. It could also indicate that some groups are easier to reach than others. Evidence of uneven progress amongst different groups is presented in the report, particularly in relation to the protected characteristics of gender reassignment, religion and belief. However, separate Duties on sex, race and disability existed prior to the introduction of the single PSED, and it might therefore be assumed these were better developed as a consequence. Significantly, some organisations reported that they had moved beyond simply detailing organisational inequalities and had begun to investigate the *reasons* behind inequalities. This suggests that for these organisations compliance alone is not the key motivator and that they may be moving beyond a liberal (effects) model of equal opportunities to examine the *causes* of inequalities (Mitchel et al, 2014; Foster with Williams, 2011).

Suggested ways to improve the PSED were documented in the EHRC report and are echoed in other research. Organisations wanted more practical information and support to implement the PSED, a finding also reported by Foster (2015) in her study of Welsh Equality Representatives. Better provision and signposting of online resources (Mitchel et al, 2014, p. 8) and sharing of information and experiences from consultations and EIAs. In March 2014, the WAG and the EHRC signed a joint Concordat outlining the guiding principles of co-operation between the two parties to promote equality and tackle discrimination in Wales (EHRC, 2014). Future co-operation was also emphasised by the EHRC in its advice to the Silk Commission on Devolution in Wales in 2014, which reviewed the powers of the WAG. In respect of the way forward, the EHRC also recommended that the WAG be given powers to build on equality and human rights legislation including the Equality Act 2010 and the Human Rights Act 1998 and

primary legislative competence in relation to the Public Sector Equality Duty.

What lessons might be learnt from the Welsh experience?

Devolution has, we have seen, facilitated the involvement in equalities policies of key actors. Furthermore, regional and local initiatives, whether in a community, service or a workplace, can promote participation and ownership: vital ingredients of culture change. Through devolution, the WAG has been able to develop its own approach to equalities based on evidence of the needs of the population of Wales, but also on dominant political values, many of which underpinned the original Equality Act 2010. Once a piece of legislation comes into Wales, for example the PSED, it cannot leave without Welsh consent and therefore, remains unscathed by political change in Westminster. The additional ability to develop specific Welsh Duties in the case of the PSED, has moreover, given rise to provisions that have strengthened implementation and been welcomed by organisations for providing greater clarity.

The distinctive approach to 'social partnership' and 'social dialogue', which characterises employment relations in Wales has also played an important role in encouraging constructive conversations about equalities and employment (Foster and Scott, 2007; Foster, 2015). This approach contrasts with the tradition of adversarial employment relations in the UK that has seen the state turn its back on corporatist or partnership solutions since the 1970s. Given that evidence suggests that equalities initiatives are more likely to succeed with employer support, the WAG has played an important role by proactively intervening to facilitate dialogue between employers, trade unions and other stakeholders. Acknowledging that to achieve meaningful participation partners may require additional resources, the WAG established the Welsh

Social Partners Unit. Such an approach, which is more common in other parts of Europe, appears to suit the Welsh context because of the combination of political, economic and employment factors in this region. It is also, as we have seen, capable of producing some positive equalities outcomes in employment. In this paper the funding by the WAG of a Trade Union Equality Network Project Officer based at Wales TUC, with the principle aim of reinvigorating workplace based equalities, has been one illustration. This is, furthermore, an initiative that recognises that it is not enough to just talk about equalities in employment, rather, it is necessary to provide day-to-day support to representatives in workplaces willing to provide advice to groups and individuals. It also recognises that there is a need to address what has been an historic neglect of workplace equalities bargaining by UK trade unions. The issue of lack of statutory facility time for Equality Representatives has cast a shadow over this positive development in the UK. In Wales, despite the social partners agreeing to address this deficit, the WAG's inability to legislate in favour of statutory facility time, nevertheless, highlights the limits of Welsh devolution in further supporting equalities in employment.

Finally, two further themes emerged from this discussion of the Welsh context that may be of wider significance. The first is the value placed on consultation in Welsh governance. The second is the role of the public sector in advancing equalities in employment. From the extensive 'listening exercises' that preceded the implementation of the Welsh PSED organised by the Assembly, to regular consultations through Equality Exchange Network events held by the EHRC and social dialogue by unions and employers, examples of consultation and evidence gathering are readily available. Wales, moreover, retains an important belief, seemingly long abandoned in England, that the public sector can once again become an exemplar of 'best practice' in the sphere of employment and equalities. The PSED has played an important

role in re-establishing this principle and findings from the EHRCs (Mitchel et al, 2013) investigation suggests, employers value it for raising the profile of equalities in organisations and embedding practices that enable equalities concerns to be addressed. Above all, however, it is the role that the state is prepared to play in advancing equalities in employment, which is possibly the most important lesson that can be learnt from the Welsh experience.

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The contribution of national action plans for human rights to the pursuit of equality and social justice: lessons from Scotland

Dr Alison Hosie and Emma Hutton

Introduction

Human rights in Scotland are at a crucial junction. Scotland enjoys a broadly positive climate for human rights. Strong institutions are in place and practical advances have been made when it comes to the reality of people's lives. Particular progress has been made since devolution – although there is much yet to be achieved. The months and years ahead contain many opportunities for human rights, but risks are on the horizon too.

In December 2013, Scotland's first National Action Plan for Human Rights (SNAP) was launched – a roadmap for the progressive realisation of international human rights so that everyone in Scotland can live with human dignity. In line with UN guidance, SNAP has been developed in an inclusive way, based on evidence of gaps in human rights protection (SHRC, 2012) and will be independently monitored. Experience from Nordic and Commonwealth countries, among others, shows that National Action Plans for human rights have great potential to deliver practical, sustainable improvements in how people's rights are protected in reality. This is particularly true for people who are marginalised and excluded in society.

This paper sets out the context within which SNAP was developed; a synthesis of the evidence base on which is was built and

the collaborative and participative process through which it was developed. The paper then discusses how Scotland, through the vehicle of SNAP, will build a more progressive and positive culture which places the importance of human rights at the core of our everyday lives, including our public services, helping to tackle inequality and advance social justice.

Human rights in Scotland

In 1948, the Universal Declaration of Human Rights recognised the inherent dignity of every human being, affirming the idea that we all have the same rights, rights that belong to us simply because we are human and that cannot be given or taken away by anyone else. Seen as the foundation of freedom, justice and peace around the world, a system of international human rights began to evolve that now comprises a comprehensive set of international laws, treaties and monitoring mechanisms.

The UK has signed up to many of these international treaties including the European Convention on Human Rights in 1953 (incorporated into domestic law via the Human Rights Act 1998), the International Covenant on Economic, Social and Cultural Rights in 1976, the Convention on the Elimination of Discrimination Against Women in 1986, the UN Convention on the Rights of the Child in 1991, the Convention on the Rights of Persons with Disabilities in 2009, and more. As one of the four nations making up the UK, Scotland is bound by these commitments.

Furthermore, the devolution of power to the Scottish Parliament and Scottish Government through the Scotland Acts of 1998 and 2012 means that Scottish Ministers are empowered to observe and implement the UK's international human rights obligations. The combined effect of the Scotland Act and the Human Rights Act places a duty on Scottish Minsters, Parliament

and public authorities to comply with the European Convention on Human Rights.

In 2006, the Scottish Human Rights Commission was established by an Act of the Scottish Parliament with a remit to promote and protect all human rights for everyone in Scotland. Accredited within the UN system as an 'A status' national human rights institution (NHRI), the Commission also chairs the European Network of over 40 NHRIs and is deputy chair of the International Coordinating Council of over 100 NHRIs, forming a bridge between Scotland and the international human rights community.

Since devolution in 1998, the Scottish Parliament has adopted legislation that is explicitly rights-based in several areas, including mental health, adult protection and legal capacity. It has also recognized all international human rights in its legislation setting up the Scottish Human Rights Commission and Scotland's Commissioner for Children and Young People, requiring both to promote and encourage best practice in relation to all international human rights. Human rights-based approaches are being adopted, or have been committed to, in a growing number of Scottish Government policy areas including the procurement of care and support services, a strategy for learning disability services, tackling health inequalities, addressing mental health stigma, dementia services, policing and children's hearings.

Cross-party support for human rights has regularly been expressed in Scottish Parliament debates and civil society in Scotland is active in using rights-based approaches in campaigning, policy work and development of services. However, political action to respect, protect and fulfil human rights remains at times reactive rather than proactive. Successive Scottish Governments have responded to high profile human rights cases in ways that have drawn criticism from the Scottish Human Rights Commission, UN treaty monitoring bodies and others. The prioritisation of public debt reduction, pursuit of a programme of

austerity and cuts in public spending since the 2010 General Election in the UK, have also impacted on the availability of resources for the realisation of human rights in Scotland.

Before, during and after the referendum on Scottish independence in September 2014, significant public and civic debate has taken place in Scotland about how to build a society characterised by social justice, equality and fairness. Whilst the referendum debate showed that different views exist about the best constitutional framework within which to achieve those goals, their general desirability is broadly accepted.

Scotland's National Action Plan for Human Rights (SNAP)

SNAP is the first National Action Plan for Human Rights to be developed in the UK. However, others have already been developed in around 30 countries across the world including New Zealand, Australia, Sweden, Spain, Finland and South Africa.

SNAP is a roadmap towards a Scotland where all can live with human dignity. With three overarching outcomes and nine priority areas for action, SNAP is addressing key equality and social justice issues through a human rights lens. Priorities include realising the right to an adequate standard of living, tackling health inequalities, challenging discrimination in the justice system and building a culture where everyone understands their rights and is empowered to assert them, and where organisations are held to account for their implementation. Action in year one has included work to develop pilot approaches to integrating human rights into local health and care services; piloting a collaborative approach to raising awareness of human rights; reviewing Scotland's Violence Against Women Strategy from a human rights perspective; increasing understanding of human rights based approaches to tackling poverty; and securing commitment to developing an action plan on business and human rights.

The push to develop National Action Plans for Human Rights can be traced to the UN World Conference on Human Rights which met in Vienna in 1993, where a call was made to member states to fulfil their human rights obligations through systematic work. Since then, the UN has encouraged and supported countries to develop national action plans, stressing their importance in identifying gaps in human rights protection, clarifying the responsibilities of States, and establishing monitoring systems so that progress made in promoting and protecting human rights can be measured over time.

Global guidance has been produced to support the development of national action plans, including by the UN Office of the High Commissioner for Human Rights (UN OHCHR, 2002), the Commonwealth Secretariat (Commonwealth Secretariat, 2007) and by the Council of Europe Commissioner for Human Rights (Hammarberg, 2009; Commissioner for Human Rights, 2014). Three key recommendations from this guidance include ensuring that action plans are evidence based, developed in a participative and inclusive way and independently monitored.

National Human Rights Institutions (NHRIs) are seen by both the Council of Europe and the UN as having an important role in developing action plans. Their status as independent organisations provides NHRIs with the ability to play a strategic and influential role, acting as a bridge between people whose rights are affected and civil society networks, and the state and public bodies that bear duties to protect rights in practice.

How SNAP was developed

SNAP was developed based on evidence gathered over a three year period (*Getting it Right?* Scottish Human Rights Commission, 2012). *Getting it Right?* provided a baseline assessment of key human rights issues in Scotland. Drawn from a range of sources, including reviews of legal and social research, analysis of UN

recommendations and direct research with people whose rights are affected in everyday life, *Getting it Right?* found that Scotland has a relatively strong legal and institutional framework for human rights, with some examples of positive strategy and policy direction. However, when it comes to outcomes for people in everyday life, there is still inconsistent protection and respect for human rights.

Building on the evidence from *Getting it Right?,* a Drafting Group drawn from 12 public and civil society organisations, worked over a 12-month period to identify a common vision and purpose, outcomes and priorities, as well as designing an implementation and accountability process for SNAP. This work was overseen by an Advisory Council of 25 people, who reflected the diversity of Scottish civic life.

Working towards the three overall outcomes and nine priority areas identified in SNAP, Human Rights Action Groups involving more than 40 public sector and voluntary bodies came together in 2014 to identify how best to bring about change in each priority area, supported by people whose rights are directly affected: for example the Action Group responsible for Adequate Standard of Living worked with people living in poverty. Examples of the organisations involved include Scotland's police force, local and national government, health service bodies, prison and court services, a national voluntary sector umbrella body, anti-poverty campaigners and networks of gender equality, children's rights and disability organisations. A Leadership Panel of more than 25 people working at a senior level in government, the public and voluntary sectors oversees SNAP's development and a Monitoring Group of people with monitoring evaluation expertise to developing an outcomes-based framework for reviewing progress. Additional accountability mechanisms include an Annual Report to the Scottish Parliament, scrutiny by a Scottish Parliamentary Committee, international accountability via mechanisms such as

the Universal Periodic Review (UPR) and an independent evaluation scheduled for 2016–2017.

Lessons for other countries

Although SNAP is only one year into its four-year lifespan, a number of lessons have emerged from its development and implementation to date.

The relationship between human rights, equality and social justice needs to be clearly articulated and brought to life using practical examples

Human rights approaches offer a practical, legally-grounded basis for tackling inequalities, making decisions about resources in a way that maximises social justice and ensuring that people are involved in the decisions that affect them. However, the value that human rights can add is not always clear to people and organisations who are not familiar with them. More work is needed to demonstrate, articulate and provide practical guidance to people and organisations about the benefits that a human rights based approach brings in terms of achieving equality and social justice goals. This has been a common theme across SNAP and will be a priority for future action.

There is a general lack of understanding amongst decision makers and front line workers about the value of human rights

This related point has been highlighted as a significant barrier to implementation of actions in year one, because it is difficult for organisations to make a wider commitment to taking a human rights based approach when they lack the knowledge and tools to apply it. This has led a number of the Action Groups to highlight the importance of wider engagement within relevant sectors. Moreover, by encouraging wider sector and public engagement

with an Action Plan, the plan itself can form part of the necessary human rights education process, therefore helping to build a better human rights culture.

Building consensus for action is essential, but it takes time to develop a plan that is owned and delivered by all organisations involved

The collaborative way in which Scotland's National Action Plan has been approached, bringing together those with rights and those with duties to realise them, has been described as unique among National Action Plans for human rights (Commissioner for Human Rights, 2014). It stands in contrast to a 'top down' approach where government develops and owns the resulting action plan, or a 'bottom up' approach where civil society generates a list of desirable actions without commitment from government or public bodies to implement them.

Significant time has been needed to build the necessary relationships for agreeing actions and commitments through the development phase of SNAP. This has brought early benefits in the first year of implementation with good buy-in from those with responsibility for protecting people's rights and some early changes in the way existing resources are channelled. It has also meant that the problems SNAP is trying to address are being tackled with collective energy and commitment, and from a rounded perspective. These relationships have been developed on the basis of trust and equality which will be critical for maintaining commitment and ensuring that different perspectives are given equal value and that action taken is supported by all affected.

Many organisations have limited resources and whilst there is a desire to engage, many are not able to engage as much as they might like to

The Council of Europe has highlighted that many National Action

Plans do not necessarily come with an additional budget provision (Commissioner for Human Rights, 2014). It has therefore suggested that a key element of the successful implementation of National Action Plans is identified as high-level support. Where governments are openly supportive of a National Action Plan, this provides a clear signal to all public authorities, private bodies and civil society that they need to give this their upmost attention. By encouraging human rights to be viewed as a political priority, this may encourage the political will to fund necessary actions.

However, the Scottish experience has also shown the importance of the wide-spread political support recommended by the Council of Europe (ibid.) By gathering wide cross-party support for SNAP, commitments accompanied by resources are beginning to be realised, with recent commitments to: an awareness raising campaign to be undertaken by the Scottish government; funding for a baseline study into business and human rights in Scotland and a commitment to exploring human rights budgeting within the national budget process.

Impact needs to be measured and monitored over the medium to long term, involving a continuous improvement approach and integration with wider outcomes frameworks. This is complex and time-consuming but crucial to measuring success

The UN Office of the High Commissioner for Human Rights and Council of Europe both strongly recommend the independent evaluation of Action Plans and regular monitoring of their progress. Whilst previous Action Plan evaluations have tended to focus on the process elements of implementation, they note that it is equally important to develop a mechanism by which to evaluate the actual impact on the enjoyment of human rights by the general population.

The Swedish Ombudsman (considered to be among the most advanced in relation to monitoring and evaluation) has produced a range of good practice advice based on their experience. This emphasises that a central pillar of a good human rights action plan is the timeframe of ambition, which should be medium to long term, so that the plan contributes to sustainable systemic change. also It also recommends that a monitoring framework which takes an 'improvement' approach will allow for the identification and testing of actions, the assessment of progress towards long-term systemic changes and the ability to make adjustments to action as necessary.

There is a current broad consensus in Scotland that public services should focus on outcomes, improvement and participation. A range of outcomes frameworks exist that relate to SNAP's work, including Scotland's National Performance Framework and the post 2015 Sustainable Development Goals, and time has been invested in integrating SNAP's intended outcomes with these. Developing a robust outcomes framework for SNAP has been time-consuming and complex. However, it is anticipated that investing this time and energy in the early stages of development and implementation will enable SNAP's impact to be measured in a meaningful way that contributes to long-term understanding about what works to improve human rights.

Conclusion

The Scottish experience of developing SNAP has shown how governments, NHRIs, public bodies and civil society organisations can work together, with people whose rights are directly affected, to engage with human rights issues in practical ways that are designed to lead to improved outcomes in people's lives. It has involved an apolitical approach that takes the conversation about human rights out of the headlines, political debates and courtrooms and into the places that matter in

people's everyday lives – hospitals, schools, care homes, houses and workplaces.

Collaboration and participation by a wide range of stakeholders has been a critical success factor in SNAP's development and early implementation, as has ensuring that its intended outcomes are integrated into wider outcomes frameworks. Challenges remain in terms of articulating the benefits of human rights when it comes to achieving equality and social justice goals, and of raising awareness of human rights more generally. However, it is anticipated that the broad-based commitment to action from a wide range of partners in SNAP will lead to demonstrable examples of the benefits of human rights based approaches across diverse areas of public life. It is also expected that this cross-sector commitment will result in greater resources being channelled into collaborative action to improve the overall human rights culture in Scotland through increased public understanding and awareness and increased organisational accountability for realising human rights in practice.

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Poverty and gender: links and ways forward

Fran Bennett

Introduction

Public debates about social justice (in the sense of concern about poverty and socio-economic inequality) on the one hand and equalities on the other often seem to take place in parallel universes, in terms of the conceptual foundations they draw on, the analytical tools they employ and the policy solutions and strategies they propose. Yet it seems to make sense both to integrate analysis of these issues and to devise policies capable of addressing both.

This contribution focuses on two specific issues within these debates – poverty and gender – in an attempt to bridge this divide. In particular, it addresses the conundrum that poverty, which is experienced by individuals, is often measured at the household level and analysed by family characteristics – whereas gender, which is produced by societal relationships and structural processes, is often equated with sex (individual women/men). This disjuncture complicates analysis and bedevils policy proposals.

In a recent evidence and policy review (Bennett and Daly, 2014), which tried to tease out the links between gender and poverty and suggest policies to tackle them, we endeavoured to untangle these issues and propose more productive ways forward. We argued that the point is not that women are poor, or poorer than men, but that poverty itself is gendered (Jackson, 1998). This perspective, in our view, can be applied to the causes of poverty, how it is experienced and how it may be tackled – and has

far greater potential to bring together social justice and equalities and human rights debates and action.

Linking equalities and poverty: alternative perspectives

There is a range of ways to understand the relationship between equalities and poverty. Fredman (2011, p. 567), for example, argues that groups suffering discrimination on status grounds – including gender – are disproportionately represented among people in poverty; and that people in poverty undergo many elements of discrimination experienced by such groups, including lack of recognition, social exclusion and reduced political participation.

Killeen (2008) goes so far as to see 'povertyism' as another form of discrimination – and thereby also an assault on human rights. This connection with equalities debates is particularly valuable in countering the self-blaming by people in poverty that may be encouraged in a society which suggests anyone can achieve anything if they just have aspirations and a work ethic (Easton, 2015). Fredman (2011) argues that the strong correlation between status inequality and poverty means that the distributional disadvantage attached to status must be tackled. Her approach examines what the right to substantive, rather than merely formal, equality may contribute in addressing poverty – though arguably it focuses on socio-economic inequality and the relative risk of poverty, more than poverty itself. (Socio-economic inequality was originally going to be included in the Equality Act 2010).

Lister (2004) argues that poverty is criss-crossed by inequalities, in that – in addition to differential risk for various groups – it is also experienced differently by women and men, older versus younger people, disabled versus non-disabled people (etc.). She also notes that linking an equality group with poverty doubly downgrades them (Lister 2004, p. 64, cited in Fredman 2011, p. 579). Lister starts from the perspective of poverty rather

than equalities, and focuses on the interaction between them at the level of experience and identity rather than legal frameworks, foregrounding intersectionality.

Gendered processes key to link with poverty

Both these approaches represent nuanced attempts to understand the complex relationships between equalities and poverty. Both authors have an interest in gender, though they examine poverty and equalities more generally. Their deliberations are particularly welcome because so often approaches linking gender and poverty have been either too narrow or too broad – too narrow, in focusing only on women's poverty (for example, in the 'feminisation of poverty' thesis, see Schaffner Goldberg, 2010), or too broad, in equating gender inequality with poverty (eg Pialek, 2010).

In our review, we saw these approaches as being too limited for two main reasons. First, there is a tendency to collapse gender (in)equality into a focus on women. Thus researchers may examine the fortunes of female-headed households only; or they may highlight the characteristics of individual women – their lower human capital, labour market participation etc. – as inevitably leading to a greater likelihood of poverty. Secondly, problems may arise from the difference in the unit of analysis usually used in research on poverty and socio-economic inequalities (the household or family) and issues of gender or other equality issues (the individual).

But we argued that these approaches will not suffice to understand the links between gender and poverty. 'Female-headed households' is a fuzzy term, and the numbers in this group depend in part on differences in living arrangements; characteristics of individuals do not reveal the reasons for their situation; and gender inequality may result in differential risks of poverty, but is not the same as gendered poverty. Instead, we agreed with Jackson (1998), Razavi (1998) and others that the starting

point should be the ways in which gendered processes affect the causes, profiles and experiences of poverty over the life-course for both women and men, living by themselves or in couples or wider households.

This can be seen as particularly important when – as in the UK, according to figures for 2012/13 – the same proportion of each sex is living in poverty when measured in the usual way (people in households with equivalised disposable incomes of under 60% of the median, before or after housing costs) (DWP 2014). The latest Poverty and Social Exclusion survey (Dermott and Pantazis, 2014) found that women in Britain were only marginally poorer than men. And in the European Union (EU), figures for 2011 showed women only slightly more likely to be living in material deprivation when measured across the EU (Botti et al., 2012).

Looking inside the household

These figures appear to show that there is little to worry about. But if we recognise that the family is a system of distribution – of resources and responsibilities – we can start to unravel some connections between gender and poverty that remain invisible if we do not look inside the household. The first of these is by now well-known: that household resources are not always shared to the equal benefit of all, and that it is more likely to be women who have an unfair share (Bennett, 2013). This makes them more vulnerable to poverty – including the possibility of 'hidden poverty' in a household with total resources above the poverty line but in which one or more of its members are living in poverty. This can be due to unequal financial control. But it is not always or necessarily coercive; women may voluntarily limit their own consumption in favour of husband and children. Indeed, both women and men may see women's spending on house and children as their personal spending (Goode et al., 1998). Looking at poverty through a gender lens highlights the

place of roles, relationships and responsibilities in the allocation and use of resources.

When both members of a couple live in poverty, this does not mean that gender specific factors are irrelevant. Millar (2003) argued that to understand this we should consider (gendered) contributions to household resources. This is particularly apposite to analysing 'in work poverty' – when a household has at least one person in paid work, but is nonetheless living in poverty. Ponthieux (2010), for example, found that male workers' risk of in work poverty is often related to the employment position of their partner, whereas women's is related more to their own employment characteristics and/or low pay. Thus, contrary to conventional assumptions, in this situation male workers' poverty is more affected by family factors and women's by labour market issues.

The analysis of the gendered nature of individuals' contributions to total household resources is also relevant to roles and relationships within out of work couples living in poverty. In part, this is about the importance of gender identities. For example, for couples in which the male partner is unemployed, men's shame at their failure to provide for the household can be a major issue (Walker, 2014, pp. 157–158). In some situations this may lead to gender role crisis for men, as Fodor (2006) showed for Hungary, where their role as provider was under severe threat but women's role as caretaker was validated and indeed intensified by the same factors.

This has clear relevance to policy formation and implementation, as revealed by one study of changes to the requirements imposed on partners of unemployed benefit claimants in the UK when joint claims were introduced for childless couples (reported in Coleman and Seeds, 2007). This showed that the dynamics of couple relationships overlaid all other factors in the approaches to work taken by both partners. The introduction of universal credit, in which both partners in most families with

children as well as childless couples will be subject to some conditionality, will be likely to demonstrate this more starkly.

In addition to the gendered factors affecting the contribution of women/men to household resources, Millar (2003) argued that we should investigate the extent to which individuals depend on others within the household to stay out of poverty – and that this risk is gendered. The results tend to show a higher gender imbalance in financial dependence than in poverty using conventional household based measures (for example, see Botti et al., 2012). This can be seen as a risk of poverty in the future – if the couple separates, for example, or if the main income is reduced or lost. Some, however, also see this as poverty in the present, if poverty is defined in terms of the lack of a right to (and control over) adequate individual resources (Atkinson, 2011).

Addressing poverty through gender analysis

Fredman (2011) argues that a right to equality can be used to address poverty in several different ways: first, by incorporating poverty as a protected characteristic, or a ground of discrimination; second, by subjecting anti-poverty measures to equality analysis; or third, by including equality considerations in all policy measures – i.e. by taking positive steps to reduce inequalities. The proposals in our evidence and policy review are closest to the last two suggestions. But as the Equality Act 2010 currently only commits the government to having 'due regard' to equalities issues, the second proposal is perhaps more realistic as a guide for analysis and action in the period beyond 2015.

In terms of analysis, we suggested that instead of focusing on the household at one point in time, we should focus on individuals over the life-course in order to trace the influence of gender factors. This can reveal the impact of different life events experienced by men and women (such as childbirth, or unequal caring responsibilities) over the longer term; and it can demonstrate

the differentially gendered effects of shared life events – such as divorce. Whilst separation/divorce has generally resulted in higher risks of poverty for women, there is now some evidence (Dermott and Pantazis, 2014) that for men having a non-resident child also significantly increases the chance of living in poverty, and this may be one reason why the poverty of women and men has been converging in the UK. Recent research (Demey et al., 2013, for example) used retrospective life histories to highlight the position of men living alone in mid-life and running a high risk of poverty in old age. The inclusion of men has not been a prominent feature of equalities focused analysis to date, and even in poverty analysis it is rare to find studies of men's risk or experience of poverty.

A focus on individuals over the life-course is also valuable in relation to designing policies to tackle poverty in a gender sensitive way in the future (Bennett and Daly, 2014). For example, if our concern is the welfare of all individuals, as Bisdee et al. (2013) argue it should be, 'targeting' cannot be seen as successful if it is aimed only at households in poverty. Assured access to an adequate independent income for individuals within households is key. As far as possible, given the precarity caused by financial dependence, resources should be made available in ways which do not depend on the presence, activities or resources of a partner. But it will not be possible to achieve this without fairer sharing of caring and the costs of caring, both within households and between these households and the wider society.

And policy impact should also be considered in relation to an individual life-course perspective, not just in terms of a snapshot of household income at the time, as is common now. One example would be consideration of an increase in the level of the national minimum wage, whose effects on household poverty in the short term may not be large, but whose impact on the longer-term gender distribution of individual poverty may be much more significant.

In addition, a gender perspective on poverty points to the need for a more nuanced treatment than just counting the numbers of men and women affected by a particular policy and the amount of resources involved. One insight contributed by feminist analysis has been that resources are not neutral but have gendered implications (Bennett, 2013). So the composition, labelling and recipient of resources are all important in considering their gender implications. Policy analysis should include consideration of the impact of any change in resources on gender roles and relationships, financial security and autonomy, caring responsibilities and inequalities within the household and outside it – both at the time and over the life-course (Veitch with Bennett, 2010, drawing on Daly and Rake, 2003). These principles were cited in a UK government equalities impact assessment (DWP, 2010), but have not been put into effect in practice.

In the short term, however, a more immediate link between gender and poverty is likely to be found in the overlap between assessments of the effects of austerity measures that use conventional household analysis of poverty and socio-economic inequality (e.g. Lupton with others, 2015) and those that focus on gender (e.g. WBG, 2012). It is clear that policies which result in benefits and services being cut are likely to have deleterious effects both on people living in poverty and on the achievement of an adequate independent income over the life-course and fairer sharing of caring and the costs of caring for women and men.

This chapter is based in large part on the evidence and policy review written by Bennett and Daly (2014) listed above; the author of the chapter takes responsibility for any errors.

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The migrant gap in the equality agenda

Dr Sarah Spencer

It was the American legal scholar Linda Bosniak who observed that while it is common in academic literature to come across 'laundry lists of the vectors of subordination' such as race, gender and disability, writers invariably fail to include immigration status. We focus on inequality among those who are entitled to equality while ignoring those who by law are denied the full enjoyment of social, political and civil rights (Bosniak, 2006, p. 4). That has been no less true in policy debates.

The 2010 Equality Act was hailed by government as providing a legislative framework 'to protect the rights of individuals and advance equality of opportunity *for all,*'[1] in line with the Conservative's pre-election endorsement of equality of opportunity for 'every single individual in this country'.[2] Yet, tucked away in Schedules 3 and 23 of the Act are exemptions which overtly allow discrimination against migrants – on grounds of nationality, national origin, place and length of residency. Thus provision for inequality is foreseen and embedded within the legal framework itself. That these exemptions, largely taken forward from earlier race relations legislation, could pass through Parliament almost without notice is testament to the extent to which unequal treatment of people from abroad is accepted as the norm. Ten years earlier, in parliamentary debates on the then Race Relations (Amendment) Bill, the broad scope of the exemption did at least arouse some fierce concern (Dummett, 2001).

The UK is no outlier in this respect. The global experience of migrants is that inequality is not only built into the criteria which determine whether they can cross the border but that conditions of entry include further restrictions on entitlements to access the labour market, public services, welfare support, family reunion and participation in the democratic process. It is not necessary to hold the view that all migrants should have full enjoyment of each and every right enjoyed by citizens to wonder on exactly what grounds such rights are curtailed. To ask, in the words of Linda Bosniak, when it is appropriate for the border to follow the migrant inside, and when the equality principle should prevail (2004, pp. 2–4). This question, the rationale for according or denying equal rights to migrants, has had surprisingly little attention in UK academic or policy debates.

The recent trend towards greater restrictions on the economic and social rights of migrants means this is by no means a question of only academic interest. Further limits on the right to family reunion in 2013,[3] on access to NHS healthcare in the same year and, for mobile EU citizens, to welfare benefits in 2014, are simply recent examples in a litany that has affected every category of migrant from international students and labour migrants to asylum seekers. The explanatory notes to the 2010 Act cited NHS provisions for charging those not 'ordinarily resident' in the UK for hospital treatment as one illustration of the need for the exemption (GEO, 2009, pp. 988–989).

Equality principle

Non-discrimination is prominent in international and European human rights standards, and in European Union law, whether free standing or, as in the European Convention on Human Rights (ECHR), in relation to the rights in that Convention. Equality is invariably an inclusive principle, as in the International Covenant on Civil and Political Rights (ICCPR) (Art 26): 'All persons are

equal before the law..'; and included within the grounds on which discrimination is disallowed we regularly find national origin and 'any other status'. The latter has been confirmed, in the case of the ICCPR and the ECHR, to include nationality (Pobjoy and Spencer, 2011, pp. 5–6).

Different treatment does not of course always constitute discrimination: not if it has a legitimate aim and is proportional to achieving it. So the question is this: are the aims of the restrictions imposed on migrants always legitimate and proportional; and, does government feel the need to address that question and provide evidence to substantiate it before each new restriction is imposed? The wording of the exemptions in the 2010 Act make no such requirement and the evidence suggests that where challenged to do so, by Parliament's Joint Committee on Human Rights for instance, rationales provided have sometimes fallen short. In its 2007 report on the treatment of asylum seekers, for instance, the Committee concluded:

> Under the ECHR, discrimination in the enjoyment of Convention rights on grounds of nationality requires particularly weighty justification. The restrictions on access to free healthcare for refused asylum seekers who are unable to leave the UK are examples of nationality discrimination which require justification. No evidence has been provided for us to justify the charging policy, whether on the grounds of costs saving or of encouraging refused asylum seekers to leave the UK. (JCHR, 2007, p. 56).

Default position in law is inclusion

There may be a tendency to overlook the fact that, where the exemptions from the 2010 Act have not been applied, migrants are entitled to the same protection from discrimination as anyone else, across the protected characteristics. The definition of race

in the Act, moreover, includes nationality and national origins, among other grounds (s9(1)); so an employer who discriminates in recruitment on the basis of nationality, for instance, perhaps believing people from a particular country have a 'poor work ethic' (Ruhs and Anderson, 2010) is breaking the law.

Public bodies may be even more likely to overlook the fact that their duty under the Act to advance equality (s149) includes addressing inequality on those grounds (except in relation to the exercise of immigration and nationality functions) (McCarvill, 2011). Most relevant in today's climate, perhaps, is the duty s149 contains for public bodies to foster good relations between equality groups: that is, to tackle prejudice and promote understanding. Some local authorities do indeed take steps to address negative public attitudes towards migrants in their area but research suggests they do not do so in the context of this statutory duty and its relevance may not be apparent either to those authorities that have not sought to foster good relations in this way (Jones, 2012).

The Home Secretary in the Cameron coalition government, Theresa May, clearly articulated three benefits of equality – moral, social and economic:

> Morally, everyone would agree that people have a right to be treated equally and to live their lives free from discrimination. Anyone who has ever been on the receiving end of discrimination knows how painful, hurtful and damaging it can be and why we should seek to eliminate it from our society. And anyone who has ever witnessed discrimination would want to stamp it out.
>
> So equality is not just important to us as individuals. It is also essential to our wellbeing as a society. Strong communities are ones where everyone feels like they have got a voice and can make a difference. And those people within

> communities who are allowed to fall too far behind are more likely to get caught up in social problems like crime, addiction and unemployment.
>
> That brings me on to the third reason why equality matters. Economically, equality of opportunity is vital to our prosperity. It is central to building a strong, modern economy that benefits from the talents of all of its members.
>
> So equality is not an add-on or an optional extra that we should only care about when money is plentiful – it matters morally, it is important to our well-being as a society and it is crucial to our economy.[4]

The restrictions on equality that her department nevertheless imposed on migrants, following the path of previous administrations, were justified (to the extent that justification was given) on three grounds: that they were necessary for immigration control (to deter arrival, encourage departure and reduce overall numbers); for economic reasons, to protect the labour market and the public purse; and to address tensions that arise from negative public attitudes towards migrants in relation to their accessing scarce resources (Pobjoy and Spencer, 2011, p. 41).

Should we be satisfied that one or more of those rationales does provide an 'objective and reasonable' justification for differential treatment of migrants? Is there a solid evidential foundation for those claims (or is there indeed too little evidence available on the impact of restricting or granting entitlements on which such judgements can authoritatively be made?). These are questions that equality advocates could be asking next time further restrictions on migrants' entitlements are proposed – and there will be a next time. Meanwhile, for social scientists in the equality and human rights field, is there not a rich empirical and analytical research agenda here, in the UK and further afield, as yet largely unexplored?

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The long road to inclusivity

Dan Robertson

Introduction

Within this paper I will consider the current approach to what I call inclusion management. What are the key policy areas and business activities associated with this approach? How do they differ from managing diversity and equality? What are the similarities? Finally, are they future policy objectives for business and Government alike?

Equality

Today's inclusion agenda has its roots in the 1970s 'equal opportunities' laws of race and gender. Then, as now, there was a recognition that the UK labour market was marked by structural inequalities that worked to the advantage of some social groups whilst systematically excluding others. The strategic objective of policy makers was to introduce a set of policies that would level the metaphorical playing field, in areas such as access to employment, learning and developing opportunities and progression. Core to this equalities agenda was a recognition of social and cultural prejudices based on group differences and a willingness to combat employment discrimination. Thus selection for employment based on merit was a central policy objective. Other policies associated with the equality of opportunity approach included workplace equality statements and policies, awareness raising training for employees and managers, reviewing recruitment processes and procedure, family friendly policies, and seeking to advance equality of opportunities through positive action measures such as targeted recruitment

and development programmes for women and black and minority ethnic groups.

The move towards 'managing diversity'

Perhaps reflecting broader social and political changes in the mid-1990s we witnessed an increasing shift in emphasis from this rights-based approach of equal opportunities towards what we now understand as the 'managing diversity' approach. This approach was articulated fully by Kandola and Fullerston in 1998. As they stressed, a central component of the managing diversity agenda was an increasing willingness to stress the nature of the UK workforce as consisting of growing numbers of visible and non-visible differences, including factors such as gender, age, social background and work styles.

Accompanying this attempt to redefine the equalities agenda was the alignment of managing diversity with talent management policies and processes. Diversity was now seen as a key business driver. Key characteristics associated with the managing diversity approach included:

a. *The stress on individual differences*: In policy terms this meant a re-focus from positive action measures targeted at social groups who had traditionally been excluded from the labour market towards a focus on a much wider range of characteristics, including social background and non-visible differences such as work styles.
b. *Individual differences should be viewed positively*: As part of the 'war for talent' agenda, where businesses are perceived as having to compete to recruit and retain talented employees, such differences were increasingly viewed as business assets as businesses such as BT, EY and Royal Bank of Scotland increased their global presence.

c. *Using differences to meet business goals:* Here we see an emphasis on the 'business case' for diversity. Organisations like The Work Foundation, CIPD and the CBI published research that stressed the business advantages of having diverse workforces. The key arguments focused on greater access to different perspectives and sources of information, greater understanding of customer needs, improved employer brand and meeting skills gaps by tapping into a wide range of talent. Today, the business case for diversity is supported by research by organisations such as Catalyst and McKinsey who stress the link between diversity, organisational performance and profitability.
d. *An attempt to reshape organisational culture:* By aligning diversity with wider business goals and strategies, a re-shaping of culture would follow which in turn would work to eliminate some of the structural inequalities that the equal opportunities approach had tried, but failure to address.

Policies and activities associated with the managing diversity approach include the emergence of employee network groups, diversity champions amongst senior leaders, re-shaping of recruitment policies, values statements talking up the merits of diversity, and organisational audits and strategies aligning diversity to talent management and performance processes. As an example, Tesco was featured in a 2006 CIPD publication as a good practice case study. The business had developed a set of diversity Key Performance Indicators (KPIs). Key metrics included increasing the age diversity of its workforce and using customer feedback as a way of ensuring its product range met the needs of an increasingly diverse customer base, particularly those from minority ethnic backgrounds. In addition managers were given diversity KPIs which were linked to reward structures.

Diversity without inclusion is not enough

Of course the managing diversity approach is not without its critics. Perhaps one of the greatest failures of this approach was an over focus on individual differences, without considering ways in which business cultures continued to systematically exclude minority groups through formal and informal networks and unconscious biases that affect leadership behaviours and decisions in key areas including talent attract, team formation, work allocation, performance manage and reward. As Laura Liswood stressed there has been too much emphasis on the 'Noah's Ark' approach to managing diversity – focusing on increasing the numbers of women, gay people, disabled workers and talent from black and minority ethnic groups – but little attention on changing the business culture and on the unconscious biases that affect employee and leadership interactions. A further criticism is that the managing diversity approach plays down the continuing inequalities faced by such groups.

Whilst some may see a strict separation between the 'equal opportunities' and the 'managing diversity' approach, in reality what emerged was a dual approach to what we could perhaps call managing diversity and equality, with businesses such as BT adopting policies including mentoring programmes for under-represented groups, the establishment of employee networks groups for women, gay and lesbian employees, and black and minority ethnic staff members. Additionally, positive action in the form of ethnic minority leadership development schemes remained a central policy objective for many businesses.

Inclusiveness

In 2012 the professional services firm Deloitte published a paper that stressed two key points which perhaps most clearly define the current approach. The first point is that 'diversity of thinking is gaining prominence as a disruptive force to break through the

status quo'. And secondly, 'the signals point to inclusion as the new paradigm'. The key point here being that whilst diversity (and equality), with a dual focus on both individual and group differences has dominated the language and approach to what we can now call 'inclusion management', for many businesses, there is a growing willingness to admit that the approach so far has indeed had limited impact on, for instance, increasing the number of women and other groups moving up the business pipeline.

The drive towards managing inclusion, or perhaps equality, diversity and inclusion (EDI) is driven by a growing recognition of changing demographics, both at local and global levels. UK workforces are increasingly being defined by multi-generational teams, high levels of cultural differences, growing visibility of lesbian and gay talent and talent from a range of faith groups. Whilst the managing diversity approach may have over focused on simply increasing diverse populations, the inclusion agenda focuses on creating business environments that actively leverages these differences for competitive advantage. Overall there are 5 key principles that perhaps help to define the move towards inclusion management:

A recognition that unconscious bias impacts professional decision-making

Despite global businesses investing in policies and processes that are designed to ensure decisions are made on merit, the evidence from social psychology and neuro-science suggests that human beings have a set of cognitive biases that govern and override rational thinking. These biases result in what Professor Banaji from Harvard University calls 'mindbugs'. There is an overwhelming body of evidence to suggest that hiring managers are more likely to hire social groups who are like them over minority groups. Research by the Employers Network for Equality & Inclusion has shown how unconscious bias impacts performance management

processes. Thus part of the policy agenda within the inclusion management framework acknowledges the role of unconscious bias in business decision-making and seeks to develop awareness programmes and people management frameworks which can at least mitigate some of the effects. Businesses such as EY and the Post Office are increasingly investing in bias control programmes.

The need to leverage diversity within a global market place

As the business landscape becomes increasing globalised, the need to leverage diverse talent becomes critical to business. The emergence of new markets requires an alignment of business strategy and insight through the utilisation of cultural knowledge. Building cultural competencies will help businesses to avoid stereotyping potential customers and support the drive toward business growth and innovation.

Promoting inclusive leadership

As stressed in the Deloitte paper there is an urgent need to develop business leaders who can let go of the iconic image of leader as hero, and to embrace the principles of inclusive leadership. Catalyst, the global not-for-profit organisation has identified four key qualities of an inclusive leader:

1. Empowerment: Inclusive leaders enable diverse talent and teams to grow by encouraging them to solve problems. Moving away from the leader as hero figure.
2. Courage: Inclusive leaders stand up for what they believe is right. Thus they challenge existing norms and call out both conscious and unconscious biases when they see or experience them.
3. Humility: An inclusive leader is someone who creates an organisational environment where it's OK for them and others to admit their mistakes. They are curious about difference and

actively seek out different points of view to increase innovation and leverage diverse skills to meet wider business goals.
4. Accountability: A key aspect of inclusive leadership is holding oneself and others to account. This involves questioning hiring managers and reviewing differences in performance management scores between different groups and questioning why.

The global professional services firm EY has developed a model for promoting what they call inclusiveness. Their model, as set out in their 'Leading across borders' publication, is based on 3 key principles:

1. Think differently: This involves seeing diversity and difference as part of your competitive business strategy. It also involves leveraging the diverse talent in your teams. To do this effectively business leaders must modify old command and control structures and put into place structures and mechanisms that promote collaborative decision-making. Leaders should use employee networks as sources of business knowledge and promote collaboration though the bringing together of people from different background to generate new ideas and to provide insight into new markets, products and services.
2. Learn differently: This is critical to business success. For leaders to be able to positively impact on the growth of their business in an ever increasing interconnected and globalised market place they need to actively listen to their diverse work populations and seek out alternative viewpoints. Part of the learning differently agenda will mean taking leaders out of their comfort zones and exposing them to different cultures and ways of working.
3. Act differently: If mentoring is a key policy of the managing diversity approach, sponsorship is central to promoting workplace inclusiveness. Due to their cultural biases, traditional

leaders tend to sponsor people from similar backgrounds. EY encourages leaders to be aware of their unconscious biases and to actively sponsor diverse talent that thinks and acts differently. This type of activity is more likely to increase the talent pipeline and thus the cognitive diversity of future leadership teams.

Promoting agile working

In 'Future Work', Alison Maitland and Peter Thomson provide a convincing critique of traditional male career models, in which flexible working does little to promote true inclusivity and leverage diverse talent. In order for businesses to respond to a number of tectonic shifts, from technological change to changing employees' attitudes and expectations, they need to adopt new agile ways of working. This means moving away from cultures that promote presentism and command-and-control structures. It means developing leadership mind-sets and policies that encourage agile working patterns. In this way businesses are more likely to hold onto and harness their diversity through structural and psychological inclusion. Agile working policies are being adopted by businesses that range from the Royal Bank of Scotland to Pitney Bowes and the Post Office.

Diversity targets

What gets measured, gets done. Central to the inclusion management agenda sits positive action policies and practices associated with both equality and managing diversity approaches. The Women on Boards agenda together with the recent launch of the 2020 Campaign on race call for UK business to increase the number of women and black and minority ethnic talent on UK Boards. Many UK and global businesses including KPMG and Lloyds Bank now have public targets on gender and ethnicity.

Where do we go from here?

This paper finishes with a few concrete proposals. Whilst there are clearly a number of business trailblazers, it is important to recognise that the picture remains rather patchy. There is much work to be done. In addition to the issues raised, to create a total inclusion management framework, future policy would also need to:

1. Strengthen positive action measures, including the introduction of 'blind CVs'.
2. Consider introducing diversity targets in employment that are proportionate for larger employers and SMEs.
3. End unpaid internships and ensure employers offer quality work experience that complies with the principles of the Equality Act 2010.
4. Promote the adoption of agile working practices through business rates and encourage suppliers to adopt best practice diversity & inclusion principles.
5. Government responsibility: Centralise responsibility and accountability in a single Government Office for all equality, diversity and inclusion policy areas and have a dedicated Secretary of State for Equality and Inclusion.

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PART THREE: MAKING IT HAPPEN

The untold story of the Human Rights Act

Dr Alice Donald and Dr Beth Greenhill

Introduction

The Human Rights Act (HRA) 1998, enacted across the UK in 2000, gives effect in UK law to the rights and freedoms in the European Convention on Human Rights (ECHR). The HRA was heralded at its inception as a vehicle for a cultural renewal in public services. Fifteen years on, the human rights 'culture' is invoked more often in pejorative than laudatory terms. A persistent theme is the purportedly negative impact of the HRA on efforts to tackle crime and terrorism. The Act has also been blamed for creating an infantilised, individualistic and socially irresponsible culture, and even for being a contributory cause of the English riots in 2011 (David Cameron, 2011). Another common trope is the alleged propensity of public authority decision-makers to misinterpret or misapply the HRA so as to allow ill-founded considerations about individuals' rights to trump public interests.

The premise of this paper is that public discourse about the HRA fails to capture the full extent of its (actual or potential) application and impact. First, the Act is associated predominantly with the protection of groups perceived as unpopular or undeserving, excluding consideration of the way in which the HRA also protects people who do not conform to this narrative (Donald and Mottershaw, 2014). Secondly, the Act is largely portrayed as a tool for litigation, thereby ignoring the ways in which the HRA influences decision-making and guides institutional practice outside the courts. This (mis)framing of the HRA debate was perpetuated

by the Commission on a Bill of Rights (2012), whose majority report made scant reference to the impact of the HRA outside the courts, even though its consultations generated a wealth of evidence of positive impact contained in hundreds of submissions.

This paper examines, first, what a 'human rights culture' (or 'human rights-based approach') consists of. Secondly, it examines the application of human rights standards and principles in one NHS Trust, Mersey Care, a specialist provider of mental health and learning disability services for adults. Thirdly, it discusses the impact of human rights-based interventions in public services (in particular, health and social care services), in so far as they have been identified. Finally, it draws lessons from this experience for the conduct of debate about the HRA and the prospect of a more holistic assessment of the Act's impact in the UK.

The Human Rights Act and public services

The HRA laid the foundation for the putative transformation of public services by making it unlawful for any public authority or private entity exercising public functions to act in a way which is incompatible with Convention rights (HRA 1998 ss. 6(1) and 6(3)(b)) and providing individuals with remedies if a public authority breaches their human rights (HRA 1998 ss. 7 and 8).

As noted above, a situation in which public authorities become habitually responsive to human rights is sometimes described as a 'human rights culture'. The parliamentary Joint Committee on Human Rights (JCHR, 2003, pp. 11–12) defines such a culture as encompassing two dimensions: institutional and ethical. The former requires that human rights should 'shape the goals, structures and practices' of public authorities. The latter has three components: first, a 'sense of entitlement', meaning that human rights affirm everyone's equal dignity and worth and are not a 'contingent gift of the state'; secondly, a sense of personal responsibility, meaning that each individual must exercise his or her rights with

care for others; and thirdly, 'a sense of social obligation', meaning that a fair balance must (in the case of non-absolute rights) be struck between individual rights and the wider public interest.

A closely-related concept is the 'human rights-based approach' (HRBA), which originated in the international development sector (Gready, 2008) and emphasises the need to identify and redress power imbalances and prioritise the interests of those who face unusual levels of discrimination or social exclusion. Consequently, it insists on certain procedural requirements – such as participation, transparency, accountability and non-discrimination – and the structures required to fulfil them. Central to the HRBA is the idea that every individual is a 'rights-holder', having inherent dignity and equal worth, and that there are also 'duty-bearers' with correlative obligations both of delivery and oversight (primarily states and their agencies). Applying human rights entails a normative shift from discretionary meeting of needs towards socially- and legally-guaranteed entitlements (Donald and Mottershaw, 2009). Further, the HRBA commonly conceptualises human rights as both a means and an end, being concerned both with process (adopting methods which expressly conform to human rights standards and principles) and outcomes (the substantive realisation of human rights) and viewing the two as interdependent (Gready, 2008, p. 738).

The terms 'human rights culture' and HRBA are highly congruent and are often used interchangeably. Each is underpinned by an understanding of human rights as universal and inalienable. Each involves both *recognition* of rights (institutional culture) and *respect* for rights (systematic application).The implications of human rights for public services have been comparatively neglected in academic literature. However, the practical import of the Act has been examined by, among others, UK Government departments (e.g. Department of Health, 2008); national human rights institutions (e.g. Equality and Human Rights Commission,

2012; Scottish Human Rights Commission, 2009); the JCHR (e.g. JCHR, 2003, 2007, 2008); inspectorate, regulatory and complaint-handling bodies (e.g. Care Quality Commission, 2014); non-government organisations (e.g. British Institute of Human Rights, 2008) and policy bodies (e.g. Institute for Public Policy Research/Butler, 2005).

These sources suggest that adopting an organisational approach to human rights is a creative rather than prescriptive process. Yet three common and mutually reinforcing features are evident. These are: (i) the systematic involvement of people using public services in their design and delivery, and in decisions that affect them; (ii) the integration of human rights standards, and the associated concepts of necessity and proportionality, into routine decision-making; and (iii) an express recognition of the 'positive obligations' that are required of public authorities as a result of the application of human rights standards. The latter means that public authorities have not merely a negative obligation to refrain from interfering with individuals' human rights, but also a positive obligation to take proactive steps to ensure that individuals' rights are protected. Therefore, public authorities may find themselves subject to legal proceedings not only for their actions but also for their omissions.

A HRBA to organisational change: Mersey Care NHS Trust

The positive obligation to promote human rights as part of every-day health care provides the context for a number of initiatives within Mersey Care seeking to ensure that services meet human rights standards. Since 2008, Mersey Care has been developing a human rights-based approach to its work, in particular, its services for people with learning disabilities and for older adults. Key components of the organisational approach included: a strong emphasis on 'co-production' defined as 'delivering public services

in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours' (Boyle and Harris, 2009, p. 11). Service user involvement in service development is an equally strong requirement (Dyer, 2010; Mersey Care NHS Trust, 2011); human rights training for both staff and service users; and the development of practical resources to help staff integrate human rights standards and principles into clinical decision-making.

Clinical risk, broadly defined as any action which might involve harm to or from a person with a learning disability, was selected as a key area of practice where human rights might be engaged. Previously, service users were not routinely involved in their own risk assessments. A human rights-based approach was applied to risk decision-making processes. The documents were made 'easy-to-read' and featured pictures so that service users could contribute to their own risk assessments and management plans. Specific risk areas relating to discriminatory practice (e.g. racism) were included and the ECHR articles and principles engaged in key areas of risk were made explicit (Greenhill and Whitehead, 2010).

Incorporating human rights into risk decision-making was supported by staff training about human rights (Redman et al, 2012), through co-production workshops (Roberts et al, 2012) and educational resources (Montenegro and Greenhill, 2014) for service users.

The impact of using a HRBA – lessons from evaluation

Evaluations of HRBAs present a rich but still fragmentary array of evidence as to their impact (Donald, 2012). Evaluations have frequently been limited to matters of institutional process (e.g. Ipsos MORI, 2010) and have rarely extended to consideration of impact, in the form of changes to knowledge and understanding, skills, behaviour, perspective or experience, to improved clinical

outcomes or to the substantive realisation of human rights (Donald, 2012, Chapter 5). Generally, where impacts have been identified, they are at the level of an individual public authority; benefits on a larger scale have yet to be demonstrated; however, impacts identified within a single service or authority demonstrate the *potential* for wider-scale impact to occur. This section will examine (potential) impact in respect of (i) the 'business case' for human rights; (ii) the benefits of engaging service users to improve services; and (iii) organisational renewal.

The 'business case' for human rights

Human rights are sometimes perceived as a 'soft' area without a core financial or business purpose. However, this is a limited view of what the practical application of human rights can achieve.

First, there is evidence that human rights provide a sophisticated tool for managing risk. An evaluation of Mersey Care's work found that a HRBA to risk management

> shows promise in its potential to 'invert' traditional approaches to risk management and to support previous initiatives promoting community inclusion … [T]his innovative way of working and more positive construction of the service user, improves the quality of care today and has the potential to reduce the likelihood of intervention tomorrow (Mersey Care NHS Trust, 2010, p. 10).

An evaluation of the HRBA at The State Hospital, a high security forensic mental health hospital in Carstairs, Scotland, similarly found that,

> Taking a human rights-based approach … can … help organisations to avoid the risks of having to react to critical media comment, negative public perceptions or legal proceedings,

> as well as complaints when its policy and practice is shown to breach human rights (Scottish Human Rights Commission, 2009, pp. 71–72).

In this case, The State Hospital had audited policy and practice, in part using a 'traffic light' warning system; this had made human rights at the hospital 'user friendly, and helped to reduce human and organisational risks'; for example, through an increased focus on the individual patient's circumstances and risks to themselves and others as opposed to the (formerly routine) use of 'blanket' policies in areas such as restraint and seclusion.

The use of human rights as a framework to support decision-making (for example, in the assessment and management of risk) also helps public authorities to demonstrate, as they are required to by law, that the decisions they take are lawful, have a legitimate aim, and are necessary and proportionate. The human rights requirement for transparency provides a clear 'audit trail' to protect public authorities from potential legal challenge.

Evaluations that have been conducted to date make no explicit or comprehensive financial case for a human rights-based approach at an organisational level. Such a case might be founded on the preventative, as opposed to curative, purpose of the Human Rights Act. For example, a human rights-based intervention designed to identify and support people in hospital who need help with eating is aimed partly at cutting waste and improving clinical outcomes, in addition to protecting the dignity of patients (Donald, 2012, pp. 42–45).

The benefits of engaging service users

There is evidence to suggest that those public authorities which involve service users (and their families and carers) systematically in their work have a deeper engagement with human

rights than those which do not. The integration of service users in designing and evaluating services is itself an indication of an organisational human rights approach and helps to ensure that such an approach is embedded throughout the organisation and sustained over time. For example, in Mersey Care NHS Trust, service users and carers are involved in diverse activities, including recruitment and training of staff at all levels of seniority; initiatives to improve services and develop new ones; and reviews of serious incidents including homicide and suicide (Dyer, 2010). Evaluations of this experience (e.g. Dyer, 2010; Ekosgen et al, 2011; Ipsos MORI, 2010, pp. 93–94; Mersey Care NHS Trust, 2011; Roberts et al, 2012) suggest that service user involvement has had the effect of:

— challenging entrenched and often prejudicial attitudes to service users as passive recipients of care or services, rather than as active participants in shaping and evaluating those services;
— improving relationships between service users and staff and make them partners in finding shared solutions to problems;
— eroding stigma and mistrust between service users and professionals, with associated impact for service users in terms of mental health recovery and well-being, improved confidence and self-esteem, engagement in purposeful activity, feeling valued, and ability to use their skills.
— preserving autonomy to the greatest extent possible and partially redressing power imbalances through maximising opportunities for service users (and carers) to participate in decisions about risk assessment and management. For example, audit of 830 case notes suggested that where a human rights approach to risk assessment had been taken, service users were involved in 60% of the risk assessments completed, compared to none previously.

Human rights as a vehicle for organisational renewal

Some evaluations of HRBAs in public services identify a range of benefits that have accrued to the design and delivery of services and other areas such as staff morale. At The State Hospital, for example, the HRBA produced a 'strongly attested shift in the culture … from a prison to a hospital' (Scottish Human Rights Commission, 2009, p. 71). The reduction in 'blanket' policies and an increased focus on individual patients' circumstances and risks to themselves and others meant in turn that the care and treatment of patients was individualised. Procedures to manage violence and aggression were viewed as more proportionate after the introduction of the HRBA. Patients also noted a sustained increase in their ability to participate in decisions about their care and treatment. Staff reported an increase in work-related satisfaction and reduced stress and anxiety (Scottish Human Rights Commission, 2009, p. 70).

Practitioners also note that human rights also provide an underpinning foundation for other duties and policy initiatives, such as those relating to equality and diversity, commissioning, partnership working, user choice, personalisation, freedom of information or mental capacity. Staff at The State Hospital reported that taking a human rights-based approach had acted as the foundation for the smooth integration of other specific duties which must be compatible and build on human rights standards (Scottish Human Rights Commission, 2009, p. 28).

Conclusion

In view of the negative public discourse about the HRA, which has imperilled its very survival, it is vital that debate about the Act's future is informed by a holistic assessment of its impact, value and significance. This can only be achieved by taking into account the ways in which the existence of judicial remedies acts as a catalyst for organisational change, causing human rights

standards and principles to be applied as part of routine decision-making in public authorities.

This paper has adduced evidence as to the (potential) benefits of adopting a human rights-based approach, in particular for users and providers of services for those, like people with learning disabilities or mental health problems, whose rights are especially vulnerable to neglect or abuse. Such evidence directly challenges the narrative that human rights encourage individualism and erode personal responsibility; indeed, this critique makes little sense in the context of a service in which human rights are used as a tool for building confidence to *enable* social participation. In addition, the experience of practitioners suggests that human rights provide a framework within which to manage risk, ensure transparency and find balanced and proportionate solutions to complex but everyday problems, far from the portrayal of the HRA as a piece of legislation that is widely misapplied to the detriment of the public interest.

Much remains to be done, both to embed human rights in public authorities' policy and practice and to develop methodologies for identifying the impact of human rights-based practice. Closer links between academic disciplines (in particular, law and social sciences) and between researchers and practitioners are vital to this endeavour. The aim must be to develop understanding of human rights as a set of standards and principles which, when applied outside the courtroom, provide a framework for decision-making, a vehicle for social and organisational change, and a basis for moral, as well as legal, claims upon the exercise of power.

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Union equality representatives: the missing piece in the jigsaw?

Joyce Mamode and Sally Brett

Introduction

Trade unions have, in recent years, been focussed on enhancing their contribution to the workplace equality agenda (TUC, 2014). As a result they have, arguably, re-positioned themselves from being seen as part of the problem to being an 'essential part of the solution' to workplace related inequality (Hepple, 2014). One noteworthy trade union initiative in recent years has been the establishment of a network of workplace equality representatives with the potential to positively influence the equality practices of the organisations in which they are present (Dickens, 2012; Bacon and Hoque, 2012).

Drawing on interviews with union equality representatives in a range of industries and occupations, this paper illustrates the success that they are having, as well as the difficulties they are experiencing as a result of the lack of statutory recognition for their role. It is argued that giving union equality representatives statutory rights similar to those enjoyed by other types of union representative, may be one of the most important interventions that could be introduced to progress the workplace equality agenda in the UK beyond 2015.

The current situation

2015 marks the 50th anniversary of the introduction of the first equality related legislation in the UK – the Race Relations Act 1965. Over the last half a century legal protections aimed

at preventing discrimination and promoting equal treatment have been strengthened and extended to cover a greater number of potential sources of disadvantage and a greater range of protected characteristics, yet significant inequalities persist. The Equality Act 2010 was a landmark piece of equality legislation, consolidating all previous equality laws and levelling up many of the legal protections, but its basis in individual rather than collective rights has not proved sufficient to bring about the kind of cultural and organisational change that is needed to achieve genuine equality of opportunity for the UK's increasingly diverse workforce.

Despite the strong employment protections for women around the time of pregnancy and childbirth, pregnancy and maternity related discrimination remains a major problem in the UK (DCMS, 2013). The gender pay gap remains persistent, particularly for women working in the skilled manual trades and for women over the age of 50 (DCMS, 2014). Many older women find themselves stuck in low paid, part-time work (TUC, 2014a).

There remains a 30% gap in the employment rate between working age disabled people and non-disabled people. Disabled people are more likely to be in lower skilled jobs and three in ten earn less than the living wage. People with mental health conditions and learning disabilities are considerably more disadvantaged (Coleman, Sykes and Groom, 2013).

Half of young black men are unemployed – double the unemployment rate for young white men. They experienced the sharpest rise in unemployment as a result of the 2008 recession and austerity (TUC, 2012). There is also strong evidence that race still plays a part in many recruitment decisions (Wood et al, 2009).

Lesbian, gay and bisexual adults are more than twice as likely to report being bullied or discriminated against than heterosexual employees and one in four transgender people feel they have been discriminated at work in the past

year (Hoel, Lewis and Einarsdottir, 2014; EU Fundamental Rights Agency, 2012).

This paper argues that, if real progress in eliminating these sorts of labour market disadvantage is to be achieved, the legislative framework needs to place duties on employers to recognise union equality representatives, to give them time off and facilities to perform their role and to engage with them over equality related matters in the workplace. Such a model was successfully adopted by the 1974 Health and Safety at Work Act, which gave a formal role in its enforcement to health and safety representatives through affording them statutory recognition and rights (James and Walters, 2002).

Equality representatives are a relatively new type of lay (volunteer) union representative who have the role of encouraging employers to introduce equality related improvements to their policies and practices; of providing independent specialist advice to employees on equality related matters and of promoting equality within their own unions (Bacon and Hoque, 2012, p. 240). Nineteen unions, representing 87% of trade union members in the UK, have now amended their structures to enable the election or appointment of equality representatives in their branches or in the workplaces where they are recognised (TUC, 2014b). Interviews conducted during 2014 with a sample of equality representatives from these unions, covering a wider variety of industries and occupations, illustrate the valuable contribution that equality representatives have the potential to make if recognised and supported to carry out their role effectively.

Unions – an essential part of the solution to workplace inequality

In the past two decades, many businesses have begun to wake up to the fact that they need to recruit, retain and manage an increasingly diverse workforce. Three-quarters of British

workplaces now have equal opportunities policies in place and such policies are almost universal in large or unionised workplaces. Unfortunately, evidence suggests that many of these policies are little more than 'empty shells' – statements of intent that have not been translated into practice. For example, few employers carry out equality monitoring or assess the impact their employment or pay practices have on different groups of workers; very few have adopted measures to attract a diverse range of applicants; and only a quarter provide training to raise awareness of their policies among managers and staff (Van Wanrooy et. al. 2013).

One important influence over whether an organisation's equality policies will be 'empty shells' or not is whether or not there is a trade union presence within that organisation, recognised to collectively represent the workforce. Where an employer is willing to negotiate or consult with the union on equality issues, that employer's equality policies are more likely to be of substance. In such workplaces, it is more likely that steps will be taken to reach out to under-represented groups, that reviews of pay rates to check for discrimination will take place and that a wide range of flexible working and family-friendly arrangements will be available (Hoque and Bacon, 2014).

Over the past decade, the TUC and individual trade unions have sought to further strengthen this positive trade union influence on equality practice by training thousands of specialist equality representatives to help ensure that there is a worker voice to hold employers to account on their equality policy commitments. As the Women and Work Commission concluded almost a decade ago, equality representatives can 'provide a lens of equality across workplace practices, raise issues related to equality and diversity, tackle discrimination, resolve conflict and seek solutions with management alongside other union colleagues' (Women and Work Commission, 2006, p. 85).

Supporting individual members with equality-related problems
Jane* is an equality rep working in food manufacturing and much of her time is taken up with supporting disabled members seeking reasonable adjustments from her employer, which has been made more difficult with the introduction of multi-skilling. She has found that the specialist training that her union has provided often puts her in the position of providing advice not only to her members but to managers as well.

A preventative and transformative role

Parallels have been drawn between the potential impact of equality representatives and the impact that has been made by health and safety representatives who since 1974 have helped to significantly reduce injury rates and encourage positive safety cultures at UK workplaces (TUC, 2011).

Discrimination at work is rarely a one-off occurrence and individual examples often arise from structural causes related to workplace culture, policy or practice (Acker, 2006). This is why it is so important that there is a collective mechanism for dealing with what are, so often, collective problems.

Few workers who individually experience unfair treatment at work have the resilience or the financial, legal and emotional support to formally complain and pursue a case all the way to tribunal. Even if they do and they win their case at tribunal, their outcome will be restricted to financial compensation for any loss suffered. In half of all cases where compensation is awarded, the employer does not even honour the award (BIS, 2013). Successful tribunal claimants do not usually get their job back, nor is there any legal obligation on the employer to change any of the policies or practices that led to the unfair treatment taking place (Dickens, 2012).

The specialist training undergone by equality representatives aims to give them the skills to help ensure discrimination and

harassment cases are identified before ever becoming tribunal cases. Equality representatives can also press for action at a collective level to prevent discrimination arising in the first place, by giving voice to issues that individual members may be unable to raise on their own and by encouraging a culture of dignity and respect for all workers.

Checking policies and practices for equality related impacts and participating in joint union-employer committees
Lee* is an equality rep who works in security and was the only Black security officer at his place of work, despite it being situated in a mainly Afro-Caribbean community. He identified 'word of mouth' recruitment practices within the security department as being a potential source of indirect discrimination and got changes agreed at his employer's Equality Forum. Through his actions, recruitment practices have become more formalised and the ethnic composition of the workforce in security has gradually become more representative of the local area.

Building stronger, more inclusive unions

Unions, like businesses, need to reflect the diversity of the wider workforce to be sustainable and much has been done to improve the situation in recent years. The TUC Equality Audit 2014 shows that three-quarters of unions have made a commitment in their rulebook to advance equality and tackle discrimination in all that they do and a majority have an action plan in place to achieve this objective. However, challenges remain. For example, in the majority of unions women and Black and Minority Ethnic (BME) workers are under-represented in shop steward, branch officer and health and safety rep roles. The Audit also suggests that despite recent progress in unions actively reaching out to lesbian, gay, bisexual and transgender (LGBT) and disabled workers, more

needs to be done to ensure they are properly represented and involved in union structures and activities (TUC, 2014).

Building a culture of dignity and respect in the workplace
Colin* is an equality rep in a major energy company and has developed a team of equality reps covering each of the company's sites and working alongside the industrial reps. Their recent successes include raising problems being experienced by transgender staff, leading to new policy guidelines being developed for managers on how to deal with the discrimination, harassment and bullying that staff undergoing gender reassignment might experience.

Equality reps can help close the gap between unions' ambitions and current reality. They can raise awareness of equality issues, help get them onto the union bargaining agenda and advise those in mainstream roles on measures to make union branch or workplace structures more inclusive. It is also a position that has attracted many women and BME members to play an active role in the union for the first time and many have gone on to take up other roles in unions (TUC, 2014). By building a more diverse and inclusive trade union movement, union equality representatives can help grow the union movement and thereby deliver stronger workplace democracy and reduce socio-economic inequality as well.

Working as part of the union team
John* works in a mail delivery unit and is both an equality rep and a member of his branch committee. He advises his branch committee colleagues, who are traditional industrial workplace representatives, on equality issues that they come across. Getting release from his manager to attend his union's specialist training when he first became an equality rep was difficult, as the role does not come with the right to time off

for training. John is also struggling to get release to attend his union's equality related conferences to keep his skills and knowledge updated.

Recognising the role of the equality rep

As long as equality representatives lack the statutory recognition that other union representatives have they will struggle to be seen as being of equal importance as other types of union representatives. Most other representative roles including health and safety reps and union learning reps are entitled to some paid time off work to carry out their union duties such as negotiating with employers and representing members. They also get paid time off to attend training relevant to their role. While this is a cost to employers, they reap enormous benefits from union representation. Many union reps also give considerable amounts of their own time to improving the workplace and representing their members. It has been estimated that the work of union reps has saved employers £22m–£43m as a result of reducing the number of tribunal cases, saved £136m–£371m in fewer working days lost to workplace injury, saved between £82–£143m in recruitment costs as a result of reduced early exits, and led to productivity gains of £4bn to £12bn (TUC, 2011).

Working with employers to improve equality of opportunity, including positive action

Susan* is an equality rep working in higher education and at the moment is working closely with her employer on an initiative aimed at increasing women's participation in science and technology research. Her employer greatly values the contribution that she makes to the organisation's equality related initiatives. Susan's employer has provided her with a day a week of paid release time, putting her on par with other union reps such as the health and safety reps.

The case for giving specific rights to equality reps is no different to that for other union reps. As the statutory Acas Code of Practice on time off for trade union duties and activities says:

> There are positive benefits for employers, employees and for union members in encouraging the efficient performance of union representatives' work, for example in aiding the resolution of problems and conflicts at work. The role can be both demanding and complex. In order to perform effectively union representatives need to have reasonable paid time off from their normal job (ACAS, 2010).

Peer-reviewed research has found that equality representatives who were able to spend 5 hours or more a week on their representational duties were significantly more likely to report that they were successfully influencing employers' equality practices (Bacon and Hoque, 2012).

Conclusion

This article has argued that trade union equality representatives are the missing piece in the jigsaw when it comes to progressing equality in the workplace. Legislation alone cannot achieve the systemic and cultural change that is needed to tackle discrimination and create genuine equality of opportunity at the workplace. Neither can we rely solely on there being a 'business case' to prompt action as even where the business benefits are recognised, equality policies are likely to be 'empty shells' without engagement from the workforce and without a union representative to hold the employer to account.

However, it has been argued, legislation can provide important support to encouraging a more collective and transformative approach to workplace equality, through introducing statutory rights for equality representatives. As Professor Sir Bob Hepple QC

wrote, 'If a new Government enacts only one new piece of equality legislation it should be to require equality representatives at workplaces, who would be involved in drawing up and enforcing employment and pay equity plans. Trade unions were once part of the problem – today they are an essential part of the solution' (Hepple, 2014:10).

*Names have been changed to preserve anonymity

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Disability hate crime: status quo and potential ways forward

Dr Armineh Soorenian

In recent years abuse generally and disability hate crime specifically against disabled people is reported to have reached a record high in England, Wales and Northern Ireland (Clark, 2012; BBC News, 2012; Wheeler, 2015). Concurrent to this, under the British Coalition Government's 'Reform for Welfare Provisions', disabled people have faced the perfect storm of cuts to welfare benefits, legal aid and support for domestic abuse. As such cuts in disability benefits were announced in 2010 and the Government implemented these through the House of Lords in 2012.

The resulting feedback loop between politics, media coverage and public attitudes has been explained by Baumberg et al. (2012), suggesting that the Government's flagship Welfare to Work policy has created an atmosphere of hatred and violence towards disabled people representing them as 'cheats' and 'benefits scroungers':

> … outlandish slurs against benefit claimants as a group have become an accepted part of the political language, and the default setting for public attitudes is widely seen as one of suspicion and resentment (Baumberg et al., 2012).

In an article by Boffey, (2011), Jaspal Dhani, chief executive of the United Kingdom Disabled People's Council, asserted:

> The language portrays disabled people as scroungers, as lazy – a drain who are not playing their part and making a contribution. It has led to an increase in hate crimes against disabled people, victimisation and reinforcement of very old stereotypes and prejudices…

Such climate of imposed hopelessness and disenfranchisement provides fertile grounds for disability hate crimes to flourish.

Disability hate crime has been defined as 'Any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's disability or perceived disability' (Association of Chief Police Officers, 2015). Perceptions of vulnerability and of threat can also motivate acts of targeted violence against disabled people (EHRC, 2009). The statistics, released by the Crown Prosecution Service (CPS), showed that 4,000 cases have been reported since the offence was introduced in 2007 (Wheeler, 2015). Cases included verbal abuse, kicking a guide dog, attacks on cars displaying the blue badge (allowing their owners with mobility impairments to park near their destination), setting fire to a wheelchair, and the more recent phenomenon of cyber bullying. Within the disability community, people with learning disabilities and/or mental health issues experience higher levels of targeted violence (EHRC, 2009). Wheeler (2015) reported that in 2014 574 disability hate crime cases were recorded, compared with 183 in 2007/8, trebling the prosecutions for this category of criminal offence. Home Office statistics indicate 1,841 police reports of disability hate crime in 2012/13, with 810 incidents going to court, leading to 349 convictions, however only seven of these resulted in an increased sentence with the victim's impairments being considered an aggravating factor (Fox, 2014). That said, according to Stephen Brookes from the UK Disability Hate Crime Network and Disability Rights charity, the figures for disability hate

crime cases are probably much higher than that reported so far (Wheeler, 2015).

Despite this, voluntary organizations, including some disability charities, fear that the support available to disabled victims and survivors of violence may be reduced (Stephenson and Harrison, 2011). The situation has worsened in some parts of the country where funding for domestic abuse refuge services and rape crisis has been cut. Disability charities and Justice Select Committee MPs have also argued that the Government's plans to cut civil legal aid for welfare benefits, unemployment tribunals and debt advice will exaggerate disabled people's difficulties to appeal a decision about recourse to justice (UK CEDAW Working Group, 2013).

The police and CPS are facing budget cuts and officers are often inadequately trained in terms of professional and personal attitudes with regards to disability issues, leading to a lack of competency when dealing with disability hate crimes. Indeed in 2014, former director of public prosecutions Ken MacDonald criticised the police and CPS for regularly overlooking the severity of disability hate crime, despite 'lots and lots of cases involving disabled people being abused, injured, or murdered' (Wheeler, 2015). He stated that police were failing to recognise that abuse of disabled people constituted a hate crime, which meant perpetrators were not necessarily receiving increased sentences. Lord MacDonald has referred to disability hate crime in terms of a 'scar on the conscience' of the criminal justice system (CJS) (Fox, 2014).

Complaints have also been reported about police officers and control-room operators being 'too sensitive about causing offence', to the extent that they are reluctant to ask victims if they are 'disabled' (Daily Express, 2013). An appropriate support system does not appear to be in place to assist disabled victims from the point where they report the crime through to presenting

the case at court (BBC, 2013). There is also a lack of communication and working partnership between relevant agencies resulting in limitations and confusion in the way victims are dealt with. Prosecutors often fail to obtain enough evidence from the police (particularly about crimes against people with mental health issues (Mind, 2007), to be able to make informed identification and analyses of disability hate crime offences (BBC, 2013).

In general there seems to be a tendency for people in positions of authority to dismiss or ignore complaints of assault or abuse made by disabled people, regarding them as unreliable witnesses (Sherry, 2000). Considering that police must have some discretion in determining what criminal matters have sufficient prospects of success, many police officers are reluctant to pursue allegations where the main witness is a person with a learning difficulty and as a result these allegations often go without being investigated. Even when investigated, it is well documented that those who commit hate crimes against disabled victims are often given lighter sentences than others who commit similar offences against non-disabled people (Sherry, 2000). For Mark Sherry (2000), this highlights that crimes against disabled people are perceived to be less important. And according to Williams (1995, p. 111) offenders against the general public are 'criminals' whereas those who victimise people with learning disabilities are simply 'abusers.'

Additionally, information about existing help may not be readily available in accessible formats, and many refuges are inaccessible for disabled people, lack interpreter services for deaf people, or cannot accommodate people who need assistance with daily living activities or medications (Baker, 2011). Those victims who leave their registered address also risk losing their access to welfare benefits, personal assistants and other support networks crucial to independent living, and may feel further isolated.

Furthermore, despite claims that 'all CPS Areas and CPS Direct [have] implemented a disability hate crime action plan to improve

performance and engagement with disabled communities' (CPS, 2012, p. 24), there are still a variety of reasons why disabled people are less likely than their non-disabled peers to find justice. For example, past experiences with the CJS, the institution's unfamiliarity and lack of awareness with regard to human rights, and feelings of post-attack humiliation, and fears of retaliation potentially underscore disabled people's human rights (Sin et al., 2009). Disabled people's access to the justice system is also reported to be limited due to access, procedural and attitudinal barriers (Papworth Trust, 2011). Disabled victims still feel that their reports are not taken seriously or acted upon, and under-reporting is a significant concern (Daily Express, 2013). In some cases being treated as if they are the perpetrators themselves (EHRC, 2009). The HMIC, HM Crown Prosecution Service Inspectorate (HMCPSI) and HM Inspectorate of Probation (HMIP) review found victims of disability hate crime are being let down by the CJS at every stage of the judiciary procedure (Daily Express, 2013). It is not surprising then that fewer disabled individuals regard the CJS as fair (57% as opposed to 6% of non-disabled people) (Papworth Trust, 2014).

Sherry (2000) argues that unfortunately silent acceptance of violence and abuse of disabled people has become more commonly practised compared to activism against it, and disability hate crime is rife in the community. Specifically, disabled people in institutional care settings can be rendered extremely powerless; which together with their invisibility subjects them as easy targets for mental, physical and sexual abuse. More importantly, there is historically an 'insidious institutional culture' within these care settings which has stifled and discouraged the reporting of such hate crimes (Sherry, 2000). All this forces many disabled people to stay in harmful relationships and endure physical, sexual and/or financial abuse, which can exacerbate the existing discrimination against disabled people's human rights.

It is clear that these regressive moves with regard to welfare provision drastically undermine the British Government's legal obligation to the UN Convention on the Rights of Persons with Disabilities (CRPD). Disabled people have expressed fear about leaving their homes because of accusations of being benefit frauds and of physical threats, especially on days when the tabloid press runs anti-disabled stories (Glenelg, 2012). The climate of fear is impacting on disabled people's feelings of security and safety, which in turn contributes to their social marginalisation and victimisation. This violation of rights to liberty and security, and denial of their independent living contradicts with the Article 14 of the CRPD, which stipulates:

States Parties shall ensure that persons with disabilities, on an equal basis with others:

a. Enjoy the right to liberty and security of person;
b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Additionally, in Britain, various pieces of national legislation, policies and plans, specifically the Equality Act 2010 provide a legal framework where disability issues have gained equal footing claims to that of discrimination of other civil rights concerns such as those related to gender, sexual orientation and ethnicity. These acts protect disabled people's rights and advance their equality of opportunity. However, prevalence of anti-disability hate crimes, problematic media representations, combined with disabled people's unequal status with regards to legal matters not only violates national legislation but is in breach of the following articles of CRPD:

> Article 5: States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
>
> Article 12: States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
>
> Article 13: In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Hate crime legislation is a valuable step in defending the rights of disabled people to ensure that perpetrators are appropriately punished. It is equally important nevertheless to remove the systemic issues which create a climate where such crimes can thrive, and to develop a system that facilitates appropriate responses for disabled victims when hate crimes occur. In order to comply with legislation and enhance disabled people's equal opportunities before the law, I will in the next section share some insights that would improve disabled people's experiences of CJS and contribute to their equal involvement in juristic procedures.

Improving justice for disabled people

In the first instant change in attitudes is vital in creating a just society. Ending segregation and institutionalisation is significant to ensure that disabled people are not at risk of abuse and discrimination. By celebrating human diversity and respecting everyone's dignity steps can be taken in this direction.

Through effective legislation and policies cases of violence, exploitation, and abuse against disabled people must be identified, fully investigated and appropriately prosecuted. Tackling

disability hate crime should be imbedded in future plans and resources of all institutions.

Disabled people's awareness and use of existing and emerging legislative instruments to seek redress against the experience of targeted violence are inconsistent across the board (EHRC, 2009). In respect to the judicial system, disabled people need to be aware of their statutory rights; hence education and raising awareness about disabled people's rights must be addressed to ensure an equal justice system. There also needs to be increased independent advice, safeguards and advocacy support for disabled people in the processes involved in reporting hate crimes. Empowering disabled people through abuse prevention programmes to resist hate crimes is essential in reducing the chances of further victimisation. These programmes must work on improving disabled people's personal safety skills and increase self-esteem and assertiveness.

The development, implementation, and training on issues of disability equality in the CPS should also be proactively promoted and brought into the prosecution and police practices as part of the mainstream, with regular monitoring in place. The joint review of disability hate crime (prompted by the case of Fiona Pilkington) suggested that the three agencies of police, probation and CPS should implement effective training for front-line staff on disability hate crime (BBC, 2013). Disabled people, who are the real experts on hate crime, must be consulted and involved in the development of these trainings from the stage of inception to delivery. Disability hate crime should have a higher priority with the work of probation trusts (BBC, 2013). Staff must be trained in recognising signs of possible abuse, learning about standard protocols for reporting abuse, and ways of responding to cases of abuse. Staff who report abuse must be supported at all times.

The joint review of disability hate crime also proposes the adoption of a 'single, clear and uncomplicated' definition

of disability hate crime to reduce confusion (BBC, 2013). Recognising that victim personal statements have a significant role in justice and sentencing hate crimes, the review called for police to encourage victims of the crime to come forward to prevent under-reporting remaining a 'significant concern.' A Victim Support must work to secure full access and diversity of needs. To achieve this 'pan-equality' approach can help further understanding of multiple identities and multiple discriminations (EHRC, 2009).

Both services and information for victims must be made accessible to disabled people with a range of impairments. This must guarantee their access to redress and protection. Domestic violence shelters can improve their accessibility and ability to address the needs of disabled victims. Personal safety, advice and help must be available in a range of formats to accommodate a variety of needs.

In high risk areas, resources should be provided for a higher police profile. This may include the provision of community police support officers and a mobile police office making regular visits to the disabled residents, on their request. Finally it is important to gain the co-operation of local groups, including the local supermarket and their security staff. In this way joint funding and operating initiatives such as utilising CCTV cameras becomes affordable.

Disabled people are more likely than non-disabled people to experience hate crimes (Sherry, 2000). As literature demonstrates perpetrators are more likely to receive leniency in sentencing if the offence is against disabled people. Disabled victims need to gain confidence in the judicial system in order to be able to report abuse. Police and prosecutors should equally feel empowered to charge and sentence criminals who perpetrate disability hate crime. It is hoped that the insights above will contribute towards equality and human rights agendas, stimulating

debate on policy and legislation in the field of access to equitable justice and equity before the law and to have longevity beyond the next election.

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Needed more than ever: the journey of the Wolverhampton Equality and Diversity Forum

Martha Bishop, Polly Goodwin and Dr Ruth Wilson

In 2014, the Wolverhampton Equality and Diversity Forum carried out an evaluation of the organisation and its work. This paper builds on the evaluation findings to show why the Wolverhampton Equality and Diversity Forum is indeed 'needed more than ever'.

Context

The Wolverhampton Equality and Diversity Forum (WEDF, or the Forum) brings together representatives from voluntary and community organisations (VCOs) supporting a range of protected characteristics and currently has 33 members.[1] Equality officers from the Local Authority attend the Forum regularly and a range of other statutory bodies have also been represented at least once at meetings.

The evaluation engaged 27 people from 17 organisations from across the voluntary and statutory sectors that responded to an online survey and/or took part in focus groups and interviews.[2]

This quote from an interviewee as part of the evaluation of the Forum encapsulates the tone of the evaluation findings:

> *I do think it makes a huge difference to community cohesion, breaking down barriers between protected characteristics.*

> *For instance [the WEDF representative] from the Inter Faith Network walked with [the general manager of LGBT Network] at Pride. I think that's huge.* (WEDF member)

While there's still work to be done, WEDF has found a way to bring a number of single interest groups together, creating mutuality of purpose and building trusting relationships that have formed the basis of joint approaches to shared concerns. Evaluation interviewees talked about how important it had been to move participating organisations and their representatives from a 'my need is greater than yours' mind set to the realisation that many groups and individuals experience barriers and that while experiences may be personal and different many of the barriers are the same.

As one interviewee commented:

> *The Forum's strength is that there is no hierarchy of protected groups. The ethos and philosophy of the group is that all members work together* (Statutory sector representative).

The journey

The journey began in 2010 when the Forum was established to:

- promote dialogue and understanding between organisations and between organisations and individuals representing local people who share protected characteristics covered by the Public Sector Equality Duty (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation) introduced by The Equality Act 2010.
- ensure that debate around policy and service provision in Wolverhampton takes into account the cross-cutting nature of equality issues.

Established by Wolverhampton Network Consortium (WNC), the Forum grew from work funded by the Working Neighbourhoods Fund supporting under-represented groups. During the last year of this funding an Equality and Diversity worker was appointed and set up what the 'Communities of Interest' group, which became the WEDF.

In October 2013, WNC closed down. At this point WEDF was at risk of closure, however there was a strong commitment from member organisations to continue, particularly given that funding (albeit limited and short term) from the Council was available. Members decided to find a way to continuing working as a Forum and agreed to appoint a member organisation to facilitate WEDF. Expressions of interest were called for, and two member organisations were interviewed with a view to taking over the administration of the Council-funded equality project in the short term, and also the facilitation of the Forum for the foreseeable future. LGBT Wolverhampton was selected to fulfil this function and started servicing the Forum in December 2013.

Appointing LGBT Wolverhampton to facilitate the group demonstrates how far WEDF member organisations have moved forward in terms of building trust and working collaboratively rather than competitively. As one interviewee commented:

> *It shows that they've got trust in one specific under-represented protected characteristic group. Whereas the reason [WNC] came on board, was because people would say 'I'm not having* ***them*** *run the equality and diversity forum, or I'm not having* ***them****... LGBT Network have got a fabulous web of systems in place, they've got a good reputation. So I think that's had a massive impact, that's an achievement in itself* (WEDF member).

There is evidence to suggest that the Forum is now building an identity that is greater than the individual organisations and that

members are actively engaging as ambassadors for the Forum. For example one member organisation representative now attends the Children's Trust Board as the representative of the WEDF, whereas previously there was a representative of an organisation focused on race equality.

Critical success factors

The evaluation identified four critical success factors that have facilitated the transition from a number of disparate groups with little in the way of shared goals to a Forum with a mutuality of purpose that aspires to support each other and speak with one voice, lobbying service providers and policy makers to build equalities and human rights into their decision making processes.

1. Building Capacity:

One of the key features of the WEDF has been the way that larger and more established organisations have supported smaller and newer groups and helped them to build capacity through networking and through joint activity. Networking at the meetings enables member organisations to share skills and information, for example opportunities to bid for funding. Between meetings, Wolverhampton LGBT Network consider that part of their role as facilitators of the Forum is to put people together who are in a position to help each other, when appropriate.

In the past support for small VCOs was very much part of WNC's brief. One key example of this was Wolverhampton LGBT Network, which existed in a small way before but without a high profile within the city. WNC helped them to build their own capacity and skills, and supported them to bid for funding for a paid worker. The organisation has established itself, has just successfully organised Wolverhampton's third annual Pride and is now in a position to support and build the capacity and skills of other organisations through their facilitation of the WEDF.

This is the model of support for small VCOs that the Forum is keen to continue.

2. Training opportunities

As well as informal capacity building through small organisations working alongside larger more established ones, there has been support provided through formal training sessions. The most extensive training was the two day equality and diversity training the trainer course, which was attended by representatives from 28 organisations.

Small organisations have also received:

— Safeguarding training
— Support with governance
— Confidence building training

Chairing of WEDF meetings is now conducted according to a rolling programme; this is a further example of how skills are being developed.

3. Building trust through increased knowledge and experience

Perhaps the most important way in which the Forum has had an impact on individuals attending meetings, and thus indirectly on member organisations, is through the informal training and awareness raising that has taken place as people have come to understand more about each other's issues and concerns. Individual members have learned about barriers faced by other individuals and groups who work with people who share a different protected characteristic.

Comments from 3 WEDF members included:

> *The WEDF has opened my eyes.*
>
> *I think my own awareness has been raised by coming to WEDF meetings.*
>
> *I'm able to make more people aware through the Forum of the issues the children and young people I work with face-to-face.*

This individual learning has allowed people attending meetings to recognise that a lot of the barriers faced by the people their organisation chiefly deals with are the same for other groups. This has led to a much more co-operative approach, as the different communities of interest have come together to look at equalities in the City in a more holistic way.

> *Largely the axes to grind have been put aside* (Statutory sector representative).
>
> *[The WEDF is doing a] good job of beginning to create this 'us' rather than nine separate communities of interest* (Statutory sector representative).
>
> *Getting them all sitting around a table to stop all the 'my need is greater than yours,' and to realise that OK, you've got barriers, they're probably different barriers to the women's network or they're probably different barriers to the BME network, but do you know what? If you look at them, a lot of the barriers are the same* (WEDF member).

> This gradual change within the Forum has involved building trust between the different member organisations. An example given by one interviewee was that Women of Wolverhampton (WOW) are working on increasing involvement of women in politics, and when the LGBT Network cascades information about this work through to all their groups they are able to feel confident that if lesbian, bi or trans women get involved as a result WOW will be welcoming to them.

4. Involvement of statutory sector

One of the important aspects of the WEDF is its relationship with the statutory sector. As the Forum has matured, the Local Authority has responded by taking a facilitative and enabling approach, while the WEDF remains a community- led initiative. Member organisations see it as an opportunity to have an impact on the statutory sector in terms of raising awareness of equality and diversity issues in service provision and building consideration of equalities into policy and decision making. Statutory bodies see it as an opportunity to engage with a range people from under-represented groups at the same time.

Having a Forum representing the full range of protected characteristics can clearly be useful for statutory bodies in terms of being a cost-effective means of consultation, but it also potentially raises the level of the discussion in terms of people having an opportunity to consider issues from a number of different perspectives and in more depth.

What has changed because of the Forum?

As well as providing a useful network and consultative body, various pieces of cross-cutting work have been, or are being carried out by the WEDF. Brief descriptions of two are included here as examples of the impact of the Forum.

1. Mystery shopper initiative

One of the activities carried out by the WEDF was some work with the City Council (WCC) to determine how accessible front line services are for people newly arrived in the country who do not have English as their first language. This involved setting up a panel of WEDF members working with Local Authority officers to consider possible barriers. This panel attended the City Direct call centre to familiarise themselves with the work of the department. A 'mystery shop' of City Direct Services was then organised involving 31 people from Wolverhampton's Albanian, Romanian and Roma communities. The mystery shoppers enquired about a range of issues such as housing, schools and benefits.

They were then asked:

— how they felt they were treated generally?
— what went well?
— what problems they encountered?

Findings reported by mystery shoppers:

— Overall they felt they were treated well by WCC staff.
— Some issues were picked up around translation and interpretation services.
— They were unaware of services offered by City Direct.

After feedback and discussions with WCC the following measures have been taken to address issues identified:

— Staff now walk the reception area with an electronic tablet with on screen translation.
— Equality and diversity training is now undertaken with all WCC front line staff.

— WEDF has supplied City Direct Services with information to support understanding of the PSED.
— A manager from Direct Services led a workshop at the WEDF conference in June 2014 on ensuring minority groups are aware of services provided by WCC's Direct Services.

Interviewees and participants in the focus groups, both public and voluntary sector, felt that this initiative had had an impact.

2. Council firewalls

Another example of a cross-cutting piece of work was the setting up of a working group to look at barriers reported by WEDF members that people were experiencing in accessing information and resources on the internet in, for example, schools. This involved WEDF members working with local councillors.

The issue identified was that WCC protection in terms of computer firewalls resulted in limited access to certain content, and this included services relating to domestic violence, sexuality and gender identity.

The outcome of this work was that WCC adjusted their computer firewalls to ensure people could access support information for domestic violence and LGBT issues. Further discussions were then held with library services, who also altered their firewalls so that these barriers were removed and people are now able to access the support they need in public libraries.

Challenges for 2015 and beyond

In the focus groups, interviews and survey people were asked for their views about what the priorities of WEDF should be in the future. Seven key themes emerged:

1. Joint work on specific cross-cutting issues

There was general agreement that work on cross-cutting issues, for example hate crime, had been successful in the past and was something people felt should continue.

A key area at the moment, both for EDF member organisations and statutory sector partners, is cuts to services due to austerity measures. From the point of view of the statutory sector this is an area in which they are keen to work with the Forum, to make sure that when services are cut particular vulnerable groups are not disadvantaged more than others. From the point of view of EDF members they are also keen to make sure the adverse impact of cuts in services on the communities they represent is highlighted and kept to a minimum.

> *Managing the financial times going forward is incredibly difficult. We've got a huge task consulting with our community and making sure that the difficult decisions that we make are perhaps the least worst decisions, if that makes sense* (Statutory sector representative).

> *There's more need now to keep the Forum going than ever. Because every day the services are going, people are becoming more vulnerable. There's more barriers being created, there's fewer opportunities for people, there's less jobs, there's more discrimination. Everything's happening because the services are cut… I think they're going to be needed more than ever* (WEDF member).

2. Fostering good relations

Another area which WEDF members felt would be productive was in supporting events organised by member organisations. As mentioned earlier several groups other than the LGBT Network had recently taken part in the Wolverhampton Pride march.

A forthcoming Youth Arts festival was mentioned as a future opportunity for organisations to collaborate. There was general agreement that events such as these are opportunities to celebrate diversity, and have an impact on community cohesion.

3. Relationship with the statutory sector

The relationship between WEDF and the statutory sector is absolutely key to the future success of the Forum, if it is to move beyond being a useful network for members and increase the impact it is having on promoting equalities across the City.

Two main approaches emerged about how this relationship would be most productive. The first of these was the Forum acting as a consultative body. This was particularly seen as important by the statutory sector in three ways:

1. Consultation related to the financial crisis
2. Consultation on new initiatives
3. Scrutinising public bodies about equalities practice in specific areas

The second approach was around the role of the Forum in influencing and shaping an agenda in terms of promoting the building in of equalities at an early stage of policy development and decision making.

4. Representation on the Forum

A key strength of the Forum is that it comprises groups and individuals representing all of the protected characteristics. This is WEDF's unique selling point. The more representative of different communities it is, the stronger it will be. So maintaining the breadth of representation is really important, both to members of the group and to statutory sector partners.

5. Capacity building

One of the features of WEDF that people valued and would like to see continue is capacity building within smaller organisations, supported by the larger and more established members of the Forum.

> *It has helped so many people, I like that it focuses on the people that need it and tries to make a real practical difference. A few examples are: recently supporting the Eastern European Roma Community; it helped a small group of French speaking African Women set up their group; it supported LGBT Network when no one else did* (Survey respondent).

6. Funding

Funding is a huge issue for both VCOs and statutory bodies at the moment. People realised that while it would be possible to keep WEDF going for another year on existing money in terms of running costs, in order to move forward, carry out the kind of work they would like to and ensure the Forum is representative of all groups, they will need to generate income in some way.

7. Planning and prioritising

One area where there was a lot of agreement was about the need for WEDF to allocate time for strategic planning, agree on its priorities and draw up an action plan or business plan for the next few years. One focus group participant commented that this is a good time to have a review and planning session, at a time when the external funding has run out so the Forum is not tied to any particular course of action because of the funding conditions.

References

1. See Table 1.

2. www.edfwolves.org.uk/uploads/3/0/2/4/30245599/edf_evaluation_final_report_2014.pdf

Table 1: List of member organisations and protected characteristics

	Age	Disability	Gender reassignment	Race	Religion or belief	Sex	Sexual orientation	General support to all groups
Access to business		■						■
Age UK	■							
African Women of Substance						■		
Albanian community representatives				■				
Anwen Muston, trans activist			■					
Aspiring Futures				■		■		
CAATS								■
Czech Republic community representatives				■				
Druids of Albion					■			
Ethnic Minority Council				■				
EYES	■			■				
Gender Matters			■					
Gloucester Street Community Centre	■			■				
Healthwatch		■						■
LGBT Network Wolverhampton			■				■	
One Voice		■						
Over 50s Forum	■							
Lithuanian community representatives				■				

	Age	Disability	Gender reassignment	Race	Religion or belief	Sex	Sexual orientation	General support to all groups
Polish community representatives				■				
Positive Participation				■		■		
Refugee and Migrant Centre				■				
Romanian community representatives				■				
Slovakian community representatives				■				
The Haven						■		
TLC College								■
Wolverhampton Credit Union								■
Wolverhampton Domestic Violence Forum							■	
W'ton Interfaith & Regeneration Network					■			
Women of Wolverhampton						■		
X2Y Youth Group	■		■				■	
Youth of Wolverhampton	■							

Statutory organisations who have attended:

NHS, Police, Royal Wolverhampton Hospitals, Wolverhampton City Council, Wolverhampton Homes, WCC equality officers and WCC Equality Champion.

Biographical notes (abridged) of contributors

Asif Afridi is Deputy CEO at brap, a national equality and human rights advisory organisation based in Birmingham and a trustee (Vice Chair) of the Equality and Diversity Forum. Asif is a published researcher focusing principally on issues of human rights and equalities. Before joining brap he worked with the European Commission in China and Belgium in the field of human rights. Recent published research work has focused on issues of: deprivation; social networks; social cohesion; inequalities in political representation; and regulating for human rights protection in the UK.

Dr Karen Bell is a researcher at the University of Bristol working on poverty, social exclusion, environmental justice and human rights. She was formerly a community development worker, working on equalities and inclusion issues. She has produced a number of papers and books on these topics, including a monograph *Achieving Environmental Justice* (Policy Press, 2014).

BEMIS is the national Ethnic Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland and the communities that this sector represents. BEMIS' vision is of a Scotland that is equal, inclusive and responsive: A society where: people from the diverse communities are valued, treated with dignity and respect; have equal citizenship, opportunities and equality of life; and who actively participate in civic society.

Fran Bennett works half time in the Department of Social Policy and Intervention, University of Oxford, as a senior research and

teaching fellow, with a focus on social policy, including gender issues, social security policy, and poverty. She is also an independent consultant, writing on social policy issues for the UK government, NGOs and others, and one of the UK's independent experts on social policy for the European Commission. She is an active member of the Women's Budget Group. Fran chairs the editorial board of the *Journal of Poverty and Social Justice.* She has previously worked for the Child Poverty Action Group and as policy advisor on UK/EU poverty issues for Oxfam GB.

Martha Bishop is Chief Executive of LGBT Network Wolverhampton, the organisation that now facilitates and supports the Wolverhampton Equality and Diversity Forum. She has more than twenty years' experience working in support organisations, including Brook and ChildLine. LGBT Network Wolverhampton is a charity supporting LGBT people and groups across the Black Country. Under Martha's leadership the Network has become a respected local organisation providing holistic support services and events for the LGBT community. This includes Wolverhampton Pride, which was established in 2011. LGBT Network Wolverhampton is a community led organisation; services are developed in response to local need.

Sally Brett is Senior Equality Policy Officer at the TUC. She has led the TUC's work on the Equality Act 2010 and union equality representatives. She also oversees the regular TUC Equality Audits which assess how trade unions are promoting equality and tackling discrimination in all that they do. Prior to joining the TUC she worked as deputy editor for diversity and discrimination law at the employment research company, Incomes Data Services.

Dr Sarah Cemlyn is a research fellow at Bristol University, and former social work lecturer. Her research focuses on human rights,

anti-discrimination and inequality, with particular reference to Gypsies, Travellers and Roma, and asylum seekers. She has written widely in these areas, working with NGOs and community groups, including a co-edited volume *Hearing the Voices of Gypsy, Roma and Traveller communities: inclusive community development* (Policy Press, 2014).

Dr Evelyn Collins CBE has been Chief Executive of the Equality Commission for Northern Ireland since March 2000, an organisation with a wide remit under Northern Ireland's equality laws. Evelyn is a law graduate of Sheffield University, and has Masters' degrees from University of Toronto (Criminology) and Queen's University Belfast (Human Rights and Discrimination Law). Evelyn has worked on equality issues since the 1980s, mostly in Northern Ireland but also as a national expert working on gender equality in the European Commission in Brussels. Evelyn is currently Chair of the Board of Equinet, the European Network of Equality Bodies. Evelyn was awarded the CBE in 2008, for services to the public in Northern Ireland. In July 2014, the University of Ulster awarded Evelyn the honorary degree of Doctor of Law (LLD) for her contribution to the promotion of equality and good relations.

Hazel Conley is Professor of Human Resource Management at the Centre for Employment Studies Research (CESR) in Bristol Business School, University of the West of England. Her research focuses on achieving equality at work. Hazel is the co-editor (with Tessa Wright) of *The Gower Handbook of Discrimination at Work* and the co-author (with Margaret Page) of *Gender Equality in Public Services: Chasing the Dream* (Routledge).

Neil Crowther is an independent specialist on equality and human rights, with a particular interest in the rights of disabled people. He works with a wide range of government and non-government organisations in the UK, Europe and Internationally. He previously held the posts of Human Rights Programme Director and Disability Rights Programme Director at the Equality and Human Rights Commission and before that Head of Policy at the Disability Rights Commission. He is a Trustee of the organisation CHANGE which promotes the human rights of people with learning disabilities.

Dr Chantal Davies graduated with a law degree from Oxford University, before qualifying as a solicitor with Eversheds in Cardiff specialising in Employment, Human Rights and Discrimination Law. She then moved on to practice as a Senior Solicitor in Davies Wallis Foyster in Manchester. In 1998, she moved to work as a solicitor for the Equal Opportunities Commission (EOC) in Manchester heading up a Unit tackling strategic and wider enforcement of the gender equality legislation. Whilst working as a solicitor for the EOC, apart from undertaking a number of major legal test cases, she also sat on several European and national bodies. Chantal has been a qualified solicitor for 17 years and her practice has specifically focused on areas of equality law and human rights. Chantal is now a Senior Lecturer in Human Rights Law and Discrimination Law in the Law School at the University of Chester, where she is the Director of the Forum for Research into Equality and Diversity.

Dr Alice Donald is Senior Lecturer in the Department of Law and Politics at Middlesex University. Her research interests include: implementation and impact of human rights, especially in public service delivery; human rights in the UK and Europe; concepts of democratic legitimacy; religion or belief; human rights, poverty

and inequality. She is widely published on the implementation and impact of the Human Rights Act 1998. She is currently co-authoring *Parliaments and the European Court of Human Rights* (OUP, forthcoming).

Dr Moira Dustin is Director of Research and Communications at the Equality and Diversity Forum and coordinates the EDF Research Network. She has a PhD in Gender Studies from the London School of Economics where she is a Visiting Fellow at the Centre for Analysis of Social Exclusion (CASE). Before joining EDF, Moira worked at the Refugee Council, providing advice and information and developing national services for refugees and asylum-seekers. She has worked as a freelance sub-editor on the Guardian and Independent and was the Information Worker for the Carnegie Inquiry into the Third Age. She is a member of the Advisory Committee for the Asylum Aid Women's Project and the Joseph Rowntree Foundation's Poverty and Ethnicity Programme Advisory Network. She was an Impact Assessor for the 2014 Research Excellence Framework (REF).

Dr Deborah Foster is a Senior Lecturer in Employment Relations at Cardiff Business School, Cardiff University. Her research interests include: disability discrimination and employment; gender, employment and work-life balance (in the UK and Asia); trade unions and representation (UK and EU) and regional governance. Recent publications have appeared in the journals *Sociology*, *Work, Employment and Society*, *The International Journal of Human Resource Management* and *The British Journal of Industrial Relations*.

Polly Goodwin is a freelance consultant with extensive not-for-profit and statutory sector experience gained over the last 30 years. She is a partner in Merida Associates, a consultancy that

specialises in working with the public and voluntary sectors, providing specialist support around customer and community engagement, consultation, research, organisational change and development. Polly has a depth of experience gained both as a practitioner, consultant and third sector board member of both creating and evaluating approaches and projects designed to encourage inclusivity and to address issues around equalities.

Dr Beth Greenhill is a Clinical Psychologist, Mersey Care NHS Trust which provides mental health, learning disability and substance misuse services for adults in Liverpool, Sefton and Kirby. She is also a Senior University Clinical Teacher at the University of Liverpool. Beth has been programme lead within Mersey Care for the Department of Health's Human Rights in Healthcare programme and has published widely on the development of a human rights based approach to health and social care, which is central to her clinical practice.

Dr Alison Hosie is the Research Officer at the Scottish Human Rights Commission. Prior to joining the Commission Alison spent over fifteen years researching in the field of health and social policy with a particular interest in young people's right to health care and pregnant and parenting teenagers' right to education. Since joining the Commission she has been involved in creating an evidence base for Scotland's first National Action Plan for Human Rights.

Emma Hutton is Communications and Outreach Manager at the Scottish Human Rights Commission. Emma has nearly fifteen years' experience of campaigning, communications and business development in the third sector, including most recently setting up and running Equally Ours, a UK-wide campaign to

raise awareness of the benefits of human rights in everyday life. In addition to her Communications & Outreach role, Emma co-convenes the Better Culture Action Group for Scotland's first National Action Plan for Human Rights.

Michael Keating is currently freelance. Michael was a senior officer and councillor in Tower Hamlets and the National Adviser for Equalities and Cohesion. He has recently contributed 'Knowing your communities: it doesn't have to be that difficult' to *London the Promised Land Revisited* to mark the twentieth anniversary of the Centre for the Study of Migration at Queen Mary University of London in 2015.

Joyce Mamode is a doctoral researcher at the Industrial Relations Research Unit (IRRU), Warwick Business School. Her research interests centre around equality and diversity at work and trade union renewal strategies. Her research into trade union equality representatives is the subject of her forthcoming PhD thesis.

Faith Marchal is a doctoral researcher at the School of Law, Birkbeck. Her research focuses on slavery and anti-slavery resistance in the United States before the Civil War, particularly the Underground Railroad, which she regards as an early example of grass roots human rights activism in practice. Until 2012 she was an equality adviser in higher education, and later volunteered with the Equality and Diversity Forum Research Network.

Jonathan Portes is Director of the National Institute of Economic and Social Research. Previously, he was Chief Economist at the Cabinet Office, where he advised the Cabinet Secretary, Gus O'Donnell, and Number 10 Downing Street on economic and

financial issues. Before that he was Director, Children and Poverty and Chief Economist at the Department for Work and Pensions. His particular interests include immigration, labour markets, and poverty. He began his civil service career in HM Treasury in 1987. He writes regularly for the national and international press.

Jiwan Raheja the Head of Human Rights Policy and Implementation at the Ministry of Justice until 2012 and was part of the working group that developed the fundamental rights toolkit of the EU Agency for Fundamental Rights (FRA). Now a visiting lecturer of Human Rights Policy and Practice at the University of Roehampton, Jiwan is working with Hackney social care staff on the action research project described in this publication.

Howard Reed is Director of the economic research consultancy Landman Economics. Before founding Landman Economics in 2008, he was Chief Economist at the Institute for Public Policy Research. His particular research interests include labour markets, tax and benefit reform, and inequality. Landman Economics specialises in developing complex simulation models of particular aspects of economic and social policy including the tax-benefit system, the social care system, and the effects of changes to other aspects of public expenditure.

Dan Robertson is currently the Diversity & Inclusion Director at the Employers Network for Equality & Inclusion. He is highly respected as a subject matter expert on workplace diversity & inclusion management, unconscious bias and inclusive leadership. Dan has a particular interest and expertise in the science and application of unconscious bias, leadership decision-making and behavioural economics together with a passion for supporting

executives in turning diversity theory into meaningful change actions. Dan has provided tailored learning on bias reduction, inclusive leadership and diversity awareness to a wide range of organisations based across the globe. His international work has also included a programme with Initiatives of Change (IoC) on diversity and inclusion issues throughout the UK, the USA and Switzerland. From 2003–2008 he worked as an associate lecturer in Inequalities and Diversity Management at the University of Derby.

Dr Muriel Robison's primary area of interest is employment law and human rights, with a particular expertise in equality law. She has researched and published on aspects of British and European law relating to discrimination and equal pay. She is a part-time employment judge and principally combines that role with lecturing in the Law School at Glasgow University and in the Business School at Edinburgh University. She is the former Head of Commission Enforcement at the Equality and Human Rights Commission (EHRC) and former Director of Legal Affairs at the Equal Opportunities Commission in Scotland. In those roles, she represented clients in discrimination and equal pay cases at the employment tribunal, the EAT, the Court of Session, the House of Lords and the European Court of Justice. She also co-edits *Green's Employment Law Bulletin* and provides ad hoc consultancy and training on equality issues.

Dr Armineh Soorenian completed her doctoral study at University of Leeds – Centre for Disability Studies in November 2011. Soorenian is an independent researcher; her interests include inclusive education, disability hate crime, disability arts and representations, and disability and gender. She has contributed to the disability section of the UK Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Shadow

report for the examination of the UK Government by the UN CEDAW Committee in July 2013. To date Soorenian continues researching, publishing and campaigning specifically on disability and equality issues.

Dr Sarah Spencer is a Senior Fellow at the Centre on Migration, Policy and Society at the University of Oxford and Director of its Global Exchange on Migration and Diversity. Sarah is a former chair of the Equality and Diversity Forum, Deputy Chair of the Commission for Racial Equality and Director of Liberty. She has published widely on migration, human rights and equality issues.

Marie Staunton CBE is Chair of the Equality and Diversity Forum. She took up her role with EDF in October 2012. She also Chairs Crown Agents, Raleigh International and the International Broadcasting Trust and is a Trustee of the Baring Foundation. She was UK Independent Member of the Management Board of the EU Fundamental Rights Agency. In the NGO sector, Marie was CEO of Plan until December 2012, UK Director at Amnesty and Vice Chair of their International Executive Committee, before becoming Deputy Director at UNICEF UK. She gained commercial experience as Publishing Director of one of Pearson's companies. As a human rights lawyer she worked with community groups and women's organisations. She started her career with the Simon Community, setting up shelters and hostels for homeless families in England and Ireland.

John Wadham is a solicitor and independent human rights consultant. He previously worked for INTERIGHTS (the Centre for the Legal Protection of Human Rights) as Executive Director, at the Equality and Human Rights Commission as General Counsel, at the Independent Police Complaints Commission as Deputy Chair, and at Liberty, where he was Legal Officer, Director

of Law and CEO. John is a Visiting Fellow and/or Lecturer at Bristol University, the University of Auckland, Kings College London and the University of Leicester. He is the co-author of Blackstone's Guides on: the Human Rights Act 1998; the Freedom of Information Act 2000; and the Equality Act 2010. He is currently consultant expert for the Council of Europe and other human rights organisations.

Dr Ruth Wilson is a freelance equalities consultant, specialising in education. She lives in Birmingham and works mainly in the West Midlands and Black Country. She is a registered member of the Institute of Equality and Diversity Practitioners (IEDP), has been a board member since 2011, and edits the IEDP newsletter. Since February 2014 she has also worked for the British Council's EAL Nexus Project as Website and Resources Co-ordinator. EAL Nexus is a project supporting schools in meeting the needs of children and young people who speak English as an Additional Language (EAL). She is a trustee of X2Y LGBT youth group in Wolverhampton, and is currently acting chair.

Dr Tessa Wright is Senior Lecturer in Human Resource Management at the Centre for Research in Equality and Diversity, School of Business and Management, Queen Mary University of London. Her research focuses on equality and discrimination at work, with a particular interest in gender, sexuality and intersectionality. She is interested in effective strategies to overcome inequality, including legal and non-legal interventions, and the role of trade unions.

Appendix: About the Beyond 2015 project

Beyond 2015: shaping the future of equality, human rights and social justice

The Equality and Diversity Forum and EDF Research Network Beyond 2015 project is the start of a discussion about how to reduce inequality by working more effectively across sectors and disciplines. We began by mapping the UK's progress on equality, human rights and social justice since 2010, before looking beyond the next election to identify the possibilities for the decade ahead. The goal is to bring together decision makers, researchers, service providers and advocates in order to find new ways of improving outcomes through knowledge-sharing and cooperation.

With funding from the Nuffield Foundation and the Baring Foundation, the project consists of a two-day conference that took place in London in February 2015 (hosted by the British Academy), an online portal and this publication.

Setting the scene

2015 is a significant year for the UK, with opportunities but also risks for anyone with an interest in equality, human rights and social justice. Across the United Kingdom, there is a greater appetite for debate about policy and constitutional renewal. This project takes advantage of that momentum but looks beyond immediate election results to think about implementing equality and rights more effectively in the years ahead. Some of the opportunities and risks to consider are:

— Following the general election, there will be new programmes and policies with significant equality and human rights implications.

— In 2015, the Government will carry out a post-implementation review of the Equality Act 2010, including of the public sector equality duty.
— Also in 2015, the Equality and Human Rights Commission will publish its five-yearly review on the state of equality and human rights in Britain, asking 'Is Britain Fairer?'
— The post-referendum Scottish devolution agenda is likely to lead to changes in the equality and human rights infrastructure of the United Kingdom.
— The 2013 consultation on the future of the European Convention and Court of Human Rights and the UK Balance of Competences Review programme may have implications for European human rights mechanisms.
— And finally, 2015 is the 800th anniversary of Magna Carta – a symbolic landmark in the rule of law and a good time to explore where we're going.

As a first step in addressing these phenomena and thinking about the connections between them, the Equality and Diversity Forum (EDF) and EDF Research Network are engaging with partners from across the UK to ask what we know about changing outcomes for disadvantaged individuals and communities since 2010, before exploring how equality, human rights and social justice research, policy and NGO sectors can work together more effectively in 2015 and after?

Objectives

The project's remit is UK-wide. While recognising that detailed analysis of equality and human rights agendas in each of the four nations is beyond its scope, we will draw comparisons in key areas. The focus is on the impact and knowledge transfer to be achieved by bringing together academic and other researchers, policymakers and representatives of civil society organisations.

The project seeks to bridge agendas, sectors and disciplines and address the disconnections between different areas of policy and legislation in order to better equip the voluntary sector to tackle discrimination and disadvantage

The project has immediate and longer term objectives. In the short term, it will map progress, stimulate debate and critically assess the frameworks we use to think about inequality and disadvantage. In the longer term, we hope the conversations at the conference, publication material and online resources will inform UK and European equality, human rights and social justice agendas in the coming decade.

Conference, publication and online resources

The Beyond 2015 conference on 12 and 13 February brought together expert speakers and innovative thinking from research, NGO and policy circles around the UK. Following the event, an online resource with links to conference material and a wider range of contributions was developed and is a work in progress.

This publication – a collection of papers on the project themes – is available in printed and online formats. Finally, a special issue of the Journal of Poverty and Social Justice has been commissioned for publication in early 2016.

Project management

The project is co-ordinated by Dr Moira Dustin, Coordinator of the EDF Research Network, and Electra Babouri, EDF Coordinator. It has been supported by a cross-sector and cross-discipline advisory group.

Abbreviations

ACAS Advisory, Conciliation and Arbitration Service

ACPO Association of Chief Police Officers

BAME Black, Asian and Minority Ethnic

BME Black and Minority Ethnic

BIS Department for Business Innovation & Skills

CBI Confederation of British Industry

CEDAW Convention on the Elimination of Discrimination against Women

CIA Cumulative Impact Assessment

CIPD Chartered Institute of Personnel and Development

CJS Criminal Justice System

CoE Council of Europe

CRPD United Nations Convention on the Rights of Persons with Disabilities

CPS Crown Prosecution Service

CQC Care Quality Commission

DCMS Department for Culture, Media & Sport

DH Department of Health

DWP Department for Work and Pensions

ECCAR European Coalition of Cities against Racism

ECHR European Convention on Human Rights

ECNI Equality Commission for Northern Ireland

EDF Equality and Diversity Forum

EDFRN Equality and Diversity Forum Research Network

EHRC Equality and Human Rights Commission

EIA Equality Impact Assessment

ENEI Employers Network for Equality and Inclusion

EU European Union

FRA Fundamental Rights Agency (European Union Agency for Fundamental Rights)

GEO Government Equalities Office

GLA Greater London Authority

HMCPSI Her Majesty's Crown Prosecution Service Inspectorate

HMG Her Majesty's Government

HMIP Her Majesty's Inspectorate of Probation

HMT Her Majesty's Treasury

HRA Human Rights Act 1998

HRBA Human Rights Based Approach

ICC United Nations International Coordinating Committee

ICCPR International Covenant on Civil and Political Rights

IDeA Improvement and Development Agency

IPCC Independent Police Complaints Commission

JAC Judicial Appointments Commission

JCHR Joint Committee on Human Rights

KPIs Key Performance Indicators

LCF Living Costs and Food Survey

LGBT Lesbian, Gay, Bisexual and Transgender

LLSI Limiting Long-standing Illness

MOJ Ministry of Justice

NDPB Non-Departmental Public Body

NGO Non-Governmental Organisation

NHRI National Human Rights Institution

NHS National Health Service

NI Northern Ireland

OFMDFM Office of the First Minister and Deputy First Minister

ODA Olympic Delivery Authority

PAC Public Accounts Committee

PSED Public Sector Equality Duty

SHRC Scottish Human Rights Commission

SNAP Scotland's National Action Plan for Human Rights

TUC Trade Union Congress

UNESCO United Nations Educational, Scientific and Cultural Organization

UPR Universal Periodic Review

VCO Voluntary and Community Organisations

WAG Welsh Assembly Government

WBG Women's Budget Group

WEDF Wolverhampton Equality and Diversity Forum

WiC Women in Construction

WNC Wolverhampton Network Consortium

WOW Women of Wolverhampton

WSPU Welsh Social Partners Unit

About the Equality and Diversity Forum
The Equality and Diversity Forum (EDF) is the network of national organisations committed to equal opportunities, good community relations, respect for human rights and an end to discrimination. EDF builds the capacity of the voluntary and community sector to advance equality and human rights; informs policy and practice to help make a reality of equality and human rights; and builds support for equality and human rights by influencing public debate.
www.edf.org.uk

About the Equality and Diversity Forum Research Network
The Equality and Diversity Forum (EDF) Research Network is a multi-disciplinary equality and human rights network bringing together academics, policy makers, NGOs and funders to inform and improve UK policy and legislation.
www.edfresearch.org.uk