

The Impact of the Formal Equality Stance on Institutional Processes and Legal Compliance in Higher Education. (0134)

Melanie Crofts

University of Northampton, UK

The aim of this paper is to discuss the *impact* of the politics and perceptions relating to equality on compliance with legislative requirements as reflected through the equality processes within a case study institution. Such an analysis could have wider implications on how equality and compliance with the law is dealt with in other Higher Education Institutions (HEI).

### **Methodology**

The main methodological tools used were Document Analysis and Content Analysis. The aim of analysing the documentation was to provide both an historical and developmental overview of equality processes and outcomes at the case study institution to consider both the gap between the law and practice as well as the impact of the law limitations.

### **Theory**

#### *Gap and Impact Studies*

Gap studies emphasises the disparity between 'law-in-books' and 'law-in-action' as articulated in 1910 by Roscoe Pound.<sup>1</sup> The consideration of the 'law in books' as opposed to the 'law in action' which will be conducted in this paper does not correspond exactly to Pound's view but will still provide useful concepts to assist with the analysis of the implementation of the Public Sector Equality Duties (PSEDs) as reflected in equality processes in the case study institution.

Impact Studies "aim to help us to understand more about the effect of particular interventions... the general lessons of such studies are that interventions are unlikely to be effective where there is a lack of consensus in support of the law and/or where the costs of compliance are higher than the costs of non-compliance."<sup>2</sup> So although there will be a consideration of the gap between the requirements of the PSEDs and its application within a case study setting, there will also be an analysis of the effect or 'impact' of the PSEDs, via a consideration of the institutional processes, within a higher education setting in order to assess whether the law is effective.

#### *Critical Race Theory (CRT)*

Although Gap and Impact Studies provide a useful mode of analysis which explores the dynamics of the law, they do not attempt to explain *why* there is a gap between the legal requirements and practice or *why* there may be a particular impact, or lack of impact. The main underpinning theory which will be used to do this is CRT.

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

2 Brownsword, R (2006) 'An Introduction to Legal Research' [www.wellcome.ac.uk/assets/wxt030897.pdf](http://www.wellcome.ac.uk/assets/wxt030897.pdf) (accessed 19/02/08) p20

If one were to sum up CRT it might be described as a framework which allows for an examination of the role and effects of race and racism on a society which favours White supremacy.<sup>3</sup> CRT situates race as the primary factor of oppression.<sup>4</sup> Instead of principally an analysis of legal doctrine, or the law in books, CRT is sufficiently flexible to provide a framework within which the 'law in action' and importantly the potential gap between what the law says and what actually occurs, can be analysed.

### **Findings: Assessing Equality Processes**

The aim of this section of the paper is to consider the processes and structures which have been used at the case study to allow equality and diversity to be discussed, disseminated and dealt with throughout the case study institution. It is suggested that looking at the governance structures which are in place can help to determine the priority which is given to equality matters, in particular race and disability, as well as considering where decisions are taken and by whom. Looking at the committee structures within the case study institution can provide a useful insight into the commitment which management has suggested exists at the case study institution. Similarly, considering the changes in the role of the EDO can also provide useful insights into the priorities and commitment to equality.

It is suggested that in relation to the governance and committee structures relating to equality and diversity, there was a slow but purposeful erosion of the role and function as well as a downgrading of equality and diversity within the processes at the case study. This started with the abolition of committees with membership consisting of governors and chaired by Vice Chancellor, to one committee chaired by the Pro-Vice Chancellor, then Chaired by an Executive Head of Faculty, to no specific equality and diversity committees within the governance structure.

Following the appointment of a new Vice Chancellor at the case study institution, there was a reorganisation of both the management structures, committee structures and later the non-academic Departments at the case study institution. In June 2011 a consultation paper was circulated which outlined the proposals for a restructure and invited responses to the proposals. The rationale for the restructure was set within the context of a changing higher education sector, such as the introduction of student fees, changes in immigration policy as well as the economic downturn and higher running expenditure. This meant that "we need to manage our staff costs."<sup>5</sup> In addition, "[a] key driver for this proposal to restructure Professional Services is the need to provide the opportunity to reinvest in the University's student experience...."<sup>6</sup> So the context for the

---

3 Hylton, K 'Critical Race Theory: An Extended Introduction' in Pilkington et al (Eds.) (2009) 'Race(ing) Forward: Transitions in Theorising 'Race' in Education' C-SAP Higher Education Academy p86

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

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

6 Ibid. p4

restructure was very clearly based on finances and enhancing the student experience.

Along with the slow demise of the specific equality committees there was a slow erosion of the function of the EDO which eventually culminated in the post being removed altogether. The irony is that the main focus of the restructure was to ensure that the student experience was being enhanced, yet the one aspect which many of the students (and staff) who were interviewed highlighted as a positive element and which enhanced the experience for some groups of students, was removed by the institution.

### **Conclusions**

The findings of this paper suggest that the hypothesis offered by Gap Studies that "there will be some disjunction between the law-in-books and the law-in-action..."<sup>7</sup> appears to have been demonstrated in this case. The legal requirements regarding the PSEDs do not appear to have been adhered to at the case study institution. In addition, conclusions may be drawn when applying the central premise of Impact Studies that "interventions are unlikely to be effective where there is a lack of consensus in support and/or where the costs of compliance are higher than the costs of non-compliance."<sup>8</sup> It is argued that given the view from management at the case study institution that HEIs are liberal meritocratic institutions and equality is inherent in what they do as well as the view that there are not the systematic inequalities as could be observed 30 or 40 years ago and therefore the PSEDs were not seen as necessary, it may not be a surprise that the PSEDs have not been effectively implemented at the case study institution. In addition, as there is very little pressure from organisations such as the QAA and Funding Councils as well as a continued decline in the political importance of the PSEDs (which had begun under Labour but continued at an ever increasing rate by the previous Coalition Government) the cost of compliance with the PSEDs could be said to be greater than the cost of non-compliance as the risk of enforcement action against the institution for non-compliance can be said to have been greatly reduced.

In summary, the findings reflected in the data at the case study institution suggest that the formal equality stance is prevalent. The institutional barriers are not seen by those tasked with implementing the PSEDs because a substantive approach is not adopted. The processes which were established which had the potential of dealing with substantive equality issues were eroded and eventually disappeared altogether. This therefore means that there is no action to address substantive inequalities.

Those in positions of privilege will attempt to maintain their dominance and privilege. It is therefore argued that CRT can provide us with some concepts which are helpful in understanding the data relating to race at the case study institution. In addition, although the focus of CRT is, by definition, on race as the primary factor of oppression, these concepts are also useful in providing an explanation with regards to what was happening in relation to disability and

---

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

8 Ibid, p20

other equality dimensions too. The situation is unlikely to improve whilst the external pressures on institutions decline further, particularly with the Coalition Government's apparent hostility towards the PSED. The prediction made by CRT that successes in terms of race equality are eroded over time are reflected in the Coalition Government's actions, such as reducing the funding for the EHRC and reviewing the effectiveness of the PSED under the banner of eliminating 'red tape.'

## Bibliography:

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

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

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

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

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

Cabinet Office (15<sup>th</sup> May 2012) 'Equalities Red Tape Challenge Announcement'  
<http://www.redtapechallenge.cabinetoffice.gov.uk/2012/05/equalities-rtc-announcement/> (accessed 14/06/13)

'Review of Public Sector Equality Duty' <https://www.gov.uk/government/policy-advisory-groups/123> (accessed 14/06/13)

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

Case Study Institution (18<sup>th</sup> October 2011) 'Outcome of 30 Day Collective Consultation: Professional Services Review'

Case Study Institution (22<sup>nd</sup> August 2011) 'PSR Collective Redundancy Consultation Paper'

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

Case Study Institution (September 2011) 'Collective Consultation – Posts Affected/Not Affected'

Clerk to the Committee – email communication sent 13<sup>th</sup> February 2012

Clerk to the Committee – email communication sent 18<sup>th</sup> October 2011

Cole, M and Maisuria, A (2007) 'Shut the f\*\*\* up', 'you have no rights here': Critical Race Theory and Racialisation in post-7/7 Racist Britain' *Journal for Critical Education Policy Studies Vol. 5 No. 1*

Cole, M (2009) 'Critical Race Theory and Education: A Marxist Response' Palgrave Macmillan

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

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

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

EDO (21<sup>st</sup> April 2008) contained in email dialogue with a Union Representative

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

Email correspondence between the UCU representative and the Pro-Vice Chancellor dated 24<sup>th</sup> September 2008

Equality Action Committee (undated) Terms of Reference

Equality Committee (19<sup>th</sup> November 2003) – Composition, Membership and Terms of Reference

Equality Working Group (23<sup>rd</sup> June 2004) Composition, Membership and Terms of Reference

Ewens, D et al (2011) 'Enabling Equality: Further Disability Equality for Staff in Higher Education' ECU and Leadership Foundation for Higher Education

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

Fawcett Society (July 2013) 'Red Tape, Red Line: Five Reasons why Government should not "Drop its Duty" to Tackle Women's Inequality'  
<http://www.fawcettsociety.org.uk/wp-content/uploads/2013/07/Red-Tape-Red-Lines-five-reasons-why-government-should-not-drop-its-duty-to-tackle-womens-inequality.pdf> (accessed 21/07/13)

Fullick, L (2008) 'From Compliance to Culture Change: Disabled Staff Working in Lifelong Learning' Summary Report NIACE

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

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

HRGC (8<sup>th</sup> March 2011) Deputy Chairman's Minutes of the Meeting

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

Hsieh, H.F. and Shannon, S.E. (2005) 'Three Approaches to Qualitative Content Analysis' *Qualitative Health Research Vol. 15 No. 9* pp1277 – 1288

Hylton, K 'Critical Race Theory: An Extended Introduction' in Pilkington et al (Eds.) (2009) 'Race(ing) Forward: Transitions in Theorising 'Race' in Education' C-SAP Higher Education Academy

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

Pilkington et al (Eds.) (2009) 'Race(ing) Forward: Transitions in Theorising 'Race' in Education' C-SAP Higher Education Academy

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

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

Ramesh, R (15<sup>th</sup> May 2012) 'Equality and Human Rights Commission has Workforce Halved' <http://www.guardian.co.uk/society/2012/may/15/equality-human-rights-commission-cuts> (accessed 14/06/13)

Singh, G (2009) 'A Synthesis of Research Evidence. Black and Minority Ethnic (BME) Students' Participation in Higher Education: Improving Retention and Success' EvidenceNet Higher Education Academy [www.heacademy.ac.uk/evidencenet\\_p48](http://www.heacademy.ac.uk/evidencenet_p48)

Student Experience Committee (undated) Membership 2012 – 13

Student Experience Committee (2<sup>nd</sup> November 2011) Terms of Reference 2011 – 12

Student Experience Committee (undated) Terms of Reference.

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

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

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

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

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