Equality through the lens of disability: A case study

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Abstract

The concept of equality is complex and can be understood in a number of different ways. Treating everyone in the same way can lead to unfair outcomes and if these inequalities are to be avoided, it becomes necessary to identify significant differences which can be capable of providing justification for the unequal treatment necessary to avoid inequality. The Equality Act 2010 identifies significant differences in the form of "protected characteristics" and establishes a structure in which less favourable or unfavourable treatment on the basis of those characteristics can be identified and should be avoided.

A literature review showed that much of the research conducted to date is difficult to apply to the current domestic context. Difficulties in application may arise because the research was carried out overseas or because it predates the Equality Act 2010. In addition, it was found that much of the existing research focuses on the experience of undergraduates and their tutors or does not specify the programme students were enrolled on.

The University which was the subject of the case study operates within the structure of the Equality Act 2010 and makes a public commitment to equality. However, the commitment to equality is neither publically defined nor the subject of internal discussion and so, while all members of the University might agree on the desirability of equality, what the concept might mean in the context of the University and how it might be achieved remain unclear. The purpose of this research was to investigate how staff and students associated with or enrolled on a vocational course for postgraduates at the University think about equality and how they communicate those ideas to each other.

The research takes a social constructivist stance, which is based on the understanding that experience of the real world is inevitably a construction resulting from perception, because interpretation of the real world is inevitable.

Interviews were carried out with staff and students at the university and a number of different constructions of equality emerged which related to and were influenced by, the roles held by the participants at the university. Tutors were found to be cautious in their discussions of equality and generally located responsibility for achieving equality for students within the University with the Learning Support Department, although tutors also expressed the view that that Department did not understand the programme adequately so that support suggested for students was sometimes

regarded as being inappropriate. Students took a fluid approach to their own identity and their construction of equality varied with their identity. Support staff were generally pragmatic in their approach. Suggestions are made for ways in which communication within the University could be improved and areas for future research are identified.

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Glossary of terms

BPTC...Bar Professional Training Course

BSB...Bar Standards Board

CDS...Critical disability studies

DSAs...Disabled Students Allowances

EA...Equality Act 2010

ECU...Equality Challenge Unit

EHCR.. Equality and Human Rights Commission

FE...further education

GARs...General Academic Regulations

GDL...Graduate Diploma in Law

HEFC...Higher Education Funding Council

HEI...Higher Education Institution

HE...higher education

LLB...Bachelor of Laws

LLM...Master of Laws

LPC...Legal Practice Course

MOPPs...Manual of Policies and Procedures

Chapter 1: Researcher Perspective

The purpose of this short chapter is to give an overview of what I am interested in finding out and how that interest has developed. I will also provide an outline of the context in which the research was carried out.

I work at a university in England, which I'm going to call "Smith University". I'm a lawyer and I was originally employed to teach on the postgraduate course which is compulsory for those who intend to become barristers. This programme is now called the Bar Professional Training Course (BPTC). Tutors at Smith are encouraged to maintain links with practice and I have a very small practice in the area of education law, much of which is concerned with issues of equality and discrimination, and how those matters can be constructed in opposing ways. During the course of my current employment, I had the role of learning support tutor for the BPTC and that role brought me into contact with students who wanted to agree support and also with staff at the university from the learning support department. By the time the research was being planned, I had left the BPTC team.

The Bar Professional Training Course

The Bar Standards Board (BSB) is the regulatory body for barristers in England and sets the education and training requirements for those who intend to qualify as barristers. The BSB sets out particular requirements which apply to the support which might be appropriate for students with disabilities. Part of the BSB handbook reads as follows: "The need to ensure that course objectives are met and that the student should be assessed in a manner which is fair both to them and the other students (neither advantaged nor disadvantaged) must be borne in mind" (BSB, 2014, p.114).

Although the BSB does not require all BPTC tutors to be legally qualified, all the BPTC tutors at Smith are either solicitors or barristers and all have practice experience. These characteristics may be relevant to the approach taken by tutors to matters of learning support. During the time when I was the learning support tutor for the BPTC, I was involved in several discussions with staff from the learning support department which reflected disagreements between BPTC tutors and learning support staff as to the support which should be provided for particular students with disabilities. Where a disagreement arose, it generally concerned staff from learning support advocating for measures such as recording sessions which the tutors regarded as unjustified or unworkable.

While the fact of the discussions which follow these disagreements might imply generally open communication between two different parts of the university, their content implies that there is little understanding between these parts of the organisation.

Bryman (2016) notes that the research process often starts with identification of a research area which is of general interest to the researcher and that was the case here. Over time, I reflected on these discussions and in particular, I became interested in *why* the disagreements arose. It seemed to me that in some instances the focus of the tutors seemed to be on the effect of the support suggested for one student on the cohort as a whole, whereas the focus of the learning support team seemed to be on the needs of the individual student and I started to wonder whether these apparently different approaches reflected different and uncommunicated understandings of the concept of equality.

Differences in approach can cause uncertainty for individual students (because what will ultimately be agreed for them is not clear) but also unease between different groups of staff. The tutors can then be regarded by staff from other departments as unsympathetic and unnecessarily difficult and learning support staff can be regarded by the tutors as failing to understand the context and requirements of the programme. The issue which emerges concerns both how the University interprets its obligations concerning equality (which staff and students are then expected to implement) and secondly, how members of the University (staff and students) understand, construct and communicate the concept of equality.

The commitment to equality

The University makes a public commitment to equality in its policies which are available online and this commitment appears to be uncontroversial, in that neither staff nor students would be likely to assert that striving to attain equality is not a valid or laudable objective. However, my contact with tutors and non-teaching staff, as well as students has led me to question what it is that people understand by the concept of equality. While I think there would be general agreement that the university, through its staff, seeks to do the best that we can for our students, I wonder whether there is general agreement about what constitutes "the best" and whether the relevant students are the whole cohort of students or the group of students who disclose disabilities. If there are different approaches to these issues, I wonder whether there are relationships between the person taking the view and their role – in other words, do tutors tend to take a different approach to that taken by students or by other staff members? I have referred to incidents of tension between different groups of staff (for instance, between tutors and staff from learning support) above and I wonder

whether these tensions arise from different understandings, so that, for instance, staff use common terms but with unidentified and uncommunicated differences in meaning. Finally, I am interested in whether communication within the University acts to encourage clarity of intended meaning.

The questions which I became interested in concerned equality, disability and experiences at Smith University.

My three questions were:

1. How do staff and students at Smith University construct the concept of equality in relation to students with disabilities?

2. What are the practical consequences experienced, if any?

3. Is there a relationship between how people think about equality and their role at Smith?

One of the subjects which I have taught for several years is "legal research" and one of the first steps which students are told to take involves breaking down a research question (such as "is X liable for breach of contract?") into a series of discrete questions, each of which is capable of being investigated. Applying that approach, I achieve the following result:

1. How do staff and students at Smith University construct the concept of equality in relation to students with disabilities?

    1.1. Which "staff and students at Smith" am I interested in?

    1.2. What is a "disability"?

        1.2.1. What is the legal definition?

        1.2.2. What are other ways of thinking about disability?

        1.2.3. Are these ways of thinking about disability reflected in the legislation?

        1.2.4. How do the people I am interested in think about disability?

    1.3. What is "equality"?

        1.3.1. Is there a legal definition?

        1.3.2. What are the parameters?

        1.3.3. Who is entitled to equality?

        1.3.4. In what circumstances?

        1.3.5. How does the legislation apply to Smith?

1.3.6. How do the people at Smith I am interested in think about equality?

1.3.7. How are these interpretations communicated between groups within Smith?

1.4. What are the policies regarding equality at Smith?

1.4.1. Who are the policies available to?

1.4.2. Who are the policies for?

1.4.3. How are the policies made available?

1.4.4. Are the people I am interested in at Smith aware of the policies?

1.4.5. Do the policies affect/influence how the people I am interested in at Smith behave?

2. What are the practical consequences experienced, if any?

2.1. What are the relevant roles?

2.2. How do the people I am interested in at Smith behave?

3. Is there a relationship between how people think about equality and their role is at Smith?

Some of these sub-questions can be regarded as background questions, in the sense that they do not require empirical research, while other questions are relevant to the design or the research, rather than being formal "research questions". In the next chapter I will describe the context for the research and start the process of addressing the questions identified.

Chapter 2: Introduction

The purpose of this chapter is to set the context for the research and in that process, I will also start to address some of the questions identified at the end of the last chapter. There are a number of aspects to be considered, including the relevant legislation and understandings of disability. After identifying the salient details in relation to those matters, I will go on to consider characteristics of Smith University, where the research took place and how the legislation affects the University, before analysing the policies which the University makes publically available.

The legal framework : the legislative context

The University which is the subject of the research is in England and I will address the legal framework which applies in England. The statutory framework and its interpretation through case law are relevant here because it is the context in which the University, staff and students operate. The University interprets its obligations on the basis of the application of the law and complaints or litigation would be framed on the law. Consideration of the legal framework is therefore necessary as a foundation for discussion of interpretation of concepts reflected in that framework. In addition, the different forms of prohibited behaviour identified by statute can be associated with different understandings of the concept of equality and these understandings are also discussed.

It is apparent that there is no general right to equality. A discussion of the rationale for asserting that such a general right would be meaningless is included below (see the section "Formal equality" in Chapter 3). However, for present purposes, it is sufficient to note that one of the purposes of the Equality Act 2010 ("the Act") is to define the circumstances in which equal treatment can be expected. There is more than one relevant context here and the legislation identifies relevant characteristics and different kinds of prohibited behaviour. Finally, the Act is not of universal application (it does not apply to all activities, regardless of the identity of the actor) and so the Act identifies the sectors in which it applies.

The Equality Act 2010 came into force in October 2010 and two aims are identified in the long title of the Act. These are to "reform and harmonise equality law" and "to increase equality of opportunity".

The Act reflects what Bell (2011, p.222) regards as the predilection of the system for "ground-specific legislation" (the characteristic which Solanke (2011) refers to as "ocularcentricity") in that it provides a remedy only for the difficulties it can see. For example, discrimination on the basis of a

characteristic which is not identified as protected is not seen as a difficulty by the law and consequently there is currently no remedy for such discrimination. As Lady Hale observed in Pearce v Governing Body of Mayfield School, 2001, "discrimination is only unlawful if it is on the particular grounds prohibited by statute" (paragraph 4). Similarly, the Disability Discrimination 1995 did not recognise indirect discrimination and so indirect discrimination on the ground of disability was not problematised by the law and there was no remedy available until the Equality Act 2010 extended the concept to cover disability.

Only certain aspects of the Act are relevant to this research and I will identify these relevant aspects in the course of the discussion which follows.

The Act does not define equality but identifies prohibited behaviour and the characteristics which are protected from the behaviour. There are four types of prohibited behaviour and these are direct discrimination, indirect discrimination, harassment and victimisation. The Act applies to nine protected characteristics which are age; disability; gender re-assignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. These characteristics were all protected by previous legislation, although the level of protection varied and has not been harmonised by the legislative changes. This research is concerned with the protected characteristic of disability.

A lack of harmonisation is apparent in the Equality Act in the context of disability. Conceptually, this is justified because treating disabled people in the same way as non-disabled people, in the manner required by formal equality, would not adequately address the inequalities between the two groups of people (Fredman, 2005; Waddington, 2007). The business which provides access via stairs treats all potential customers in the same way but the outcome is not equality for those unable to use the stairs, for instance.

Other protected characteristics (with the exception of marriage and civil partnership) demonstrate symmetry in that individuals with the characteristic are protected from less favourable treatment when compared with individuals who do not have that characteristic. However, the asymmetry in relation to disability discrimination means not only that complainants do not have to identify a comparator but that no cause of action arises on the ground of more favourable treatment of a disabled person (s13(5), EA 2010). The requirements of the BSB and the university regulations which prevent favourable treatment of students with disabilities can therefore be seen to be more

restrictive than is required by statute and possibly reflective of a different conception of the requirements of equality.

Disability

The protection of the Act extends to people who have a disability and people who have had a disability in the past. People who are perceived to have a disability or who are associated with a disabled person (for instance, carers) are also protected, as well as people who are the victims of other prohibited conduct such as victimisation.

There are three elements to the statutory definition of disability:

- impairment, which is

- long term and of

- substantial adverse effect

It is clear, from this definition, that the effects of a broken limb which is likely to heal within 12 months, or the effects of an illness which is likely to resolve within 12 months are both outside the definition of disability. However, in practice at Smith University students in both these categories are treated as if they are disabled and learning support agreements specifying adjustments to be made are created.

Models of disability

The term "model" can be used in a number of ways (Llewellyn & Hogan, 2000). Dewsbury, Clarke, Randall, Rouncefield and Sommerville (2004) regard models as analytical frameworks, which direct attention to specified features of the phenomena being considered and Haegele and Hodge (2016) demonstrate how the application of different models of disability can result in varying outcomes.

The assumption that it is individuals who are troublesome and who should therefore change is associated with the medical model of disability, which locates the deficiency with the individual. The structural model was described as the social model by Oliver (1983; 1986) and locates deficit with the environment, rather than the individual. Finkelstein (1975) illustrates the difference between impairment and disability by reference to a hypothetical village in which all the residents use wheelchairs. Everything is adapted to their needs and so their use of wheelchairs causes no disadvantage. The villagers are people with impairments but they are not disabled.

The social model is effective in separating impairment and disability (Campbell & Oliver, 1996; Glazzard and Dale, 2013; Oliver, 1996). From a human rights perspective, it can be argued that the social model is predicated on the individual's right to inclusion, whereas in the medical model, integration is contingent on adaptation by the individual and so the "right" to be part of society is contingent on the judgment of those who are in positions of authority (Corbett, 1991). Shakespeare (2013) recognises this dichotomy which regards the social model as progressive and the medical model as reactionary and also identifies other dichotomies which are fundamental to the social model, including the separation of the structural and public concept of disability from the individual and private concept of impairment. This distinction is significant and transforms "disability-as-impairment...into disability-as-oppression" (Goodley (2014, p.7).

The concept of oppression is important here and distinguishes disabled people from non-disabled people so that the former are regarded as oppressed and the latter (who may also be carers or professionals working with disabled people) are regarded as causing or at least contributing to that oppression. The Union of the Physically Impaired Against Segregation (1976, p.4) explained how oppression arises in the following way: "Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group in society." Medical professionals typically treat impairment but the social model mandates for impairment to be accepted and disability ended through the removal of the barriers which create it. The distinction between impairment and disability is central to the social model of disability and has also acted to characterise the British approach to disability rights and disability studies (Shakespeare, 2006a) to such an extent that Thomas (1999) concludes that impairment talk is capable of identifying individuals as social modellists. The social model can be credited with practical outcomes: it identified removal of barriers as a political objective (Shakespeare, 2006a); it had a liberating effect on disabled people by locating deficiency with society, rather than with individuals (Shakespeare, 2006a); it has resulted in legislation which addresses discrimination and "undoubtedly leads to a more inclusive organisation of social life" (Shildrick, 2012).

The binary nature of the distinction has, however, also been the subject of criticism, for instance by Shakespeare (2006b) who asserts that the predicament of impairment is ignored by the social model and that "impairment is only ever experienced in a social context" (Shakespeare, 2006a, p.35) and that "the population does not divide up easily into 'impaired people' and non-impaired people'" (Shakespeare, 1998, p.671). Other critics include Sherry (2002) who concludes that impairment and disability form a continuum, rather than a dichotomy, French (1993), who argues that "some of the

most profound problems experienced by people with certain impairments are difficult, if not impossible, to solve by social manipulation" and Lock, Jordan, Bryan and Maxim (2005) who report that participants perceived impairments rather than disability as barriers to employment.

Shildrick (2012, p.35) argues that despite the practical changes which have been associated with the social model of disability, the fundamental binary divide of disabled/non-disabled has not been altered because the changes achieved have not challenged the "underlying attitudes, values and subconscious prejudices and fears that ground a persistent, albeit often unspoken, intolerance." The argument which Shildrick makes is that what is needed is a commitment to deconstruct the "apparent stability of distinct and bounded categories" (p.40). Working with this orientation, McCruer (2010) derives "crip theory" from considering the constructions of heterosexuality and able-bodiedness and Collins (1998, p.63) argues that rather than considering how race, gender, class and nationality separately operate as systems of oppression, intersectionality considers "how those systems mutually construct each other." Everelles (2011, p.117) considers the intersectionality of race, class, gender and disability and argues that disability has been used to organise social hierarchies which act to identify individuals seen as a threat to the normative social order which is "symbolic of efficient and profitable individualism and the efficient economic appropriation of those profits produced within capitalist societies."

Sheldrick (2012) expresses the hope that Critical Disability Studies (CDS) will have the sort of influence demonstrated by feminism, in that it will encourage all of us to think and therefore to act differently. Vehmas and Watson (2014, p.647) are sceptical of any claim that such changes could be sufficient to address the disadvantages faced by people with disabilities and point to the need for practical measures including "material help, targeted resource enhancement, and personal enhancement." While Shakespeare (1998) successfully demonstrates how identification of the hidden ableist thinking can affect the decision whether to terminate pregnancy where screening has revealed abnormalities, he also demonstrates that financial consequences are inevitably implicated if the ableism in society generally is to be addressed. In this sense, a reconsideration of how we think will not necessarily lead to changes in how we act, because changes in action are unlikely to be resource neutral.

While this debate is unresolved at present, it is the case that the social model of disability has been operationalised in a way that is not characteristic of CDS (and perhaps it would be possible to criticise CDS on the basis that it is not possible to operationalise in the same way and so the

idealogical changes argued for are of little practical utility) and I will now consider the relationship between legislation and the social model of disability.

Relating the legal framework to constructions of disability

The Equality Act 2010 replaced the Disability Discrimination Act 1995 and uses the same approach to disability as in the previous Act. This requires proof of the three specified elements before an individual can proceed to complain of prohibited conduct. Lawson (2011) points to the "discomfort associated with having the details of one's impairment and its effects publically scrutinised" (p.360) and argues that "an associated difficulty is that the disability definition requirement risks distracting judicial and other attention from the behaviour of the alleged discriminator and focusing it instead on the functional limitations of the victim" (p.360). The first difficulty is not unique to individuals complaining of discrimination, of course, and the second is also a difficulty which is not uncommon in litigation. It seems, therefore, that the difficulties Lawson identifies, while real, are not unique to this area of litigation and are a product of the structure of litigation in England, rather than providing a basis for a change in approach to this type of litigation only. However, the focus on the individual disabled person leads Butlin (2011) to conclude that the model of disability in the Equality Act is "strongly medical" (p.432).

Specific learning difficulties and other hidden disabilities (such as mental illness) do not fit the medical model of disability which regards disability as a medical problem affecting a small minority of people and may be the object of suspicion on that basis (Kirwan & Leather, 2011). Application of the medical model may tend to individualise the response of the HEI to disabled students, since the model identifies the individual deficit as the source of any difficulty and this can be a source of inconsistencies (Holloway, 2001). The medical model of disability is challenged by the social model of disability, which Crow (1996) explains "shifts the focus from impairment onto disability, using this term to refer to disabling social, environmental and attitudinal barriers rather than lack of ability." Interference between the social model of disability (often reflected in the policies of HEIs) and the medical model (which may be more familiar to staff) can also cause difficulties (Borland & James, 1999).

Identity

Where it can be demonstrated that a person meets the three elements of the statutory definition of disability, that person will be regarded as a disabled person and so in this regard, the Equality Act 2010 establishes a binary division which separates disabled persons from persons without

disabilities. Goodley (2014) comments that binary divisions between people are created and maintained by a process of "Othering" and this is a concept which is developed further below.

Prohibited conduct and required conduct

The provisions of the Act are summarised in the tables below.

Prohibited act	Provision of Equality Act 2010	Standard	Knowledge required?	Comparator required?	Equality	Causation required?	Can be justified?
Direct discrimination	s13	Less favourable treatment, satisfied by *any* disadvantage	Yes or belief	Yes, may be hypothetical	Formal. Equality of treatment	Yes, "reason why" test applied	No
Discrimination arising from disability	s15	Unfavourable treatment, satisfied by evidence of any detriment	Yes, defence if did not know and could not reasonably have been expected to know	No	Formal. Equality of treatment	Yes, must be link between the thing caused by the disability and the treatment	Yes, as proportionate means of achieving legitimate end
Indirect discrimination	s19	Particular disadvantage	No but intention relevant to damages s119(5)	Yes, may be hypothetical	Equality of outcome	Yes	Yes, as proportionate means of achieving legitimate end
Failing to make reasonable adjustments	s20	Substantial disadvantage, meaning more than minor or trivial	No but intention relevant to damages s124(4) ETs	Yes, may be hypothetical, does not have to share circumstances	Equality of outcome	Yes	No, duty is to take such steps as are reasonable; duty does not apply to competence standards
Harassment	s26	Unwanted conduct with "purpose or effect" of listed impacts	Yes. Applies to actions of students regarding staff s40	No	Formal. Equality of treatment	No, harassment must be "related to" the disability	No
Victimisation	s27	Detriment	Yes or belief	No	Formal. Equality of treatment	Yes	No

Table 1: Conduct prohibited by the Equality Act 2010

Required act	Provision of Equality Act 2010	Elements of duty	Standard	Application	Equality	Required steps
Single equality duty	s149	• Eliminate conduct that is prohibited by the Act; • advance equality of opportunity; • foster good relations	Have due regard	All protected characteristics Public authorities and bodies which exercise public functions	Transformative	Publication of information to demonstrate compliance

Table 2: Conduct required by the Equality Act 2010

Smith University: the context for the research

Smith was founded in the last 50 years and so is atypical of the higher education landscape in England, being considerably younger as an institution than many other universities.

Smith is also unusual in being a private and for profit university. One hundred and thirty-two universities receive funding from the Higher Education Funding Council for England (HEFCE 2015a). There are 5 universities which are not funded by HEFCE, 3 of which are "for profit". Until Arden University acquired university status in August 2015, Smith was unique in being the only for profit organisation to acquire university status. That Smith is a for profit organisation is regarded by some as relevant to quality. For example, the University and College Union (2013) says that it is concerned that privatisation of the HE sector will "remove the academic checks and balances that protect standards in universities" (Education is not for profit section, para. 1).This concern can also be generalised to the processes at Smith.

The third distinguishing factor is that the University operates from a number of locations in England. A number of universities have a number of sites, often within a particular city, and very often where that is the case, programmes are available by site. However, it is less common for a university to have sites in different cities, with the same programme available at a number of sites. Exeter University, for example, has a site in Cornwall as well as sites in Exeter and subjects are available at one of the two sites (University of Exeter, n.d.). However, the Smith model is unusual because subjects and programmes are provided at various geographically separate sites. This geographical spread has implications for the structure of the organisation (more mid-level managers are required) as well as more senior leaders (who manage teams which are probably larger than would otherwise be the case and which include people in a number of different locations). In addition, there is scope for the different sites to develop individual cultures in some respects.

Smith University is also unusual in that it has relatively few Schools. This research took place in the Law School and involved staff and students from the BPTC as well as staff from the central Learning Support department and Examinations and Assessments. The Law School has a number of sites in England and the BPTC is available in London, as well as a number of other cities in England. Further details about other students at Smith have not been included in the interests of preserving the anonymity of Smith.

Application of the Equality Act 2010 to Smith University

Part 6, Chapter 2 of the Equality Act ("the Act") contains the provisions relating to institutions within the further and higher education sector ("the FE/HE provisions"). Smith University receives no funding from HEFCE (HEFCE, n.d.) and acquired university status after the Act was passed. As noted above, the primary intention of the Act 2010 was to restate and harmonise the existing equality and discrimination law. The HE provisions of the predecessor equalities legislation did not apply to private higher education providers, such as Smith, and so it would be possible to argue that the apparent inclusion of Smith University may not be intentional.

It seems that the options available to Smith are:

1. Operating on the basis that it is not caught by the FE/HE provisions

2. Challenging the statute

3. Operating on the basis that it is within the FE/HE provisions

There are a number of risks attaching to the first option, including that Smith could expose itself to potential claims for discrimination from students. Acting as if not caught by the provisions may cause Smith to be complacent in its approach to equality and anti-discrimination. An important consideration is that damages for discrimination can be significant. In addition, if Smith were to take the position that it is not caught by the FE/HE provisions, any student complaint brought under those provisions would require the involvement of the court to determine whether or not the University is caught by the provisions. Such court action would be likely to result in adverse publicity for Smith as there would almost inevitably be a perception that Smith is seeking to "get out" of complying with equality law. In addition, the HE/FE provisions contain exemptions which are beneficial to Smith, including in particular, the exemption which applies to the content of an institution's curriculum. Finally, the FE/HE provisions do not include a duty to make reasonable adjustments to competence standards. These exemptions are not available within the service provider provisions (although the competence standard exemption is available under the qualifications bodies provisions).

The second option, challenging the inclusion of Smith on the basis that this is an unintended consequence of the Equality Act 2010, could also have the effect of attracting undesirable publicity, as well as being costly. In addition, Smith would have to produce cogent reasons as to why the provisions should not apply to it. Given that the provisions passed through both Houses of Parliament without extensive debate or dissension, it is hard to see what these cogent grounds

might be. Application of the provisions to Smith does not seem to engage a right under the European Convention of Human Rights or a breach of European community law and so it seems Smith would not be able to challenge the Act through the courts (British Railways Board v Pickin, 1974).

The third option identified above requires Smith to operate on the basis that the FE/HE provisions apply to it. This course enables the University to have the benefit of the exemptions in respect of the content of its curriculum and its competence standards. Further, the only positive duties contained within these provisions are those in connection with the duty to make reasonable adjustments. As mentioned above, the University is subject to the similar duty set out in the service provider and qualifications bodies provisions and therefore it would have to comply with such provisions even if it was not caught by the HE/FE provisions. This course also means that Smith avoids the reputational risks and costs identified above and seems to be the course which the University has adopted.

The alternative position would be that;

- Smith is a "service provider" and so caught by the provisions and requirements of Part 3 (section 29) of the Act, which are broadly similar to those in Part 6 (dealing with education providers);

- Smith is a "qualifications body" and so caught by section 53 of the Act (recently illustrated under the Disability Discrimination Act 1995 by Burke v (1) College of Law (2) Solicitors Regulatory Authority, 2012).

Each of the service provider and qualifications bodies provisions are subservient to the education provider provisions, i.e. if Smith is providing HE/FE to a person, Smith is not providing a service or being a qualifications body to that person (see sections 28(2)(a) and 54(4)(c) Equality Act 2010).

Smith has apparently chosen to accept that it is a provider of FE/HE.

Application of the public sector equality duty to Smith University

The public sector equality duty extends to all protected characteristics and replaces the separate duties which were created by previous legislation. The duty is not comprehensive (for instance, it does not apply to immigration functions, EA 2010, schedule 18, paragraph 2) but it does apply to private bodies when they are carrying out public functions. The public sector equality duties will only apply to those functions of the University which can be regarded as public in nature.

In respect of Smith's functions of awarding degrees and conducting professional examinations which lead to admission to the legal profession, the question as to whether the duties apply or not is very

finely balanced, with factors pointing in either direction. There is no single universal test for determining whether a function is of a public nature. However, a number of relevant factors result from the case law. These include:

- Whether the function is supported by public funding.

- Whether the function is an exercise of special powers conferred by Parliament.

- Whether the body is taking the place of central government or local authorities.

- Whether the function is a provision of a public service.

Other relevant factors may include whether the body in question is amenable to judicial review and whether improper performance of the function might violate an individual's human rights. None of these factors taken in isolation can be determinative. The courts will determine the question on a case by case basis.

It is possible that Smith's powers to award degrees and to conduct professional examinations which lead to admission to a profession can amount to functions of a public nature. In respect of Smith's degree awarding powers, a factor which points towards this being a function of a public nature is that the source of the degree awarding powers is underpinned by statute (degree awarding powers are granted by the Privy Council pursuant to the Further and Higher Education Act 1992). Conversely, the courts have said that the mere possession of special powers conferred by Parliament or susceptibility to judicial review do not by themselves mean that a person has "functions of a public nature". Such powers may have been conferred for private, religious or purely commercial purposes (Lord Mance in YL and Birmingham City Council, 2007). The extent to which the Human Rights Act 1998 applies directly to a degree awarding body has not been fully tested by the Courts.

The European Court on Human Rights has so far rejected claims from UK students that their human rights are engaged by the actions of UK universities in appeals concerning the non-award of a degree (Hanuman v United Kingdom, 2000) and an admission case (Patel v United Kingdom, 1982). While in Northern Ireland, case law suggests that admissions decisions where a person is rejected on discriminatory grounds may involve a human right (Croskery's (Andrew) Application, 2010), it seems that the vast majority of Smith's actions in connection with the award of its own degrees will not be "of a public nature".

In respect of Smith's examinations which may lead to admission to a profession (e.g. the LPC and BPTC) it is possible that the certificates which one is given for passing them constitute "possessions" under Article 1 Protocol 1 of the European Convention of Human Rights 1950 (which protects peaceful enjoyment of possessions). The European Court of Human Rights has held that where a

state is obliged to secure a particular human right for its nationals it may not evade that obligation just because the alleged violation of a human right took place within a private institution (Costello Roberts v United Kingdom, 1993). While it has been held that a licence to engage in a particular activity can amount to a possession for the purposes of Article 1, Protocol 1 of the Convention, the courts have emphasised that what is protected is the underlying economic interests to which the licence relates. For example, in the case of Van Marle v The Netherlands (1986) the European Court of Human Rights held that an accountant's professional clientele could constitute a possession for the purposes of Article 1 Protocol 1, in circumstances where a subsequent change of the law had an adverse impact on the income and value of the accountant's clientele. However, the English courts have emphasised that future anticipated income which has not yet been earned or one's livelihood cannot amount to a possession for the purposes of Article 1 Protocol 1, unless an enforceable claim already exists (R (Countryside Alliance and Others) and Attorney General, 2006). Further, in the context of the medical profession the court has held that a licence to engage in a profession must have some monetary value to be protected under the Convention (R (Malick) v Waltham Forest NHS Primary Care Trust, 2007). On the basis of these decisions, it seems that it is likely that certification that a student has passed an examination which entitles one to enter a profession does not amount to a human right in the form of a "possession" under the European Convention. On the other hand, there is a public interest in ensuring that those entering the profession are adequately qualified and professionally competent. However, it is unlikely that this factor itself will suffice to determine that the function of providing professional legal qualifications is a function of a public nature. It seems, therefore, that the above factors tend to point against these functions of Smith amounting to functions of a public nature. The House of Lords was divided 3 to 2 in YL v Birmingham City Council and others (2007) which remains the leading case in this area and which decided that a private care home which housed some patients funded by the local authority as well as other privately funded patients was not exercising a public function in doing so. There is consequently a considerable degree of uncertainty in this area, meaning that the approach a court may take to this issue cannot be predicted with confidence.

Given the uncertainty in this area, Smith has decided to proceed on the basis that it is subject to the public sector equality duty in respect of these two functions (personal communication). In fact, it seems unlikely that complying with the duty will impose an unduly onerous burden on the University. Breach of the public sector equality duty cannot give rise to a private law cause of action. The only potential remedy is an application for Judicial Review of a decision made or action taken in disregard of the duty, which (if successful) is likely to result in the Court requiring Smith to "think

again" (although the legal costs of defending such claims and resultant adverse publicity are likely to be significant).

The public sector equality duty was identified as one of the key ways in which the Equality Act 2010 set out to strengthen the law to improve equality (Explanatory Notes, EA 2010; Hepple, 2014). However, the duty requires only that "due regard" be applied, rather than requiring particular steps to be taken or specified outcomes to be achieved. Some commentators (including Hepple, 2010 and Grover & Piggott, 2015) have taken the view that the approach taken to interpretation of the duty through the implementation of associated regulations has undermined the significance and impact of the duty. Regulations made under s153 (2011/2260) require the publication of information to demonstrate compliance with the matters set out in s149. This information was first required to be published by 31 January 2012 and annually thereafter. Whether Smith University complies with this duty is discussed in a subsequent chapter.

The university; the external, domestic context

Smith University is in England, where government policy favours widening participation in higher education (Hoare and Johnston, 2011; HEFCE, 2015b). Provision is made for some funding for HEIs, together with the provision of some benefits for disabled students (although changes are imminent here (Lewthwaite, 2014). Disabled students are able to apply for "Disabled Students Allowances" (DSAs), which are intended to help to meet some of the additional expenses incurred by disabled students by reason of their disability. DSAs are available to home students (including students at Smith) and are not means tested. They are a grant, rather than a loan and cover items in four areas as follows:

- Specialist equipment allowance;
- Non-medical helper's allowance;
- General and other expenditure allowance;
- Travel costs.

Application for DSAs is made to the appropriate agency (which depends on the whereabouts of the student in the United Kingdom) and not to the HEI which the student is or will be applying. The application process includes a study needs assessment, the purpose of which is to identify appropriate support for the student. The cost of the support identified is met partly by the HEI and partly by central government (Johnson, 2015). A provision which came into effect for courses starting after 1st September 2016 requires students to meet the first £200 of the cost of a new

computer, should one be required to run any recommended assistive software. Some HEIs, such as Brunel University but not Smith, are refunding this amount to students required to pay it (Brunel University, n.d.).

The Equality Challenge Unit (ECU) uses the term "disabled student" to refer to those who indicated that they are disabled on their Higher Education Statistics Agency student record and the term "non-disabled" is used to refer to those who indicate that they are not disabled, or whose status is not known by their institution. All information obtained from ECU relates to students at HEIs in the United Kingdom and also to students at colleges in Scotland (ECU, 2016a). The most recent information available relates to the academic year 2013/14 and shows that the numbers of disabled students in higher education (as defined above) has increased since 2003/2004 (ECU, 2015). The figures can be represented as follows in Figure 1:
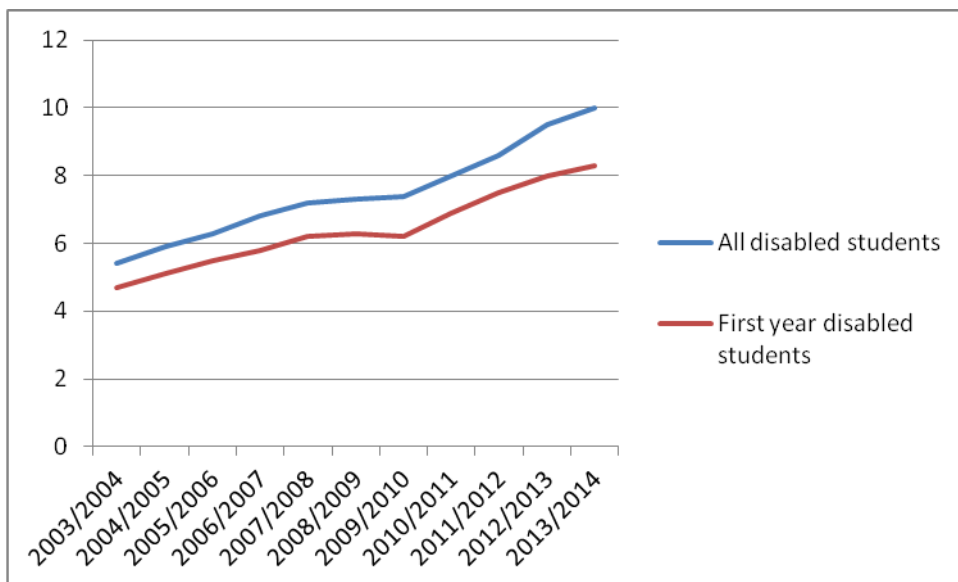
Figure 1: Disabled students in higher education, adapted from ECU 2015

The figures also show that there are differences in disclosure rates, so that disclosure rates were higher at undergraduate level than at postgraduate level, as shown below in Figure 2:
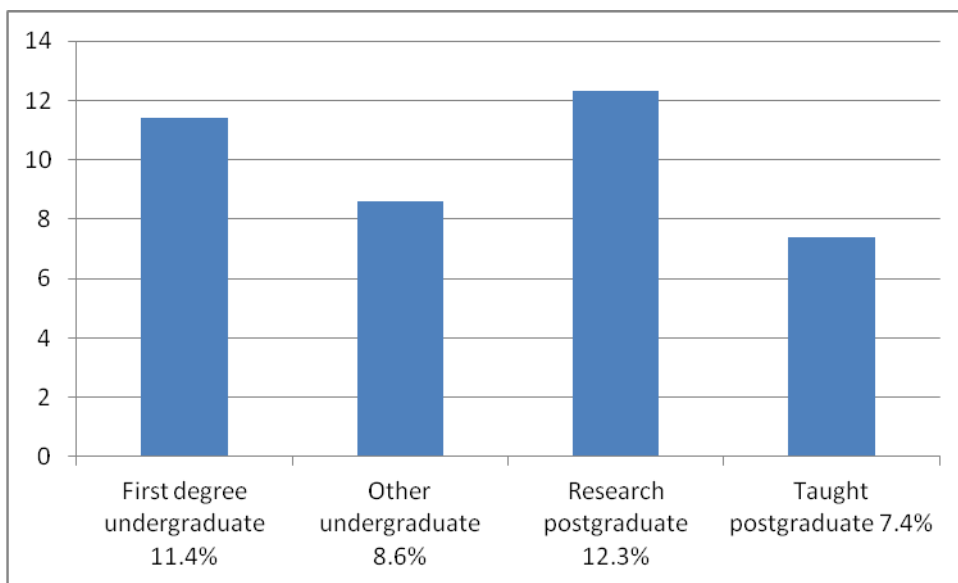
Figure 2: Rates of disclosure 2013/14, adapted from ECU 2015

The BPTC is a taught postgraduate programme and it can be seen that the disclosure rate for these programmes generally is 7.4%. Figures relating to students at at Smith for 2014/15 show that 11% of students on the BPTC disclosed a disability.

ECU figures also show disabled students by subject area, shown in Figure 3:
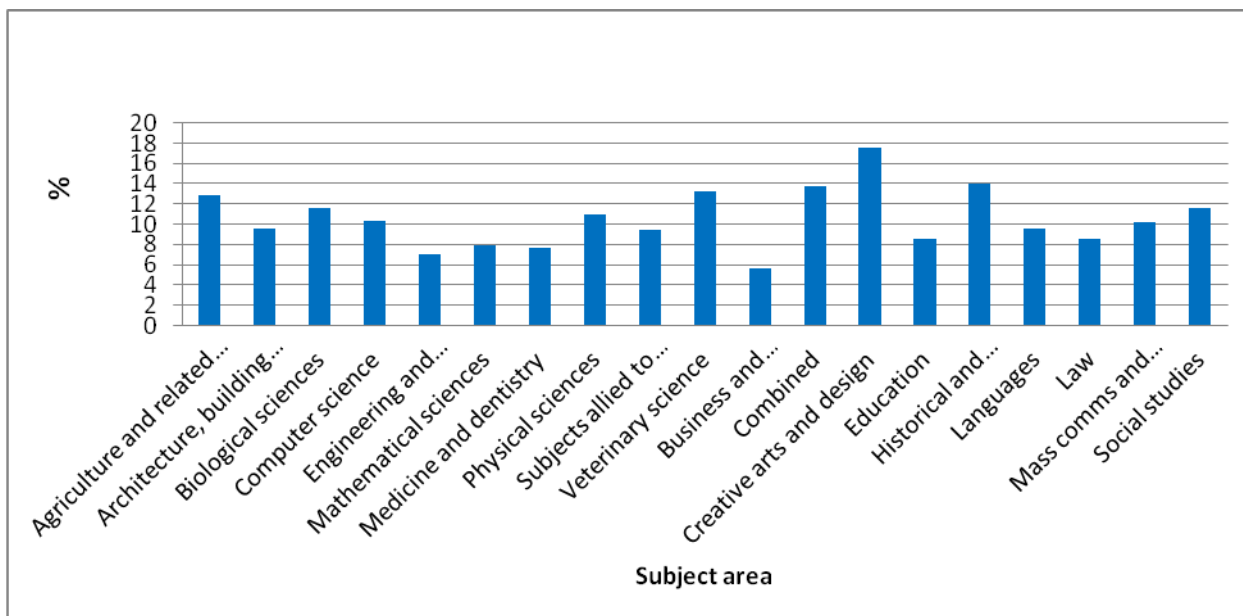
Figure 3: Disabled students by subject area, adapted from ECU

The subject area with the highest number of disabled students is creative arts and design (17.5%). A lower percentage of law students are disabled (8.6%). As noted above, this rate is exceeded at Smith.

Figures for the BPTC for 2014/15 show that 11% of students on the BPTC disclosed a disability. The area with the lowest per centage of disabled students is business and administrative studies (5.6%).

ECU information regarding type of disability disclosed in 2013/14 can be represented as follows in Figure 4:
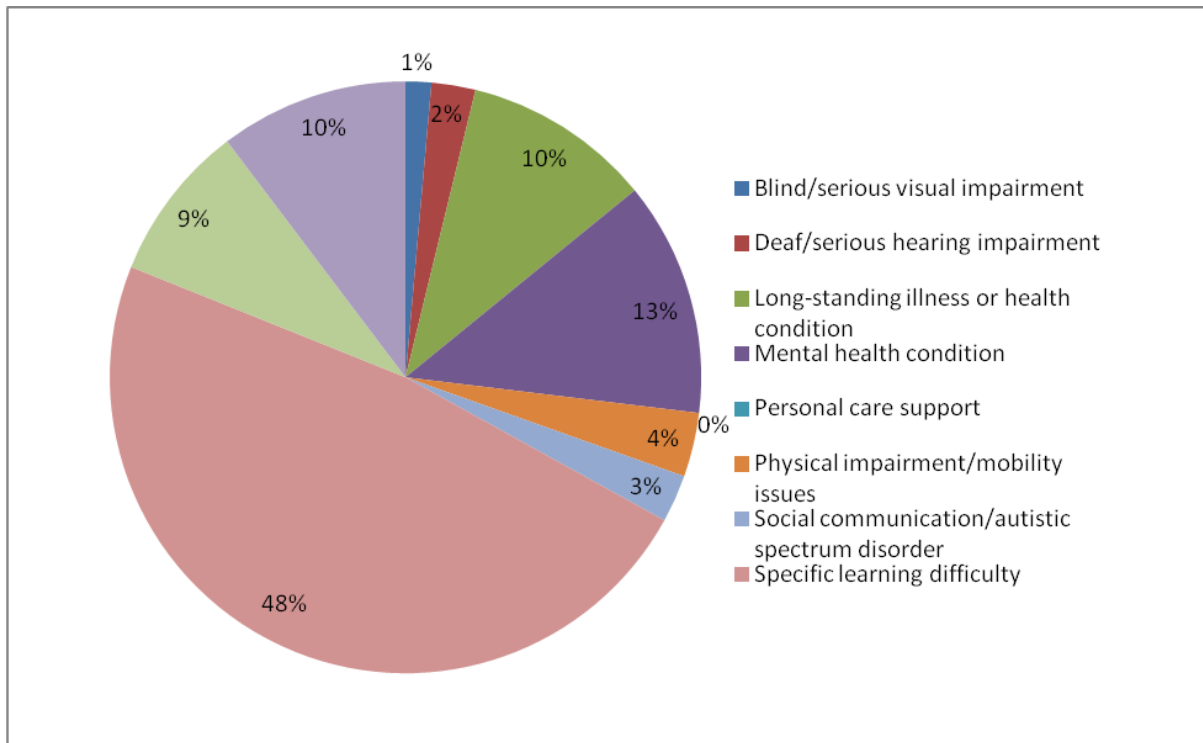
Figure 4: Impairments disclosed 2013/14, adapted from ECU

It can be seen that in 2013/14, the most commonly disclosed impairments were a specific learning disability (48%), mental health condition (12.8%) long-standing illness or health condition and an impairment other than those listed (each at 10.3%).

Figures for Smith are as shown below in Figure 5:
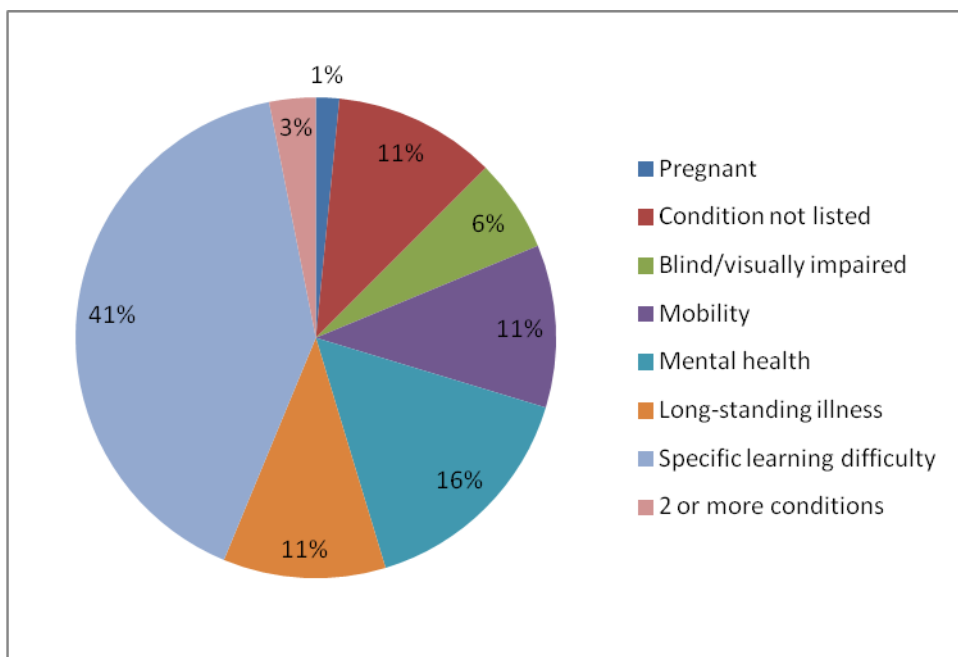
Figure 5: Characteristics disclosed by BPTC students at Smith 2014/15

Figures collected by Smith relate to all disclosed protected characteristics and so include pregnancy. It can be seen that the proportions of impairments disclosed at Smith are similar to those disclosed by all students nationally and, in particular, that the specific learning difficulties are the largest category of impairment, although the proportion at Smith (41%) is lower than that reported nationally by ECU (48%).

Adjustments agreed for assessments for BPTC students can be represented as follows in Figure 6:
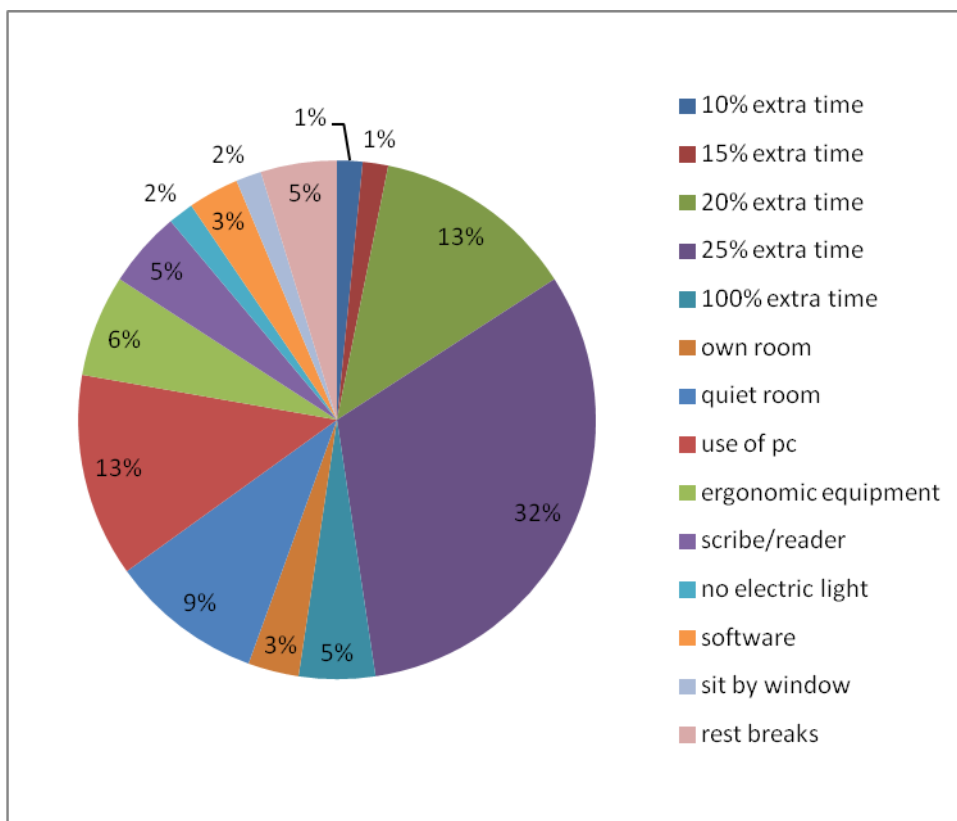
Figure 6: Adjustments agreed for assessments for BPTC students at Smith 2014/15

Where the duty to make reasonable adjustments arises, a refusal to make a reasonable adjustment cannot be justified. However, the duty to make reasonable adjustments does not apply to competence standards. Competence standards are defined by the ECU (2016b) as a "particular level of competence or ability that a student must demonstrate to be accepted on to, progress within and successfully complete a course or programme of study". Competence standards for the BPTC are set out by the BSB in the handbook (BSB, 2014a) as a series of aims and objectives and learning outcomes. The feedback and assessment sheets used by tutors at Smith University map onto the aims and objectives and the learning outcomes set out by the BSB, so there is a strong argument that the marking criteria will be held to be competence standards set by the University so that Smith is consequently not under a duty to make any adjustments to that competence standard. Therefore special allowance is not made when marking disabled students against those criteria.

The duty to make reasonable adjustments is owed to disabled individuals and it is also an anticipatory duty, owed to disabled people generally – the duty is not solely capable of being measured in relation to each individual. The Equality and Human Rights Commission (EHRC, 2014) says that it is not reasonable to expect disabled individuals to suggest adjustments but that where adjustments are suggested, organisations with the duty to make reasonable adjustments should consider a number of matters including:

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- Whether the adjustment would help overcome the disadvantage;
- Whether the adjustment is reasonable;
- The financial and other costs of making the adjustment;
- The availability of grants, loans and other assistance to disabled students;
- The resources of the education provider.

The figures above show that at Smith, provision of extra time for assessments is the most frequently agreed adjustment. Some students, of course, will have a package of adjustments agreed. These packages may be relatively extensive. For example, in Burke v College of Law (2011, paragraph 20) the package of reasonable adjustments are described as follows:

- "60% extra time;
- May hand write or use an amanuensis (who may also be required to act as a reader) or use a computer (to be supplied by the College);
- Stop the clock limited to 15 minutes per hour or pro-rata (based on the extended examination time) to be taken as and when required;
- Extra desk;
- High backed chair with adjustable arms;
- Own room;
- Exam questions and any advance reading to be produced on cream coloured paper;
- Exam room on ground floor or accessible by lift;
- Exam timetable to be adjusted as per the schedule in the confidentiality agreement to split each examination paper into two parts;
- [the student] to sign a confidentiality agreement in relation to any examination or part thereof which is thereby postponed;
- Accommodation at the YMCA, Guildford throughout the exam period to be paid for by the College."

In certain circumstances, HEIs are required to have an access agreement which sets out what they do to attract and then support students from disadvantaged backgrounds (Department for Business, Innovation and Skills, 2012). The University receives no funding from HEFCE (HEFCE, n.d.) and so is not subject to the formal requirement regarding making an access agreement. The consequence of this is that the University has not been required to give the detailed consideration of the requirements and meaning of equality which production of that agreement would require, so that the concept remains relatively open to interpretation by staff and students.

The issue which arises here concerns the scope for interpretation of the concept of equality by tutors, support staff and students at Smith. At this point, the institutional policies on equality become relevant.

Discourse analysis of Smith's policies

Introduction

Smith University makes a number of policy documents available to the public by posting them online. A limited number of policies are made available and analysis was limited to these policies, on the basis that the selection of the policies for publication is itself notable. In addition, limiting analysis to documents made publically available avoided any issues of confidentiality or breach of employee fiduciary duty on my part. This decision limited the ambit of the research question "what are the policies regarding equality?" (above) to those policies identified below.

As part of the process of setting the context for the research, a documentary analysis of these policies was conducted. The analysis was guided by the research questions identified in Chapter 1, which I will repeat here for convenience

- What are the policies regarding equality at Smith?
  - o Who are the policies available to?
  - o Who are the policies for?
  - o How are the policies made available?

Language can be understood as a means of creating reality and in this regard, the policies can be understood as the university's attempt to determine, regulate and codify cultural norms, modes of conduct and distribution of opportunities within the institution. Language is used as the medium through which the university creates and records policies, sets out rights and obligations and represents identities, including that of the university itself.

Language can also be understood in terms of the provision of context and in this regard, the policies can be understood as the framework within which individuals experience, interpret and report their experiences.

Overview of documents available online

Two policies are available online, the Equality and Diversity Policy and the Disability Disclosure Policy. In addition, the website contains a link to a page which describes the general approach to equality at Smith and the Manual of Policies and Procedures (MOPPs) is also available online. The MOPPs contain the Learning Support Policy and are supplemental to the General Academic Regulations (GARs) which are also available online. There are no employment policies available online.

Both the Disability Disclosure Policy and the Learning Support Policy have students as their focus. The Disability Disclosure Policy refers to staff only in the context of the part of the organisation to whom a disclosure might be made, while the Learning Support Policy identifies staff responsibilities by reference to their particular role (learning support tutors have different responsibilities to those of a personal tutor, for instance).

The Equality and Diversity Policy sets out a commitment to "promoting equality" and tackling discrimination to ensure fair access to learning and facilities for students and staff. Staff are also included in the reference to the undertaking to "promote and foster good relations between all staff and students with protected characteristics and those who do not have such characteristics". However, these are the only references to staff which do not appear in the context of describing staff obligations and responsibilities. Potential students are identified as applicants and expressly referred to in the Disability Disclosure Policy and the Learning Support Policy but there is no equivalent policy document available to individuals who might become members of staff. The webpage referred to above ("Strategy and value, equality at Smith") is not directly linked to the Vacancies page and there is no reference to an inclusive environment on the "employee benefits" page. The employee benefits page includes a reference to the "culture...to inspire you personally and professionally" although this reference is not explained. The page also includes reference to Smith's commitment to cultural capital, which could be regarded as an inclusive approach to understanding employee benefits and which makes the absence of any reference to inclusion more notable.

The Equality and Diversity Policy refers to and identifies all of the protected characteristics. Disability is therefore not treated as an area in its own right and this could be regarded as a positive feature, in that the disability area is mainstreamed. This argument is, however, undermined by the observation that staff are generally omitted as the focus of policies. Mainstreaming should involve incorporating the equalities in all aspects of conducting the university and a "mainstreaming" strategy which applies only to selected aspects of the university (students and student activities) is at best ineffective.

The Equality and Diversity Policy contains a statement regarding the university's commitment to "promoting equality and tackling discrimination" but does not consider the rationale for this stance, beyond a reference to compliance with duties created by the Equality Act 2010.

The GARs say that statistical information regarding the age, gender, ethnicity and disability of staff and students will be monitored and recorded and that where possible to do so without causing offence or discomfort to those whom it is intended to protect, Smith will monitor the sexual orientation and religion or belief of staff and students to ensure that they are not discriminated against in terms of the opportunities or benefits available to them. Statistical information relating to students in relation to age, gender, ethnicity and disability is to be produced and published as part of the Single Equality Scheme, so that the operation of services such as admissions, registration and progression can be monitored and evaluated. The protected characteristics listed appear to be exhaustive rather than indicative and this further undermines the mainstreaming argument identified above. The GARs also provide for the publication of a Single Equality Scheme, which would have to include information relating to staff as well as students in order to comply with the relevant regulations (Equality Act 2010 (Specific Duties) Regulations 2011).

It was not possible to find the University's single equality scheme or progress reports by searching online, although the commitment to the collection and publication of information can be traced back to the 2012/13 GARs which continue to be available online. Although this information could not be found, the search did lead to more than one advertisement of a staff vacancy for an "Inclusion Officer" whose duties would include production of reports on "students' individual and protected characteristics" (Smith, n.d.).

A search of the intranet identified one document, the "Single Equality Scheme 2011/12" which describes itself as the "first Single Equality Scheme" and which consolidates the pre-existing race, gender and disability equality schemes into one document. The document describes the "student journey" from application to acceptance, registration and withdrawals. The document includes a preface from the Vice Chancellor, which refers to enhancing provision for the benefit of staff and students but other references to staff are in the context of staff training and development and no statistics regarding employees are included in the document.

Information on disability equality is more visible on the university's websites than information relating to the other protected characteristics. However, disability equality is mostly incorporated into the promotional student section that occupies the customer care discourse.

This does not seem to reflect a concentration only on areas most recently subject to legislative change, since the changes to the protected characteristic of gender reassignment are not given space, for instance. One interpretation could be that the areas not represented are not problematic and an alternative interpretation could be that the other areas are unimportant. A last interpretation is that the policies constitute a linguistic fan dance, the purpose of which is to distract attention from more problematic areas which are not being addressed.

Genres of the policies

Genre can be understood as a characteristic of discourse. The term "discourse" can be understood to refer to the different ways in which communication between people can be achieved. Fairclough (1992) describes discourse as an "active relation to reality" (p.41) in that discourse both describes and is shaped by its social context.

The University's policies can be regarded as "discursive events" which can be analysed linguistically, as instances of both discourse and social practice (Fairclough, 1992). Discourse practice can be understood as the practices of production, distribution and consumption of texts and social practice as the practices by which individuals shape and are shaped by the social world in which they live.

Fairclough (2003, p.26) identifies three characteristics of discourse as follows:

- Genres (ways of acting)

- Discourses (ways of representing) and

- Styles (ways of being)

Wodak (2015) explains the term "genres" as "the conventionalized, more or less schematically fixed use of language associated with a particular activity" (p.66) and Fairclough (1995) describes the operation of genres as a "socially ratified way of using language in connection with a particular type of social activity" (p.14). Genre has implications for text type, and also the processes of production, distribution and consumption of the text (Fairclough, 1992).

According to Fairclough (1992) the term "discourse" can be understood as describing content but is not synonymous with content. Fairclough explains that:

"A discourse is a particular way of constructing a subject-matter, and the concept...emphasises that contents or subject matters – areas of knowledge – only enter texts in the mediated form of particular constructions of them" (p.128).

Particular discourses tend to be associated with particular genres but the discourse concept is nevertheless relatively autonomous in the sense that it is not dictated by genre.

Particular styles also tend to be associated with particular genres, although genres may be capable of being associated with more than one style, so that, for instance an interview could be formal or informal. Fairclough (1992) identifies three main aspects to style, which he describes as "tenor" "mode" and "rhetorical mode". These terms can be understood as follows:

Tenor – relates to the relationship between the participants in an interaction and can be described by terms such as "official" and "casual;"

Mode – relates to the medium of the text, whether it is spoken or written or a combination of the two;

Rhetorical mode – relates to voice and is caught by terms such as "argumentative" and "descriptive".

The combination of stylistic features such as the particular use of language and the intended communicative purpose (what the text is intended to do) makes a particular text capable of being recognised and classified as belonging to a particular genre.

These concepts can be applied to the University's published policies as follows. The rhetorical mode is declarative and the mode is written. The tenor is formal. The communicative purpose of the university's policies is to declare the commitment of the university to the promotion of equality and the fight against discrimination as part of the duty imposed by the Equality Act 2010. The stylistic configuration of elements such as tenor is consistent with the communicative purpose.

Bakhtin (1986) asserts that "each sphere in which language is used develops its own relatively stable types of these utterances" and application of the theory of communication as mediation put forward by Cooren and Taylor (1997) leads to the conclusion that the university's policies can be viewed as organisational communication, so that the university organisation "now is able to be responsible for "being able to do's" and "having to do's" (p.254).

However, the availability of the policies online is significant and gives the policies a role beyond organisational communication. As well as constituting organisational communication, the policies are part of a public discourse, which addresses the question of social justice within public discourse. The policy statements inhabit four orders of discourse; organisational; legal; moral and economic and selectively combines legislative, memorandum and promotional genres.

The legal genre can be seen in the references to legislation, specifically the Equality Act 2010 and the duty imposed on the University by that Act.

The memorandum genre is apparent in those parts of the policies which address the university's constituents – staff, students and applicants. The policies aim to initiate, regulate and institutionalise a legitimate form of interactional behaviour within the organisation and to reshape cultural norms.

The Equality and Diversity Policy states that "the College" is fully committed to promoting equality to ensure fair access to learning and facilities for students and staff.

The reference to the "College" here reflects an earlier iteration of the organisation, prior to the acquisition of university status. The footnote to this policy records that it is "V1" and the reference to the organisation as "the College" does not identify the date when the policy was written but does reveal that the policy has not been revisited since the organisation acquired university status, some years ago. The policy also contains a reference to a definition of marriage as "a union between a man and a woman" and records that "same sex couples can have their relationships legally recognised as 'civil partnerships.'" A cynical view might be that the statement that the university's commitment to promoting equality and promoting diversity is to an extent undermined by this failure to ensure that policies reflect the current legal identity of the organisation and current legislation regarding marriage.

Wagner and Pencak (2006) identify use of the impersonal voice as a feature of the legislative genre and the policy borrows from this genre in its use of the impersonal voice. Machin and Meyr (2012) comment that the effect of this device is to give extra weight to the statement. The university is presented as an impersonal actor, distinct from its students and staff (who could together be regarded as constituting the university) and which is able to require these constituents to act in a particular way – for instance the Equality and Diversity Policy records that the expectations that the University has regarding the behaviour of students.

Barron (2012) comments that the promotional genre is comprised of communications with an "overriding promotional purpose" (p.23). It is suggested that the University policy statements also inhabit the promotional genre (Bhatia, 2004) in that they uphold and promote the social justice paradigm of equality of opportunity and as proportional, equitable return on ability, talent, performance and character.

It would be possible to argue that the policies are examples of "hybrid genres" (cf. Bhatia 2004, p.90; Fairclough 1992, p.207) – i.e. genres which result from the blurring of boundaries between discourses and it is possible to argue that this hybridisation is related to the general trend towards

what Fairclough (1992, 1995) calls the "commodification" of discourse, i.e. the tendency of market discourses to colonize other types of discourse.

Mautner (2010) identifies the market discourse as that "pertaining to social processes and relationships that are...based on a market logic" (p.17). The market discourse can be said to arise from the format of the policies – the university makes them available online and consequently can be said to be addressing groups which can be regarded collectively as the university's customers - students and potential students, and "exclusive clients" (large firms who sponsor groups of students on a number of programmes at the university). In addition to its customers, the university can also be regarded as addressing a wider audience, consisting of interested others, including non-governmental organisations such as the Equality and Human Rights Commission and the media.

The policies are made available online and this can be regarded as an attempt by the university to enhance its public profile and represent it in a good light. This can then be regarded as incorporation of the promotional genre. The promotional genre is explicit on the University's website; applications from students with learning difficulties and disabilities are "welcomed" and the availability of "support and guidance" is emphasised (Smith, n.d.).

The website then goes on to give details of "How we aim to help" and there are links to the Equality and Diversity Policy. On these pages, the potential student is addressed as "you" and the term "we" is used for the University, usage which is typical of the promotional genre (Machin and Meyr, 2012). Elsewhere, for instance in the Equality and Diversity Policy itself, the potential objects of the text are described in functionalised terms ("staff" or "students") which has the effect of reducing the individuals to the role assigned by the policies and of devolving legitimacy to those roles (Machin and Meyr, 2012).

It is notable that the policies are generally addressing students and potential students as the university's customers. However, in a student survey carried out by Smith University in 2013, nearly half of the respondents (43.84%) were not aware that the University had policies on equality and diversity, which may indicate that students felt the policies had little relevance to them.

The policies which are available online generally do not address staff or potential members of staff. The most common reference to staff arises in the context of how staff will act ("staff will give equitable consideration…teaching staff will have staff development"). Staff are rarely included with students as potential beneficiaries of the policies but rather are regarded as instruments through which the policy commitment will be demonstrated.

It seems that the market discourse is dominant, although it is not clear whether that is apparent to staff and students at Smith.

Statutory duties

Statutory obligations arising from the Equality Act 2010 are recognised in the policy statements but the university's commitments apparently extend beyond what is required by statute. The Equality and Diversity Policy, for instance, makes a number of commitments and goes on to say that "we are *also* committed to promoting equality and tackling discrimination…as part of our duty under the Equality Act 2010" (emphasis added). The implication is that some parts of the university's commitment is voluntary and extra-statutory in nature.

There is little use of "rights" vocabulary, although the Learning Support Policy makes several references to "students with learning support entitlements" and in places the obligatory nature of the statutory duty is diluted, so that, for instance, students are "expected" to act in certain ways.

There is an interesting qualification used regarding conduct. The Equality and Diversity Policy records that the university will "take positive steps to…eliminate unlawful discrimination, harassment and victimisation" which seems to suggest that lawful discrimination, harassment and victimisation are both possible and outwith the scope of the policy. This is interesting, because the Equality Act 2010 identifies discrimination, harassment and victimisation as "prohibited conduct" where those actions are based on a protected characteristic. The university's commitment to equality and diversity is stated as extending beyond what is required by the Equality Act 2010 and yet the ultimate extent of that commitment is unclear, because lawful discrimination, harassment and victimisation are all both contemplated and explicitly placed beyond the terms of the university's Equality and Diversity Policy.

Policy statements as commitment

Application of Austin's (1962) speech act theory leads to the conclusion that the policy statements can be regarded as explicit performative utterances and are therefore not "truth-evaluable." The policy statements are neither true nor false but in making the commitments in the statements, the university performs the commitment; making the commitment is an illocutionary act and the statement is therefore a performative utterance, which may be unhappy (or infelicitous, in Austin's terms) if the commitment is subsequently not adhered to but which is incapable of being true or false.

Sedgwick (2003) identifies promissory performatives, which describe the world as it will be in the future and many parts of the policy statements are orientated towards the future. For instance, the Equality and Diversity Policy contains a list of values and behaviours which Smith *will* achieve (emphasis added) and the subsequent sections regarding admissions, teaching, learning and assessment, equality and diversity, monitoring and review are all set out using the future tense.

The difficulty which arises is in relation to whether the promissory performatives have been acted on. The fact that the Equality and Diversity Policy is out of date has already been noted and this is despite the commitment in the policy to review it annually. The policy also contains a commitment to monitor, record and publish "equality and diversity information about staff and students" as "a central aspect of the Single Equality Scheme which will be reviewed annually". At present, the only Single Equality Scheme which can be identified is dated 2011/12 and is available only by searching the university's intranet.

The repeated use of the performative future, as opposed to statements about what is being done in the present makes it difficult to evaluate what is currently being done and therefore does not facilitate evaluation of the university's stated commitment to equality and diversity.

Smith's policies; conclusion

The University has chosen to make certain policies available online and in doing so can be seen to be creating a reality which is as described by the policies. This reality includes commitments which go beyond what is required by statute, although the tendency to describe actions which will be taken in the future makes it difficult to evaluate the extent to which these commitments are reflected in action taken. Analysis of the policies which the University makes publically available reveals the possibility of a gap or disconnect between that which is publically communicated and the experience of members of the University. Staff are rarely identified as the beneficiaries of the policies and generally feature in relation to obligations which arise in consequence of the policies. Existing students may not be aware of the policies and may not feel that the policies are relevant to them. It seems that the intended audience for the online policies are potential customers and the market discourse is dominant. This conclusion is congruent with the decision taken by the University regarding the availability of the policies. One of the questions identified in Chapter 1, asks "who are the policies for?" and the answer which emerges is that the policies which have been analysed here are predominantly for potential customers. Other policies are available on the internal intranet and these may have different audiences but they have not been the subject of analysis here.

Processes at Smith: Agreement of learning support adjustments

Students attend the BPTC at one of the sites and it is rare for a student to transfer between the sites. At each location, a BPTC tutor takes on the role of learning support tutor for the BPTC. The learning support tutor has responsibility for meeting students and making learning support agreements.

Students who think they may be entitled to learning support agreements are prompted to contact the learning support tutor. For instance, the welcome lecture, which is delivered on the first day of the course to the entire cohort of students at each location, includes a description of the process and identification of the learning support tutor.

The University has a small Learning Support team, members of which support learning support tutors and students with applications for Disabled Students Allowance, as well as making practical arrangements for individual support sessions for students. The Learning Support team also liaises with Examinations and Assessments regarding adjustments to be made. The system, therefore, resembles the hub and spoke system (Rodger, Wilson, Roberts, Roulstone, & Campbell, 2015).

Occasionally the system does not operate as intended and students may approach Learning Support for a learning support agreement, rather than the learning support tutor for their programme. Where that happens, the University processes provide for Learning Support to refer the student to the Learning Support tutor for their programme but in practice, this referral is rare and the Learning Support team tend to make the agreement with the student direct.

Summary

In the course of this chapter, I have considered some of the questions identified in Chapter 1. In particular, I have considered the following questions

- What is a "disability"?

- What is the legal definition?

- What are other ways of thinking about disability?

- Is there a legal definition of equality?

- What are the parameters of the legal definition?

- Who is entitled to equality?

- In what circumstances?

- How does the legislation apply to Smith?

I have described my professional context in a University which is unusual but not unique. I have described my experience of the scope for conflict between staff and identified the potential effects of that conflict on the student experience. I have identified an issue arising from this conflict concerning the understanding of the concept of equality, specifically whether that concept is subject to different understandings by tutors and support staff and also by students. I have identified an issue relating to the University's approach to the application of the relevant statute. I have then considered the legal framework in which these understandings are founded.

In the next chapter, I will consider relevant literature in the area in order to provide a context for the research carried out at Smith.

Chapter 3: Literature Review

Perceptions of equality and disability

Where equality is represented in government policy, a common thread seems to be an explicit commitment to widening participation (for example, Adnan & Hafiz, 2001; Brandt, 2011; Chong, 2015; Jelas & Mohd Ali, 2014; Magnus & Tøssebro, 2014; Mohamedbhai, 2011; Shevlin, Kenny & Mcneela, 2004; Smit 2012). Equity is conceived in terms of access ("anyone with the ability who wants to go to university should have the chance to do so, whatever their economic or social background" Department for Business, Innovation and Skills, 2012, para. 1) although some attention is paid to the social and economic conditions which permit such access. This government commitment may be accompanied by a funding incentive (as in England, for instance, HEFC, 2014) or certain requirements concerning the policies of HEIs so that the policies of individual HEIs often contain provisions relating to equality. Smith receives no funding from HEFCE, as noted above and so the equality policies are not subject to HEFCE requirements, although the relationship with the Equality Act 2010 has been discussed above.

Understandings of equality

Lucas (1965) observes that "we are not sure what [equality] is – but we are sure that, whatever it is, we want it" (p.296). Different understandings of the concept of equality can lead to confused and inconsistent practice.

Fredman (2011) identifies different understandings of equality:

- Formal equality – associated with procedural fairness, achieved if direct discrimination is avoided

- Equality of opportunity – achieved if seemingly neutral policies which in fact (and possibly unintentionally) discriminate against particular individuals are adjusted for those individuals.

- Substantive equality – achieved if results and outcomes do not reveal that particular individuals have been placed at a disadvantage.

It is possible that staff in different departments (teaching and non-teaching or academic and vocational) understand equality in different ways. For instance a construction of substantive equality could lead to an understanding of measures of support different to the understanding which might

result from a construction in terms of equality of opportunity. There is scope for future research to investigate this possibility.

Formal equality; direct discrimination

Formal equality can be understood in terms of treating like alike, so that 'unlikes' can be treated differently. One difficulty with formal equality is immediately apparent – relevant similarities and irrelevant differences have to be identified, since in many situations formal equality is not desirable. For instance, a person with convictions relating to sexual offences should be treated the same as a person without those convictions in the context of doing the weekly shopping but the conviction becomes a relevant difference in the context of an application for a role at a school. So the identification of similarities which should lead to equal treatment, and the corresponding identification of differences which should be disregarded, constitute one foundation of formal equality. Questions of irrelevant difference and relevant similarity may relate to personal characteristics and also to situations or context. Race or disability would both be examples of the former and driving on a motorway would be an example of the latter (the Road Traffic Act 1988 applies to people who are using the road, for instance, rather than to people using private land). The Race Relations Act 1965 made discrimination on specified grounds unlawful in certain contexts and in doing so established a model for subsequent discrimination legislation. Since 1965, legislation has identified an increasing number of irrelevant differences (for instance the Equal Pay Act 1970 made sex an irrelevant difference) as well as an increasing number of contexts in which discrimination is made unlawful (for instance the Equal Pay Act 1970 applied only in the context of men and women in the same employment when employed on "like" work or on work rated as equivalent under a job evaluation survey). The Equality Act 2010 now identifies eight "protected characteristics" which cannot be used to justify certain behaviour in specified contexts, although the relevance of each characteristic is not identical in all situations.

The need to identify irrelevant differences and relevant contexts is characteristic of formal equality and once those parameters have been established, formal equality is satisfied by equality of treatment. Consequently, the requirements of formal equality are satisfied as much by equally poor as by equally good treatment and case law includes examples such as Zafar v Glasgow City Council, (1998) (no discrimination where workers are treated equally badly) and Stewart v Cleveland Guest (Engineering) Ltd, (1994) (no discrimination where the employers would have treated a man equally badly). Barnard and Hepple (2000) observe that "a claim to equal treatment can be satisfied by depriving both the persons compared of a particular benefit (levelling down) as well as by conferring the benefit on them both (levelling up)" (p.563) and give the example of Smith v Advel (1994) in

which the pension age for women was raised to the same as that for men. The same reasoning led to a similar result more recently in Premier Foods Group Limited v RHM Pension Trust Limited, 2012.

In order to determine whether equality of treatment has been achieved, it is necessary to identify a comparator. In some cases, a real comparator will not be available and in others, the choice of comparator will be determinative of the issues (Advocate General v MacDonald, 2001; Pearce v Governing Body of Mayfield School, 2001; Lewisham LBC v Malcolm, 2008; Connolly, 2011). The law has developed so that a hypothetical comparator is permitted (s13(1) Equality Act 2010) but it remains necessary to compare "like with like" (per Nicholls, Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland), 2003). Identification of a hypothetical comparator may not be straightforward, as discussed above.

Substantive equality; indirect discrimination

Fredman (2005) distinguishes formal equality from substantive equality, arguing that:

> "formal equality, with its focus on the abstract individual, has failed to address deeply entrenched patterns of social disadvantage. In framing an alternative concept of substantive equality, distributive justice plays a central role.' This means, in turn, that equality requires more than restraint from the state. In addition, it calls for a duty upon the state to take positive measures to promote equality, including, where appropriate, allocation of resources" (p.163).

English law has recognised that equality of treatment may not result in a fair outcome. In R. (on the application of E) v JFS Governing Body (2009) Baroness Hale observed that;

> "The basic difference between direct and indirect discrimination is plain...The rule against direct discrimination aims to achieve formal equality of treatment: there must be no less favourable treatment between otherwise similarly situated people on grounds of [any of the protected characteristics]. Indirect discrimination looks beyond formal equality towards a more substantive equality of results: criteria which appear neutral on their face may have a disproportionately adverse impact [upon people with protected characteristics]" (paragraph 56).

This approach makes it clear that at least one of the limitations which applies to formal equality continues to be relevant here. In 2009, characteristics recognised by the law were listed by Lady Hale as "colour, race, nationality or ethnic or national origins" (paragraph 56). That list of protected characteristics has since been expanded and additional characteristics could be added in the future

(for example, McGettigan, 2012). Interpretation of the existing characteristics could also be subject to change, with the result that there is no need for statutory amendment. For instance, Hervey and Rostant (2016) observe that there is evidence that "people of non-ideal weight" (p.249) are subject to less favourable treatment in a number of situations and argue that there are a number of ways in which it could be argued that obesity in particular could be regarded as a disability for the purposes of the Equality Act 2010.

Smith (2011) argues that "the logic of the formal/substantive distinction is…elusive" (p.115), pointing out that it is often possible to construct a fact pattern as both direct and indirect discrimination. Similar difficulties in construction have been recognised in case law, including CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia (2015), Home Office (UK Border Agency) v Essop (2015) and Harrod v Chief Constable of West Midlands Police (2017). Smith suggests that the terminology used is often unhelpful, in that the concept of formal justice is treated as if it had the substance which it cannot possess, precisely because it is formal and that the term "substantive equality" is often used in a "vague commendatory way" (p.508) and has a number of variants, none of which have "much specific content" (p.506). The difficulty with this analysis is that the overlap between direct and indirect discrimination is not complete and that rejection of substantive equality limits the sphere of influence for equality legislation to those situations capable of being constructed as direct discrimination.

Fredman (2011) makes the point that inequality of outcome can be presumed to be indicative of indirect discrimination but that the presumption is rebutted where that inequality is explicable in terms of a legitimate justification.

There is further scope for research to investigate the protected characteristic of disability in the context of discrimination.

Harassment and victimisation; equality and dignity

In EBR Attridge Law LLP (formerly Attridge Law) v Coleman (2010) the court observed that "in order to determine what equality requires in any given case it is useful to recall the values underlying equality. These are human dignity and personal autonomy. At its bare minimum, human dignity entails the recognition of the equal worth of every individual" (paragraphs 8 – 9). However, the meaning of "dignity" is "difficult to pin down" (Feldman, 1999) and whether there is a right to dignity is contested (see, for example, O'Mahony, 2012a, 2012b; White, 2012). Despite this rather complex background, the provisions of the Equality Act 2010 which relate to harassment refer expressly to

the concept of violating dignity and so can be regarded as creating a right to dignity in the circumstances in which the relevant sections apply.

In Richmond Pharmacology Ltd v Dhaliwal (2009) Underhill P said:

> "Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase" (paragraph 22).

Richmond Pharmacology was decided on regulations which were replaced as a result of the Equality Act 2010 but which used the same formulation relating to dignity. However, in Betsi Cadwaladr University Health Board v Hughes and others (2014) the tribunal approved this passage, going on to note that

> "the word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence" (paragraph 12).

The comparator

One theme running through the behaviour regulated by the Equality Act 2010 is that of the comparator and, as already noted, choice of comparator may be determinative of the claim. Ms Pearce (see above, p.6) lost her claim for sex discrimination brought under the previous legislation because the Court of Appeal decided that the appropriate comparator was a person sharing all Ms Pearce's characteristics save for the characteristic which was said to be the basis of the discrimination. The claim brought was for sex discrimination and so the Court decided that the appropriate comparator was a man, who shared all Ms Pearce's characteristics, including that of homosexuality. Had the Court accepted Ms Pearce's argument that the appropriate comparator was a heterosexual woman, her claim would have succeeded. The case is also a good example of the "ocularcentricity" of the law (Solanke, 2011) in that, although the tribunal at first instance had found

that there was no doubt that Ms Pearce had suffered very badly, the Court of Appeal observed that discrimination is only unlawful if it is on the particular grounds identified by statute. At the time, the specified grounds were sex, race and disability. Sexual orientation was not recognised as a ground and therefore discrimination because of that characteristic was not unlawful.

Fredman (2011) demonstrates that the underlying model of disability is also important in the identification of a comparator, using the example of a blind person being turned away from a restaurant because no dogs are allowed on the premises. The medical model would identify a sighted person as the appropriate comparator and the result would be a finding of no discrimination, as a sighted person with a dog would also be turned away. However, the social model, identifying the deficit in the environment and recognising the differences between the respective roles of the dogs, one with a blind person and one with a sighted person, would identify the appropriate comparator as a sighted person without a dog. That individual would not be turned away, with the consequence that the finding would be one of discrimination.

Critical disability theorists have argued that normative understandings of various characteristics have the effect of conferring privilege. Slater (2016, p.23), for instance, asserts that "the valid subject of liberal freedom and democracy...was not only male, but also white" so that those lacking these qualities, including people with disabilities, have been regarded as "Other." Erevelles (2011, p.129) identifies normative tendencies which arise from historical, economic and social contexts which play an important role in the construction of the "Other" but which are apparently taken for granted and argues that unless these structural constraints are recognised and given appropriate precedence ("foregrounded") theory such as, for instance, feminist disability studies will be ineffective in achieving its claims for transformative politics. Corker (1999, p.638) draws on Derrida to problematise the conceptual distinction between impairment and disability and adopts Derrida's argument that "binary oppositions, in which one term is always given a more privileged position than its opposite, are typical of ideologies which deceive us into valuing one side of a dichotomy more than another, when in fact neither can exist without its other". McRuer (2010) draws on the concept of compulsory heterosexuality developed by Rich (1983) to develop a theory of interdependence between compulsory heterosexuality and compulsory able-bodiedness and argues that a process of subordination allows both heterosexuality and able-bodiedness to be established as normal and that the element of compulsion follows the introduction of normalcy. Campbell (2012) argues that disableism identifies disabled people as other than 'us' (the non-disabled) so that the tendency may be to enquire what 'we' can do for 'them' and disability is not regarded as an acceptable form of diversity. Finally, Fredman (2011, p.11) notes that "the apparently abstract

comparator is clothed with the attributes of the dominant gender, culture, religion, ethnicity or sexuality". It is clear that the identification of an appropriate comparator is itself problematic and has implications for the view taken of the individual who is to be compared against the comparator. However, Vehmas and Watson (2014) argue that identification of the normative assumptions underlying the construction of the Other may not be enough to result in change and Sayer (2011, p.29) identifies what he terms a "crypto-normative" tendency in these sorts of analyses, which are themselves normatively based but in a manner which tends to remain unexamined.

The importance of attitudes

Trow (2007) identifies a set of attitudes regarding the concept of equality, including that which he terms "egalitarian" which insists on the "levelling up" of provision so that students with non-traditional characteristics (including disability) are given equality of educational opportunities. Trow argues that these attitudes are common to certain countries. Marks (2007, p.71) observes that "people often associate "disabilities with an apparent physical impairment...However, the most common chronic conditions causing activity limitations are rarely visually apparent". Deal (2007) identifies subtle prejudice directed towards disabled people, which he concludes is often unintentional. Tinklin and Hall (1999) identified the importance of attitudes held by staff at HEIs, commenting that "students' experiences in higher education – whether good or bad – depended to a great extent on the level of awareness of the members of staff they came into contact with" (p.190).

Staniland (2011, p.15) notes that "attitudes are seen to play a key role in achieving equality because they may translate into behaviour towards individuals and groups in society which have negative consequences" but it seems that some attitudes are less capable of being retrieved, so that descriptions of attitudes held given by participants in research may not give a full picture of those attitudes.

Wilson and Scior (2015) report that attitudes may be explicit or implicit and that these types of attitude are quite distinct. Explicit attitudes are accessible and available, while implicit attitudes are activated automatically and so arise without effort or intention. Explicit attitudes are the result of conscious evaluations which the individual believes to be true and so require cognitive capacity. Implicit attitudes, on the other hand, reflect automatic responses which are not consciously available (Bohner & Dickel, 2011). Stack and Deutsch (2004) suggest that there are two information processing systems which operate in parallel and either of which can influence behaviour; a

reflective processing system which requires that the individual has the capacity and motivation to consider the value and consequences of their behaviours and an impulsive system which will influence behaviour when these resources are not available. These differences may be important when the research regarding attitudes towards disabled students is considered.

The research conducted by Deal (2007) referred to above was conducted in the UK but research conducted elsewhere shows that staff at HEIs generally report that they regard disability in a positive light. For instance, Aksamit, Morris, and Leuenberger (1987) report that staff attitudes in midwest USA were positive, Thompson, Bethea and Turner (1997) report the same outcome for research carried out in southeast USA, Rao and Gartin (2003) found positive attitudes in a southern American university and Leyser and Greenberger (2008) came to the same conclusion on the basis of research carried out in Israel. These studies can all be regarded as investigations of explicit attitudes and some differences emerge when views which staff attribute to themselves are compared to views of staff attitudes held by students with disabilities. For instance, Collins (cited by Chataika, 2007) asserts that students with disabilities identify attitudinal difficulties as the most important obstacle to academic success whereas tutors identified difficulties with physical access and scarcity of assistive technology as the most significant barriers. Similarly, Shevlin, Kenny and Mcneela (2004) identify "lecturer suspicion, indifference or lack of awareness" as by far the most common source of difficulty for students with disabilities (p.21). Lombardi, Murray and Gerdes (2011) report differences between the attitudes which faculty report they have and their self-reported actions, so that a positive attitude towards certain adjustments is not necessarily reflected in action to implement those adjustments.

The research into staff attitudes described so far is relatively aged but more recent research suggests both that attitudes held by staff vary widely (Hadjikakou & Hartas, 2008) and also that disabled people perceive that discrimination arising from the attitudes of staff is continuing. For instance, Snyder, Carmichael, Blackwell Cleveland and Thornton (2009) describe the development of "more overt and subtle discrimination" (p.5) 20 years after the Americans with Disabilities Act was enacted; Moswela and Mukhopadhyay (2011) report the existence of "pervasive attitudinal barriers" which limit the extent to which disabled students are able to participate in higher education (p.317) and Moriña Díez, López and Molina (2015) conclude that lecturers' attitudes towards disabled students are more commonly negative, rather than positive. Konur (2002) and Ryan and Struhs (2004) also report that disabled students encounter attitudinal barriers and Hanafin, Shevlin, Kenny and McNeela (2007) say that attitudinal barriers were the "single biggest barrier reported by participants" (p.441). None of the research cited in this paragraph was conducted in the UK,

however there is reason to believe that the findings might be applicable in the UK. Holloway (2001) notes that while academic staff at a university in England were described by students as generally helpful and supportive, some were "cynical, unhelpful and non-consultative" (p.605). Mortimore and Crozier (2006) also found that students attending 17 British HEIs commented that tutors were often uninformed about dyslexia in particular. Staniland (2011) comments on the results of the British social attitudes survey and observes that public perceptions generally of attitudinal barriers affecting disabled people remained relatively stable between 1998 and 2011 suggesting that disabled students are likely to continue to experience discrimination arising from the attitudes of staff. That much of this research is relatively aged and pre-dates the Equality Act 2010 is the subject of comment below.

Mortimore and Crozier (2006) report a lack of communication between academic departments and support staff (described by one student as a "glass wall" p. 248). This particular finding has also been reported in other research. Van Jaarsveldt and Ndeya-Ndereya (2015) carried out research in South Africa and found that a number of factors including poor liaison between lecturers and student support services enabled the lecturers to avoid ownership of responsibility for making adjustments for disabled students.

Allport (1954) suggests that contact between different social groups has a significant effect on attitudes and specifically acts to reduce prejudice. The resulting "contact hypothesis" (Allport) has received significant research support. In a meta analysis of 203 studies from 25 countries, Pettigrew and Tropp (2000) found that 94% of the findings supported the hypothesis and research in this particular area also supports the hypothesis. For instance, Leyser and Greenberger (2008) report that the strongest influence on staff attitudes towards disabled students is personal contact with individuals with disabilities and Hopkins (2011) reflects on the effect of extended contact with students with disabilities on his own attitudes and practices. Rigg (2007) also notes that individuals who know a disabled person are more likely to perceive the existence of disability discrimination and less likely to express negative attitudes on the basis of disability themselves. More recently, Scior, Addai-Davis, Kenyon and Sheridan (2013) also report that in the general population, prior contact is positively correlated with positive attitudes towards those with disability. Scior, Addai-Davis, Kenyon and Sheridan (2013) also found that younger age and increased educational attainment are also positively correlated with positive attitudes. On this basis, it can be observed that lecturers at university are likely to share that educational characteristic and if they are also relatively young and have prior contact might be expected to have generally positive attitudes towards individuals with disability. Lombardi, Murray and Gerdes (2011) sent questionnaires to all full time faculty at a

particular university and received responses from faculty in a number of departments which are identified. They report that the two most significant indicators of attitude among faculty are prior contact and training. Tinklin and Hall (1999) also had participants from a number of different courses and universities and report that personal experience is more significant than training.

The educational context within which lecturers are working is important. Murray, Wren and Keys (2008) report that faculty generally had positive attitudes towards those with disabilities and that individual members of staff were willing to spend time with individual students in order to support them. Similarly, Ashcroft and Lutifyya (2013) describe tutors spending extra time with students with disabilities and comment that these actions reflect a generally positive attitude towards students with disabilities and the belief that these students can be successful. However, Murray, Wren and Keys also report that while faculty were generally willing to make provision for what are described as "minor accommodations" such as recording lectures and the provision of extra time in examinations, staff were less willing to make more significant adjustments for instance by making changes to the number or format of assessments. These findings replicated those reported by Vogel, Leyser, Wyland, and Brulle (1999) and Foss (2002) and indicate that little change had taken place since the date of the first study.

Courses leading to professional qualifications may throw up additional issues affecting the attitudes of staff, particularly where there are issues relating to whether the student will be able to practice. Although other views are considered below, Eichhorn (1997, p.61) comments that:

> "While learning disabled law students can potentially receive a wide variety of accommodations in law school, these accommodations are not always available in law practice...Schools do their students a disservice by allowing them to become dependent upon accommodations such as extra time that will not always be available in practice."

Jolly-Ryan (2005) comments that "perhaps the most frequent concern about a lawyer with a disability is whether he or she can be a competent lawyer" (p.128). Similarly, in the context of applicants to courses leading to teaching qualifications, Riddick and English (2006) report a concern expressed by some respondents relating to "balancing equal opportunities issues for the applicant and the needs of learners in schools" (p.219). Storr, Wray and Draper (2011) identify the same difficulty in the context of student nurses and Sing and Fong (2008) comment that "given evidence that attitudinal barriers exist, the potential for these to influence assessment of 'fitness' in the

absence of clear national standards is obvious" (p.643). In the context of teacher training, MacLeod and Cebula (2009) report that the concept of being "fit for practice" was abandoned in Scotland in 2004, on the basis that it was incompatible with the social model of disability (discussed below) and also on the basis that employers rather than universities should resolve the question of fitness to practise. Those training in England continue to be subject to the fitness to practise requirements and the concept is also still extant in the context of qualification as a barrister. Students who successfully complete the BPTC apply to be called to the Bar and are required to produce evidence to support their application. In addition to providing evidence of completion of the BPTC, students are required to produce two letters from referees, each of which must state "*I consider him/her to be in every way a fit and proper person for Call to the Bar*" (Gray's Inn, 2016). There is a limited list of those qualified to write these letters, which includes BPTC tutors (but only where the tutor concerned has known the student for a full calendar year).

The particular disability which a student has is also significant. Beilke and Yssel (1999) found that students with obvious physical disabilities described the classroom as unfriendly and that the effect was greater for students whose disabilities were not apparent and comment that "easily verifiable, physical disabilities do not place faculty in the position of compromising academic integrity or being duped into "believing" students who only claim to need special assistance" (p. 364). Riddell and Weedon (2006) found that students who had a visible impairment elicited "at least a degree of sympathy, and were regarded as deserving some adjustments, even when these were perceived as imposing additional work on staff" (pp.70 -71) whereas those with invisible impairments (such as dyslexia) were regarded as an extra burden, which had to be balanced amongst other institutional demands, including research output. Riddell and Weedon also report that students with dyslexia seemed to be the subject of particular disapproval for a number of reasons, including the invisible nature of the impairment. This may be of particular relevance to postgraduate students studying law. Jolly-Ryan (2005) observes that the postgraduate study of law may challenge academically able students in a novel way, so that late investigation and diagnoses of learning disabilities may result. Runyan and Smith (1991), Eichhorn (1997) and Murphy (1992) all make a similar point.

Sowers and Smith (2004) also report that faculty attitudes vary with disability, so that attitudes towards students with physical disabilities can be more positive than attitudes towards those with learning disabilities. They suggest that an explanation for this may lie in the relative ease with which adjustments such as changing the layout of a room, can be made for the former, compared with the relative difficulty of making adjustments such as changing teaching or assessment practices. In addition, Sowers and Smith make the point that disabilities such as dyslexia which are not readily

observable are more difficult for tutors to understand. This is a point also made by Smith (1999) who identifies "disdain" on the part of administrators, faculty and non-disabled students for students with learning disabilities. Similarly, students describe perceiving negative attitudes on the part of academic staff regarding their dyslexia (Hanafin, Shevlin, Kenny, & McNeela, 2007; Madriaga, 2007; Morgan, 2001; Riddell and Weedon 2006). Although the numbers of students with specific learning difficulties, including dyslexia, have increased over recent years (ECU, 2015), it seems that negative attitudes still exist. Mortimore (p.43, 2013) reports that 9% of the respondents to her survey reflected negative attitudes towards students with dyslexia and were critical of students' expectations regarding special provision "or intent to play 'the disability card'" and Webster (2016) reports that 16% of student participants described their lecturers as unsympathetic. Sowers and Smith (2004) report that training can effectively address the knowledge, perceptions and concerns which staff hold regarding disabled students.

Anticipation of a negative reception, embarrassment and perception of discrimination can act to inhibit disclosure (Jacklin, Robinson, O'Meara, & Harris, 2007; Olney & Brockelman, 2003; Riddell, Tinklin & Wilson, 2005). In addition, students who do not categorise themselves as disabled will not disclose (Jacklin, Robinson, O'Meara, & Harris; Riddell, Tinklin & Wilson). Stampoltzis and Polychronopoulou (2009) found that most of their respondents chose not to disclose their disability when they went to university, both because they didn't want to be perceived as different and because they doubted that any adjustments would be made for them. MacLeod and Cebula (2009) say some types of disability are more likely to be disclosed than others and Jacklin (2011) reports that visibility of a disability and the extent to which it can be hidden are two factors relevant to whether students declare a disability. Riddell and Weedon (2014) note that students who have a disability which is not apparent may be able to choose whether disability is a permanent aspect of their identity but that this is not an option available to those with impairments which are obvious to others. Students in the former category may choose to identify as disabled for certain purposes but may not accept disability as a fundamental aspect of their identity (Riddell, Tinklin & Wilson, 2005). Watson (2002) also found that many of his participants did not identify as disabled but that this identification could be contingent on the situation.

Jolly-Ryan (2005) observes that faculty have a tendency to focus on the deficiencies of disabled students and that the experience of disability may translate into positive attributes valuable at both the student and practitioner stage so that, for instance, "the lawyer with a disability is likely to possess exceptional abilities when it comes to hard work and negotiating" (p.134). Although the point can be made that the system shouldn't require disabled students in particular to develop such

attributes, Olney and Brockelman (2003) report that the disabled students they interviewed "saw many benefits to having a disability" (p.42) including tenacity and the ability to conceptualise problems in unique ways.

Darling (2003) suggests a typology of disabled identity which recognises that people with disability may adopt different orientations at different times. For example, 'crusaders' accept the norms of the cultural majority but are prevented from accessing the normalised lifestyle and so become involved in the disability subculture in an effort to achieve normalisation. Activities may include self-advocacy and involvement in social movements in order to create social change which promotes normalisation. A later study (Seligman & Darling, 2009) provided support for the theory regarding the existence of a number of orientations towards disability and also found a positive correlation between being born with a disability and a positive disability identity, an outcome also reported by Hahn and Belt (2004). Darling and Heckert (2010) suggest that development of a positive disability identity among those who acquire a disability may be impeded or prevented by prior socialisation into the societal norm of stigma. The notion of stigma is discussed by Goffman (1963), who argues that historically people with disabilities have been de-valued or discredited and consequently have been motivated to try to "pass" as non-disabled. This passing has been described by Nirje (1973) as adopting "patterns of life and conditions of everyday living which are as close as possible to the regular circumstances and ways of life of society" (p.194).

Shepherd (2009) describes the experiences of a group of parents whose children have Down's syndrome and who have been committed to keeping their children in mainstream schools. These accounts can be understood as relating to crusaders and Darling comments "typically, when their crusades were successful, these individuals would adopt a normalisation orientation" (p.887). Darling (2003) also identifies a variant of normalisation labelled "situational identification" constituted by a group of people she calls 'chameleons'. These people are seemingly able to maintain multiple identities or to present the identity which seems most appropriate or expedient at any particular time. Darling comments that "some disabled individuals who have access to full inclusion in society may choose normalisation when inter-acting with individuals without disabilities, but may reject norms of 'fitting in' to society when interacting with their disabled peers" (p.888).

The meaning of the term "normalisation" has been contested (Emerson, 1992) and some models apply only to individuals with intellectual disabilities and/or mental illness. Culham and Nind (2003) conclude that normalisation is associated with a "legacy of attitudes towards normality, with 'normal' thought of from a moral standpoint and equated with good rather than bad…normality has

become antithetical to diversity" (p.71) and Ferri and Gregg (1998) observe that normalisation encourages people "to change themselves to gain access to society" (p.435). Morris (1991) comments that "one of the most offensive aspects of prejudice which disabled people experience is the assumption that we want to be other than we are; that is, we want to be normal" (p.34).

The ability to manage identity has been noted by a number of researchers (including Riddell & Weedon, 2014; Olney & Brockelman, 2003; Goode, 2007) and Riddell and Weedon (2006) describe students "deploying the category of disability to protect themselves from risk" (p.70). Goode notes that prior experience of the potential for discrimination is a factor in how students manage their identity. Olney and Brockelman (2003) report that responses to the question "do you consider yourself to have a disability?" were context specific, so that a student might regard themselves as being disabled in one context (for instance, writing reports) but not in another (for instance, personal care). Olney and Brockelman also note that for some individuals with intermittent conditions, disability also had a temporal aspect. Despite these contextual and temporal aspects, most participants in the research carried out by Olney and Brockelman regarded their disability as "a core part of their identities" (p.40).

Choosing to present a different identity can also be understood in terms of Foucault's (1994) theory of transgressions. Allan (2011) illustrates this proposition by reference to her research in which students with disabilities challenged the limits created and imposed by their diagnoses, as well as practices within the school. Examples of this included a student who referred to himself as "a spastic" and described how he would "sometimes say things to shock people" (Allan, p.155) and a student who presented himself differently to different members of staff. This sort of transgression gave the students control over themselves and others and can be interpreted as positive expression. However, Allan (p.155) notes that the transgressions identified were "temporary and partial, had to be constantly repeated, and reactions to them had to be monitored."

Much of the research either focuses on undergraduates and access to higher education or fails to identify whether the students taking part in the research were undergraduates or postgraduates although Jacklin (2011) identifies the importance of earlier experiences of higher education on the decision as to whether to identify as disabled as a postgraduate. For example, Hadjikakou and Hartas, 2008; Holloway, 2001 and Mortimore and Crozier, 2006 all refer to "students" without differentiation and of the four students interviewed by Kioko and Makoelle (2014) it seems that at least one was a postgraduate student, although this is neither identified nor the subject of comment.

There is scope for research to investigate the extent to which prior experience specifically in higher education informs students' management of their identity.

Many of the studies discussed here are relatively aged and perhaps significantly, predate the Equality Act 2010. Nevertheless, all these studies are cited in the current literature, often without reference to these facts (for instance Fuller, 2009; Hadjikakou & Hartas, 2008; Seale, 2006; Shevlin, Kenny & Mcneela, 2004; Vickerman & Blundell, 2010). Other studies relevant to the area were conducted in countries other than England, making it difficult to extrapolate to the situation in England. Most of the studies were conducted with an undergraduate population. Relatively little research has been conducted since the introduction of the Equality Act 2010 or with a population of postgraduate students, enrolled on a vocational course and there is scope for research to be conducted in these areas.

Constructions of disability and implementation of policies

Specific learning difficulties and other hidden disabilities (such as mental illness) do not fit the medical model of disability which regards disability as a medical problem affecting a small minority of people and may be the object of suspicion on that basis (Kirwan & Leather, 2011). Application of the medical model may tend to individualise the response of the HEI to disabled students, since the model identifies the individual deficit as the source of any difficulty and this can be a source of inconsistencies (Holloway, 2001). The medical model of disability is challenged by the social model of disability, which Crow (1996) explains "shifts the focus from impairment onto disability, using this term to refer to disabling social, environmental and attitudinal barriers rather than lack of ability." Interference between the social model of disability (often reflected in the policies of HEIs) and the medical model (which may be more familiar to staff) can also cause difficulties (Borland & James, 1999).

Research on the interpretation and implementation of policies at HEIs often takes as a focus the individual experiences of students and, in particular, whether the students are satisfied with their treatment (Holloway, 2001; Hopkins, 2011; Hyde, Punch, Power, Hartley, Neale & Brennan 2009; Maggiolini & Molteni, 2013; Mullins & Preyde, 2013; Redpath, Kearney, Nicholl, Mulvenna, Wallace & Martin, 2013). For instance, Borland and James (1999) describe the experience of one student as "very positive" on the basis that the student reported that "Y, my tutor at the time, was fantastic, nothing was to (sic) much trouble. She just asked `What do you want? When do you want it?' and then she went out and fought for it for me" (p.92). While student satisfaction is a useful measure of practice, its uncritical acceptance in relation to any other measure (for instance, the efficacy of

policies intended to achieve equality of opportunity) is problematic. High levels of student satisfaction may reduce the risk of litigation based on complaints of discrimination but HEIs operating with limited funding have an interest in whether adjustments made for disabled students are effective in addressing inequality.

Conclusion

The concept of equality can be understood in a number of different ways and is reflected in various ways in the Equality Act 2010. Attitudes held by individuals are relevant to the construction and then application of the concept of equality and I have described some of the differences in attitudes held by staff at the university where I work in Chapter 2. I have also identified the relevance of the fact that the University is not required to produce an access agreement and so has not been required to consider the requirements of equality for that purpose.

Much of the research conducted to date is difficult to apply to the current domestic context. This difficulty may arise because the research was not carried out in England and it's difficult to know, for example, whether (and if so to what extent) experiences reported in Turkey (Kayhan, Sen & Akcamete, 2015) or Tanzania (Tuomi, Lehtomaki & Matonya, 2015) are relevant to experiences in England. Other difficulties arise because of the lapse of time since the research was carried out, since the possibility that attitudes and practices have since changed cannot be ruled out. Further difficulties arise because much of the existing research takes as its focus the experiences of undergraduates, so that relatively little is known about the experiences of postgraduate students on programmes leading to professional qualifications.

Review of the literature identifies scope for research investigating current attitudes and experiences of staff and students in relation to the interpretation and application of the concept of equality at a university in England, where the students are enrolled on a postgraduate course leading to a professional qualification.

Chapter 4: Methodology

Introduction and research objectives

This study was designed to achieve the following objectives:

- To investigate constructions of the concept of "equality" by staff and students at Smith University in relation to students with disabilities

- To identify any practical consequences of different perceptions

- To articulate any relationships between the role carried out by staff and their view of equality

Ramazanoglu and Holland (2002) assert that methodology relies on ontology and epistemology. Since a discussion of methodology will be necessary to provide a framework for the research carried out, the foundations must be laid with short discussions of ontology and epistemology.

Ontological assumptions

In previous chapters, I have made use of a number of cases, and have been prompted by that to consider what sort of ontological assumptions are reflected by the legal process and whether those assumptions are matched by the assumptions underlying the research.

Tuzet (2003) asserts that "traditional wisdom" claims that the aim of a trial is to establish facts (p207). The necessary implication is that there is a single reality, made up of discrete facts which can be ascertained. This seems to be a world view compatible with realism, reflected in Bell's (2005) reference to the collection of facts, in which the implicit assumption is that facts exist objectively and are capable of being collected by adopting an appropriate methodology and method. However, the conclusion that the practice of law is based on a realist perspective is undermined by the observation that the truth created by law (Balkin, 2003) is in fact legally a matter of opinion, which is then acted on as if it were the truth. For instance, a court may determine certain questions of fact and reach a decision, finding the defendant in a criminal trial guilty or one party in a civil dispute liable. As a matter of law, that finding does not create a fact (that guilt attaches to the defendant or liability to a party, for instance) but merely represents the opinion of the court. That opinion is, of course, important, because it is then acted on as if it were the truth (so the defendant is sentenced and may appeal, for instance). Interestingly, two recent reports have emphasised that court decisions should be recognised and treated as "a legal finding, not a manifestation of truth" and so the "as if" quality of a finding of fact is important (Raynes, 2014: Davis, 2016).

Summers (1999) uses the term "formal legal truth" to describe the opinion of the court which is represented in the facts found by the court to exist and Kelsen (1994) observes that formal legal truth creates facts which then exist, even if those facts are at variance with "substantive truth", which is regarded as what actually happened. From a lawyer's point of view, therefore, what actually happened may be less important than what can be demonstrated within the rules of evidence and procedure and the question of whether what actually happened is capable of being ascertained becomes subservient to the question of proof and the associated questions of the burden and standard of proof. These claims may overstate the point, and Tuzet (2003) identifies several reasons leading to the conclusion that coincidence of formal legal truth and substantive truth is important. However, consideration of the concepts of formal legal truth and substantive truth makes it apparent that there can be more than one version of the "truth" and this conclusion is supported by the observation that one event can be constructed in different ways – for instance a defendant in a rape trial might claim first that the complainant in fact consented and also have a fallback position, based on his reasonable belief in consent. Similarly an incident can be represented as friendly badinage or as harassment and lawyers will be familiar with the concept of "pleading in the alternative" which can be understood as the process of constructing facts in alternative complimentary manners, for instance so that both a breach of common law and statute can be asserted. Since it is possible to have more than one version of the truth, what becomes interesting is the various accounts and, to the extent that their influence can be discerned, the effect of influences such as identity and context.

This approach can be applied to the process of litigation. For example in Saha v Imperial College of Science Technology and Medicine (2013) allegations of harassment were made against a supervisor by a PhD student. The agreed facts (substantive truth) included the feature that certain emails had been sent. However, whether the sending of those emails was harassment or reasonable encouragement were matters of perception and argument, leading to findings of fact (the identification of formal legal truth) by the court.

It seems that the ontological beliefs underlying the practice of law are consistent with social constructivism which is can be understood as "the idea that social reality is inextricably produced in everyday life and its routines of action and interaction" (Eberle & Maeder, p.124). This research draws on findings produced by law and so consistency might be thought to require that the research be grounded in the same ontological belief. Because the research is concerned with constructions and experiences of equality, consistency in this regard does not seem to be a requirement, since concepts produced in one ontological setting are susceptible to experience and analysis in another.

For the same reason, the ontological foundations of the current research would not be undermined by considerations of incongruence were a different ontological foundation to be accepted here.

So it seems that while the practice of law seems to be consistent with social constructivism, that observation has no necessary impact requiring that this research adopt the same ontological assumptions. However, the research is concerned with experiences, which are necessarily filtered by perception and this orientation does seem necessarily to reject both the assumption that there is one true reality which is capable of being ascertained through observation and the assumption that a true reality does not exist, so that all reality is in fact a matter of perception. This process of elimination leads to the adoption of an assumption which conceptually places the two positions just described on a continuum, rather than regarding them as diametrically opposed positions and which is predicated on the assumption that there is a real world, but that the inevitability of interpretation has the result that the real world cannot be discerned, other than through prisms, whether the operating prism may be experience, culture or any other significant factor attaching to the perception of the world.

Epistemological beliefs

Acceptance of social constructivism has necessary implications for epistemology, at least in so far as it seems necessary to reject a positivist approach and the assumption that there is one objective reality, which exists independently of those who perceive and experience it. This necessarily involves rejecting the notion that "truth is a matter of correspondence between statements about the world contained in theories and the way the world is, its reality" (p. 16, Scott & Usher, 2011) and allows for a more pluralistic and subjective approach to the concept of truth.

Henwood and Pidgeon (1992) identify two apparently opposing poles of epistemological stances, the positivist paradigm, which underlies the experimental approach, and the naturalistic or interpretative approach, which developed from criticisms of the former approach, when applied to social reality. The distinction has significant implications both for what is regarded as "warrantable knowledge" and for appropriate methods. The concept of "warrantable knowledge" seems to raise issues of quality and evaluation, although Madill, Jordan and Shirley (2000) point out that concepts such as reliability and objectivity traditionally applied to evaluate research are themselves based in epistemological positions and so may not be capable of transfer to research which does not share the same epistemological foundation.

Murray Parkes and Sills (1994) suggest the following cycle of experience:
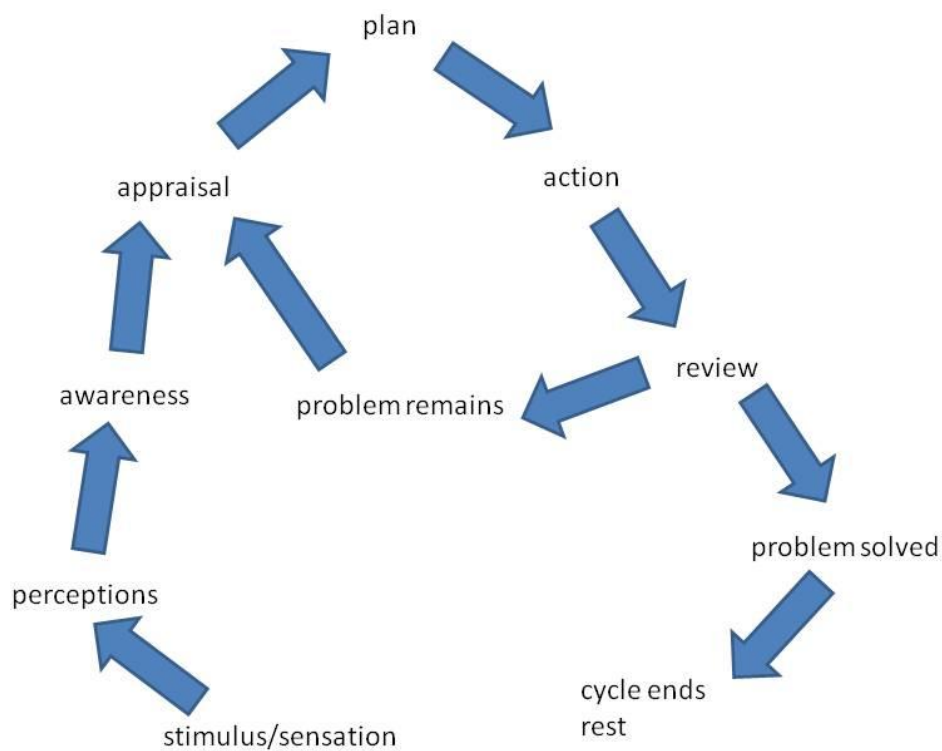
Figure 7: The cycle of experience, Murray Parkes and Sills, 1994

The epistemological question bites at a number of points in this cycle and raises questions of objectivity and subjectivity. The ontological assumption made above assumes the existence of a stimulus or sensation, albeit one which is not fully accessible. Perception can be regarded as necessarily a matter of subjectivity and has been shown to be malleable and so unreliable as a barometer of the reality which is its object (for example, Aviezer et al., 2008; Dunning & Balcetis, 2006; Cole, Trope, & Balcetis 2016; Luus & Wells, 1994). Additional support for the assertion that perception is subjective is provided by a number of studies. For example, Riccio, Cole, & Balcetis (2013) argue that visual perception is systematically biased rather than an objective reflection of the external world; Cole, Trope and Balcetis (2016) discuss the effect of motivation on perception; Vasey et al (2012) discuss the effect of fear on perception in spider phobic individuals and Xiao and Bavel (2012) describe the effect of social identity and identity threat on perception. Similarly, Kirsch (2015) describes the effect of intention to act on perception; Drager (2010) demonstrates a link between an individual's own production of sound and how they perceive sound and Shimojo at el. (2001) show a number of effects of auditory stimuli on visual perception.

If perception is acknowledged to be subjective, it must logically follow that the subsequent stages in the process identified by Murray Parkes and Sills (1994) are also subjective. This conclusion is supported by the research available. For instance, Krusemark and Li (2011) discuss the effect of perception on threat evaluation; Hosman and Stassen (1999) consider the effect of perception on response; Krishna (2012) reviews a number of studies which show the effect of varying perceptions on behaviour and Combs and Taylor (1952) discuss the effect of the perception of mild threat on efficiency. This research emphasises the importance of subjectivity and the epistemological beliefs which this research is based on.

The conclusion supported by the reasoning and research referred to above is that the entirety of the process identified by Murray Parkes and Sills (1994) is subject to interpretation and construction, with the exception of the original stimulus or sensation, although the "real truth" of the stimulus or sensation exists it cannot be accessed. This process of interpretation and construction based on the assumption of an objective reality does not seem to be incoherent, since Maxwell (2012) observes that ontological realism (understood here to mean that a real world exists, independently of our perceptions and constructions) can also accept epistemological interpretivism, so that our understanding of the real world is understood to be inevitably a construction resulting from perception and because interpretation of the real world is inevitable, it is not possible to access a "view from nowhere" (Putnam, 1981, p.49).

The ontological assumptions and epistemological approach discussed above both support the methodology of the research, which will now be considered.

Methodology

Methodology is understood to provide the framework for research, or "the ways in which we acquire knowledge" (Moses and Knutsen, 2012, p.4).

Yin (2009, p.26) explains research design as "*a logical plan for getting from here to there*, where *here* may be defined as the initial set of questions to be answered, and *there* is some set of conclusions (answers) about those questions." In this research, *here* is represented by the set of questions identified in Chapter 1 (p.2) and *there* is considered in Chapter 4. The questions identified were not developed into propositions because the purpose of the research was exploratory, rather than evaluative or explanatory (Thomas, 2011) or heuristic (Eckstein, 1975).

The research was intrinsic, which Stake (2005, p.445) explains as follows:

"if the study is undertaken because, first and last, one wants better understanding of this particular case. It is not undertaken primarily because the case represents other cases or because it illustrates a particular trait or problem, but instead because, in all its particularity and ordinariness, the case itself is of interest."

A number of methodological matters will now be discussed.

Case study design

Rowley (2002, p.18) comments that case studies are "a valuable way of looking at the world around us" and that a case study design is often appropriate in the situation where the research focuses on the workplace of the researcher. These points suggest that a case study approach is appropriate for the research here. However, Rowley also makes the point that because case studies can be regarded as lacking rigour and objectivity, it is particularly important to set out details of design and implementation.

The subject and the object of the research

Wieviorka (1992) distinguishes between two essential parts to the case study, the subject and the object, where the subject is the case and the object is the analytical frame. The role of the subject is to act as a lens, through which the object is viewed. The subject for the current research was my own workplace and represents what Thomas (2013) describes as a "local knowledge case", it is familiar to me and I wanted to understand particular features of it. It's clear, therefore, that the subject was not chosen, as Yin (2009, p.48) suggests because it is "representative or typical". Thomas (2013, p.514) argues that whether a subject is typical will depend on the "dimension by which typicality is framed" and Smith could be regarded as typical if the relevant dimension is "provider of the BPTC" but in any event there is no necessary relationship between the chosen dimension of typicality and the object of the study. Thomas makes the point that the concept of typicality may give the misleading impression that the significance of the analysis is a result of how typical the subject is. Similarly, Hammersley (1992) asserts that the value of a small case study subsists in the richness of the information obtained, rather than in the extent to which the information can found a theory capable of generalisation. Applying these arguments, the value of the current research subsists in the information obtained, rather than in any claim to generalisation.

The object of the research was the interpretation of the concept of equality. However, the research focus was on more than one element of my workplace, with comparison to be made between these

elements. The research investigated the views and actions of participants from different parts of the large unit that is Smith University, as well as the way in which the University uses its policies regarding equality. The research therefore involved "more than one unit of analysis" (Yin, 2009, p.50) and can be regarded as adopting an "embedded design" (Yin, p.50).

The elements or units are important because they are part of the wider case (the University). Yin (p.53) observes that:

> "the subunits can often add significant opportunities for significant analysis, enhancing the insights into the single case. However, if too much attention is given to these subunits, and if the larger, holistic aspects of the case begin to be ignored, the case study itself will have shifted its orientation and changed its nature."

In order to avoid this outcome, different methods relating to the study of how information is transmitted and which could be applied to the larger aspects of the case, were considered. This is discussed below.

The boundary of the case study

Ragin (1992, p.5) identifies the role of boundaries in defining cases and explains "the...case-orientated approach places cases, not variables, center stage. But what is a case? Comparative social science has a ready-made, conventualised answer to this question: Boundaries around places and times define cases (for example, Italy after World War II)."

The boundaries of this research were the organisation in which the research took place (Smith University) and time (after the Equality Act 2010 came into force).

Methods

Case study is not a method in itself (Simons, 2009; Thomas, 2011; Yin, 1999) but is a design frame which can incorporate a number of methods, without dictating a particular method. Methods, therefore, require independent consideration.

A good starting point, as far as methods are concerned, is to consider the question, "what exactly are you trying to find out?" (Blaxter, Hughes & Tight, 2006, p.81). Miles and Huberman (2002, p.42) then point out that "Knowing what you want to find out leads inexorably to the question of *how* you will get that information."

The focus of my interest was the experiences of staff and students at Smith University in relation to a particular phenomenon (construction of the concept of equality). This focus of interest suggested the case study as the most appropriate approach, taking my own workplace as the subject. Blaxter, Hughes and Tight (2006) describe a number of advantages to this approach, including ease of access.

The results of the research are relevant to policy and its implementation both within Smith and at other HEIs. The impact of the research is further considered below.

Two sources of data were considered. The intention was to triangulate different aspects of equality at Smith, which can be described as the way in which Smith as an organisation uses its publically available policies to make representations regarding its approach to equality on the one hand and the experience of members of the organisation on the other hand. The term "triangulation" can be used to have a number of different meanings, including, in the realist paradigm, the use of a variety of methods and data sources to obtain support for the accuracy of the findings reported (Lincoln & Guba, 1985). A realist stance would support using different sources of data in order to uncover aspects of the "truth" of how equality is constructed at Smith. However, the intention here was not to generate support for the existence of the single reality revealed by the research and so triangulation was not used for this purpose. This project is predicated on a social constructivist understanding which takes the view that the "truth" exists but cannot be accessed and so makes this understanding of triangulation unhelpful. Triangulation is accordingly regarded as a tool which produces richer data, provides a fuller picture and strengthens analytical claims (Smith, 1996).

Interviews

Blaxter, Hughes and Tight (2006) observe that the suggestion that an appropriately refined research question will "effectively determine the methods" used to answer it (p.81) can be undermined because "in practice...in almost every case there will be alternative techniques which could be used, either instead of or in conjunction with the one(s) you first think of" (p.81).

Because the research concerned the experiences of people at Smith, (insofar as these experiences inform or result from their construction of the concept of equality) a number of approaches were possible. Any affective reaction to events would necessarily be a matter of extrapolation and interpretation, for instance and consequently observation as an approach was excluded on the basis that it would not result in data capable of answering the research question. Similar difficulties attached to the use of a survey. Blaxter, Hughes and Tight comment that "the survey relies on breadth rather than depth for its validity " (p.80) and Cohen, Manion, and Morrison (2011) say that surveys are typically used "to scan a wide field of issues, populations, programme, etc. in order to

measure or describe any generalized features" (p.256). Since the research questions concerned detailed consideration of participants' experiences and their reactions to those experiences, the use of a survey was excluded.

While there were identifiable disadvantages attaching to the methods described above, the use of an interview carried a number of advantages. Most importantly, use of the interview method was justified in relation to the focus of the research on the experiences of participants and how they thought about and regarded those experiences (King & Horrocks, 2010). Cohen, Mannion and Morrison (2011) make the point that "interviews enable participants – be they interviewers or interviewees – to discuss their interpretations of the world in which they live, and to express how they regard situations from their own point of view" (p.409). The focus of the research on interpretations, therefore, justified the use of interviews from a methodological point of view. In addition to the question of methodological justification, the use of interviews was regarded as efficient. Blaxter, Hughes and Tight (2006) advise that "the interview method...can be a useful technique for collecting data which would likely not be accessible using techniques such as observation or questionnaires" (p.193)

Silverman (2013) makes the point that "in some respects, doing an interview is that most natural thing in the world...we all know what an interview looks like and have no difficulty in interviewing or in being interviewed" (p.199) and King and Horrocks (2010) similarly comment that "when you tell a potential participant that you want to interview them, they will usually have a pretty good idea of the kind of encounter they are agreeing to" (p.1). However, both Silverman and King and Horrocks go on to observe that this is a view which does not recognise some of the complexities of this method. Holman (1987) makes the point that research is often something which is done by the relatively powerful to those relatively lacking in power and, writing from a feminist perspective, Oakley (1981) argues that "interviewers define the role of interviewees as subordinates: extracting information is more to be valued than yielding it: the convention of interviewer-interviewee hierarchy is a rationalisation of inequality; what is good for interviewers is not necessarily good for interviewees" (p.40). However, an alternative view of the interview conceptualises it as inevitably active (Holstein and Gubrium, 2004; Holstein and Gubrium, 2011). This approach regards the interview as a process of narrative construction, so that "understanding how the narrative process unfolds in the interview is as critical as apprehending what is substantively said" (p.151, Holstein and Gubrium).

These different views informed the approach taken to the "important methodological issue of whether interview responses are to be treated as giving direct access to 'experience' and 'feelings'

or as actively constructed 'narratives' involving activities which themselves demand analysis" (Silverman, 2013 p.202). The focus of the research was the relationship of the reported experience to the interpretation of equality, rather than, for instance, the production of disability narratives akin to the illness narratives described by Riessman (2003) and so the naturalist approach was thought to be more appropriate. However, it was also recognised that the alternative approach would preserve the possibility that the way in which an individual constructs themselves (for instance as a disabled student or as a student with disabilities, as a staff member with particular responsibilities or as a person subject to certain obligations) is significant. Although the two approaches identified by Silverman are presented as alternatives, the approach taken by Holstein and Gubrium (2004; 2011) seems to be conjunctive rather than disjunctive, in that attention is directed to "both the practical *hows* and the substantive *whats* of interviewing, taking care to give them equal status" (Holstein and Gubrium, 2011, p.151, original emphasis) and so the ability to adopt both approaches is preserved. Moses and Knutsen (2012) discuss the value of understanding the world "in terms of wearing different-coloured lenses" (p.301) and that proved to be a useful analogy. Silverman (2013) suggests that researchers should "try out different theoretical approaches" in the early stages of data analysis to "see what works for you (and for your data)" (p.234) and also comments that it is possible to "kick-start a piece of interview research" using both the constructionist and the naturalist approaches (p.238). Tracy's (2010) concept of crystallisation advocates the use of multiple theoretical frameworks and was applied here to permit the application of both approaches, so that the different understandings generated by each approach were preserved.

Recruitment of participants

Staff from the learning support team, examinations and teaching teams were invited to participate. Students were also invited to participate. Marshall (1996) observes that a sample size can be regarded as sufficient where it adequately answers the research question and the sample size sufficient by that criterion was 12 (see also the discussion of saturation below). It may be relevant here to mention that tutors at Smith rarely teach across programmes, so, for instance, a tutor teaching on the BPTC will not also teach on the course leading to qualification as a solicitor.

Potential participants were initially sent an email by a third party, with some information about the research and details about eligibility for participation. Students on the BPTC are organised in tutor groups, each of which has 12 members. A tutor group was chosen at random by the third party and all members of the tutor group were contacted. The alternative to this approach would have been to

select individual students at random but my view was that this method could place students under a degree of pressure to take part. The email explained that the research concerned the experiences of disabled students at the University and invited anyone who was interested in the research to contact me for further information. The email did not set out conditions of eligibility but all the students who expressed an interest in the research were interviewed (no one expressed an interest but then declined to take part in the research). All the students interviewed had declared a disability to the University and either had or were in the process of agreeing a learning support agreement.

All students coming forward to take part in the research were interviewed before another tutor group was selected at random and sent the initial email. This process was repeated until a sufficient number of participants had been interviewed (see discussion below regarding saturation). Students from three different tutor groups took part in the research.

Tutors in the BPTC team, staff in Learning Support and staff in Examinations were also approached in the first instance by email sent by a third party. All the staff who expressed an interest went on to take part in the interviews, as with the student participants.

Individuals who were potentially interested in taking part were asked to use a specified email address in order to contact me. The initial contact was made by a third party to address the possibility that potential participants could feel a degree of pressure to agree to take part in the research. The potential difficulties which can attach to this procedure (and which Groger, Mayberry & Straker, 1999, refer to as "gatekeeper bias") resulting from reluctance of the third party to be involved were not experienced.

When I was contacted, I sent potential participants more detailed information regarding the research (participant information sheets were developed for both staff and student groups and are included in Appendix 1). A mutually convenient date and time for the interview was arranged through email and all participants were given at least 7 days in which to read the information sheet and decide whether to continue their involvement.

All participants were asked to give consent to their involvement (the consent form is included in Appendix 2) and were provided with a copy of the transcript of their interview, which I had prepared from the recording. Transcripts were verbatim, reflecting the narrative nature of the interview. The interview responses were then anonymised. Participants were able to withdraw at any stage prior to the anonymisation of their data and their data would not then have been used.

Smith is a large organisation and there is little communication between certain teams. Had I been interviewing tutors from other programme teams, for instance, it is extremely unlikely that I would

have known them. However, the research in part concerned the experiences of staff on the BPTC, a team to which I have previously belonged and with whom I still sit when at the University. Accordingly, I know all members of the team, including those who have joined the team since I left it. Similarly, my previous role as learning support tutor for the BPTC meant that I knew all the members of staff in the learning support team, and I also know many of the staff in Examinations. The result was that I knew all the staff who participated, although I didn't know all of them well. However, it was important to be aware that prior acquaintanceship had the potential to complicate matters. Williams (2009, p.216) identifies what he describes as "the aporia of multiple practitioner roles" and Herlihy and Corey (1992) explain that professionals enter dual relationships when they "assume two roles simultaneously or sequentially" (p.3). Tutors at Smith all have some experience of dual relationships, since the organisation of the course means that an individual may be a module leader and so managing a colleague and at the same time be a member of a module team which is managed by that colleague. However, carrying out the research with tutors meant that we were negotiating a new relationship and one which exposed me in the role of "researcher". In addition, one of the modules which I have previously taught is conference and this involves interviewing skills (albeit skills which are relatively stylised). I was, accordingly, aware of the possibility that tutors would on some level be analysing my interviewing skills.

Blythe, Wilkes, Jackson and Halcomb (2013) say that while being an insider may help with recruitment of participants there are also a number of possible disadvantages which can attach to the position of insider, including the possibility that the researcher's similarity to the participants can lead to presumption so that the researcher or the participants may fail to seek or to give sufficient detail during the interview so that effective analysis is not possible (Couture, Zaidi, & Maticka-Tyndale, 2012). The challenge of assumed understanding was relevant here and informed the development and use of prompts in a number of interviews. However, it was also important to note Kusow's (2003) argument that the researcher's relationship with research participants may not be determined a priori and that individuals cannot be permanently located, in this case as an insider or an outsider, on the basis of one particular characteristic. Kusow's argument is that research status is the subject of continuous negotiation between the researcher and the participant so that the insider/outsider status emerges from the interaction, as well as the wider context in which they meet (this may be social, political and so on). It follows that a researcher can be an insider in one situation but an outsider in another and the choice of "status characteristics" (Gurney, 1985) is important. If I compare myself as a lawyer, former tutor on the BPTC and employee at Smith, I might emerge as an insider in relation to staff participants. This claim to insider status might be more tenuous in relation to participants from outside the BPTC team and stronger in relation to tutors. On

the other hand, any claim to insider status might be impossible to sustain if the characteristic of disability is identified as the defining matter. Taylor (2011, p.16) asserts that where a researcher and a participant have a pre-existing friendship, the researcher's interpretations are likely to be affected and that a process of "unlearning the familiar" can be effective in helping the researcher to achieve some clarity. Recognising that this was a possibility was important in analysing the data and returning to the analysis for reconsideration was a safeguard adopted here.

Williams (2009) identifies a number of difficulties which can arise where what Evetts (2003) terms "guilty knowledge" comes into existence through the process of research carried out in one's own environment. Qualitative research is driven by the intention to discover but this intention can collide with the ethical principle of doing no harm when the process of research creates knowledge about a person which has the potential for harm. What, for instance, would I have done had a participant disclosed commission of a crime? The use which Williams makes of Heidegger's (1945) concept of aporia emphasises that the complexities caused when guilty knowledge is generated cannot be anticipated and so awareness of the potential for these complexities to emerge was important.

Participants

Seven members of staff took part in the research. This group included five BPTC tutors, one examinations officer and one member of the learning support team. Both the examinations officer and the person from the learning support team had particular responsibility for the BPTC and are the only members of their teams who have that particular responsibility.

One of the BPTC tutors who took part was the learning support tutor and the group of tutors included full time members of staff, as well as one part time member of staff who was also in practice. Staff members were drawn from more than one site at Smith.

There were 31 tutors teaching on the BPTC across all the sites when the research was being carried out, 11 of who were part time. Accordingly, nearly 20% of the team took part in the research.

Five BPTC students participated in interviews. Four students were full time and one was part time. The students were not all attending the same site at Smith.

Structure of interviews

A semi-structured interview approach was used and a copy of the guide developed is included in Appendix 3. Some adjustments were made to the guide to reflect the fact that both staff and

students took part in the interviews and so it would not have been appropriate to ask exactly the same questions of both groups of participants.

Thomas (2013) comments that the semi-structured interview combines "the structure of a list of issues to be covered together with the freedom to follow up points as necessary" (p.198) although Gesch-Karamanlidis (2015) observes that increased flexibility is associated with increased unpredictability. Unpredictability was tempered by the sequential approach to transcription which was adopted and which provided the opportunity for reflection on each interview before the next was arranged. The advantages of this approach were such as to justify its use.

Questions included in the guide were developed from the research sub questions identified above (page 2). Although no propositions were developed for the research, for the reason given above, I was aware of Yin's (2009, p.28) advice that "every exploration...should...have some purpose" and questions were included in the interview guide on the basis that the purpose was to explore material behind the identified research issue.

Although the guide includes fully formulated questions, these were not read out to participants verbatim. The intention was to encourage participants to talk in depth about their experiences at Smith, while at the same time covering the areas relevant to the research. The interview guides did not include the research questions and participants were told that I was interested in their experiences, in order to avoid both the danger that responses would be contaminated by knowledge of the research question and the associated danger of "lazy research in which careful data analysis is simply replaced by reporting back what people have said" (Thomas, 2013, p.206).

Location of interviews

All interviews took place on University premises. The University has a number of meeting rooms which can be booked by staff and which provide quiet and private spaces in which to meet. Because the meeting rooms used are not located in a part of the building used for BPTC teaching, participants would not be observed by colleagues, either student or staff, as they arrived for interviews or left afterwards. The meeting rooms are located at the end of a corridor and so there was no possibility of distraction from people passing by.

Data analysis

Analysis of the data which results from the interviews could have been carried out by reference to codes identified in advance or by reference to codes created after the data is created or by using a

combination of the two approaches. The third approach, which uses a combination of codes, was adopted. Codes were created to reflect anticipated types of responses to particular questions, and the existence of some codes acted as a useful mechanism for imposing some order on the data, especially in the initial stages. The view was taken that it would not be helpful to identify all anticipated codes before starting the analysis of the data, as that could have the effect of discouraging recognition of unexpected responses. It was thought that it was important to retain the ability to be surprised (Foss and Waters, 2007; Riessman, 2003), so it was important to avoid any mechanism which might operate against that possibility. Abbott (2004, p.215) says that this process is akin to "decorating a room; you try it, step back, move a few things, step back again, try a serious reorganisation, and so on."For the avoidance of doubt, then, the research intention was not to test a preconception and so prior identification of all anticipated codes was not attempted.

Initially, I used large codes which corresponded to the issues and topics identified in the interview guides (which are included at Appendix 3). As I coded and recoded, I developed new codes and subcodes, which related to categories and themes. Charts relating to this process are included at Appendix 4.

Saturation

O'Reilly and Parker (2013) observe that "saturation seems to have become the gold standard against which the diversity of samples is determined" (p.191) but also note that the meaning of the term "saturation" can vary according to context. Guest, Bunce and Johnson (2006) describe thematic saturation and Green and Thorogood (2013) refer to a process in which data are collected until nothing new is yielded. The approach described by Green and Thororgood was adopted here. Each interview was transcribed and analysed before the next interview was arranged. Data resulting from each interview were analysed and that analysis informed the decision as to whether a subsequent interview was indicated.

It was not possible to apply this process to the interviews with the learning support staff member and the examinations officer, since they are unique in the responsibility they have for the BPTC at Smith.

Access issues

The research was discussed with both the Dean of the Law School and the Head of Learning Support, before any steps were taken. However, neither the Dean nor the Head of Learning Support took the position of gatekeeper in the sense described by LeCompte and Preissle (1993) so that it was not

necessary to go through either in order to contact prospective participants. The research was supported by these individuals but there was no resulting encouragement for individual staff members to take part in the research, neither was there any publicity regarding the research. Staff whose line manager was not either the Dean or the Head of Learning Support took part in the research often without the knowledge of their line managers. No access issues were anticipated or encountered.

Ethical considerations

Ethical approval

Ethical approval was obtained from the Virtual Programmes Research Ethics Committee and is included at Appendix 5. The proposal that students who have disabilities should be involved in the research led to particularly pressing ethical considerations and is discussed below.

Vulnerability of participants

The option of basing the research only on staff interviews was carefully considered but taking this approach would have deprived the research of a potentially important source of information as well as "potentially excluding from the public domain those very voices that otherwise remain muted" (Russell, 2000, p.415).

These ethical difficulties were perhaps rather reduced by the student population. Entry to the course which the students are on is selective and students are required to have achieved at least a 2:1 classification for their undergraduate degree. Given that requirement, it is possible to be confident that none of the students had an intellectual impairment which would influence their ability to understand that they were being asked to participate in research. King and Horrocks (2010) make the point that "informed consent is a process" (p.115) rather than a stage which is completed at a particular point in time. Accordingly, all participants were reminded of their right to withdraw from the research at a number of stages in the process and an explanation of how anonymity was to be achieved formed part of the consent process.

Although the potential vulnerability of student participants was a matter which was recognised during the process of obtaining ethical approval, the potential vulnerability of other participants did not attract the same detailed scrutiny. The research process created the opportunity for "guilty knowledge" (Williams, 2009, p.212) with the possibility that such disclosures would create the potential for subsequent difficulty. As Williams notes, recognition of this possibility could provide no

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"talisman" against its manifestation but it was nevertheless important to acknowledge in the design of the research.

Power issues

The research required students to be interviewed by an academic member of staff who worked in the same school of the University where the students are studying. However, the potential for difficult power issues to arise because of our respective roles at the University was more apparent than real. All the student interviewees were on the BPTC. This is a postgraduate course which can be taken either full time, over the course of one year, or part time, over the course of two years. Although I have previously taught on the BPTC, I no longer do so and so none of the student participants were my own students. I left the BPTC team before any of the current BPTC students enrolled on the course and so I have had no prior involvement with them and they do not know me in the capacity of BPTC tutor.

Students are eligible for the BPTC either because they hold a qualifying law degree (often an LLB) or a first degree in a non-law subject and a conversion diploma (the General Diploma in Law or GDL). Although Smith offers both an LLB programme and the GDL, I have never taught on those programmes, which in any event are not physically located in the same part of the country as the Law School where I am based. Accordingly, I had had no prior involvement with the students where they had been previously studying on a different programme at Smith.

There were no power issues which arose in relation to student participants because of their position as student on the BPTC therefore. However, it was recognised that power issues were capable of attaching to the roles adopted (interviewer/participant) and to roles within Smith (staff/student).

Staff who took part in the research were not members of my current team and I am not in a position to exert any influence, either formally or informally, over them. This position results from the team structure adopted at Smith which means that generally and except in the case of senior staff (Deputy Dean and above) membership of the relevant team is a prerequisite to the ability to exert any influence, for good or bad. This position would have been apparent to all the staff participants who, accordingly could not benefit or suffer in a formal sense as a result of their involvement.

Although the power relationships were such as to exclude the possibility of formal benefit or detriment, involvement in any interview process carries the potential for benefit and the risk of harm in a different manner. The potential benefit subsists in the opportunity to be the subject of the undivided attention of another person, in a way which is not common in ordinary social intercourse.

Conversations between friends, colleagues and acquaintances tend to be reciprocal and one participant may have the impression that the interlocutor is concerned more with what he himself will say next, rather than really listening to what is being said at the moment. The powerful potential of the experience of being the recipient of undivided attention and close listening may be a large part of the mechanism for success in counselling, for example (Sanders, Frankland, & Wilkins, 2009) and no detriment would attach to such an outcome for the participant. Indeed, Kvale (1996) comments that "a well-conducted qualitative interview can be a rare and enriching experience for the interviewee" (p.36).

However, involvement in the interview process also carried the potential for informal harm in that the subject of the interview had the potential to cause distress, perhaps in a way which was not anticipated by the subject (since it might be reasonable to suppose that the person who anticipated distress would therefore choose not to take part in the interview process). King and Horrocks (2010) comment that the novice researcher can often respond to distress on the part of a participant by "deployment" of the right to withdraw on the basis of an assumption that "someone's distress necessitates the termination of the interview, perhaps in relation to the ethical principle of beneficence and the undertaking to do no harm" (p.115). Had a participant demonstrated or reported distress during the course of an interview, the process would not have been automatically halted but the plan provided any distress to be recognised and for a decision to be taken regarding ending the interview or taking a short break before resuming the interview process. Sources of external support were identified for all participants in the PIS and I would have been able to remind participants of help and support available. However, in the event, none of the participants seemed to become distressed during the course of the interviews, neither did anyone report feeling distressed.

Limitations

Use of email to recruit participants in the manner described amounted to advertising for participants, with consequences for the sample of participants which resulted. King and Horrocks (2010) observe that "methodologically, the major pitfall of recruiting participants through advertising is that the sample is highly self-selecting" (p.35). This difficulty was mitigated to some extent by the use of a sampling frame which stipulated participants from different groups (staff and students). Participants were not sampled, as the term is used in quantitative research but rather were selected because they were able and willing to "provide substantial contributions to filling out the structure and character of the experience under investigation" (Polkinghorne, 2005, p.139).

Systems theory

Yin's (2009) reminder of the importance of the wider, holistic case provides a general justification for the use of theory relating to the case.

I am interested in the structures within Smith University and also in the flow of information within the University. One of the questions which I initially identified concerned whether the flow of information might be relevant to the tensions between different staff teams identified above. These interests led me to systems theory, which de Board (1978) explains "can be used to analyse and explain the processes at work in an organisation" (p.91). Systems theory therefore provides a useful lens through which the structure at Smith can be viewed, as well as providing an analytical framework for discussion.

I considered the question of whether other methods of approaching the question of communication within Smith might be appropriate. For instance, the communication audit can be used to discover the "accuracy, and direction of communication within a particular organisation at a particular moment" (Odiorne, 1954, p.235) and can be very effective (for example, Downs & Adrian 2012; Goodwin, Davis & Telg, 2014; Popescu & Crenicean 2016; Toelken & Shaw, 2012). However, Hargie and Dickson (2007, p.12) note that one disadvantage of this method can be that "some staff may be...loath to admit that they are in ignorance of what is then perceived to be an important piece of information" and I took the view that this potential difficulty made the method inappropriate for this research.

Social network analysis has been applied to people in organisations, resulting in "abundant data" (Burt, Kilduff & Tasselli, 2013, p.528) but is predicated on the requirement that the individual is "directly involved" (Fischer, 1982, p.2) with other people in the sense that there is a "social relationship between the individual and the network partner that is characterized by repeated interactions between the dyad members and a mental representation of the relationship as such" (Wrzus, Hänel, Wagner & Neyer, 2013, p.53). This method was ruled out on the basis that it was not clear at the outset that participants would have such a relationship. In the circumstances, systems theory offered the best method for considering the flow of information within Smith.

Research questions

The research set out to answer the following questions:

1. How do staff and students at Smith University construct the concept of equality in relation to students with disabilities?

2. What are the practical consequences experienced, if any?

3. Is there any relationship between the role carried out by staff and their understanding of equality?

Chapter 5: Interview themes

If the reality described by the policies may not be the reality experienced by members of the university, a different method of investigation may be better able to uncover the experienced reality. Vickerman and Blundell (2010) comment that "good experiences for students largely depended on the attitudes, experience and personal knowledge of particular members of staff, rather than institutional policies and procedures" (p.29) and so I will turn now to discussion of the themes which emerged during the interviews.

Interview themes

In this part, I will discuss themes which emerged from the interviews. Each subheading is a direct quote taken from one of the interviews. All references are to material identified and discussed in Chapter 2.

All names are pseudonyms and the roles of interview participants are as follows:

Table 3: Participants and their roles at Smith

Name	Role
Mary	BPTC tutor
Joe	BPTC tutor, learning support tutor
Jeremy	BPTC tutor
Kammy	BPTC tutor
Sophie	BPTC tutor
Frances	Examinations officer
Thomas	Learning support officer
Ben	BPTC student
Lydia	BPTC student
Andrew	BPTC student
Susan	BPTC student
Phoebe	BPTC student

The policies and procedures are not great: Frances, Examinations

None of the student respondents discussed Smith's policies, but most did comment on the University's procedures. The students who had experience of managing disability as an undergraduate had generally entered the process with expectations about what would be required. Phoebe said "I have been through the process before and I had already organised a letter, so that was available at the start of the course" Andrew commented that "[The process] was quite time consuming at the start of the course when I was settling in and getting used to the course and the people in the group. It was another plate to spin" and Susan viewed the process of agreeing adjustments as "just another job to do." Ben wanted a support worker to accompany him to classes which his report did not support and was told that he would need to obtain an addendum to the report to support his request. He commented that "I didn't think I had the time or the energy to do that. I thought someone else could have done that for me."

Only two of the tutors commented on the policies. Sophie said "We have a policy but it's just a smokescreen...we don't adhere to it at all...and management are not interested. They just don't want to know."

Frances was the Examinations officer who took part in the research. Her perspective was:

> "The policies and procedures are not great. They are quite comprehensively cut and pasted from other organisations' websites I think for a start and they are really...a lot of the time there is no internal logic at all so it's very difficult for anyone to rely on it. It's supposed to be our get out but it doesn't stand up."

Discussion

None of the students had been prompted to investigate the University's policies because of dissatisfaction with the procedures applied to them. With the exception of Ben's request for support in classes, all the requests for support made by the students had been met and so the fact that they did not comment on Smith's policies is unsurprising. Some of the students did comment on the time and effort required by the process of agreeing adjustments in the manner described in earlier research (Holloway, 2001) but students with prior experience of managing similar processes generally arrived prepared for it and seemed generally to regard the investment of time and effort required as being reasonable.

That staff generally did not comment on policies seems to support what is said above regarding the linguistic fan dance which is performed by the policies. While the existence of the policies is important, how well they function in practice is perceived by staff as a matter which is of little interest to management. Staff generally did not regard themselves as the focus of the policies and Thomas viewed the policies as an (ineffective) line of defence. Some of those interviewed were well aware of the promotional intention behind the policies discussed above.

I don't tell people I'm a lecturer: Mary, tutor

All BPTC tutors are required to be qualified as either barristers or solicitors and also to have practice experience. Most staff teaching on the BPTC are barristers and all of the tutors who took part in the interviews were barristers. Consequently, all BPTC tutors have two professional identities, one as legal practitioner and one as tutor. In any discussion of "professional experience" that term is understood to refer to experience of being in legal practice rather than experience as a tutor or manager in higher education. This practical experience is valued by Smith, because it allows Smith to make claims regarding the currency and value of the BPTC as it is delivered at Smith. Links with practice are encouraged. Tutors are able to take "practice days" during the academic year or to return to practice during non-teaching times. In some cases, Smith will meet the cost of practising certificates which are a prerequisite for practice and the professional activities of staff are publicised to students. During a recent visit by the regulator, staff were asked to indicate by a show of hands whether they were still involved in practice, and information on the proportion of staff who also maintain a practice is often included in the annual monitoring reports published by the Bar Standards Board.

This focus on practical experience probably explains why the majority of tutors interviewed regarded themselves primarily as barristers and then as tutors. Sophie explained this in the following terms:

> "I don't have time to practise now but I see myself as a member of the Bar. I still have tenancy and whenever someone asks me "what do you do for a living?" I always say I'm a barrister by profession and a lecturer. So this is not my passion, the Bar was my passion. I would be very surprised if anyone on the team didn't see themselves first as a barrister."

Mary's response was similar: "I regard myself as a barrister first and then as a person who teaches on the BPTC. I don't tell people who ask that I am a lecturer."

Joe was the only tutor who didn't immediately adopt the barrister persona, explaining "I do now say I'm a teacher" but also going on to comment that "I notice a lot of people, once you're a barrister, you're always a barrister is kind of their view but I haven't been in a court room since 2009 and... I wouldn't first describe myself as a barrister as some people do" before ultimately concluding that "it depends who's asking I suppose".

Jeremy was rather more reflective about the question of professional identity, commenting that:

> "People's identity is tied up in what they do so you say to somebody at a dinner party what do you do and they say oh I am a barrister or I am a headmaster or I am a merchant banker. They don't say oh I am a father of 5 children or I'm a resident of [named area]. They define themselves in terms of their job and people on the BPTC particularly define themselves in terms of their professional qualification. That absolutely applies to me which is bizarre but that's the way it is."

There is an inherent contradiction here. Jeremy points out the importance of the job in relation to self-identity but concludes that tutors on the BPTC define themselves not in terms of their job but rather in terms of their professional qualification, so that the BPTC tutors form an unacknowledged exception to the tendency he identifies.

The university introduced a Certificate of Education three years ago, which is available to all teaching staff. Uptake amongst BPTC tutors has been relatively low and none of the tutors interviewed had taken part in that process, although Mary had registered for the programme but had deferred the start on several occasions. Nobody on the team holds a teaching qualification and nobody has membership with the Higher Education Academy. The term "professional" is understood always to refer to legal practice, therefore. The foregrounding of the identity as a barrister rather than that of educator may reflect a relative devaluation of teaching as a profession, which may be reflected in the uptake amongst staff of this training opportunity.

Joe commented on training received:

> "Smith gave me some training. I was given some training for the Advocacy. I passed the Advocacy Training Council [qualification]. Other than that, a lot of it was training on the job and I chose to watch some classes myself to learn but I'm a criminal practitioner, I'm familiar with speaking to groups of people and thinking on my feet, otherwise I wouldn't be in the job. You know, I wouldn't be comfortable doing it so I felt that I was equipped to start and learn on the job. I'm

familiar with the subject matter having been a criminal practitioner and advocacy is something I had a great deal of training in pupillage but also learning by doing on my feet in court. I had to learn how to handle witnesses etc so I felt able to at this graduate level teach on the Bar course with the training I had. In hindsight, I think I would have benefitted from more, probably but I've been doing it now a year nearly and I feel happy with the experience I've gained along the way."

Joe was not the only tutor who expressed the feeling that experience of practice qualified an individual to teach and one of the tutors interviewed, Sophie, had experience of being the training officer for the team:

"What I found though was that members of staff were resistant to training. Really resistant and in a way I can understand it because we're all busy and we don't have much time to reflect or do anything else but prepare, teach and recover. And plan for the next year. It was a bit of a thankless job."

Discussion

Although there are issues arising from the use of student feedback as a measure of tutor effectiveness (for example, Abrami, 2007; Feldman, 2007; Marsh, 2007) the lack of emphasis given to training generally is not reflected in the student feedback. Students are asked to respond to a number of questions using a scale of 1 – 5, where 1 equals "not at all" and 5 equals "very". Feedback given during the year by all cohorts is summarised below and can be seen to be highly positive. The figures are taken from the Annual Programme Monitoring Report for the BPTC for the year 2014/15. These are the most recent figures available at the time of writing.

Table 4: Feedback survey results for the BPTC at Smith 2014/15

Subject	Average of responses to the question: How effective was your tutor at helping you to achieve the learning outcomes of the SGSs?
Advocacy	4.37
Civil litigation	4.64
Criminal litigation	4.33
Professional ethics	4.22
Resolution of disputes	4.38

Written skills	4.46
Conference	4.14
Options	4.41

The response rate to all student feedback surveys was 33.3% over the course of the year. The generally positive feedback regarding teaching on the BPTC at Smith makes it difficult to argue that tutors' self-identification translates into poor pedagogical practice. Further, any incentive to attend training or register for the University's Certificate of Education which relies on a claim to improve classroom practice is also fatally undermined.

Most, but not all, tutors defined themselves first as members of the Bar and only secondly as tutors and questions of identity with respect to tutors are discussed below. This can be understood in terms of status generally, perhaps the tutors felt that being a barrister is better in some way than being a tutor, for instance, but it's also capable of being explained in terms of the identity of the students on the programme, who can all be presumed to want the qualification which the tutors interviewed all possess. That ambition means that the status of the tutors is enhanced in the eyes of the students, which may give the tutors additional reason to emphasise this aspect of their identity.

The matter of training is also theme to which I return below.

I haven't asked for any adjustments: Joe, tutor

 Equality did not emerge as a theme when tutors were talking about their role at Smith. Tutors described their roles and responsibilities in relation to the BPTC programme and Smith generally and also discussed their own experiences. More than one of the tutors disclosed that they had a disability or other protected characteristic. Although these discussions were quite wide ranging, the subject of equality was not mentioned, neither had any of the tutors taken steps regarding reasonable adjustments and the impression given was that tutors thought of equality in relation to other people, rather than as a concept applicable to themselves.

Frances, the examinations officer, also shared this perception of equality:

> "In terms of equality for staff...it's one of those awkward things where I don't know that it impacts on what I do. I'm just fire fighting to such an extent all the time that I almost fail to engage with the bigger picture...Colleagues based in the regions seem to have more time to engage with issues like equality. There's a

Smith unity group which was set up ages ago, which has done nothing for the last three years. They've got [named person] involved now because they just want someone slightly more recognisable at the head of it but for the last three years no one has...there has been one telephone call a year...people say "what's this for" and no one really knows and my colleagues in [named locations] seem far more hell bent on engaging with it and forming a staff network but at the end of the day, from an equality point of view...this is a terrible thing to say but I don't know what it's for. I don't understand why it's needed..."

Thomas, a member of staff in the learning support department, explained that Smith would not accept his diagnosis of a named condition and so were not prepared to make adjustments for him.

Discussion

None of the tutors related the concept of equality to themselves and none of those who disclosed a disability had asked for adjustments to be made. This is consistent with the majority view expressed below regarding the perceived reluctance of the Bar to accommodate individuals with disabilities and is also congruent with the observation made above regarding the fact that staff are generally not the focus of the University's policies regarding equality. The policies don't have staff as their focus and are not recognised by these staff members as applicable to themselves.

It's also possible that the tutors were conscious of the small world comprised by the Bar, so that adjustments capable of being perceived by other members of staff could not be presumed to be the subject of knowledge only in the Smith environment but could easily become known in the wider environment. Since most tutors took the view that the Bar is not accommodating to individuals with disabilities, and also expressed doubt about the readiness of lay clients to accept advocates with disabilities, it is perhaps unsurprising that tutors protected their identity by not disclosing disabilities. It's also relevant to note in this context that tutors generally said that they did not personally know anybody in practice with a disability.

In contrast, both the Examinations officer and Thomas, from Learning Support, spontaneously related the concept of equality to themselves and their colleagues. Having raised the issue, Frances then effectively dismissed it as something which was made irrelevant by pressures in the environment and Thomas described a situation in which his request for adjustments was rejected. The rejection of the request made by Thomas is interesting in the context of an institution which has set a target for the number of learning support agreements made with students and an environment in which rumours circulate about the quality of the evidence which is accepted to support those

agreements. Thomas did not go into detail about the rejection of his request for adjustments but it's interesting to note that my conversations with learning support tutors generally over time have not identified a single instance where the totality of a student request for adjustments has been rejected, although occasions when a student has asked for particular adjustments (such as recording particular sessions) have been discussed above.

The disclosure by Thomas could have had the consequence of giving me the guilty knowledge discussed by Williams (2009) and considered above. However, during the course of the interview, Thomas also told me that he would be leaving Smith shortly. It was apparent that Thomas was not seeking to sequester the research space for his own purposes and, as we discussed the matter, Thomas did not seem to expect (or hope) that I would take the matter up on his behalf. Possibly displaying the caution discussed below, I did not feel that the fact that I would not be taking this further was a failing on my part, because I would have wanted to know a lot more detail regarding the diagnosis and its source in order to evaluate the strength of the claim for adjustments, before deciding that I should take any action.

In making this disclosure, Thomas can be regarded as showing a degree of lack of concern for his own anonymity. Although I have changed details here, it might be possible for his identity to be worked out through a process of piecing together the clues contained in this work, although perhaps the value of the largest clue (that this particular member of Learning Support worked with BPTC students and has subsequently left Smith) is undermined by the observation that more than one individual with these responsibilities has now left Smith and that the period over which the interviews took place has not been identified.

This is almost a lay person's view: Jeremy, tutor

One concern raised by all the tutors related to how their views might be regarded. All the tutors took care to expressly disown any expertise in relation to equality. For instance, Jeremy caveated his views more than once with the statement "I'm not an expert, so this is almost a lay person's view", Kammy prefaced his remarks in a similar manner ("I'm not a learning support expert") and Joe used the formulation "I would say this carefully". In addition, all the tutors wanted information in writing prior to the interview regarding the questions and prompts which would be used. The information required in the staff PIS was not sufficient for the tutors, who seemed to fear being exposed or caught off guard in some way and this was despite the assurance of anonymity which attached to the process.

In contrast, neither Frances (from Examinations) nor Thomas (from Learning Support) expressed caution either prior to or during the interviews.

Discussion

In relation to the tutors who took part in the research, Blythe, Wilkes, Jackson and Halcomb (2013) say that being an insider may help with recruitment of participants and I think that was important here. I knew all the tutors who took part in the research, some of them very well. Taylor (2011, p.11) identifies "friend-informants" as those with whom she had a friendship which existed prior to the involvement of those people in the research and notes that a prior friendship can have the effect of attuning the researcher to the participant, so that, for instance, body-language is read more accurately and hesitancies noted. Taylor's view is that a prior friendship can mean that the participant is more open and that the combined effects of good attunement and openness can result in the collection of good data –"the data I have gathered from friend-informants...is significantly greater in volume and depth". However, the prior relationship between a researcher and participant can also complicate the interpretation of that data and the concept of unlearning the familiar discussed above was important. Wolcott's (1999, p.137) observation that "there is no monolithic insider view, every view is *a* way of seeing, not *the* way of seeing" was also important here.

The caution expressed by the tutors could be attributed simply to the fact that all the tutors had experience of practice and so would naturally be cautious in expressing a view. However, the process of participating in the interview constituted a process of reality building which included elements of identity construction for both parties. I was aware of the new relationships being formed during the interviews, as I constructed a new role of researcher and the tutors actively constructed their identities as lawyers, with the caution that may be inherent to that role (Daicoff, 1997, 2004).

An alternative explanation, however, relates the caution with which the tutors participated in the interviews to the concept of equality itself. The caveats and limitations which were vocalised during the interviews were all made when the issue of equality arose and no similar caveats were made in relation to other themes. One interpretation of this would be that the concept itself was the source of the anxiety and that tutors were seeking to protect themselves by limiting the extent to which they were prepared to claim knowledge. When other matters, for instance dyslexia, were discussed, tutors commented on their own lack of knowledge in an altogether different way ("I sound so dumb!" Sophie) but talking about equality evoked a different quality of reaction. Both concepts (equality and dyslexia) can be regarded as complex but only the former elicited this reaction from

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tutors. The issue of anxiety is discussed further below in the context of systems theory. (Menzies, 1970).

We don't have training here, do we? Sophie, tutor

Tutors' resistance to pedagogical training is described above but I also discussed training in learning support with the tutors who took part in the interview process. Mary commented "Smith has made attempts to make staff members aware of their policy on equality and diversity" although she couldn't recall any specific occasions when that might have occurred. Sophie's view was more representative "I have had no training on learning support. Nothing. I have never had that" although the realisation was surprising to her and she commented "I'm really surprised now I think of it. We don't have training here, do we?" None of the other tutors remembered any training on learning support or receiving support with how particular students or disabilities might be accommodated.

Discussion

The tutors interviewed generally expressed interest in training in learning support, although this was at odds with the lack of enthusiasm described by Sophie in relation to training generally. These expressions of interest are consistent with the lack of knowledge and expertise which tutors were generally quick to emphasise and also inconsistent with the "pervasive attitudinal barriers" described by Moswela and Mukhopadhyay (2011) and the generally negative tutor attitudes identified by Moriña Díez, López and Molina (2015). However, given the general antipathy regarding training described by Sophie (above), it's possible that the tutors' vocalisation of a positive attitude to training represents an explicit attitude as described by Wilson and Scior (2015) and that training events would in fact be poorly attended.

The knowledge is ring-fenced, learning support are the experts: Kammy, tutor

In addition to carefully establishing non-expert status, teaching staff interviewed were also clear in their view that questions of equality for students were within the expert remit of learning support, rather than being a matter relevant to their role. For this purpose, the learning support tutor on the BPTC team was regarded as a learning support expert. In turn, the learning support tutor regarded staff in the learning support department as the experts. Mary explained that "If a student raises an issue which is, which I considered might be a learning support issue, I will then direct them to the relevant person within the team". Joe (a learning support tutor) said: "Any queries I have I go to [colleagues in learning support] immediately."

This attitude was common among the staff and was also reflected in interactions with students. For instance, Ben described the experience he had shortly after receiving his diagnosis of dyslexia and dyspraxia:

> "I did make an appointment to talk to my personal tutor but when I mentioned my diagnosis, he just said well that's really something you need to discuss with the learning support tutor... At first, I wanted more time from the learning support tutor. She teaches on the course and I wanted the tutors to know how I was feeling."

Although learning support were regarded as the experts, tutors also expressed some frustration as far as transmission of information was concerned. Sophie said "At Smith the knowledge is kind of ring fenced, so learning support are the experts and they don't cascade the knowledge to us." Kammy's viewpoint was as follows:

> "I think again it's a case of where the information is and where it's disseminated. I think it's great that [the learning support department] have these regular events, but they're all not mindful of the fact that tutors teach and so they...need to come in and say "we're going to do a presentation for the BPTC team in London at a time that has been boxed off, that everyone can do" and to come and deliver some training to us. But also to have some [information]. If it exists I can't find it, don't know where it is, but on the intranet to have resources we can look at for the common forms of learning support, I would like to know a little more about teaching people with dyslexia and dyspraxia because they are two issues that come up quite often. "

The view of the member of staff in the learning support team was rather different. Thomas said that "We do have lots of information available" and also that "We're also good at liaising with other departments" but that "There isn't much communication with BPTC tutors."

While learning support were regarded as the experts in learning support, there was a feeling amongst tutors that the department did not really understand the BPTC programme. Kammy explained:

> "I lack confidence that learning support as a team understand the BPTC. I have heard about unrealistic expectations that they or the student have and it's also sometimes hearing about the reasonable adjustments that are made and thinking that those aren't the right reasonable adjustments. Thinking about the student,

to the limited extent that I understand learning support but thinking about the whole cohort."

Joe also expressed concerns relating to a learning support agreement which, because complex, had been drafted by learning support:

"We all came to the party long after the LSA was drafted, she's paid her money and she's on the course and we just have to help her the best we can. We have concerns about her ability to practice anyway but also about the things she thinks are reasonable adjustments in line with her LSA. "

Sophie commented:

"Sometimes we have to make adjustments which are not contemplated in the learning support agreement and that can be because the agreement has been drawn up by learning support and they don't really understand the programme and how the assessments in particular work."

From the perspective of the learning support team, Thomas commented that "I found the BPTC as quite complicated for someone that hasn't studied law."

Discussion

BPTC tutors were keen to establish their relative lack of expertise regarding the issues of equality and learning support as noted above and were also quick to locate ownership of the area with Learning Support. In some regards, the perceptions of staff in different departments varied. Thomas, from Learning Support, said that a lot of information was available to staff but the BPTC tutors generally said that they couldn't find information and that, to some extent, the Learning Support team guarded their expertise by failing to pass information effectively.

Some features of the environment at Smith mirror those reported by Van Jaarsveldt and Ndeya-Ndereya (2015). The tutors' responses reflect a tendency to distance themselves by locating responsibility for learning support with that department. Van Jaarsveldt and Ndeya-Ndereya carried out their research specifically in the context of e-learning and report that both the technology associated with e-learning and understanding of disability (or particular disabilities) resulted in the distancing behaviour identified; they suggest that appropriate strategies would address these inadequacies by providing information and raising awareness. As noted above, there was a disjunction here at Smith; Thomas from learning support said that a lot of information was available to tutors but tutors complained that they couldn't find the information and that training events

were not sympathetically timed. These findings indicate that communication regarding the provision of information is more of a problem than the information itself and that there is a need for better communication between the different parts of the organisation.

The flow of information between departments is diagrammatically illustrated in Figure 8 (p.99 below). Mortimore and Crozier (2006) identify poor communication between tutors and staff in learning support departments as a difficulty which impacted on the support available to students in the 17 HEIs which were included in their research and it seems that poor communication is a feature of the organisation at Smith. Crozier, Reay and Clayton (p.70) call for "effective communication" between the different departments within HEIs but, possibly because the scope of their research did not allow for it, do not go on to consider why that standard was not being achieved or changes that might facilitate improved communication.

Systems theory would suggest that the boundaries between departments are located and managed in such a way that they prevent the subsystems (departments) from relating to each other (de Board, 1978) and that these boundary issues are related to difficulties with the definition of primary task described (this is discussed further below).

The needs of any disabled students don't impact my teaching: Sophie, tutor

Two complementary themes which emerged from the interviews with tutors concerned confidentiality and the extent to which accommodations were made in teaching sessions. All the tutors agreed that confidentiality was important. Joe, a learning support tutor, explained that:

> "I tend to not make a thing of it with the other tutors unless they expressly ask me to, the students because although they've given consent I still feel a duty to them to only tell people if they need to know because part of the equality is to, I would say when necessary, when you can avoid it, not repeatedly talking about things that you've agreed in the agreement, just implementing them and moving forward. So the more people you share it with, the more danger there is that they might feel they're being treated differently. But maybe that's the wrong approach. If anyone needs to know I tell them if I've got the consent, otherwise I just try and implement it and not to make a too much of a fuss about it."

Sophie commented that:

> "And the learning support tutor has gone to great lengths to ensure that the team who don't need to know about disabilities are not told. So for instance,

when we were doing the assessment timetable, he said that we had to be very careful to make sure that students with disabilities were not identified."

Confidentiality was also important to the students. Andrew reflected that "the level of confidentiality is important and some students don't want people to know. It would bother them." Lydia commented that:

"I know what my report says. [Any reports are] quite personal and I find it weird. I don't know how many people on the staff have read that and know those things about me. My report is quite insulting at times. It says we couldn't calculate your IQ because your profile is too spikey. That's kind of an insult! I'm not ashamed of it and it's very true if you look at my profile. But I don't want to discuss that with anyone."

While some students felt more strongly about confidentiality than others, all of the students had an expectation that staff would make appropriate adjustments. Andrew described telling his tutors about his needs but also commented that his open personality made this easier for him than it might have been for other students:

"I got on very well with all of them and I was happy to tell them what my condition is. I wasn't aware that they knew what the medical problem was but it wouldn't have mattered to me if they had known. I know that it would have been a problem for other people where they were more sensitive about it."

Unless students had these conversations with tutors, staff were generally not aware of students' disabilities or their need for adjustments:

"The needs of any disabled students don't impact my teaching because there is no information but I should be aware. We should all be aware because otherwise we can't be inclusive. Sometimes I might inadvertently make things difficult for a student." Sophie.

"I have never been told about a particular student or particular needs for teaching." Jeremy.

"The gap in the provision of information relates to classroom practice. That's where the issue comes in." Kammy.

> "So I have no idea which of my personal tutees might have learning support arrangements...I have no idea when I'm teaching someone whether they have a learning support arrangement in place...there's nothing in the process that requires you to be aware at the teaching and training stage. Absolutely nothing."
> Mary

Joe, the learning support tutor who took part in the interviews, explained that he would take direct action to implement adjustments:

> "Well one student's got eyesight problems... so I have to remember that in all the classrooms there should be black pens... I haven't had 100% success rate with communicating with tutors. I got a load of black pens from the stationery cupboard because there's no point in sending out a missive. It's easier to do these things yourself...I think that the best thing is just to try to get the pens. I mean it sounds like a basic thing but if I make it into a whole big thing that we must always have this stationery it's usually best to just go and find them myself. I think adding layers is just annoying."

Discussion

There was no evidence of the subtle prejudice identified by Deal (2007) and the attitudes described by staff were generally positive, in the way described by Aksamit, Morris, and Leuenberger (1987) in relation to midwest America, Thompson, Bethea and Turner (1997) in southeast America and Leyser and Greenberger (2008) in relation to Israel. Similarly, students did not describe encountering attitudinal difficulties on the part of staff as described by Collins (cited by Chataika, 2007). However, the "lecturer...lack of awareness" described by Shevlin, Kenny and Mcneela (2004, p.21) as by far the most common source of difficulty for students with disabilities seems to be a feature of the environment, albeit that its roots are not in the suspicion or indifference also identified by Shevlin, Kenny and Mcneela. It seems that the lack of awareness instead results from a concern with confidentiality which prevents the flow of relevant information to tutors.

Levelling the playing field: Kammy, tutor

A number of different perspectives emerged on the question of reasonable adjustments. Tutors commonly expressed two concerns, the first of which centred on whether appropriate adjustments were being made and the second of which related to the interests of the whole cohort of students.

Students generally tended to take the view that their requests were reasonable, even where (as in the case of Ben) those requests had not been met by Smith.

Joe explained his approach to settling learning support agreements: "I have just been following the forms as it went before and giving 25% extra time and also thinking that the exams are going to get awfully long if you give any longer, especially opinion writing etc."

Thomas also had experience of writing learning support agreements and explained that:

> "I am very aware of the practicalities and what is reasonable from that point of view. Whether something is reasonable from the disability point of view will depend on the disability. I will go beyond what is recommended if that is reasonable. I might do that if the resources are available. If it's not going to cost anything."

There was general agreement among all participants on the question of what the purpose of reasonable adjustments should be and how these measures related to the concept of equality. The phrase most often used in this context was "levelling the playing field" although tutors in particular had a tendency to talk around the issues in the first instance. For example, this was Joe's initial consideration of reasonable adjustments and equality:

> "I've had to consider the concept of equality in various frames, various contexts, political and legal over the years, so I do often find myself thinking about scenarios and considering whether I think it's equality and I suppose one recent example that's troubling me is all this tax credits business. I do find myself thinking about equality an awful lot and I'm always interested to hear how others view it as well and I'm open to changing my view when I have heard reasonable argument from someone else. So I'm open minded. I suppose I have my own definition, I don't know if I can put it into words right now of what I think it is right now but I also have the opinion that I was given from counsel who are experts in this on what reasonable adjustments are and I keep that in mind at all times. I have done this course, so I know what the demands of the course are. So I keep all of those factors in mind. It helps me when I'm trying to make decisions but to be honest, more often than not, if the medical evidence is there and the request is reasonable, I grant it. I'm not trying to stand in anybody's way. Of course if issues are thrown up of equality versus other students who are not asking for these things, I would always consider it but I think we've come a long

way, Smith, and so have institutions as a whole on recognising the need for adjustments and so I suppose I do have an underlying view of what I think equality is but I don't know that I apply it (sounds bad) consistently in every situation because each situation is different but I try to be fair and even handed with the students that come to me and where possible grant the learning support adjustments."

Joe then went on to use the playing field analogy:

"The analogy of levelling the playing field is used a lot and I'm not always sure that that is helpful but I suppose that is what we're trying to do with this course, We're trying to put everyone who attends the course in the best position they can be to achieve it on what is a difficult course and if you are someone who has difficulty with memory with written skills, maybe even with a hand injury then of course these things are going to unfairly penalise you against others if you have to sit and do an opinion writing for four hours or whatever it is so I suppose it is levelling the playing field, putting them all in the same starting position and then letting them go and see what the results are. We can't do their homework for them, if they haven't done their prep, they're not going to do very well in exams but making the exam environment fair is important, fair and equal."

The same analogy was used by other tutors and students. Kammy, for instance, explained that:

"I am thinking about consistency and the adjustment. Again my understanding is that a reasonable adjustment should be something that mitigates the issue that the person who has a learning support issue faces so that they have an equal playing field. And my concern sometime is that in just looking at the student and not looking at the cohort, they have inadvertently created an unequal playing field for that person and that has an effect on the cohort as a whole."

Joe's perspective was similar:

"The BPTC handbook says that it must be fair to everybody, so disabled students can't be advantaged... I'm a BPTC lecturer and it seems to me that at some stage when [this student's] learning support agreement was drafted, when she started, it was missed out to explain to her that we'll do everything we can to level the playing field but we're not going to put you ahead of the game."

Frances, from the Examinations office also discussed this matter but the concern relating to giving an advantage to disabled students because of the adjustments agreed was not shared by Thomas, whose focus seemed to be entirely on the disabled student in front of him at the time. However, Thomas also had regard for practical matters. For instance, Thomas said:

> "I will go beyond what is recommended if that is reasonable. I might do that if the resources are available. If it's not going to cost anything."

Lydia's view was:

> "In some ways [typing] gives me an advantage over other students because I can type a lot faster than the average writing speed and then being able to go back and edit is really useful... I can't know if I am at an advantage... Without extra time, I would be more stressed and that would affect my processing skills, so then I would be at a disadvantage. And I think people have to appreciate how long exams are when you have extra time. I have been in an exam for 5 and a half hours and that's a long time. And so in part you need to have a more relaxed pace because you can't have that furious writing, writing for such a long time. You need to be able to take some water, do whatever. It does get a bit ridiculous when you have to pack snacks for an exam (laughs). I don't think that's a thing people should have to do (laughs)."

Lydia also reflected:

> "I think a lot of the adjustments are there really to make you feel better. How do they decide on 25% extra time? Is that because it's a huge coincidence that every disabled person needs exactly the same amount of time? Is it because it's easy to calculate 25%? No one is at 26% or 27%? Apart from people who are slightly better and are running at 15%?"

Phoebe made a similar point about the effect of some adjustments:

> "I am not trying to get an advantage over the other students but I shouldn't be at a disadvantage where that can be avoided... Sometimes, it is not possible for a disadvantage to be avoided and sometimes the adjustment itself can create a disadvantage. For instance, I have 100% extra time and rest breaks and some of the exams are four hours long. The effect of the adjustments can be that I am in exam conditions for longer than a working day and that is difficult for me just from the point of view of focus. Also, my condition means that I get tired and

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then that it takes me longer to recover. When my exams are so long, it takes me longer to recover from taking the exam and the exam timetable doesn't allow for that where the exams are close together."

Andrew's perspective was slightly different:

"The adjustments are to level the playing field as much as the person wants it to be levelled. There is the question what is excellent customer service and the answer is what the person wants and for me, equality is about what I want."

The point about students being given what they want was an interesting one. Some of the students said that they arrived at Smith with experience of adjustments, so that they knew what worked for them and did not wish to discuss changes to their package. For example, Lydia said:

"When I went to Smith I had a clear idea of what was helpful to me... I arrived knowing what worked for me and so I didn't engage on some levels with the support system because it was just like, for exams I know that what I want tallies up very nicely with what I'm entitled to. It was just quite standard to offer. So for exams, I want to use a computer and to have 25% extra time. That's what I've always had. It's quite a standard [package]. It's quite a high one because I know that some students have a lower per cent age of time but it says in my report that I should be entitled to that much time and the use of a computer in exams so that's what I've always had and I've never had a discussion about whether it would be good to make changes to do this or do that. That's just how I do exams."

Susan had similar experiences:

"I have had my condition all my life, so I had adjustments for my undergraduate degree and I knew what I needed when I arrived at Smith... My requests were reasonable and not too extensive. I asked for what I have had before because I know that those things work for me. I wouldn't have wanted to have a discussion about changing things, especially not at the start of the course. I know what works for me and that's what I wanted to agree here."

Phoebe, also with experience of learning support elsewhere agreed:

"I knew what sort of support I would need prior to starting the course... I would not have been especially interested in a discussion about variations to my

support. I have spent a number of years in education and have learnt what works for me and I just wanted to get the arrangements in place and then to be left to get on with the course."

Frances, from the Examinations department, commented that attempts to change adjustments could be traumatic for the student:

"They come here [from another university] and someone has just taken it all away from them again and that's not just a bit unreasonable, it's actively abusive and psychologically bullying. It's just that sort of thing, where they have this perception that it's so bound up in their own identity within the context of higher education that they go into an immediate anxiety melt down the second they think that something they've relied upon is going to be taken away. And I think it's quite hard to justify taking it away even if it's quite hard to justify giving it to them. Once they've had it and they're saying this was my expectation when I enrolled and paid.."

Andrew had acquired a disability and Ben was diagnosed with dyslexia at the start of the BPTC. Their perspective was rather different:

"I came to Smith after I had my injury and I didn't really think of myself as disabled, so I just got on with things...I didn't know what the university could do... I didn't ask for more than I wanted. I didn't feel the need to do that because I was quite willing to aim low and then felt quite comfortable to come back and say that it wasn't working and I needed more help. I didn't think I had to aim high from the get go." Andrew

"I wanted to have someone to go to classes with me but I was told I couldn't have that because it's not included in my report. I was told that I could go back to the person who wrote my report and discuss whether I needed someone to go to classes with me and then go back to the learning support tutor. I didn't think I had the time or the energy to do that. I thought someone else could have done that for me. The learning support tutor was quite everyday in her approach. She asked for my report and said well, you can have what the report says but I can't go beyond that unless the report is amended." Ben

Frances explained that:

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"Learning support have caused us so much trouble but I do appreciate it's done from a position of incredible well meaningness... There is a learning support tutor who has caused us a lot of difficulty. He gives the students all these arrangements. Loads of the students had their own rooms and we were dependent on people not turning up. We really had to cram them in, every single broom cupboard we could find and some of the students would say to you "well, I don't know why I've got a reader, I'd rather not have one but I was told I had to and I didn't want to upset him" and you just think "oh God" because you've had to put them into a room by themselves, which you could have used, we've had to pay £200 to this person to come out who you don't need. You just think for God's sake. I appreciate we're trying to support them but don't just throw things at them gratuitously because it's so irresponsible especially given that now support workers come out of the exam budget and not the learning support budget...we can't afford for this to happen. I know expense shouldn't be an issue but it is."

This picture of students accepting adjustments which they didn't really want but which were supported by their reports was supported by Thomas' description of his approach to agreeing adjustments:

"I look on the evidence, for dyspraxia reports I'm thinking 'this student will need support in terms of organisation, computer perhaps using screen reading software'. Generally there is a bit of leeway with recommendations. If a student doesn't want to take an adjustment which is recommended I make them aware that they won't be able to mitigate. I say that we have offered them a reasonable adjustment and I make that very clear. I also tell the students that I do know the staff who would be dealing with any application they might make for mitigation."

Discussion

The students who had experience of adjustments at the undergraduate stage (and sometimes prior to that), generally took the view that they knew what worked and that they wanted the same adjustments to continue to be made. These students were often not open to discussion about adjustments and often relied on past experience as support for their assertion that they should continue to have the same adjustments. Frances was sensitive to the potential effects of removing support which had previously been available. However, the effects of some disabilities are not static. Writing specifically in the context of dyslexia, for instance, Mortimore and Crozier (2006) identify

how difficulties reported by students vary with the stage of education, from primary to secondary to university. While Mortimer and Crozier did not specifically consider postgraduate students, the students who participated in this research reported that they were generally not open to discussions which reviewed their needs in the light of their undergraduate experience.

Ben had no prior experience of agreeing support and had discussed the recommendations in his report with the learning support tutor. However, he subsequently wanted to agree support which was not contemplated in his report and was frustrated by the response, which seemed to him to favour procedure over meeting his needs as he perceived them. One interpretation of this response would be to relate the response of the tutor he approached to anxiety arising from disability generally. It has been observed before (for instance Everelles, 2011; Goodley, 2014; Shakespeare, 2006a, discussed above) that the boundaries of disability are fluid in the sense that individuals can become disabled and suggested that awareness of this potential can lead to anxiety and distancing behaviour. While this is a possible interpretation, my sense during the interviews was that anxiety and distancing behaviour were elicited by the concept of equality rather than that of disability. The discussion of attitudes (above) would also seem to support the view that it was not the concept of disability which gave rise to the anxiety and caution described.

The reference by Frances to the provision of a reader raises questions related to whether adjustments might be helpful while a student is attending university while not constituting a reasonable expectation for a career as a self-employed professional and this is discussed below.

Lydia and Phoebe both made points about the overall effect of adjustments, suggesting that there is a need for a review of the entire package proposed. This approach could be at variance with the managerial approach seemingly reflected by Thomas' account of identification of individual measures to be implemented and also reflects a rather different orientation to the approach taken by researchers who seem to adopt the approach of considering a number of adjustments separately and in isolation of each other (Mortimore & Crozier, 2006; Shevlin, Kenny & Mcneela, 2004).

You have to work the system almost: Lydia, student

Some of the assessments on the BPTC require tutors to collect students from a preparation room immediately prior to an assessment. Where students have had extra time in the preparation room or have been accommodated in a dedicated preparation room, rather than the room being used by all other students, this can lead to a situation in which tutors become aware for the first time that a student they have taught has adjustments. Mary commented that:

"Sometimes I've been surprised by the extent to which certain students have been allowed...for example to sit by themselves in a different room, with their own invigilator, with their own computer, their own facilities...sometimes I've found that as almost distorting the assessment process... I would probably find the arrangements as almost...inappropriate.... because those are not the type of things [which]...would be available in practice."

Sophie's account was similar:

"Because of the nature of the assessments it is possible for tutors to become aware that a student has special arrangements for an assessment in circumstances where the tutor has taught the student during the year without being told of any disability issues and without becoming aware of those issues in the classroom. I have been shocked actually, been quite surprised because when I have dealt with them in the classroom setting they seemed absolutely fine and able to follow, to participate, understand. So yes, I have been surprised."

The sense that students were able to manipulate how they presented themselves was reflected by Sophie in the comment "Some of them are very naughty. They present themselves according to what they think will benefit them." Similarly, Mary commented that:

"You can be a cynic and think this student is almost taking advantage at the assessment stage but has been able to manage, for some reason has been able to manage during the delivery of the course without these arrangements."

However, this ability to manipulate identity was not only recognised but embraced by some of the students. Lydia, for instance explained that disability was not part of her self-image but that "I will present an identity where that is worth my while and I think that should be your right."

Lydia went on to say:

"I think I identified as disabled as part of the application process. The question more generally about whether I would identify as disabled is more difficult because I wouldn't. I don't identify as disabled but I'm now not too proud to identify as disabled if I make an application and there is a guaranteed interview scheme because I think it's all part of working it into your self image. Because while you don't want to be all "I'm dyslexic and that's all I am" you also don't want to not accept any help or support because you're too proud and I think

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sometimes because you've never lived differently, you've never had a different brain, you don't actually know what disadvantages you're at."

Whereas Lydia had been diagnosed as a young child and so had grown up with the knowledge of her disabilities, Ben was diagnosed with dyslexia only after arriving at Smith and reported that while the diagnosis had preoccupied him for a time: "I don't feel so bad now. I suppose I have had time to get used to the diagnosis and actually most of the time now it's not something at the front of my mind." However, in contrast to Lydia's approach, Ben's approach was to disclose his disability on every application:

> "I think it will be important for people to know that I am disabled, so that they can make allowances and arrange for support... I have started to think about jobs and I will tell people about my diagnosis when I apply."

Andrew's disability was acquired and he reported that "I would say I have a bad back not a disability. I have to get used to other people's perception and I know that sometimes I give an impression which is not how I think of myself. So I can be surprised if someone refers to me as disabled." Although Andrew did not take on the disabled identity in the same way as Ben, his approach was the same as that described by Ben, in that he disclosed his disability on applying for positions:

> "I tell chambers that I have a disability and I know that has gone against me on at least one occasion because I know someone who works at the chambers and it was a toss up between me and someone else and they said well we'll take her because we have to provide whatever for him. And I know that. That's not right but it's how life is. You come up against things and you've just got to get on with it. It's no use just collapsing in their reception in floods of tears because that won't get you anywhere. I just won't apply to them next year. It might have been quite a good escape you just have to get on with it."

Susan's approach was different: "It might take me longer to do something but I wouldn't tell people about that at an interview. I would just put in the extra time at the end of the day."

Teaching staff were aware that students might choose not to disclose a disability at the application stage. Sophie reported that:

> "It's difficult when a student can't hide their disability and sometimes a student will ask for a disability like dyslexia not to be mentioned in a reference. But then some students will expressly ask for it to be included."

Discussion

Andrew's observation regarding how he would not describe his condition as a disability seems to reflect the observation by Marks (2007) regarding the common perception of disability and also Watson's (2002) findings regarding how some of his participants regarded themselves.

The nature of the performance assessments can mean that tutors will become aware of adjustments being made for a student, where the tutor has previously taught the student without being aware of the need for adjustments to be made in the classroom. Resolution of the difficulties with communication noted above might be one way to address this situation. It may be the case that these situations are explicable in terms of disabilities being context specific or temporal (as described by Olney and Brockelman, 2003) and the surprise (and possibly suspicion) that can result may be capable of being addressed through training. Tutors in particular expressed interest in training regarding learning support and training of the sort described by Sowers and Smith (2004) might be effective in addressing tutors' concerns and increasing understanding. Training involving contact with individuals with disabilities might be particularly effective (Tinklin & Hall, 1999). However, notwithstanding the overt enthusiasm for training, the distinction between explicit and implicit attitudes drawn by Wilson and Scior (2015) and Bohner and Dickel (2011) and the risk that self-professed attitudes may not translate into action (Lombardi, Murray and Gerdes (2011) could result in low levels of participation in such training.

The ability to manage identity has been noted by a number of researchers, including Riddell and Weedon (2014) and Riddell, Tinklin and Wilson (2005) and the examples described here can be regarded as incidents of transgression, in the sense discussed by Allan (2011). While the students interviewed generally defended their right to choose how to present themselves, they generally seemed to regard their disabilities as a core part of their identity which might be apparent in some situations but not others but which was not susceptible to change and these feelings reflect earlier findings (Olney and Brockelman, 2003). The students interviewed were generally, therefore, not interested in any consideration of whether adjustments which they had had historically continued to be appropriate.

People with disabilities face enormous difficulties at the Bar: Jeremy, tutor

Tutors did not agree on the question of the difficulties which a person with disabilities might face in practice. Jeremy was in practice and took the view that:

"The Bar is not accepting of impairments and disabilities. The Bar is not accepting of anything. The Bar is not accepting of women at the Bar and of people that are not public school educated at the Bar. It's an incredibly conservative profession. As much as the profession wants to change, that is the character of the profession, partly driven by the fact that the senior members of the profession entered the profession 40 years ago so we've got that imprimatur, that approach.

I have absolutely no doubt that people with disabilities face enormous difficulties at the Bar, starting with the disability of being female. I think this is probably the one that strikes me the most. Trying to get members of the Bar's heads around the fact that people take time off and it's 2015."

Sophie's view was similar:

"The Bar is not ready for people with disabilities and won't accommodate them and I say that because the Bar is a reflection of society and clients won't want to be represented by someone they perceive has a disability. They won't because they will then feel that they are at a disadvantage. You know, appearance and image is very important with clients, particularly criminal. They want their barrister to look good and to sound good and to be good."

In contrast, Joe had not been in practice for eight years at the time of the interview and had a more positive outlook:

"I don't think there's any stigma attached to disability at the criminal bar but it probably depends what it is. I think there are practical problems but it's not a hurdle that can't be overcome and the judiciary is only going in the right direction - more women, more equality. I know more needs to be done but I would be really surprised in this day and age if you didn't find a judge who was willing and able to make any adjustments which are needed in the court room for any advocate to be able to participate."

However, Joe also reflected that:

"I don't think there really is a stigma but then again in pupillage I wasn't aware of any of my fellow pupils having learning support needs. I should imagine if they did, they might not have shared it with me, because it's a competitive environment and you all want to be taken on."

Mary's view was rather more pragmatic:

> "In the profession you are very much taken to compete with able bodied people and arrangements that are made, even in this sort of environment where firms and chambers are very aware of equality and diversity, the reality is it's a client driven legal services profession and efficiency being the top of the list, there are only so many arrangements that will be made in order to ensure efficient output."

Mary's view became more cynical as the interview progressed:

> "If you are going to be cynical and say that the legal services profession now being conscious of the need to show that they are equal and diverse would rather have someone...who sort of has an ...outwardly visible condition...than somebody who has a hidden condition. But having said that, I still believe the legal services profession is interested in being competitive and if they satisfy the requirements of exercising equal opportunity, um and that is done by showing oh we have people who are severely dyslexic or with partial hearing, they will use that opportunity if that means then the person who is outwardly...disabled is not as efficient they will say well, we are not are we meeting the Bar Standard's equality, we are meeting that standard...albeit that on the spectrum of disability we have obviously chosen the person who is going to be most like an able bodied person, if that makes sense."

The students also expressed a range of views. Susan said:

> "I want to go into practice. It's possible that that will be more difficult for me than for other people but lots of people have their own characteristics and reasons which could make practice difficult for them."

Phoebe was rather more cautious:

> "I would like to go into practise but recognise that may be difficult....I'm not sure if the effect of [any] adjustments would mean that I would be able to practice though."

Ben's view was that he would need adjustments: "I know that there are some things which I can do to help myself but I still need support and I suppose that might make practice more difficult."

Lydia raised a question about the effect of adjustments:

> "There does come a point where you have to be realistic and adapted to the real world. Sometimes the adaptations can insulate you from the real world and give you a false idea."

Discussion

The restrictions on the information available to tutors and also the generally welcoming attitude of tutors regarding the prospect of training specifically on learning support and reasonable adjustments have been discussed above. Tutors tended to focus on the deficiencies of disabled students in the way described by Jolly-Ryan (2005). It is possible that better information and understanding would change attitudes so that tutors might adopt the position that students with disabilities might be able to thrive at the Bar despite what the tutors perceive to be a generally unsupportive environment (Sowers & Smith, 2004).

The students who took part in the interviews did not tend to identify advantages of disability and in this respect the findings here do not replicate earlier reports (Jolly-Ryan, 2005; Olney & Brockelman, 2003). This could be because the students were concerned that discussion of advantage could affect the continued availability of adjustments. While none of the students attributed their tenacity to their experience of disability, that is a quality which they all had, albeit to varying degrees.

You want to prepare them for practice and it is tough: Joe, tutor

Some of the tutors shared this concern about the effect of adjustments made for students. Joe explained:

> " You want to give them the reasonable adjustments but you also want them to be able to cope when suddenly in court the judge asks them a question they're not expecting or wants them to go away and do some research. I find a lot on this course that students expect you to tell them how to pass or to give them the information on how to do it and that's not how it is in practice. We're more like parents, we want the students to be able to do it independently."

Mary took a similar view:

> "You realise that in practice... you would not have the benefit of any of these arrangements or special consideration being given to you...so if for example, you were to reject a brief that came into chambers on the basis that you didn't have enough time to prepare for it, if your reason for saying I don't have enough time to prepare for it was, I am severely dyslexic and I need 24 hours more than an

able bodied person...you are immediately making yourself less attractive to chambers...and less attractive to clients...that's the reality...so...you know..the brief will then be given to somebody who is able bodied."

Mary also expressed some concerns about the outcome which are similar to those discussed by Kammy above (p.6):

"It certainly can be a cause for alarm bells ringing if you are cynical about the motivation of the students but it does make you also think as to whether the people who are putting these arrangements into place are being completely consistent and rational in their approach to these things... I think I can only speak for the BPTC and the BPTC being a professional course, generally I think that we adopt a policy that's suited to courses which are undergraduate and I don't actually think that they have thought out a policy that is suited to the way the course is taught, the way it's delivered. I'm not sure that that's been thought out properly...for the professional courses...for the BPTC in particular."

Kammy was concerned that the effect of the adjustments might be to insulate students from developing an understanding of what might be required in practice:

"I wonder where the line needs to be because this is not an undergraduate course. It's a professional course that's preparing somebody for practice."

Sophie explained her perspective as follows:

"I'm conflicted about this whole learning support business because on the one hand I want us to treat the students fairly and I want everyone to have a fair opportunity, an equal chance to pass the course, I really do, but on the other hand, I have my prejudices that certain people shouldn't be doing the course and there are certain people who shouldn't be practising at the Bar and I don't believe that we should be putting some students in an advantageous position.... We're having to make so many adjustments and I just think to myself but there won't be these adjustments when you're practising, when you're in court and your clients will certainly not be making any adjustments for you."

Sophie was not the only member of teaching staff who had concerns about the ability or suitability of some students for practice. However, none of the staff interviewed reported that they would discuss these matters with students.

Joe explained his experience:

> "I actually had one very sweet student this year say to me "do you think I should be doing this course?" 'cos she was asking for more and more and more because her health was getting worse and she was needing more and more help and side effects from her medication and everything were just making it so hard for her to come and attend. And she was attending but she was really unwell and weak and tired. And she was scared about getting too many absences. And I said to her "that has to be your decision. I can't possibly...All I can tell you is that for someone with absolutely no health problems of any kind, is a full on, full time intensive course". That's the starting point, so anything beyond that, it's going to be difficult but we want to put adjustments in place, we want people to undertake the course and do well. We're here to help you do that but it has to be your decision, I couldn't possibly...I also don't know what her life is like day to day. You only meet them for half an hour in a room and she sort of took that on board but I think she would actually have liked me to say "I think it's going to be too much for you" and almost let someone else take the decision so she wouldn't be quitting or something. I felt I couldn't do that. I had no knowledge of it and it would be such a shame if I was wrong."

Similarly, Sophie said:

> "I do not talk to students about their prospects or life at the Bar, because I don't think it's my place, and I think if somebody has a dream, able bodied or not, they should have the opportunity to pursue that dream. If they ask me directly what did I think, then I tell them the truth but I wouldn't volunteer that."

Frances (from the Examinations team) took a similar view:

> "There are all kinds of students on the BPTC. I've seen students with very severe physical disabilities who you would just think if you're going on the understanding that these students are all going to became barristers, which of course they won't, you know in theory they could, you just think well this person could never do it and this person could never do it and that's kind of the point. The point is that I guess they are proving to you and to them that that's not the case and who are we to make that sort of blanket statement that you can never do this because it's horrifyingly discriminatory, you can't."

While Joe would not discuss the prospects for any individual student, and Sophie would do so only if directly asked, other tutors were aware that they tended to be more cautious where they were aware that a student had a disability. Kammy explained:

> "With [one disabled] student, having interacted with her and only taught her once, I have some grave concerns as to her ability generally, which we have with lots of our students but I don't feel that any of us think we're in the same position as we would be with a student who is of very low ability to say something, because it all seems so intrinsically wrapped in the learning support issue, which does them a disservice at the end. Whereas with some students, I'd feel far more comfortable with saying this is just not even close to the quality required, I certainly wouldn't do it in the same way, for fear of sparking something."

However, Lydia's view was that this sort of discussion would be very helpful:

> "It's difficult, because you want to say equality is about access and putting adaptations in place so that everyone has an equal opportunity to learn, which I think is true but then I think it doesn't consider whether that should be the case. Say I wanted to be something which would be very difficult for me and the university gave me 100% extra time. That would be great and I would get through the course but no one would employ me to do that. How does that help me? That's not giving me an equal chance. It would be more equal if you told me "You'll never do it. Get yourself another career" I suppose it depends what the equal chance is for – the programme or getting a job but I think there needs to be a line and someone should tell me before I spend all my money getting a qualification which I'm never going to be able to use."

Discussion

Themes which emerged on the subject of reasonable adjustments included whether appropriate adjustments were being made and the interests of the whole cohort of students.

Tutors and students shared the concern relating to appropriate adjustments. Tutors were concerned about adjustments being made in the context of a professional programme, which they contrasted with an undergraduate programme, raising concerns similar to those identified by Jolly-Ryan (2005), Riddick and English (2006) and Storr, Wray and Draper (2011). Some of the students were also concerned about the gap between the BPTC and practice, reflecting issues raised by Eichhorn (1997).

Lydia articulated concerns relating to whether she would be warned about the prospect of passing the BPTC but being unfit to practise (MacLeod & Cebula, 2009). Ben also identified that gap but assumed that the support he was receiving at the University would somehow be replicated in practice. Of all the student participants, Ben was the most recently diagnosed and so had been living with the knowledge of his disability for a comparatively short period of time. This may be relevant to his expectations and world view (Darling, 2003; Darling and Heckert, 2010; Hahn and Belt, 2004; Seligman & Darling, 2009).

Numbers have gone sky high: Thomas, Learning Support

Students were generally satisfied with the support they received and the University's procedures. Andrew commented "I can't fault the help I got here" and Susan said "Agreeing what I needed was easy." Susan arrived at Smith with prior experience of navigating support processes at another university and described preparing for the meeting with the learning support tutor by printing off her reports and giving copies to the tutor, whereas Andrew had no prior experience of agreeing support and so was rather more dependent on staff during that process. A lack of information meant that tutors were not able to identify what was done well and they tended to be rather more negative in their assessment.

Thomas agreed that communication could be improved ("There isn't much communication with BPTC tutors") but when describing what the University did well, relied on the increasing number of learning support agreements being made, in a manner reflective of the emphasis put on numbers by management at the University:

"We do have lots of information available...and numbers have gone sky high"

Discussion

The difficulties associated with taking student satisfaction as an unexamined measure of success in relation to reasonable adjustments and the process of achieving equality have been described elsewhere (Holloway, 2001; Hopkins, 2011; Hyde, Punch, Power, Hartley, Neale & Brennan 2009; Maggiolini & Molteni, 2013; Mullins & Preyde, 2013; Redpath, Kearney, Nicholl, Mulvenna, Wallace & Martin, 2013). It's interesting in this context that students generally appeared to be satisfied because their requests were met. Although students tended to regard the fact that they had made the requests as evidence that the requests were reasonable, some of the students also related their requests to what was supported by their reports, identifying in that way one objective basis for the assertion that the requests were reasonable.

The reliance placed by Thomas on the increasing number of students with learning support agreements as a measure of success can be regarded as reflecting the difficulties with identification of the primary task identified below.

Systems theory

Smith University is an organisation which is a complicated system of people, groups and procedures. There is clearly a boundary which separates the internal environment from the external and systems theory applies the term "open system" to organisations which are in contact with and adapt to the external environment. Contact with the external environment and adaptation to that environment means that Smith University can be regarded as an open system. The organisation imports students from the external environment and exports students who have acquired experiences, skills and qualifications which represent added value. There are other imports and exports, of course, but I have limited this analysis to those directly relevant to the present context.

Bearing those limitations in mind, Figure 8 below represents systems at the University, where the direction of the arrows indicates the general direction of information flow.
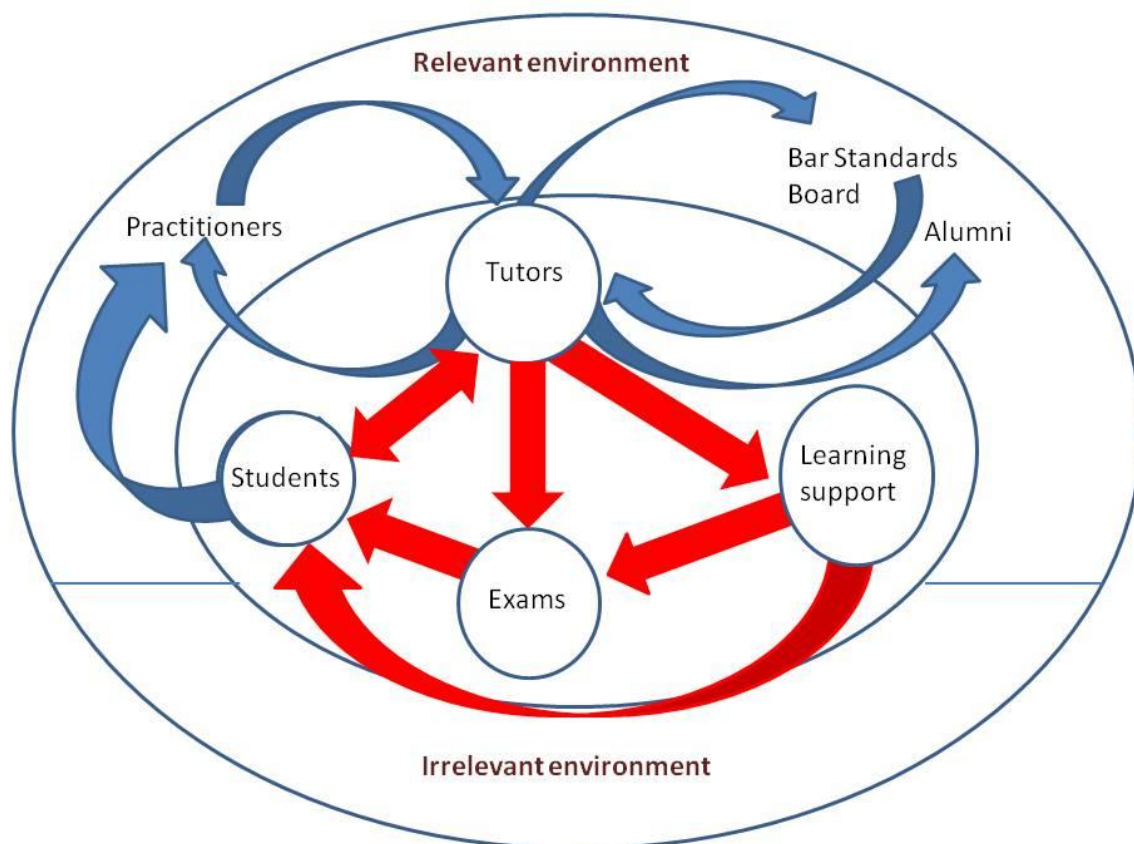

Figure 8: Flow of information at Smith, adapted from de Board, 1978

De Board (1978) observes that "the organisation maintains a steady state only as long as it continually changes and adapts to the changes outside" (p.91). From this perspective, the role of management is to manage the boundary between the internal and the external. The organisation cannot be effective unless management is aware of the relevant elements of the external environment and the figure above identifies only those elements of the external environment which have been referred to elsewhere.

Each department within the organisation can be regarded as a discrete sub-system but the environment of each subsystem is not identical. For example, in the figure above, the boundaries of the Examinations department interfaces only with those of other parts of the organisation and so the environment for this department is entirely internal. Communication with the external validating body, including scanning of examination papers, is a function carried out by tutors, rather than Examinations. In contrast, the boundaries of the tutor group (the BPTC team) interface both with elements of the external environment and the internal environment. Similarly, Learning Support has an internal environment and it is noticeable that there is no flow of information from Learning Support to the tutors generally. Indications from the tutors were that they would be interested in training and information being provided by Learning Support.

Primary task

As already noted, Smith University as an organisation is considerably more complex than represented above and not all inputs and outputs and departments are shown. Each of the departments (subsystems) in the University has its own processes and tasks and, on occasion, the different tasks may conflict or compete. For example, the task of Admissions may be to recruit a sufficient number of new students and this may conflict with the task of the tutors, where that task is defined as enabling students to successfully complete the programme. The appropriate allocation of resources and prioritisation of tasks is determined by the organisation's "primary task" (Rice, 1963). Hirschhorn (1999) notes that a reasonable assumption would be that the primary task of an organisation will be evident from the organisation's day to day activities in relation to its environment and comments that the primary task of an educational institution will be the provision of learning opportunities. It seems, however, that the tutors' understanding of the primary task of the university recognised what Hirschhorn would term a "constraint" in relation to the audience for the learning opportunities represented by the BPTC.

The tutors defined their primary task by reference to preparing students for practice and expressed concern about the extent to which arrangements made for learning support facilitated this. Mary, for instance, commented that

> The reality is that they will be competing against able bodied people...and in fact, you know, they will probably not even have the concessions we're giving them made to them...and that itself might be a cause for concern...that might be a need to revisit whether we should be giving them the concessions...but I just don't think it's something that's been necessarily thought about...

Joe commented

> There has to come a point and I hope it's very few cases where they themselves have to ask themselves if they're going to be able not just to pass this course but to practise.

Jeremy was also concerned about the effect of reasonable adjustments

> Is there a point at which the reasonable adjustment gets unreasonable because it means that the person can pass the exam but is plainly not ready for practice because they'd never be able to meet the learning objectives because of the adjustment that's been made.

Some of the students shared these concerns. Lydia and Phoebe's views, respectively, are below

> I think it's different if you're getting a qualification and it's just blue sky thinking, what you want but there does come a point where you have to be realistic and adapted to the real world. Sometimes the adaptations can insulate you from the real world and give you a false idea.

> I would like to go into practice but recognise that may be difficult. However, I would be entitled to adjustments. I'm not sure if the effect of those adjustments would mean that I would be able to practice though.

However, the Learning Support department has a key performance indicator which relates to the numbers of learning support agreements agreed (personal communication) and Thomas defined his department's primary task by reference to making learning support agreements ("numbers have gone sky high").

Francis' understanding of the primary task of the organisation related to efficient administration of the assessments

> It's terrible because you feel that the pragmatics shouldn't be taken into account but it is cos you know in theory if we had infinite resources we would be able to accommodate everyone. But the logistics of running the exam and making sure everyone is accommodated without the assessment being compromised....There are situations where students turn up for the exam and they're just like oh well my agreement was signed three days ago so you have to accommodate me and the learning support office has told them they'll be accommodated...they have put us in an impossible position on so many occasions and that's terrible because it then becomes a bit of a war and certain managers of their department and our department like to have a little internal civil war.

What emerges here is that identification of the organisation's primary task is not necessarily a straightforward matter, since the concept may be defined in different ways by different elements of the organisation.

At first sight, these conceptions of primary task may appear to be congruent, since appropriately supported apt students can be supposed to be better placed to do well in efficiently administered exams. However, scope for conflict can be identified in the unexamined notions of "apt students" and "appropriate support."

The relative lack of contact between tutors, Learning Support and exams can mean that there are few opportunities for these matters to be discussed. Most tutors do not know individual members of the Learning Support team, and so the Learning Support department can be regarded by tutors as a part of the organisation which causes difficulty. The concept of appropriate support is closely analogous to that of reasonable adjustments and is therefore bound up with constructions of equality. An associated difficulty arises from the fact that the question of the fundamental purpose of the university has not been problematised, so that disagreements and varying points of view are not necessarily visible.

The interviews revealed different, and competing, conceptions of the primary task of the organisation.

Boundaries

The departmental organisation of Smith is represented in Figure 10, in which "M" represents management of the boundary.
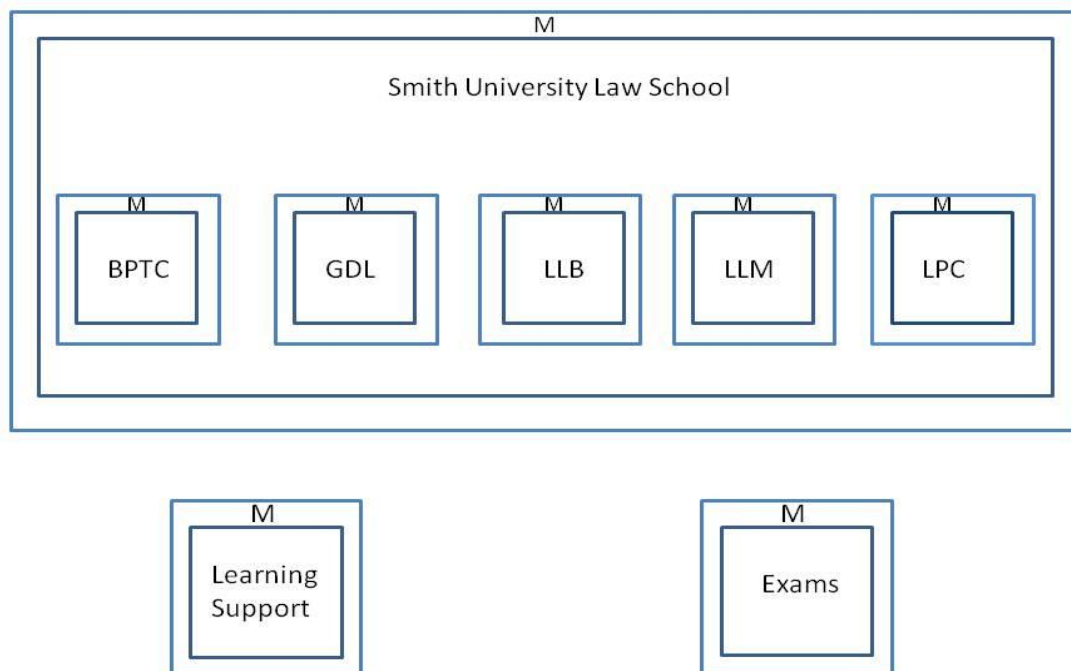
Figure 9: Organisation of Smith University

Boundaries act to separate what is outside and what is inside, as well as relating to both elements. Management of boundaries is therefore important if the system is to achieve its task. Roberts (p.35, 1994) observes that "where there are difficulties with the definition of the primary task, there are likely also to be problems with boundaries, so that instead of facilitating task performance, they serve defensive functions".

Interview participants were well aware of boundaries, and the tendency of tutors to push responsibility for equality into the Learning Support department has already been identified.

Frances' comment regarding the civil wars between departmental heads is also relevant here. Menzies (1970) developed the theory of social defences in the context of her study of nurses caring for patients and specifically her observation that the nurses would often wake a patient up to administer medicine even where clinically it would have been more beneficial for the patient to be allowed to sleep. Menzies suggested that the procedures did not have the benefit of patients as an object but rather functioned as a means for the nurses to contain the anxiety arising from working with unwell and sometimes dying patients. By administering drugs, regardless of circumstance, the nurses were able to depersonalise the patients and deny each person's unique situation. Drug administration became a ritual. Rituals invoke thoughtlessness and so help people to avoid anxiety. A similar analysis can be applied to the tutors. The university procedures enable tutors to contain the anxiety caused by the presentation of a student whose disability makes them "not apt" for the BPTC by referring the student to a different department for support. Ben's disappointment at the disinterest he perceived was shown when he wanted to discuss his experiences can also be understood as an effect of the ritual of referral which has as its object the containment of anxiety.

In conclusion, therefore, the interviews revealed difficulties both with the definition of primary task and also with boundaries.

Summary

In this chapter, I have described the themes which emerged during the interviews and discussed each, relating what was said to the research identified in Chapter 3. I have also considered systems analysis in relation to Smith.

In Chapter 6, I will apply what was said to the research questions and draw some conclusions from the research.

Chapter 6: Conclusions

In this chapter, I will review the findings described in Chapter 5 against the research questions identified in Chapter 1 with the objective of suggesting changes to the current environment which address the themes of communication, tension and consequences.

Application to research questions

The research set out to achieve the research objectives identified in Chapter 1 by answering the following questions:

1. How do staff and students at Smith University construct the concept of equality in relation to students with disabilities?

2. What are the practical consequences experienced, if any?

3. Is there any relationship between the role carried out by staff and their understanding of equality?

I will take each of these questions in turn. My intention here is to draw the various strands together and to relate the preceding discussions to the research questions, rather than to develop new points. No new sources are relied upon in the discussion of my findings, so that each source used in those parts of this chapter has been the subject of prior discussion.

Constructing the concept of equality

Policies

A number of University policies are made available online. A notable feature of these policies is that, although the commitment to equality is highlighted, the term is not defined. The protected characteristic which is most visible online is disability and generally references to staff describe obligations rather than rights. The conclusion that a gap exists between that which is publically proclaimed and the experience of members of the University is supported by the results of a student survey conducted by the University. Nearly half of the respondents to that survey were not aware that the University had policies on equality and diversity. This may indicate that these respondents felt that the policies had no relevance to them but is also consistent with the analysis in Chapter 3:

these policies are not advertised to existing staff and students because they are not the intended audience for the policies, which generally inhabit the promotional genre (Bhatia, 2004).

The possibility that the policies are perceived as irrelevant is also supported by the fact that none of the student participants referred to the policies and that, where staff commented on policies, comment was to the effect that the policies were irrelevant either because the policies were not put into effect or because poor internal logic in the policies mean that the policies were incapable of implementation.

The perception that the policies are irrelevant to existing members of the University is supported by the conclusion that these individuals are not the intended audience for the policies which are made available online. The repeated use of the promissory future in the policies reflects their promotional purpose, which is also demonstrated by the content of the policies (which address the potential student) and by the fact that the policies are placed online where they are accessible by potential customers (Barron, 2012).

It is difficult to evaluate the extent to which the promissory performative has been achieved by reference to documents available online (Sedgwick, 2003), although the absence of documents such as the Single Equality Scheme can be interpreted as giving reason for doubt.

Tutors

Staniland (2011) identifies the importance of attitudes and Wilson and Scior (2015) describe the difference between implicit and explicit attitudes. The explicit attitude of the tutors towards the concept of equality was marked by a good deal of caution. As noted above, all the tutors seemed to be aware of the potential effect on their own identity were they to be perceived to be ill-informed or incorrect. This awareness seemed to cause anxiety, which was reflected in the requests for information about areas to be covered prior to the interviews being carried out. At the start of the interviews, tutors were keen to establish their non-expert status and were generally cautious about expressing a view (Joe's dissembling which is set out above was not untypical). As well as establishing their own non-expert status, tutors attributed expertise elsewhere – either to the learning support tutor on the BPTC team or to the learning support department. This desire to avoid ownership of the issue reflects the findings reported by Van Jaarsveldt and Ndeya-Ndereya (2015). While attributing expertise to the learning support department, tutors also expressed the view that that department did not really understand the BPTC and the demands of the course.

All the tutors made use of the "levelling the playing field" analogy, although they also expressed doubts about its utility. Tutors also generally expressed concern about the effects of the adjustments on the rest of the cohort.

None of the tutors revealed hostility towards disabled students or regarding adjustments and there was no evidence of the attitudinal barriers reported in a number of older studies (Moriña Díez, López & Molina, 2015; Hanafin, Shevlin, Kenny and McNeela, 2007; Konur, 2002; Moswela and Mukhopadhyay, 2011; Ryan & Struhs, 2004; Snyder, Carmichael, Blackwell Cleveland & Thornton, 2009). Given this observation, it is not surprising that the type of disability appeared to be unimportant (Beilke & Yssel, 1999; Riddell & Weedon, 2006; Sowers and Smith, 2004). Similarly, there was no evidence that negative attitudes were influencing tutors' evaluations of whether a student is "fit for practice" (Riddick & English, 2006; Sin &Fong, 2008; Storr, Wray & Draper, 2011).

Although negative attitudes were not elicited, there was no discussion by tutor participants regarding the possible advantages which experience of disability might give disabled students (Jolly-Ryan, 2005; Olney & Brockelman, 2003).

None of the tutors applied the concept of equality to themselves, although one disclosed a disability during the interview and others speculated that they could have a specific learning difficulty, albeit undiagnosed. None of the tutors had asked for reasonable adjustments in relation to their employment. It appeared, therefore, that tutors regarded equality as a concept applicable to others.

Although at least one of the tutor participants demonstrated the ability to manage their identity in the manner described by a number of researchers (including Goode, 2007; Olney & Brockelman, 2003; Riddell & Weedon, 2014) when students were seen to be exercising that ability, tutors reacted with a degree of suspicion, albeit not at the level described by Mortimore (2013).

Examinations officer

Frances did not approach the interview with the same sense of caution as the tutors but often commented on what she had said ("It's terrible that I feel like this, I just need a holiday. I have obviously a very damaged perception of the whole thing...God, I sound embittered... I feel like I'm just doing a rant").

Frances recognised that the concept of equality is one capable of application to staff as well as students and the concept did not seem to evoke the sense of caution for Frances, who also felt able to express views without the same concern for a potential effect on the person she reveals herself to be. To the contrary, Frances actively constructed an identity which she then commented on during

the course of the interview. This identity placed Frances outside the procedures leading to agreement of adjustments, while simultaneously requiring her to meet the demands which resulted. Despite the relative lack of caution identified above, this identity effectively relieved Frances of any responsibility for equality and so achieved the same outcome which the tutors obtained by pushing responsibility into the Learning Support department (Van Jaarsveldt & Ndeya-Ndereya, 2015).

Frances also made the point about avoiding creating an advantage to disabled students but overall, took a much more pragmatic approach to the concept of equality. Equality emerged as something which could be achieved subject to the constraints imposed by budgets and procedure.

Frances was frustrated by what she perceived as the relative failure of Smith to apply the concept of equality to staff.

Learning support officer

Thomas was similar to Frances in that he did not express any caution about expressing his views regarding equality. He was also frustrated by what he described as the failure of Smith to apply the concept of equality to himself as a member of staff. Thomas had asked for some adjustments which had been refused, apparently on the basis of rejection of his diagnostic report. Whilst that process did not form the focus of the interview, rejection of a student request for adjustments seems to be more rarely encountered, although Ben described being told that he couldn't have the particular form of support which he wanted. Joe, the Learning Support tutor interviewed, could not recollect any occasion when a student request for adjustments had been rejected in its entirety and my own experience is the same. On that basis, the high levels of satisfaction expressed by the student participants is perhaps not surprising (Holloway, 2001; Hopkins, 2011; Hyde, Punch, Power, Hartley, Neale & Brennan 2009; Maggiolini & Molteni, 2013; Mullins & Preyde, 2013; Redpath, Kearney, Nicholl, Mulvenna, Wallace & Martin, 2013). However, these experiences may go some way towards supporting the idea that equality at Smith is generally regarded as a principle more relevant to students than to staff and it can be argued that this is also reflected in the policies, which rarely have staff as their focus, as described above.

Thomas did not use the analogy of levelling the playing field at any point. He seemed to view the concept of equality through a lens of procedural correctness, the apparent assumption being that equality would be achieved if the correct procedure is followed, even where that resulted in students having adjustments which they had not requested.

Students

The students also used the analogy of levelling the playing field, although they generally adapted the concept slightly by incorporation of reference to what they wanted. So there was an assumption that what the students wanted would, if implemented, result in some levelling of the field, albeit that more than one of the students noted both that disadvantage could not be eradicated and also that the unintended consequence of some adjustments could be a new sort of disadvantage, as in the case of examinations lasting the equivalent of a working day, for instance.

This seemed to be a more individualistic and flexible approach to equality, which emerged as a concept capable of more than one meaning. In the university context and specifically with reference to assessment, equality was constituted if the adjustments desired by the students were put into effect and on that basis, student satisfaction achieved (Holloway, 2001; Hopkins, 2011; Hyde, Punch, Power, Hartley, Neale & Brennan 2009; Maggiolini & Molteni, 2013; Mullins & Preyde, 2013; Redpath, Kearney, Nicholl, Mulvenna, Wallace & Martin, 2013). More than one of the students expressly disavowed any desire to accrue an advantage in this way. In the work context, equality was achieved by the student exercising the right to control disclosure of their disabled identity (although this wasn't always possible for all the students who took part in the interviews). In this respect, the students' approach reflected the situational identification described by Darling (2003), as well as the ability to manage their identity (Goode, 2007; Olney & Brockelman, 2003; Riddell & Weedon, 2014).

What are the practical consequences, if any?

The tutors shared a tendency to attribute responsibility for equality to others, while also asserting that those others did not understand the nature of the BPTC, the tutors own concerns about the whole cohort of students and the effects of the adjustments agreed by those others. Tutors also claimed that they wanted more information, as well as specific training in learning support matters.

The examinations officer seemed to feel that examinations were left with the responsibility to implement adjustments and that the learning support department were not sufficiently aware of the difficulties of implementation.

The learning support officer adopted an approach which was both individualistic (centring on the person he was dealing with at the time) but also quite rigid (reflected in the concern to encourage students to accept all the adjustments recommended in a report).

The fluid approach of the students meant that their requirements could vary over time, in ways that could appear inconsistent to staff but which caused the students no concern and, specifically, no cognitive dissonance regarding their own identity.

Application of systems theory shows that communication between the different departments can be problematic and raises the possibility that there is confusion regarding the primary task of the organisation (Roberts, 1994).

Is there any relationship between the role carried out by staff and their understanding of equality?

There seem to be clear relationships between staff roles and their understanding of equality. Tutors primarily identified as lawyers, rather than as educationalists, in the main, and this lawyer identity was reflected in a cautious and heavily caveated approach in the interviews. The Bar constitutes a small world and barristers are conscious of the need to protect and build their reputations at all times and these concerns were also reflected in the interviews. Equality seemed to be regarded as a problematic concept which was swiftly located as being within the remit of individuals other than the tutors in the manner described by an earlier study (Van Jaarsveldt & Ndeya-Ndereya, 2015).

The examinations officer had no option but to accept responsibility for making the practical arrangements and also regarded equality as a problematic concept but, seemingly, for reasons other than those adopted by the tutors. While the tutors seemed to recognise the complexities of the concept, the examinations officer talked more about the practical difficulties caused by the understanding operationalised by others in the organisation. His was a more pragmatic approach.

The individualistic approach taken by the learning support officer focused on one particular student at a time. The approach was characterised by a concern for procedure, although practical matters were also regarded as important.

Communication, tensions and consequences

Communication between different parts of the University emerged as a problematic area and in addition, communication of the University policies was often not clear. Identification of a named individual as the specialist for an area seems to result in a pooling of expertise which is not then passed on to other interested parties and also provides the opportunity for these other parties to locate all responsibility with the expert. For instance, learning support are identified as the experts

generally and primary responsibility is attributed to the department on that basis but at the same time the department is criticised by tutors for not disseminating that knowledge.

Poor communication did not emerge as a theme in the interviews with student participants, who were generally positive about the support they received. However, the tendency for tutors to focus on the deficiencies of disabled students has been noted above, and raises the possibility that improved communication of the experience of disability would change attitudes in the manner explained by the contact hypothesis (Allport, 1954; Hopkins, 2011; Leyser & Greenberger, 2008; Pettigrew & Tropp, 2000; Rigg, 2007)

Communication of certain policies is prioritised by the University and reflected in mandatory training, some of which has to be repeated at regular intervals. Mandatory training is carried out either through online courses, which end with an assessment which must be passed or face to face by requiring attendance at meetings. Communication of the Equality and Diversity Policy would be susceptible to either method and the introduction of such training could be seen to reflect the University's commitment to creating the reality envisaged in the policies (Sedgwick, 2003).

Communication between different parts of the University is currently not facilitated by the structure which is shown in Figure 9. A structure such as that shown in Figure 10 would facilitate communication by reducing the boundaries to be negotiated, as well as addressing the concern articulated by some tutor regarding the extent to which the particular context of their own programme is understood by other departments by bringing members of those other departments into a larger team. In this figure, as in Figure 9, "M" denotes management of the boundary.
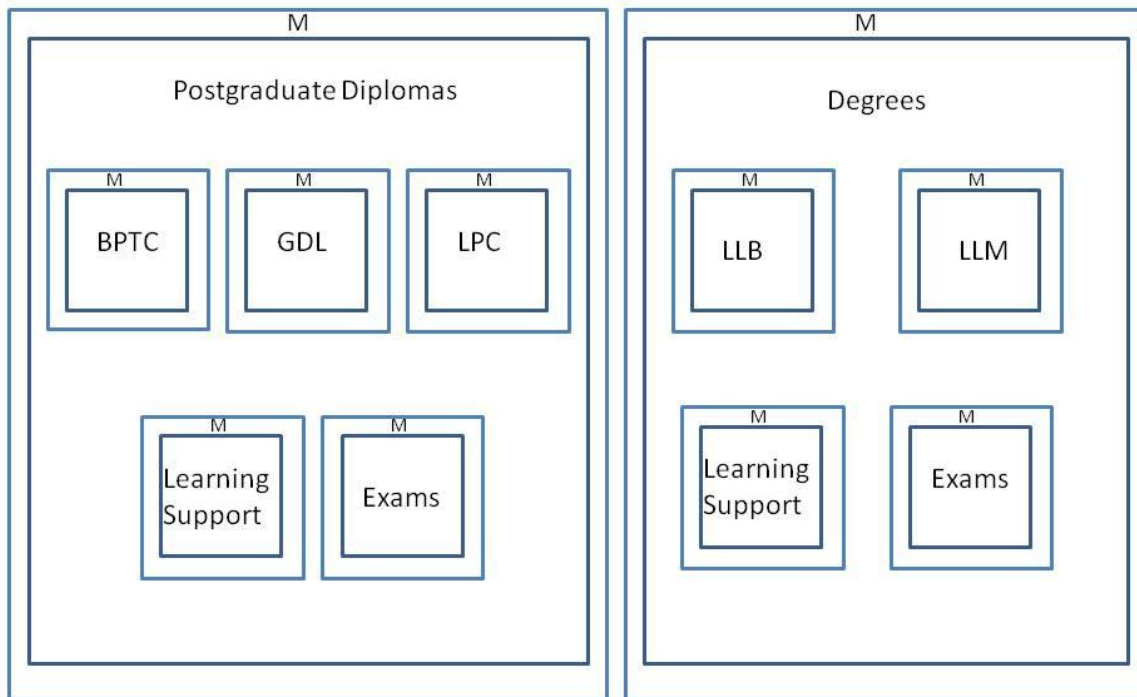
Figure 10: Proposed organisation at Smith

Improved communication of the policies and of the terms used in the policies, between the different departments and with students would be an effective step to addressing the tensions described in Chapter 1 with the consequence that the variations in practice which impact the student experience would be exposed and could be discussed openly.

I referred earlier to my decision that social network analysis would not be a helpful method to adopt, since I was not sure that participants would have the social relationship required (Wrzus, Hänel, Wagner & Neyer, 2013). At Smith, teams sit together and so redrawing the boundaries of the teams in the way suggested could be expected to have the consequence that people who are currently based in different physical locations would be seated together. There are advantages to this arrangement. Shore and Warden (2007, p.113) note that "sitting together fuels team communication. This has impressive results...it enables simultaneous phases, eliminates waste, and allows team members to contribute insights to others' conversations" and Strickland and Whitlock (2016, p.53) assert that the advantages which accrue when a team sits together are such that

"when employees are on different floors of the same building, they might as well

be in different cities. While social media and other factors register, no issue has as

much bearing on predicting information processing and performance than where employees sit in relation to one another."

Despite these advantages, from a management perspective, the suggestion that members of the Examinations and Learning Support teams should be brought within other teams might well be met with reluctance, if that change were to result in a physical move for some members of staff. McCaffery (2010, p.291) discusses the risks of change and observes that a manager "could be forgiven for wanting to avoid change altogether" and Smith has recently completed a physical reorganisation, the effect of which is that the Examinations team has moved to a site geographically separate to the site where the BPTC tutors are based and it would be expensive to relocate staff again. However, on the basis of a review of eight published meta-analyses of studies comparing outcomes of face-to-face and virtual teams, Purvanova (2014, p.4) argues that the view that virtual teams perform less well than face-to-face teams is supported by the experimental literature but not by field investigations and case studies, so that "many of the disadvantages of virtual teams supported in the experimental literature are explained by the somewhat unrealistic conditions under which virtual teams have been studied." Purvanova notes that one disadvantage of virtual teams emerges in both the experimental literature and the field investigations relates to the dislike with which team members regard remote verbal communication and suggests that this can be attributed to technical difficulties (team members have to learn how to use the media, which is then often subject to technical problems) and also to an innate preference for face-to-face communication (although it is possible that the strength of this will fade over time and that the popularity of social media will contribute to this). The implications for Smith are that a reorganisation of teams does not necessarily have to be accompanied by a physical relocation of staff and that virtual team members would be likely to dislike the communication technology they would have to use and so would require easily accessible support in that regard.

A theme related to communication is that of training. As noted above, tutors were rather ambivalent about training, saying on the one hand that they would welcome it but often failing to enrol (for instance on the University's Certificate) or attend (for instance at events run by learning support). While the benefits of training have been noted (including, for example, Lombardi, Murray & Gerdes, 2011; Sowers & Smith, 2004; Van Jaarsveldt & Ndeya-Ndereya, 2015) it is clear that in the Smith context, the availability of training must be appropriately communicated and timed to meet the other demands on staff time.

One relevant factor might be that the costs of the present system are difficult to measure, subsisting as they do in the loss of staff time when meetings are necessary to reach agreement on support and the associated suspicion which the disagreements can cause. It seems that reference to the student experience is likely to be most effective: the proposed changes have the potential to enhance that experience by increasing the efficiency with which support can be identified and put into place and a reputation for dealing with these matters well can only enhance Smith's position.

Impact of the research

As Maxwell (2013, p.79) notes, the research set out to answer questions posed in particular terms concerning how particular people at a particular HEI think and act so that "the primary concern of the study is not with generalisation, but with developing an adequate description, interpretation and explanation of this case." The implications of the research for Smith have been considered above and represent one measure of the impact of the research. I have previously relied on Hammersley (1992) to argue that the value of the current research subsists in the richness of the data obtained, rather than in the extent to which the information can generate theory capable of generalisation.

Future research

The literature review identifies that there is little, if any, research into the construction of the concept of equality by staff and postgraduate students on vocational courses at universities in England and Wales since the Equality Act 2010 came into force. Becker (1991) identifies a theory which accounts for the process by which, despite differences in the actual prison cultures, a distinctive prison culture is produced by deprivation which is capable of being generalised from men's prisons to women's. Becker's argument is that "generalisations are not about how all prisons are just the same, but about a process, the same no matter where it occurs, in which variations in conditions create variations in results" (p.240). While the value of the research is as set out above, the question which arises here is whether the theory of the processes identified in the case studied is capable of being generalised to other cases, albeit that different outcomes might be produced (Yin, 1999, the alternative possibility being that the case selected is extreme, so that the explanations advanced are limited to the particular case selected.

Future research could be carried out at Smith, with staff and students from programmes other than the BPTC. Such research could investigate whether the theory of processes identified here can also

be identified in relation to other law programmes (for instance, does it make a difference if the tutors are solicitors, rather than counsel? Do the professional aspirations of the students make a difference?), in relation to non-law programmes (do tutors who are not lawyers react in the same way?) and in relation to law programmes which are postgraduate but not vocational (does the vocational nature of the programme influence the processes?).

Implications also arise for research to be undertaken at HEIs other than Smith. The effect of the regulation of the BPTC by Bar Standards might be that Smith can be regarded as a typical provider, although as noted above, there is no necessary relationship between the dimension of typicality chosen and the object of the case study (Thomas, 2013). However, future research might investigate the application of the theory of processes identified here to other providers of the BPTC, providers of the LPC and providers of law and non-law undergraduate and postgraduate programmes.

Other lines of research are indicated by the recommendations for Smith which, if implemented would lend themselves to pre and post study. Would structural changes improve communication and reduce the frustration identified by this research? Is the identification of anxiety in relation to the concept of equality correct and how can that be addressed by training? Other questions arise in connection with the effect of training on professional identity. For instance, would training affect the self-image of the tutors who took part in this research, or that of other tutors at Smith? These questions could also be investigated in the context of other programmes at Smith, as well as in the context of other HEIs.

Afterword: Personal and professional learning

Introduction

The outcomes of the research discussed in this work can be regarded as falling into two categories. What might be described as the formal outcomes, the results of the research, implications for the particular institution where the research was carried out and suggestions for further research have already been discussed. However, there is a second set of outcomes, which are not crystallised in the same way, and these relate to my experiences on the programme. Barnacle and Usher (2003, p.353) conducted a study of part time students who were completing higher degrees by research and report that their participants identified a close link between their research and their work and specifically that they believed that "doing research makes them better professionals. It...gives

them...a critical perspective on what they do in the workplace." From this perspective, the particular research which I carried out, and my experience of the EdD programme generally, were instrumental in my own development as a practitioner and this is an outcome which can be considered independently of the outcomes of that research. Doncaster and Thorne (2000) assert that reflection is an important aspect of professional practice and so an essential component of a professional doctorate but the term "reflection" is contested and so requires examination.

When used in everyday conversation, the word is used to describe a process in which we consider something which we already know, we reflect when we "think something over". We may reflect on experiences, emotions, reactions and actions, usually because the process has some purpose, such as a better understanding of an incident. It is apparent from this approach, that reflection tends to be applied to the complex rather than the straightforward. Moon (2001) describes reflection as "a means of working on what we know already." According to Brockbank and McGill (2007) both reflection-on-action and reflection-in-action are necessary elements of reflective practice, which can be distinguished as follows (Schön, 1991a)

- reflection- on- action takes place after the matter which forms the subject of the reflection is complete. Brophy's (2000) performer might reflect on the concert when it is finished in order to evaluate how successful the performance was and whether some element should have been different. An important aspect of reflection-on-action is that it is not limited to intellectual thinking but includes feelings and emotions (Schön 1991b).

- reflection –in- action is concerned with practising critically, "our thinking serves to reshape what we are doing while we are doing it" (Schön, 1987, p.26). This seems to be analogous to Brophy's (2000) concept of procedural application, resulting in the adaptation of musical performance to suit the immediate musical conditions or context, for instance. Other examples would include a tutor departing from a planned mode of delivery in response to the reactions of the student group and a diagnostician deciding which question or test should be next, depending on the response to the previous question or test.

Moon's (2001) assertion that reflection usually has some purpose is congruent with Schön's approach, in that it suggests that reflection has an outcome. That outcome may not immediately be expressed as action. For instance, the purpose of reflection may be a better understanding of an event, and that may not immediately manifest in action but should the same or a similar event either happen or appear to be imminent, the understanding of the previous event might inform reaction to the subsequent occurrence or even management of that second occurrence.

The common element to both types of reflection identified by Schön (1991a; 1991b) and which is also found in Moon's (2001) conceptualisation is the idea that reflection has an output which can then be applied to practice, either immediately or at some point in the future. In this respect, the assertion by Boud and Walker (1998, p.193) that "there are no reflective activities which are guaranteed to lead to learning" acts as a warning against rumination.

Balance between reflecting and action

Mälkki and Lindblom-Ylänne (2012) identify an assumption that reflection may result in knowledge which, when applied to practice will enhance that practice and go on to discuss a number of impediments to the translation of reflection into action. One of the impediments identified is an institutional or departmental framework, and I have discussed the effects of organisational structure above.

Reflection which does not result in action in any way would seem to be quite a barren exercise, characterised by Boud and Walker (1998, p.193) as "self-referential, inward-looking and uncritical". At the other extreme, reflection may actually become an impediment to action. Reflection may lead to the conclusion that changes are desirable, but if the changes are too challenging, the individual is likely to take no action to make the changes and continue in the same manner. Alternatively, the individual, reflecting and recognising that changes are desirable is motivated to put off taking any action, including a repetition of the action which is the subject matter of the reflection. Procrastination has often been associated with perfectionism, although more recently procrastination has been associated with lack of self-confidence and low self-esteem (Steel, 2011). Reflection which feeds into low self-esteem could have a paralysing effect.

In some of the instances discussed below, I already knew what happened and what the effect was for me, and one outcome of the reflection described is better understanding of the incident. In the incidents which I describe, however, the outcome is not limited to a better understanding of the incident but extends to a better understanding of myself, of how I might affect others and of how I might reflect this understanding in my own practice.

The concept of reflection-in-action has been the subject of criticism (for instance, Clinton, 1998; Eraut, 1994) and Moon (2001) points out that Schön is ambiguous as to whether reflection-in-action must necessarily take place "in the midst of action without interrupting it" (Schön, 1987, p.26). Eraut concludes that reflection-in-action is in fact a form of metacognition and a number of different arguments have been constructed in support of the assertion that reflection cannot take place simultaneously with action (for example, Clarke, 1995; Ekebergh, 2007; Van Manen, 1991). These

arguments do not undermine the argument that there is a difference between retrospective reflection and that which takes place while the individual is "on their feet." I have found the distinction useful and the concept of reflection-in-action seems to be compatible with both the four stages of learning model (Adams, 2016) and Fisher's (1999, 2005) approach to personal change. The particular instances discussed here are examples of reflection-on-practice and the occasions when I have reconsidered how I am responding to a student (for example) would be examples of reflection-in-action. Schön (1991) regarded reflection-in-action as a distinguishing feature of expert practice, so my experience on the programme has developed my understanding of the concept of reflection, developed my ability (and inclination) to be reflective and contributed to my development as a practitioner.

Both the concepts of reflection-in-action and reflection-on-action have been criticised for a failure to attend to context (for example, Kincheloe, 1991; Smyth, 1989, 1991) but reflection-on-action can be approached in ways that take account of context. Brookfield (2015) suggests the use of four lenses to achieve this. The four lenses are:

- Autobiographical experiences and particularly those relating to experiences as a learner

- Students' experiences

- Colleagues' perceptions

- Research and theory

This is the approach which I have adopted below.

A personal account of doctoral skills and attributes

Azuma (2003) presents an entertaining account of the qualities necessary for success as a postgraduate. Some of the points he makes accord with my own experience, while others seem to be less capable of being transferred to my own situation. I have used Azuma's article as a source for some of the subheadings in what follows.

Autobiographical experience, the first lens: You don't have to be a genius

On a personal level, this has been quite a relief! However, it also accords with my experience of teaching at postgraduate level. Interpersonal skills, including a certain amount of well-judged charm, can take a student some way and "intelligence" can refer to emotional intelligence as well as the sort of intelligence which might be measured by a traditional I.Q. test (Goleman, 1996).

Smith (2009, pp. 26 - 7) comments that

> "If the doctoral programme does not at some point make you deeply question your role, the knowledge and skill you use and your professional practice and identity, then it is not interrogating your practice at a level commensurate with a professional doctorate."

There have been a number of incidents which have translated directly into my own practice but I will describe two examples here, both of which have directly affected my own practice.

I have completed the programme which has culminated in the production of this thesis online and found that this has been a significant element. Our discussion in week one of the first module included some consideration of emotional intelligence which is defined by Salovey and Mayer (1990, p.189) as "the subset of social intelligence that involves the ability to monitor one's own and others' feelings and emotions, to discriminate among them and to use this information to guide one's thinking and actions." I found that my ability to monitor the feelings and emotions of other students was likely to be severely impacted by the online nature of the programme and on occasion this led to difficulty. It was necessary to remember that our mode of communication didn't allow nuances of tone to be conveyed. I remember on one occasion unintentionally causing offence to another student and being reassured by a third student "You have done nothing wrong!" I remember how disconcerting this was, and I recollect the reactions of others but exactly what I did escapes me now and perhaps is unimportant. The learning from this incident was how important it is to remember that tone is often not conveyed in writing. A large part of my current role consists in communicating by email, often with students and colleagues who I will never meet and so this has been significant for me.

I also remember a later and more unsettling incident which took place in one of the last modules. We had each posted ideas for research and were expected to comment on each other's ideas. We were not put into groups for this exercise, and so it was a free for all, in the sense that we each had a completely free choice of which ideas we would comment on. I remember that I posted my ideas and received no comments. No comments at all. I discussed this with the tutor, who advised me to post early in the following week, on the basis that people often comment on the posts made early in the week. However, in this second week, my post received no comments, which put me in difficulty with the instructions for week 3 ("Drawing on the comments you have received..."). I asked the tutor how to approach this and was advised to consider my posting style, and in particular whether I had, somehow by week 2 of the module, so alienated the rest of the group that, although they would

discuss their own ideas with me, they were not prepared to discuss my ideas. No examples were given of how I might have achieved this result (nor, indeed, where any suggestions made as to what I might do about it) and I remember being devastated by this response. Any insecurities about whether I belonged in this process were immediately engaged and I think that period of time was when I came closest to giving up the whole endeavour. Wilhemson (2002, p.191) notes that "critical reflection can only begin after emotions have been worked through" and the emotional response evoked by writing about this experience at the time and shortly afterwards is now much less apparent, so that I have been able to reflect on the experience.

I'm aware that I have been circumspect in talking about the fact that I have been engaged in this process, in sharp distinction to the approach taken by a colleague of mine, also a student on this programme, whose email signature now includes the words "Doctoral candidate, University of Liverpool" and I think the significance of this incident is related to my reticence. Imposter syndrome is well-known and has been observed in both doctoral students (Cope-Watson & Betts, 2010) and university faculty (Hutchins, 2015) although it's certainly not confined to those two groups. I think my own reticence is connected to a fear that I shouldn't be on the programme, would be incapable of completing it and would inevitably, at some stage, be found out and that these fears were immediately engaged by the comments made to me.

I don't know the tutor who made the comment to me, and have had no contact with him since that particular module ended. It could be the case that he would be appalled by my response to his comment but it could equally be the case that his response would be more along the lines of inviting me to leave the kitchen should the heat be too great. His response is, I think, less significant than my own reactions, the possible reasons for those reactions and how the incident was relevant to this research.

Brookfield (2015) comments that taking the role of learner can act as a reminder of aspects of learning that have been uncomfortable in the past and that these experiences can become overlaid by later experiences (for instance as an educator or learner) so that the roles taken on later become increasingly comfortable and the difficult experiences forgotten. While none of us can take complete responsibility for how a comment "lands" on its recipient, I think this particular incident has made me more aware of the need to be sensitive to the context of a transaction for other people and particularly where the nature of the transaction is other than face-to-face. Beard, Clegg and Smith (2007, p.237) identify a perspective on learning in higher education which regards "attempts to think about learning from the perspective of the whole self as a collapse into relativism and an improper concern for the therapeutic rather than the pedagogic" and this is certainly a way of thinking which

is dominant amongst my colleagues. In my environment, even the degree of sensitivity which I have developed is a distinguishing factor.

In relation to this research, I used this experience as a reminder of the need to take care with participants and it was also reflected in my efforts to build rapport.

Experience of participants, the second lens: Why the hell am I doing this?

Azuma (2003) identifies this as the most basic question and one which every student must be able to answer. I have considered the wording of this particular subheading carefully but have retained it, because I think it's a useful pointer to the emotions which the process has engaged from time to time, although I think that the fact that emotions have been engaged is a reflection of the strength of my experience.

Fulton, Kuit, Sanders and Smith (2012) identify the development of identity as one of the objectives of the professional doctorate and that process has been emotional.

Egan (2001, p.101) observes that

> "Identity is a negotiated, contested space... At different times our many affiliations, attributes and experiences- labels - jockey for prominence in how we describe who we are in the world, to the world...Often, some of these identities are obscured partially or wholly by others. Sometimes I am a paradox of competing and seemingly incompatible identities."

Participation in the programme has meant that I have acquired a number of new labels, some of which have conflicted with each other or with existing labels. One of the new identities which I have taken on during this programme is that of student, with all the uncertainties and difficulties which attach to that. I have previously been a student whilst also teaching in higher education and so was prepared, to some extent, for this new identity. However, that earlier iteration was at a time when I was less established in my career and that was a significant factor. It was difficult, on this occasion, to experience the two identities and I found that there was greater tension between the two, which in large part arose because of my own expectations regarding my own competency.

Petty, Cross and Stew (2012) identify difficulties associated with the risks which attach to the decision to expose oneself to the risk of failure and the changes which may then result to a student's own self-image. Expectations about competency are particularly vulnerable in this respect. Cohen (2011, p.68) advises doctoral students to "let go of unrealistic expectations" and while this is good

advice, the difficulty which I experienced related to identifying what was realistic for the identity of student.

Leitch (2006) describes the difficulty which she had in acknowledging to others the fact that she was doing a professional doctorate and this reticence is one way of manufacturing a degree of protection – failure might in itself be devastating but it doesn't have to be public. The difficulty with this approach, however, is that the same mechanism which provides protection also ensures that support available from other people will be reduced. I found this a difficult balance to maintain throughout the programme.

Difficulty maintaining dual identities as student and member of staff has been previously identified (Smith, 2009; Wellington, Bathmaker, Hunt, McCulloch & Sikes 2005) so it wasn't unique to me and realising that I wasn't the first person to experience this was helpful, as was discussing the experience with peers. Petty, Cross and Stew (2012) identify the value of peer support but these discussions were also significant in relation to the development of a second new identity, which was that of researcher.

I have reflected on some of the difficulties which attached to the identity of researcher above and my focus here is on the process of the programme and in particular the significance of the discussions which I had with other students, tutors and research active colleagues. Wellington Bathmaker, Hunt, McCulloch and Sikes (2005) refer to the ability to manage many roles and I think this skill is related to flexibility. I have been well-used to managing different roles, both at home and at work, but the research process required me to develop a new identity at work.

Brookfield's (2015) second lens, and the one which he identifies as the most important, is that which relates to students' experiences. In the context of this research, that lens would focus on the interview participants. I received feedback from some, but not all of the participants and often this took place at a later date and was unsolicited. This feedback tended to focus on "macro" issues, such as the experience of being interviewed. For instance, one participant reflected that he had found the interview particularly useful, as he had reached a crossroads in his career and the interview represented an opportunity for him to reflect on his current role. I conducted a pilot interview with a colleague and was able to discuss a number of aspects of the interview with her which were micro in nature. For instance, I found that I tended to think through some of my questions as I was asking them and this meant that some of the questions which I had asked had not been clear to my colleague, so that she took a different meaning from the meaning I had intended. My preparation for this pilot interview included consideration of how I would ask for feedback and I had prepared a

number of questions which were intended to capture my colleague's reflections, including her emotional responses. These questions drew on Dewey's (1933) observation that the trigger for reflection is often an emotional response and took a critical incident approach, which was both consistent with the approach described by Brookfield in relation to students and intended to identify what had gone well and what could be improved (Woolsey, 1985).

Applying this learning to my professional context, I have introduced an opportunity for my own students to give feedback as they progress through their research, in addition to the feedback which is requested when they have finished their research.

Views of colleagues, the third lens: Tenacity

Tenacity is identified by a number of researchers as an important attribute for doctoral students (including, for example Smith, 2009 and Wellington, Bathmaker, Hunt, McCulloch & Sikes 2005). Azuma (2003) refers to developing a thick skin, which will act as a preventative to the impulse to give up at the first difficulty encountered. The third lens identified by Brookfield (2015) relates to colleagues' perceptions. I have taught particular skills to students for some years now and have observed that the difficulties students encounter are rarely unique to the particular student and I think the process of learning a particular research skill mirrors this in that the difficulties I encountered were unlikely to be unique. Although the autobiographical lens described by Brookfield is an important source of understanding a situation, there are likely to be alternatives which colleagues may propose, based on their own experience and understanding. This lens has resonance with the concept of legitimate peripheral involvement proposed by Lave and Wenger (2002). My colleagues for this purpose were other students, researchers at the university and my supervisor.

Applying this learning to my professional context, I have introduced additional opportunities for supervisors to meet and exchange experiences and strategies. We now have a discussion board, which is well-used by new supervisors in particular. I have also introduced a mentoring process, which matches a new supervisor with an experienced supervisor and feedback on this new scheme is good.

Theory and research, the fourth lens: Reflection

Brookfield's fourth lens, and the one which he argues is probably utilised the least, relates to theory and research. This is a lens which can reveal a new reality or analysis which would not otherwise have been accessible. As an example of this, there is an established body of research which identifies the importance of seating arrangements on interaction. For instance, Bryant (2015) describes the

relationship between power dynamics and seating arrangements and King and Horrocks (2010) suggest that it is best to avoid facing a participant over a desk. Bryman (2016) discusses the significance of interviewers' characteristics, while Gore (1993) points out the potential effects of direct face-to-face interaction. I couldn't re-arrange the furniture in the rooms used for the interviews but research and theory was relevant to how the furniture was used, for instance in ensuring that we didn't face each other across a table or desk. These theories are also relevant in the 1:1 meetings which I have with my own students.

Conclusion

Rather like the concept of reflection, reflexivity can be understood in a number of ways. I am using the term here to describe a process in which the researcher acknowledges the researcher's own role in the research and reflects on this role (Finlay, 2003). Finlay (2002, p.212) observes that "researchers have to negotiate the 'swamp' of interminable self analysis and self disclosure. On their journey, they can all too easily fall into the mire of the infinite regress of excessive self analysis and deconstruction at the expense of focusing on the research participants and developing understanding" and goes on to suggest five ways in which the swamp can be navigated.

The accounts of reflection-on-action which I have included here can be regarded as examples of 'introspection', 'intersubjective reflection' and 'mutual collaboration'.

The challenge which arises relates to continuing the habit of reflection. I have to attend regular training courses in relation to my practice in education law and part of that process involves analysis – how are my experiences as a learner and are there resonances with my experiences as a tutor? I have developed points in the programme which I lead for checking in with the students about how things are going, what is being helpful and what is not and I can make opportunities for discussions, even if these are brief, with colleagues.

Word count 49,920

Appendices

Appendix 1: Participant information sheets

UNIVERSITY OF LIVERPOOL

Participant Information Sheet

This document is available in other formats on request

Research Project Title

Constructions of equality through the lens of disability: A case study

Invitation

You are being invited to participate in a research project. Before deciding whether to participate, it is important for you to understand why the research is being done and what it will involve. Please take the time to read the following information carefully and feel free to ask me if you would like more information or if there is anything you do not understand. I should like to stress that you do not have to accept this invitation and should only agree to take part if you want to.

Purpose of the research

The university which you are attending is situated in England and is accordingly subject to legislation regarding equality and discrimination. The university has a public commitment to equality. However, whilst it is anticipated that, if questioned, staff and students would endorse this commitment to equality, the concept of equality is not defined in the university's policies and so there is scope for the concept to be constructed in varying and sometimes conflicting ways. The research will investigate the experiences of staff and students at the university, with a particular focus on the concepts of equality and disability.

Differences in construction and understanding of the concept of equality can lead to expectations on the part of students which the university will not meet, as well as conflicts between staff, who may not agree on what steps should be taken to support students who have disabilities.

Finally, differences in understanding can be a source of inequality, since different constructions may lead to a variety of practices so that the experience of a student may vary in part because of the views of the person making decisions about learning support and reasonable adjustments.

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The purpose of the research is to investigate how different stakeholders construct the concept of equality and to consider whether different constructions have any practical consequences. The research is being carried out in partial fulfilment of the requirements for the award of Doctor of Education by Liverpool University.

Why have I been invited to take part?

All the students in your tutor group have been invited to take part in this research. Your tutor group was randomly selected.

Who is taking part in the research?

The research is investigating the experiences of disabled students and the experiences of staff whose role involves supporting students with disabilities at the university.

If you are a student with a disability, please continue to read this information sheet. If you do not have a disability, you will not be invited to take part in the current research. However, I would like to thank you for your interest.

Do I have to take part?

Participation in this study is completely voluntary. You will be given 7 days before being asked to sign a consent form giving your permission for your responses during the interview to be analysed as part of the study.

You can withdraw your participation at any point after completing the consent form without explanation, and without repercussion. You may also refuse to answer any question with which you are uncomfortable without giving any explanation, and without repercussion.

You will be able to see the transcript of your interview and can decide to make additions or to withdraw from the study at that point.

You may also withdraw your consent after completing the interview and after seeing your transcript. Results up to the period of withdrawal may be used, if you are happy for this to be done. Otherwise you may request that they are destroyed and no further use is made of them.

After you have seen your transcript, it will be anonymised. Results may only be withdrawn prior to anonymisation.

What will happen if I take part?

You will have 7 days in which to decide whether you want to take part in the research. Participation in this study will involve taking part in a semi-structured interview exploring your views. The interview will be recorded and then transcribed.

How long will the interview take?

The interview is unlikely to take longer than 40 minutes.

What record will be kept of the interview?

The interview will be recorded on a handheld device which will be kept in a locked filing cabinet. You will be asked to consent to this recording. The recording will be transcribed. You will be able to see the transcript of your interview and can decide to make additions or to withdraw from the study at that point.

The recording and the transcript will be retained for 5 years. Any hard copy produced will be kept in a locked filing cabinet and any soft copy will be kept on a computer which is password protected, in a folder which is also password protected.

Where and when will the interview take place?

The interview will take place at a place which we will agree between us. We will meet in a place which will provide privacy so that anyone passing the room will not be able to overhear what is being said or look in and see you or the person you are talking to.

The interview will take place at a mutually convenient time which will be agreed between you and me.

Will I receive remuneration of any kind if I take part?

No. You will not receive any reward for taking part. You will not receive travel expenses or compensation of any kind for your time.

Confidentiality of the research process

Your responses during the interview will be explored as part of the write-up of the study. Responses will be kept separate from any identifying information you give.

Your responses will be anonymised and your name will not be disclosed to any third party. You will be allocated a randomly generated code, such as "AB".

Extracts from the interview may be presented in my report. Any extracts used in the discussion will be completely anonymous and participants will be referred to by codes only; no-one will be able to identify you by your responses and no-one will be told that you have taken part in the research. The transcripts and recordings will be destroyed when the research has been written up.

No one at Smith will be told that you have taken part in the research. This includes tutors, learning support and examinations.

What will happen to the results?

Extracts from the interview may be presented in my report. Any extracts used in the discussion will be completely anonymous and participants will be referred to by codes only; no-one will be able to identify you by your responses and no-one will be told that you have taken part in the research. The transcripts and recordings will be destroyed after 5 years.

Who is carrying out the research?

The research is being carried out by Rosamund Reay. I am the Programme Leader for the [programme named] and I do not teach on the Bar Professional Training Programme.

What are the possible disadvantages of taking part? What if there is a problem or I have a question?

You will be able to terminate the interview at any stage if you become distressed or for any other reason. You will not be asked to justify or explain why you want to end the interview.

It is unlikely that completing this interview will have any sort of negative effect on you. However, if you do feel distressed by a question, or have any other issues or questions, please do not hesitate to contact me at ros.reay@online.liverpool.ac.uk If appropriate, I can refer you to the confidential counselling service which the university makes available.

My supervisor is Dr Hazel Brown. Dr Brown can be contacted by email at [addresses supplied]. Further sources of support include senior members of staff and a confidential counselling service.

What are the possible advantages of taking part?

You will be given an opportunity to explore your own views on equality and equity of provision bringing greater clarity to personal beliefs. Whilst it is acknowledged that there may be no personal benefit to you on a personal level, there will be a benefit in adding to the body of knowledge in this area and influencing future practice.

Complaint procedure

The complaint procedure was described and contact details were given for:

- Hazel Brown (supervisor)
- Rosamund Reay
- Research Participant Advocate

Please keep/print a copy of the Participant Information Sheet for your reference. Please contact me and/or the Research Participant Advocate at the University of Liverpool with any question or concerns you may have.

NB This is the information sheet developed for students. That used for staff was similar, with the omission of the reference to tutor groups

Appendix 2: Consent form

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Title of research project Constructions of equality through the lens of disability: A case study	Please initial below
1. I confirm that I have read and have understood the information sheet dated 5 August 2015 for the above study. The information sheet was sent to me on [insert date]. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.	
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without my rights being affected. In addition, should I not wish to answer any particular question or questions, I am free to decline.	
3. I understand that, under the Data Protection Act, I can at any time prior to anonymisation ask for access to the information I provide and I can also request the destruction of that information if I wish.	
4. I understand that confidentiality and anonymity will be maintained and it will not be possible to identify me in any publications	
5. I understand and agree that my participation will be audio recorded and I am aware of and consent to your use of this recording for creating a transcript for use in the above study.	
6. I understand and agree that when the recording of my interview has been transcribed, it will become anonymised and I will therefore no longer be able to withdraw my data.	
7. I agree to take part in the above study.	

Participant name   Date   Signature

Name of person taking   Date   Signature
consent

Researcher   Date   Signature

Research Supervisor: Details given		Student Researcher: Details given

Appendix 3: Interview guide

Staff

Issue/topic	Possible questions	Follow up questions	Probes
Role at Smith	What's your role at Smith?	Experience as tutor on programme? Different to "day job" at Smith? More/less satisfying? Demanding? Challenging? Does that involve learning support at all?	
Experience of the BPTC	What teaching experience do you have?	Is it related to your practice?	Demanding? Challenging? How do you feel about that?
Training at Smith	What training have you had?	Did you find that yourself? What did you think of it?	Go on?
Experience at Smith	How aware are you of the other courses available at Smith?	Do you have any involvement with these other courses? Do you know anyone who teaches on these courses? How does that work?	
	What do you think Smith does well?	Is that effective?	
Smith's approach to	What's your experience of learning	How do you think that relates to	Please explain?

learning support	support at Smith?	the question of equality?	Why?
		Do you think Smith takes equality seriously?	Please go on
		What do you think motivates Smith?	
		Any examples of good or bad practice you've come across?	
Regulations at Smith	How aware are you of the programme regulations?	What do you think is the impact on students with disabilities?	
	What's the effect of the external regulator?	Would you make any changes?	
		How confident do you feel that the regulations achieve the right outcomes?	
Professional experience	Aware of practitioners with disabilities?	Incentive not to disclose?	
	What do you think is the attitude of the profession generally?	How does the approach to learning support at Smith tie in with this?	
		Do you think students are realistic about practice?	
Role in relation to profession	So you're a barrister and a tutor? How do you see yourself?	Do you feel that you're in the position of gatekeeper to the profession?	
	Which role has primacy?		

Students

Issue/topic	Possible questions	Follow up questions	Probes
At Smith	You're currently on the BPTC?	Full time? Part time? Reasons for being part time? Previously on a different course at Smith?	
Learning support at Smith	You've had contact with learning support?	How did you first make contact? What was your experience? How did that work for you? What was the process?	
Learning support at other organisations	Previously had learning support?	How did that work? Compared to Smith? Effect of previous experience? How do you feel about that?	
Disability in relation to experience of learning support	How did learning support react to you?	What was your reaction? How do you feel about that now?	
Experiences with tutors	How have tutors been with you? What guidance would you	Was that helpful? How did you react?	

	want/did you receive from tutors?		
Expectations of practice	What are your expectations? Do you intend to disclose your disability when applying for pupillage?	How do you think it will work? Have you made any applications? How's the process going? Any experiences of interviews?	

Appendix 4: Coding exercises

Codes　　**Subcodes**　　**Category**　　**Theme**　　**Assertion**

Self as focus of policies

Fluidity

Identity

Custodian of
equality as
applied
to students

Student
with disabilities

Adjustments

Ownership

*Understanding
of procedures*

*I knew what
I wanted/reasonableness*

Effects

Confidentiality

Adapted from Saldaña, 2013

Codes	Subcodes	Category	Theme	Assertion

Pressure

Application of equality to self

Functionary

Identity

Ownership

Examinations officer

Equality belongs to someone else

Lack of power

Policies

Communication

Adapted from Saldaña, 2013

Codes	*Subcodes*	Category	Theme	Assertion

Codes **Subcodes** **Category** **Theme** **Assertion**

Self as focus of policies

Identity

Custodian of
equality as
applied
to students

Learning support
officer

Procedures

Ownership

Policies

*Interpretation
of reports*

Numbers

Communication

Adapted from Saldaña, 2013

Codes   *Subcodes*   **Category**   **Theme**   **Assertion**

Practice

Caution

Counsel

Ownership

BPTC tutor

Equality
belongs to
someone else

Lack of expertise

Knowledge

Training

Communication

Confidentiality

Adapted from Saldaña, 2013

Appendix 5: Ethical approval

Dear Rosamund Reay			
I am pleased to inform you that the EdD. Virtual Programme Research Ethics Committee (VPREC) has approved your application for ethical approval for your study. Details and conditions of the approval can be found below.			
Sub-Committee:	EdD. Virtual Programme Research Ethics Committee (VPREC)		
Review type:	Expedited		
PI:			
School:	Lifelong Learning		
Title:	Constructions of equality through the lens of disability: A case study		
First Reviewer:	Dr. Lucilla Crosta		
Second Reviewer:	Prof. Morag Gray		
Other members of the Committee	Dr. Anthony Edwards, Dr. Martin Gough, Dr. Janis McIntyre		
Date of Approval:	07/09/2015		
The application was APPROVED subject to the following conditions:			
Conditions			
1	Mandatory	M: All serious adverse events must be reported to the VPREC within 24 hours of their occurrence, via the EdD Thesis Primary Supervisor.	

This approval applies for the duration of the research. If it is proposed to extend the duration of the study as specified in the application form, the Sub-Committee should be notified. If it is proposed to make an amendment to the research, you should notify the Sub-Committee by following the Notice of Amendment procedure outlined at http://www.liv.ac.uk/media/livacuk/researchethics/notice%20of%20amendment.doc.

Where your research includes elements that are not conducted in the UK, approval to proceed is further conditional upon a thorough risk assessment of the site and local permission to carry out the research, including, where such a body exists, local research ethics committee approval. No documentation of local permission is required (a) if the researcher will simply be asking organizations to distribute research invitations on the researcher's behalf, or (b) if the researcher is using only public means to identify/contact participants. When medical, educational, or business records are analysed or used to identify potential research participants, the site needs to explicitly approve access to data for research purposes (even if the researcher normally has access to that data to perform his or her job).

Please note that the approval to proceed depends also on research proposal approval.

Kind regards,

Lucilla Crosta

Chair, EdD. VPREC

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