The Equality Bill- How could it impact upon HRD professionals in the workplace environment? A study with particular reference to disability in the workplace

Stream: Critical Perspectives on Human Resource Development

10th International Conference on HRD Research and Practice across Europe
Newcastle Business School, Northumbria University
June 2009

Working Paper

Keywords: HRD, anti-discrimination legislation, disability discourses

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HRD has been defined as being about “short term training, encompassing skills acquisition and behavioural change” (Harrison 2005:6). Harrison cites Nadler (1970) as being HRD’s most influential commentator who had defined HRD as “a series of organised activities conducted within a specified time and designed to produce behavioural change”. The links with strategy and the role of HRD professionals has been acknowledged by Harrison as contributing to “an organisational process to aid collective progress through the collaborative and expert stimulation and facilitation of learning and knowledge that support business goals, develop individual potential, and respect and build on diversity”.

This is further emphasised by Collin (in Beardwell and Claydon, 2007:263) who clarifies that the “new ways of working are demanding not just extensive training in new task skills, but completely new ways of thinking about work, doing work, and relating with one another” and “organisations have to invest in their human capital. It means they have to train and develop their existing workforce, facilitate their learning within a learning culture, with appropriate resources, and develop a learning organisation”. The role of promoting ethical practice through diversity initiatives should be seen as a central part of the HRD professionals role.

However, as Metcalfe (2008) notes, whilst equality and diversity initiatives are an important aspect of HR ‘strategic planning’, there remains a need to draw upon critical approaches to develop the field. Thanem (2008) identifies a limited engagement with disability within the diversity field, and suggests there is a need to develop research which works from disabled people’s perspectives to develop the field.

This research takes forward both a critical theoretical approach and works from the perspectives of disabled academics in critically assessing the impact of the DDA in enabling their careers and organizational experiences, and considering the potential impact of the Equality Bill in enabling future engagement with disabled staff.

Legislative context

The Equality Bill aims to replace a wide range of equality legislation already in place (reducing 100 statutory instruments into a single Act). Such a move can be interpreted as attempting to support employers’ ability to navigate the legislative duties and responsibilities and improve the implementation of equality at work initiatives. However, the expectation of a single duty upon public bodies to ensure equality across all strands of diversity as well as equal pay audits can equally be interpreted as challenging.

The matter of promoting equality and diversity in the workplace is invariably challenging even in its current content. It is important therefore that a strategy is in
place prior to any new legislation and that there is an awareness of the specific aspects that HRD professionals need to be developing with line managers.

On 26 June 2008 Harriet Harman, the minister for women and equality spoke in the House of Commons on the Equality Bill (Harman, 2008) noting “although more disabled people are working than ever before, a disabled person is still two and a half more likely to be out of work”. The minister considered and described various aspects of discrimination in her speech but with regard to disabled people she said “on disability we need to be able to see who is including disabled people in their workforce and who is shutting them out. That way we can see who is making progress year on year, compare comparable organisations, learn from the best and challenge the worst”.

The response from the Disability Rights Commission (DRC) (2008) includes some positive views but it also comments that ‘it fails to measure up to (this) task of producing an equality law fit to address the challenges and embrace the opportunities of the 21st Century’. Of the concerns raised, the “failure to comply with existing law” with the need ‘a simpler, better definition of disability’ amongst an array of recommendations.

It is important, therefore, that HRD professionals gain an understanding of the key concepts likely to impact upon the workplace and that suitable awareness interventions are in place. The aim of this paper is to assist in this dialogue and to highlight crucial aspects. This will partly be gained by reflection from research with disabled people in the workplace and partly by drawing upon ongoing discussion within the HRD community.

To explore the legislative framework and critique the Equality Bill, this paper will focus upon one aspect, disability legislation. It will particularly consider the effect on equality in the workplace for disabled people. In particular it will incorporate findings from recent research with disabled academics which explored their career and organizational experiences.

Methodology

This paper draws upon empirical materials developed as part of a narrative inquiry study which understands the self as narratively constructed, and as both the phenomenon and the method of inquiry (Clandinin and Connolly, 2000). The study was conducted using narrative interviews (Lewis-Beck, Bryman & Futing Liao, 2004) with eight disabled academics as case studies (Stake, 2005; Yin, 1994). Narrative accounts were analysed using the Voice Centred Relational Method (VCRM) (Mauthner and Doucet, 1998) which enables four readings of each narrative
Researching disability, Lawthom (Goodley et al, 2004:118) suggests these readings have a ‘distinct focus aim[ing] to span and track the individual’s agentic voice together with the voices of those in relationship with the individual, through to shared societal discourses’.

Theoretical framework

Disability studies moves away from a medical or individual model of disability (individual model), which locates the ‘problem’ of disability within the impaired individual (Oliver, 1990). The individual model perceives disability as a consequence of biological or functional limitations, requiring medical diagnosis and treatment or rehabilitation, with the aim of assisting disabled people to achieve some form of ‘normalisation’, that is to operate within the social world to the ideal of non-impairment (French, 2001).

The emphasis in disability studies is upon a socio-political interpretation of disability (Abberley, 1987), where disability is the outcome of social responses to people with impairments, and the ways in which social contexts are designed around assumptions of non-impairment. Disability, through this critical understanding, is re-categorised as a “social and political process”, the outcome of negative social responses to people with impairments Swain et al, 2003:23). Such an understanding shifts attention towards critiquing how disabled people are included or excluded within social contexts, such as work organizations.

Taking forward a focus upon ‘the experiential, discursive and structural issues involved’ (Meekosha:2004:726) in constructing disability the approach adopted for this study recognizes organizational actors use discursive strategies to achieve their projects. Watson (2001:25) suggests discourse can be appreciated as a “…cultural medium...through which we justify and make sense, to ourselves and others, of what we do”. As Abberley, (2002:122) notes discourses “both opens up and closes down possibilities for action”.

Disability legislation

Barnes (1991; 1992) outlined a compelling case for anti-discrimination legislation to protect disabled people across a range of activities in social life including employment prior to the introduction of the Disability Discrimination Act 1995 (DDA 1995), suggesting it would be through anti-discrimination legislation that the institutional discrimination disabled people face could be tackled.

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1 For a more detailed exploration of the VCRM, see Theoretical and methodological issues in HRD stream paper number 10.7
The DDA 1995 legislation once in place, required employers to make ‘reasonable adjustments’, and not to treat disabled people less favourable unless this could be justified. The option of employers to consider a request as ‘un-reasonable’ is a compromise Hurst (2004) suggests has broadly been accepted to enable anti-discrimination to be accepted, and to prevent the change agenda from being a burden upon society. The key issue for Hurst (2004:297) is for “disabled people to be involved in setting guidance as to what is deemed ‘reasonable’”.

Woodhams and Corby (2007:561) note the DDA 1995 is “based on an individual rights approach, which emphasizes equality of treatment, consistency and procedural justice.” Therefore it may be reasonable for disabled staff to draw upon an equality legislation discourse in assessing their employer’s actions and to request work arrangements are adjusted to meet their requirements.

A range of amendments to the scope and definitions within the DDA 1995 have been made². However, whilst Roulstone and Warren (2006) suggest that current anti-discrimination legislation has symbolic meaning, and has been important in fighting discrimination and enhancing opportunities for disabled people, it is criticised as failing to affect significant change for disabled people seeking to work.

One of the criticisms of the legislative framework is that it reifies an individual model of disability reflecting dominant discourses of disability which conflate disability with inability (Corker, 2000; Foster, 2007; Woodhams and Corby, 2003). This is seen in the legislative definition of disability, which relies upon concepts of mental and physical functional limitation of an individual disabled person set against concepts of ‘normality’, and the extent to which disabled people can argue they are limited in their ability to carry out day-to-day activities (French, 2001). Positioning disability as an individual limitation and the inversion of normality, Robert and Harlan (1998) suggest, reinforces the notion of reasonable adjustments for disabled people being ‘special treatment’. Such an approach fails to take into consideration contextual factors in constructing disability, through the exclusion of the requirements of people with impairments, as the critical disability studies literature argues is essential to develop inclusive approaches to organizing.

Woodhams and Corby (2003:172) suggest the implications of this are confusion amongst managers who do think ‘contextually’ as well as medically when assessing disabled staff. That is, managers assess both the nature of an impairment and their judgement over whether or not this affects ‘productivity’, the assessment of disability is therefore contingent upon managers perceptions or impairment and the nature of

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² Notably the Disability Discrimination Act 1995 (Amendment) Regulations 2003 which introduced a range of amendments to the legislation addressing employment. See Foster (2007) for a condensed overview of changes to the DDA legislation relating to employment
the work being performed, making ‘conscious choices’ in relation to assessing disability and deciding upon whether the legislative framework applies. Where there is an increase in ‘conscious choices’, managers may be less likely to draw upon the liberal equality framework underpinning the legislation (Woodhams and Corby, 2003). Foster (2007) suggests management responses often reflect the medical model discourse of the legislation, reifying an individualised understanding of disability, which is reflected in behaviours such as an abdication of responsibility to manage disability related activities, something Foster describes as a form of management ‘non-decision making’ (Foster, 2007).

Empirical materials and discussion

The narrative accounts gathered for this study highlighted the importance of the ways in which participants drew upon a legislative discourse in their critique of organizational processes and individual actors.

Concepts such as ‘adjustment’ and ‘discrimination’, key concepts within the legislative discourse were emphasised by disabled academics as they narrated their career experiences.

They described times when they requested alternative working or adjustments. Often managers drew upon and at times misapplied the UK legislative framework in response. In doing so, the responses they received indicated that their requests were perceived as unreasonable and/or as falling outside the protection of the legislative framework.

One disabled academic’s request for the promotions policy to include ‘reasonable adjustments’ to take account of a gap in her publications output related to her impairment

...people sort of turned around and said ‘well what do you mean, what sort of policy?’ and I said ‘well reasonable adjustments they apply to promotions procedures’, no-one could get their head around this at all.... They were outraged...that I was saying that this should apply to promotions, and I kind of brought the DDA in and showed them the relevant passage and I went through it and I looked at the DRC advice and I showed them that. No, they would not accept this.

This request, based upon her interpretation of the legislative framework and duties, was met with incredulity, including that of human resources professionals, and reflected a belief that an organizational practice such as academic promotions was outside the scope of the law, supporting Woodham and Corby’s (2003) suggestion
that managers make choices in assessing disability in relation to legislative duties, and in considering adjustments as ‘special treatment’ rather than legislative rights (Robert and Harlan, 1998).

In narrating their experiences participants in the study also highlighted the implications of an individualised discourse of disability, which emphasized the expectations that they should comply with (non-impairment) normative standards and practices (French, 2001). This was reflected for a number of participants in their transition back into work after becoming disabled. Often organizations failed to ensure adequate procedures were in place to ensure the process was managed indicating an expectation that disabled people should manage themselves, suggesting a view that they were returning to work and ‘back to business as usual’.

The individual model discourse was also evidenced in failures to include the requirements of disabled academics within work processes such as timetabling. One academic noted the lack of consideration given to the requirements of people with mobility related impairments when organizing teaching and other activities

But what is difficult is if you’ve got to keep moving rooms and changing around...you know that makes it difficult to get around, I don’t think they give a lot of thought to that, the facilities people and the planners, the timetablers.

This reflects Foster’s (2007) suggestion that non-management of disabled employee’s requirements reflects an individualised understanding of disability.

The Equality Bill

The Equality Bill was published on 27 April 2009. A full critique has yet to be made in order to meet working paper’s deadline submission. However, relevant to the issues raised in this paper, an initial review of the Equality Bill suggests the language adopted within the Equality Bill continues to reflect a medical interpretation of disability (Great Britain. Parliament. House of Commons, 2009). This is despite the outcome of a DRC consultation which recommended to the Government that the definition of disability should shift to reflect disability as a social rather than a medical experience and offer protection to people who experience discrimination on the basis of impairment (DRC, 2006), an approach which better reflects a critical disability studies perspective.

More widely, there remain concerns that some of the hopes and aspirations of disabled people in the workplace have not been met, for example the ability of employers to ask health related questions pre-interview, an issue illegal in the US and EU (NAT, 2009).
Conclusion

The critical literature considering the impact, and critiquing the concepts inherent in the DDA legislation outlined above, and the experiences of the disabled academics in this research, highlights the importance of the legislation and the strength of the legislative discourse. However, as Meager and Hurstfield (2005:81) suggest, despite its promise, the disability legislative framework has failed to reduce the marginalization disabled academics experience in the workplace. Rather, the legislation has lead to ‘an individualized approach to disability in organizations’ (Foster, 2007:82), which reflects the individual model of disability discourse which undergirds it, and which remains within the Equality Bill as it currently stands.

The implications of this paper are to highlight the apparent failure of the Equality Bill to address this individualised approach to disability despite the Governments concern to ensure employers treat disabled workers fairly.

Implications for HRD practitioners

It is anticipated that the Equality Bill will be a focus for HRD professionals in the future, shaping equality agendas, and bringing challenges which require the development of a strong learning culture with a foundation of ethical practice which addresses the needs of disabled people in the workplace.

Managers, supervisors and co-workers with disabled employees require support to understand their legislative responsibilities, and to understand the need to apply these duties across a whole range of employment contexts. However, when developing and delivering organizational, management and personal development initiatives, both in terms of design and delivery, it will be critical to consider the individual model discourse, to ensure initiatives to not reify disability as the ‘problem’ of employees with impairments, rather that the emphasis is upon how organizations can develop more inclusive processes and practices.

HRD practitioners, if they want to influence their organizations to develop inclusive practices which meet the needs of their disabled staff, must look beyond a legislative framework to wider debates and literatures, such as the disability studies and critical HRD literatures which encourage a more reflexive and context focused understanding of disability.
References


