

Working in Partnership: Devolution and the Development of a Distinctive Equalities Agenda in Employment, in Wales

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Introduction

Since devolution in 1998, the Welsh Assembly Government (WAG) has been proactive in exercising its responsibilities for equalities within its territories (Chaney, 2009; Davies, 2003). The Government of Wales Act 2006 moreover, placed a statutory duty on the Assembly to have due regard for equality of opportunity in everything it did. Although discrimination law in itself is not a function that is devolved to Wales, many of the levers for influencing implementation and policy lie with the WAG. For example, responsibility for equality policies was devolved to regional governments and the regional arms of the Equality and Human Rights Commission (EHRC) under the provisions of the Equality Act (EqA) 2010, facilitating opportunities for local initiatives (Chaney, 2009; Squires 2008). This included the ability to enforce 'specific' Welsh Duties, in addition to the 'general' UK wide Public Sector Equality Duties (PSEDs). Viewed as significantly more prescriptive than the English regulations, these were implemented in 2011 and placed a responsibility on public authorities, in consultation with relevant groups, to publish agreed Strategic Equality Plans with clear time-frames for meeting objectives. Amongst other things, they also emphasised the use of Equality Impact assessments (EIAs) to provide an evidence base for advancing equalities, a tool used by the WAG, when it became the first UK administration to publish an EIA of its 2011/12 budget.

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

Social Partnership and Employment Relations in Wales

Equalities and employment in Wales needs to be understood in the context of a distinctive Welsh commitment to the concepts of 'social partnership' and 'social

dialogue' in employment relations (Davies, 2003; Foster and Scott, 2007; Bond and Hollywood, 2010; Foster, 2015). The political dominance of Welsh Labour has seen a continued commitment to public service provision and employment, meaning the polity has had a major stake in mediating policy and employment relations in the region. The preference of the WAG has been to do this through social dialogue with employers and trade unions. To enable this the Assembly set up and funded a body called the 'Welsh Social Partners Unit' (WSPU). This occupies a non-political role, providing briefings to employers and trade unions about policy proposals, with the sole aim of facilitating their participation (Foster and Scott, 2007). The establishment of the WSPU by the WAG also recognised that the social partners have limited resources - financial, political and professional (England, 2004) and that, in effect, the WSPU needs to perform the role of 'midwife' to facilitate dialogue. A recent WAG document entitled: 'Working Together: A Strategic framework for the public Service Workforce in Wales'(2012) sums up well the Assembly's vision of social partnership:

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

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

The configuration of politics and employment relations in Wales has had a particular impact on equalities in employment. This is evident in both the implementation of the PSED and by reference to a recent (2013) initiative between the WAG and Wales TUC (WTUC). The latter has seen the WAG fund a dedicated equalities officer based at WTUC, charged with developing an active network of *workplace* based trade union Equality Representatives (ERs). Capable of representing employees who have equalities concerns on a day-to-day basis, these ERs are also viewed as important in helping to reinvigorate equalities bargaining in workplaces (see Foster, 2015). The role of workplace ERs and the implementation of the PSED in Wales, will be discussed further below.

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

Trade Union Equality Representatives (ERs) have existed in some UK unions at branch level for a number of years. During the Labour administration of 2005-10, a Union Modernisation Fund (UMF) was established to help formalise the role of ERs,

providing unions with dedicated resources for recruitment and training (Bennett 2010:511). However, whilst the Discrimination Law Review (2007:11) acknowledged their “pioneering work”. Labour, while still in Government, failed to secure for them statutory rights to have time off to perform their role. The subsequent election of a Coalition of Conservatives and liberal Democrats in 2010, has since rendered this objective even more unrealisable (Fredman 2011; Hepple 2011).

The role of dedicated ER was developed to encourage previously under-represented groups to become involved in union activities and equalities bargaining (Bacon and Hoque, 2012:240). A recent survey of TUC trained ERs (Bacon and Hoque, 2012) found that their influence on union ‘voice effects’ (how far equality issues are integrated into bargaining agendas), and ‘facilitative effects’ (the extent to which union support, representation and information helped employees with equality grievances), has been important. However, findings from this and other studies (Bacon and Hoque, 2012; Conley et al., 2011; Foster, 2015) also suggest that fewer than expected new recruits are undertaking the role, because of the absence of time to perform it. Instead, evidence appears to point to ERs being seasoned union activists, who undertake the job by ‘borrowing’ time from other union positions that do provide statutory facility time.

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

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

This new post at WTUC built on a previously funded two year UMF project ‘Equal at Work’ that had ended in 2010. An initial network of lead equality contacts throughout Wales had been established, but has since been significantly expanded to include approximately 300 representatives. Given that evidence suggests that employer support for workplace equality initiatives is a key predictor of the likelihood of their success (Gregory and Milner 2009; Kirton and Greene, 2006), WAGs promotion of ERs, has been important.

The Public Sector Equality Duty in Wales

‘How Fair is Wales?’ a report published by the EHRC in 2011, found that socioeconomic disadvantage in Wales is interwoven with inequality based on individual characteristics such as disability or ethnicity. Through a number of ‘Equality Exchange Network’ events with stakeholders, the EHRC subsequently explored how these inequalities might be addressed, and how the PSED might make

a difference. In 2013, the EHRC published an independent evaluation of the implementation of the PSED in Wales (Mitchel et al, 2013). This found that Welsh public authorities value the PSED for having raised the profile of equalities in their organisations; for providing structure and focus to equality work; and for encouraging cultures of inclusivity, fairness and respect. The specific 'Welsh Duties' were moreover, valued for providing additional clarity on compliance and training: suggesting that the UK 'General Duties' might not be directive enough. EIAs, criticised by the UK Coalition government in England, were regarded as important tools for embedding equality into service planning and organisational decision-making, whilst providing an evidence base to measure the progress of equality objectives (ibid:5). Other positive outcomes reported include improvements in consultation with staff networks and service users, facilitated by the requirement that all Welsh public authorities have established equality objectives and action plans (ibid:6).

It is interesting to note that organisations surveyed in Wales, whilst believing that they had addressed all three objectives of the PSED - 'fostering good relations', 'reducing unlawful discrimination', and 'promoting equality of opportunity' – provided more examples of their involvement in the latter. This might suggest that authorities are responding to compliance requirements, rather than building partnerships with employees and users of services. It could also indicate that some groups are easier to reach than others. Evidence of uneven progress amongst different groups is presented in the report, particularly in relation to the protected characteristics of gender reassignment, religion and belief. However, separate Duties on sex, race and disability existed prior to the introduction of the single PSED, and it might therefore be assumed these were better developed as a consequence. Significantly, some organisations reported that they had moved beyond simply detailing organisational inequalities and had begun to investigate the *reasons* behind inequalities. This suggests that for these organisations compliance alone is not the key motivator and that they may be moving beyond a liberal (effects) model of equal opportunities to examine the *causes* of inequalities (Mitchel et al, 2013; Foster with Williams, 2011).

Suggested ways to improve the PSED were documented in the EHRC report and are echoed in other research. Organisations wanted more practical information and support to implement the PSED, a finding also reported by Foster (2015) in her study of Welsh ERs. Better provision and signposting of online resources (Mitchel et al, 2013:8) and sharing of information and experiences from consultations and EIAs. In March 2014, the WAG and the EHRC signed a joint Concordat outlining the guiding principles of co-operation between the two parties to promote equality and tackle discrimination in Wales (EHRC, 2014). Future co-operation was also emphasised by the EHRC in its advice to the Silk Commission on Devolution in Wales in 2014, which reviewed the powers of the WAG. In respect of the way forward, the EHRC also recommended that the WAG be given powers to build on equality and human rights legislation including the Equality Act 2010 and the Human Rights Act 1998 and primary legislative competence in relation to the Public Sector Equality Duty.

What lessons might be learnt from the Welsh experience?

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

The distinctive approach to 'social partnership' and 'social dialogue', which characterises employment relations in Wales has also played an important role in encouraging constructive conversations about equalities and employment (Foster and Scott, 2007; Foster, 2015). This approach contrasts with the tradition of adversarial employment relations in the UK, that has seen the state turn its back on corporatist or partnership solutions since the 1970s. Given that evidence suggests that equalities initiatives are more likely to succeed with employer support, the WAG has played an important role by proactively intervening to facilitate dialogue between employers, trade unions and other stakeholders. Acknowledging that to achieve meaningful participation partners may require additional resources, the WAG established the Welsh Social Partners Unit. Such an approach, which is more common in other parts of Europe, appears to suit the Welsh context because of the combination of political, economic and employment factors in this region. It is also, as we have seen, capable of producing some positive equalities outcomes in employment. In this paper the funding by the WAG of a 'Trade Union Equality Network Project Officer' based at Wales TUC, with the principle aim of reinvigorating workplace based equalities, has been one illustration. This is, furthermore, an initiative that recognises that it is not enough to just talk about equalities in employment, rather, it is necessary to provide day-to-day support to representatives in workplaces willing to provide advice to groups and individuals. It also recognises that there is a need to address what has been an historic neglect of workplace equalities bargaining by UK trade unions. The issue of lack of statutory facility time for ERs has cast a shadow over this positive development in the UK. In Wales, despite the social partners agreeing to address this deficit, the WAGs inability to legislate in favour of statutory facility time, nevertheless, highlights the limits of Welsh devolution in further supporting equalities in employment.

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

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

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