Research paper

A concept analysis of positive action in health and education

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ABSTRACT

Although the overall equality and diversity agenda receives high-profile media coverage and continues to be well debated in academic circles, there is significantly less conceptual analysis of the nature of the anti-discriminatory tools that employers can call upon. This paper provides an analysis of the anti-discriminatory measure known as *positive action* as currently employed within the health and social care arenas in the UK. Emphasis is placed on employment in further education (FE), higher education (HE) and the National Health Service (NHS), paying particular regard to the equality strands of disability, ethnicity and gender. A modified concept analysis framework has been adopted using an inclusive literature review approach. Positive action has three significant conceptual dimensions – the legislative, the practical and the political. We can see this in operation at various levels: so that statutory equality bodies such as the Commission for Racial Equality, or the new Commission for Equalities and Human Rights will explain the application of the legislative concept, managers in their workplaces expand the concept of positive action into practical workforce diversity measures, and then this positive action is communicated through a variety of media, often reflecting the perceptions of those involved in the political agenda and priorities of their constituencies. This analysis of the concepts of positive action should be considered as groundwork, and could be extended to incorporate the equality strands of age, religion and belief and sexual orientation, or used to discuss applications within the wider public and private sectors and provide further international comparative analysis.

Keywords: disability, diversity, equality, ethnicity, gender, positive action, race

Introduction

In line with the University of Bradford-led project 'Positive Action Research in Education and Health (PAREH)', this conceptual paper provides an analysis of Positive Action as currently employed within the UK further education (FE) and higher education (HE) sectors as well as the National Health Service (NHS), with a primary focus on the equality strands of disability, ethnicity and gender due to the extent of work carried out in these areas. As structural and contextual legislative differences exist internationally, we have chosen to concentrate on the UK situation, while recognising that other jurisdictions may well face similar challenges and therefore adopt similar approaches. Moreover, we suggest that these findings can inform a more diverse, sectoral and international debate.

Background

Recent Audit Commission reports (2002a, 2002b) identify the established patterns of inequity in employment as presenting the public sector in Britain with both challenges to recruit and retain staff and also opportunities to tap into a pool of unused available talents in a wider population. The challenge has been reflected in targets set by government across key public services. *The Vital Connection: an equalities framework for the NHS* (Department of Health, 2000) makes the case for the NHS to harness the diversity of its workforce, and specifies targets to increase minority ethnic and female representation in executive posts at board level. Targeted initiatives in place include 'Positively Diverse', a service-wide national organisational development programme to support NHS organisations in tackling inequalities and managing diversity, by encouraging the recruitment and development of staff from local communities (Alexander, 1999).

There is widespread recognition that appropriate strategies are required in order to nurture a workforce that comprises a variety of talents and reflects the diverse community being served (Department of Health, 2000, 2003; Association of University Teachers (AUT), 2004; Archibong, 2006). Even though comprehensive and clear policies and interventions have been introduced in order to change social attitudes towards discrimination, there is ample evidence to suggest that black and minority ethnic (BME) people, women, disabled people and other socially excluded groups continue to suffer discrimination in employment. Each of these labels of difference reflects a dimension of *social cleavage*, that is to say, a line across which disadvantage exists: for some groups there is an added or multiplicative effect from membership of more

than one category. Action to tackle this situation of multiple disadvantages has been hampered by disagreement or confusion about the potential avenues of intervention.

Sex, BME status and patterns of employment illustrate *social cleavage* in relation to multiple disadvantages. For example, managerial-level employment accounts for 14% of the total workforce in Britain. The majority of managers are men; 18% of the total male workforce is employed at managerial level compared with only 9% of the total number of women employees (Equal Opportunities Commission (EOC), 2002). Moreover, women managers earn, on average, 24% less per hour than their male counterparts. The number of BME women managers lags behind those of their white counterparts (EOC, 2005). BME status thus complicates a situation in which women are already disadvantaged because of their sex. Unemployment amongst African, African Caribbean, Pakistani and Bangladeshi people is three times greater than for white people (National Statistics, 2005; Social Trends, 2002). Despite the passage of the Race Relations Amendment Act 2000, racism is still a major concern in the workplace (The Commission for Black Staff in Further Education, 2002; Esmail, 2005). Within the NHS, there is evidence to suggest that people in some professional groups such as doctors and nurses are prevented from developing their careers by being blocked or deterred from attempting to apply for more senior posts (Elliot *et al*, 2002). While there is in general a higher representation of BME staff in the public sector, the rate of promotion and entry to more desirable posts for BME people is still comparatively low and has not improved over the past few years (Home Office, 2001; Connor *et al*, 2003).

Although the intention of equal opportunities policies has been to address these inequities, there is still a need to change institutional practice, as women and other minority groups continue to face discriminatory barriers in the workplace (Crompton and Le Feuvre, 2000). Ingrained customs and practices have firmly resisted the impact of anti-discriminatory policies and legislation, creating a reactive management culture in which discriminatory incidents are only dealt with once they have occurred, rather than being prevented in the first place. The consequences of past discrimination are recognised in law, which allows certain steps to be taken to improve levels of representation from women, ethnic minorities, gay, lesbian, bisexual and disabled people (Sex Discrimination Act (SDA), 1975; Disability Discrimination Act (DDA), 1995; Race Relations Amendment Act (RRAA), 2000; Employment Equality Regulations (Sexual Orientation), 2003). However, recent UK legislation, which reflects or mirrors developments in the European Union but lags some years behind practice in the US, has established a need for pro-active strategies that eliminate or minimise the potential for discrimination to take

place by introducing a positive duty. This has strengthened the need for transparent positive action measures to bring about equality of opportunity in the workplace.

Although the overall equality and diversity agenda receives high-profile media coverage and continues to be well debated in academic circles, there is significantly less conceptual analysis of the nature of the anti-discriminatory tools that the public sector employer can call upon. This is particularly the case with *positive action*, a means of overcoming structural workforce-related disadvantage for particular social groups, which has been explicitly permitted by legislation in the UK since the mid-1970s. Thirty years later, with a public sector increasingly aware of *positive action's* potential for overcoming inequality and enhancing workforce diversity, considerable confusion remains over its appropriate application. Indeed, while it has strong potential as an anti-discriminatory measure (Karim, 2004), it remains a contested term (Nowak, 2004), with wrongful interpretation by employers leading in some instances to litigation (Karim, 2004; Nowak, 2004). Within the workforce, poor communication of well-intended *positive action* measures has sometimes caused confusion amongst intended beneficiaries and their peers (Arora and Archibong, 2003), with such situations potentially leading to stigmatisation of recipients and a negative impact on overall staff morale.

Methodology

Comprehensive literature review

Articles from the period 1990–2005 were retrieved across ASSIA (CSA), CINAHL, Emerald (MCB), Medline, Proquest, PsycINFO (Ovid), Science Direct (Elsevier), and SwetsWise Electronic Journals databases. The following search terms were used: *affirmative action*; *disability*; *disabled*; *diversity*; *employment*; *equality*; *equal opportunities*; *ethnicity*; *further education*; *gender*; *higher education*; *National Health Service*; *positive action*; *race* and *women*. A Google search for online media, statutory agency and sector-specific articles was also conducted.

An inclusive approach to the literature review was adopted, with selected articles ranging from the empirical to those that were more in the form of debate. Documents were originally chosen if they researched, discussed, reported or evaluated positive action programmes in organisations at international, national or local levels. Once appraised, the documents were then filtered for further review, both determining and supporting the emerging structure and extent of the concept analysis framework. The dearth of academic literature available on private sector *positive action*

schemes determined our subsequent focus on the public sector. Within the international literature, variance in legislation relating to *positive action* and related activity, often based on profoundly differing social, political, historical and cultural contexts, threatened to obscure the clarity of the developing conceptual argument. As a result, it was decided to concentrate on the UK literature to strengthen the conceptual analysis process.

Concept analysis

Concept analysis is a method adopted to elucidate a notion in order to break it down into useable components and thereby facilitate clarification and enable further intellectual development (Rodgers, 1989). This approach was deemed suitable for clarifying the often misunderstood and misrepresented application of positive action. To undertake this analysis, a modified version of a concept analysis framework was adopted as it allowed consideration of the usage of the concept within its legislative context as well as practical application. Following the modified concept analysis approach, the abstract characteristics of *positive action* in use were identified and clustered for the purpose of developing a clear, useful definition. The approach involved the identification of conceptual characteristics; borderline cases; related cases; antecedents and consequences (Walker and Avant, 1995, p. 65) in combination with a focus on conceptual context (Fu *et al*, 2004). Context was added to the initial framework to enable the concept of *positive action* to be more rigorously linked to the specific legislative framework in the UK. Clusters of themes were identified and refined through a process of constant comparative analysis: *the context for positive action in the UK*; *characteristics of positive action in the UK: Commission for Racial Equality and Equal Opportunities Commission*; *characteristics of positive action in the UK: further and higher education and the NHS*; *identification of borderline and related cases*; *affirmative action*; *antecedents of positive action*; and *consequences of positive action*. Each of these is discussed below.

Results

The context for positive action in the UK

Positive action has three significant conceptual dimensions: the legislative, the executive or practical, and the political, which includes communication or debate. In practice, statutory equality bodies are charged with explaining the application of the legislative concept of *positive action*, while managers have responsibility for

expanding the concept into practical diversity measures. The political situation is less clear-cut. Positive action communication through a variety of media may remain dependent on context and is often driven by the political agendas. The context for positive action begins with the UK's anti-discriminatory legislation within a wider framework of European structures including the Human Rights conventions and European Directives under Article 13 of the Amsterdam Treaty (see www.rcn.org.uk/resources/transcultural/raceequalitymanagement/sectionone.php).

Examples of key disability, race and gender-related legislation follow. While positive action measures are sanctioned within the legislation on race and gender, equivalent provision for disabled people is legally termed *reasonable adjustment* in the UK. More detail on reasonable adjustment follows in the section on 'Identification of borderline and related cases'.

Disability

In the aftermath of World War Two, UK legislation on disability included an early form of positive discrimination. The Disabled Persons (Employment) Act 1944, largely repealed in 1996, sanctioned quota schemes enabling or requiring a 3% workforce employment rate of disabled people in organisations with 20 or more employees. The DDA (1995) did not include explicit provision for *positive action* nor, indeed, for positive discrimination measures. Anti-discriminatory actions for disabled employees were referred to as the *reasonable adjustments* that an employer was expected to take to accommodate and facilitate a disabled employee. Case law has subsequently defined what is *reasonable*.

Race

While the mid-1970s are generally regarded as the key period for the legislative appearance of positive action in the UK, related anti-discriminatory legislation appeared in the Local Government Act 1966, section 11 (Johnson *et al*, 1989). This section, amended in 1993, enabled local authorities to apply for special government grants 'because of the specific cultural needs of' (New Commonwealth) BME groups in their communities. While the Race Relations Act (RRA) 1976 describes and permits particular positive action activity, it does not mention the term *positive action* by name. Section 35 allows for the provision of certain targeted resources for particular BME groups (Commission for Racial Equality (CRE), 2002a). Sections 37 and 38 allow the instigation of particular *positive action* activity in training, recruitment and encouragement, where it is found that particular BME groups are lacking in representation within the workforce (Karim, 2004). For *positive action* to be legitimate, workforce under-representation must be demonstrated to be present over the period of the previous 12 months in the UK.

Gender

The SDA (1975), sections 47 and 48, permits particular *positive action* activity in training, employee encouragement and trade union elections. The Sex Discrimination (Election of Candidates) Act (2002) stands alone amongst current UK anti-discrimination legislation in enabling political parties to put in place all-female shortlists to enhance the proportional representation of women in government, a measure which could be described as a form of positive discrimination. It has been argued, however, that the legal status of candidates for election is different from that of potential candidates for employment (Russell and O'Cinneide, 2003). This particular provision has fallen into disrepute partly because of the opposition of high-profile local candidates, such as the unexpected victory of the dissident MP Peter Law in the Blaenau Gwent constituency in the election of May 2005, over the official Labour party candidate.

Characteristics of positive action in the UK: Commission for Racial Equality and Equal Opportunities Commission

Through examining the positive action pronouncements of the two statutory equality bodies, the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC), it is possible to consider the leading characteristics of the concept of *positive action* as adopted in the UK. We address the notion of *reasonable adjustment* used by the Disability Rights Commission (DRC) in the section on the identification of borderline and related conceptual cases. The defining characteristics as defined by the CRE are that *positive action* enables those members of BME groups who have experienced historic exclusion and discrimination to benefit from equal competition with their peers and be employed on merit where appropriate (CRE, 2005). However, the EOC define the concept of *positive action* as having two possible interpretations: a specific, legal meaning, and a broader, initiative-based interpretation (EOC, 2005). In addition to overcoming the impact of previous discrimination, *positive action* is used to reduce and remove gender stereotyping (EOC, 2005).

Characteristics of positive action in the UK: further education, higher education and the NHS

Different public sector organisations take different approaches to defining the term *positive action*. FE,

HE and the NHS are considered in turn, alongside the equality strands of *disability, race* and *gender*.

Further education

FE guidance favours *positive action* for disabled people, and supports anti-discriminatory activity on issues of gender and race. Despite the legally distinct notions of *positive action* and *reasonable adjustment,* FE guidance endorses *positive action* for disabled people. *Positive action* is characterised by activity at both the point of recruitment and during employment (Association of Colleges (AOC), 2004a). In the guidance on gender, *positive action* activity is implied through the use of the term 'under-representation', rather than directly stated, and anti-discriminatory practice rather than targeted activity is advised. Women-only training in management is, however, recommended (AOC, 2004b). In the guidance on race, *positive action* appears in the text but remains an undefined activity, and is grouped with examples of anti-discriminatory employment practice posed as guidance questions for employers. It is unclear from the extract whether targeting is seen as a form of *positive action*, particularly with the proposition of questions such as 'Do you use targets or positive action?' (CRE, 2002b).

Higher education

The legal basis for the definition is made apparent through recent guidance to universities and colleges which draws together the equality strands of gender, disability and race into a framework for *positive action*, and makes the distinction between *positive action* and positive discrimination measures (Higher Education Funding Council of England (HEFCE), 2004). The guidance is careful not to conflate disability with *positive action*, but does not refer directly to *reasonable adjustment* measures. Other HE guidance identifies three distinct categories of *positive action*, suggesting that it may both identify and transform discriminatory policies and practice and also attempt(s) to counter-balance the under-representation of a particular group (Equality Challenge Unit (ECU), 2004). While the latter category correlates with other equivalent public sector guidance on *positive action*, this ECU definition expands the concept of *positive action*. The first two categories include anti-discriminatory measures often deemed necessary as a precursor to the kind of *positive action* identified in the third category. Moreover, the ECU characterises *positive action* as a process that is aimed at levelling the playing field in order to provide equal access to opportunities for everyone. Possible *positive action* initiatives include mentoring, championing, networks, outreach work, setting targets, encouraging work–life balance, rewarding staff, targeted job advertisements and training (ECU, 2004).

The National Health Service

In the past, NHS guidance on *positive action* has emphasised under-represented groups and highlighted the need for using particular recruitment and promotion opportunities, where the law allows (General Whitley Council, 2000). Guidance by NHS Employers, the organisation which supports the NHS with its human resource function, defines positive action as 'a range of lawful actions which seek to redress an imbalance in employment opportunities among targeted groups that have previously experienced disadvantage, or that have been subject to discriminatory policies and practices, or that are under-represented in the workforce' (NHS Employers, 2005, p. 7). This definition suggests the need for targeting particular groups for receiving *positive action*, strengthened and extended beyond the General Whitley Council (2000) guidance, to include not merely under-representation in the workforce but experience of historic barriers to progression, and to address previous unfair organisational procedures and practices.

NHS Employers characterise the concept of *positive action* as having both a legal and practical perspective, and suggest a number of possible initiatives including targeted recruitment, help with gaining further qualifications, changing policies and practices, coaching and mentoring, training and leadership development (NHS Employers, 2005). The examples highlighted by NHS Employers (2005) go further than those suggested in other sectors such as HE, with the recommendation of changes to the working environment such as *reasonable adjustment* measures for disabled staff, and therefore their definition includes *reasonable adjustment* within its overall definition of *positive action*. The document does not, however, distinguish between the obligation on the employer to provide *reasonable adjustment*, and the choice for the employer to take *positive action,* as legally defined.

Identification of borderline and related cases

Borderline cases: reasonable adjustment

The concept analysis framework requires the identification of borderline cases which may partially fulfil the meaning of the concept in question (Walker and Avant, 1995, p. 65). We suggest that *reasonable adjustment* could be regarded as a conceptually borderline case in relation to *positive action*, as UK anti-discriminatory legislation on disability provision refers to *reasonable adjustment* measures rather than *positive action* specifically. Some of the characteristics of the concept of *reasonable adjustment* are shared with that of *positive action*, including the intention to overcome discrimination for disadvantaged groups. Other characteristics do not apply so well, such as the

obligation on employers to provide reasonable adjustment where necessary for disabled employees, rather than the choice for employers as to whether or not to use *positive action* on the grounds of race or gender. The Disability Rights Commission (DRC, 2005, p. 161) suggests that the *reasonable adjustment* duty arises 'where a provision, criterion or practice it applies, or which is applied on its behalf, or a physical feature of premises which it occupies or controls, places a disabled member at a substantial disadvantage in comparison with non-disabled members in relation to the carrying-out of official business'. The employer therefore must take necessary steps as are reasonable, in all circumstances, to prevent or reduce any disadvantage. Occasionally, non-statutory guidance directly refers to positive action in the context of provision for disabled staff (Association of Colleges, 2004a; NHS Employers, 2005). In respect of disability, further, there is some expectation that 'users', such as students in colleges, might be entitled to some *reasonable adjustment* to permit access to premises.

Related cases: positive discrimination

Identifying 'related cases' also forms a technique within the concept analysis framework, identifying concepts that share the same field of enquiry, but do not overlap by definition (Walker and Avant, 1995, p. 65). Positive discrimination is a related case. Illegal in the UK with one specific exception, the Sex Discrimination (Election of Candidates) Act (2002), positive discrimination initiatives create quotas rather than targets for recruitment. In certain circumstances, candidates from under-represented groups may thus be appointed by virtue of the social group to which they belong, regardless of merit. Affirmative action, as practised in the US, could be said to include both aspects of UK-defined positive action and positive discrimination (Adam, 1997).

Affirmative action

Affirmative action and the move towards *restorative justice* are concepts used in many parts of the world including the US and South Africa. In practice, *affirmative action* fits both the borderline and related dimensions of *positive action* within the UK context. In the US, *affirmative action* is a policy framework that has developed through the use of legislation, regulation and decisions by courts and administrative tribunals as mechanisms for addressing discrimination in employment (Agocs and Burr, 1996). It came about as a response to deeply entrenched patterns of racial discrimination in institutions of employment and education, and the resulting exclusion, segregation and disadvantage of black people (Rai and Critzer, 2000). *Affirmative action* in South Africa – sometimes referred to as *corrective action*, *reverse discrimination* or *positive action* – can be understood as a remedial strategy which seeks to address the legal historical exclusion of a majority (Adam, 1997).

Affirmative action in employment may have a focus on increasing the representation of the designated groups, through targeted hiring, and to a lesser extent, training and promotion (Hamilton, 1992). However, it can be criticised for not addressing the issue of integration and retention of the minority and under-represented groups. Many objections focus on the assertion that individuals will be stigmatised as having been hired 'on quota' rather than on their own merits. Its focus on numerical representation does not emphasise changing organisational policies, practices and climate in order to ensure that individuals are treated equally once in employment. Moreover, there is evidence to suggest that continuing discrimination and harassment are commonplace and contribute to job dissatisfaction and turnover among affirmative action groups (Thomas and Alderfer, 1989; Morrison and Von Glinow, 1990; Miller and Wheeler, 1992).

Antecedents of positive action

Various studies have highlighted a diverse range of discriminatory situations existing within the health and education sectors. In terms of the framework for analysis, these findings may be seen as evidence of conceptual antecedents for future *positive action* measures. A recent survey for the CRE indicated that racism is still a major concern in the workplace despite the Race Relations Act 1976 (Commission for Black Staff in Further Education, 2002). The survey revealed that two-thirds of those surveyed thought racism was more likely to happen at work and that one-third of BME people said that they had experienced discrimination at work due to their race.

The Dearing Report found occupational barriers affecting particular groups among the workforce, and recommended greater openness towards equalising opportunities for all staff (National Committee of Inquiry into Higher Education, 1997). The Bett Report also found deficiencies in relation to the publication of equal opportunities policies, and a lack of provision for ensuring a diverse workforce, particularly for women and BME staff (Independent Review of Higher Education Pay and Conditions (IRHEC), 1999). Moreover, it is said that there is a lack of parity between provision for equality strands, and suggestions have been made for BME groups to be given the same priority as gender equality, particularly in positive action training and setting targets at higher structural levels within universities (Carter *et al*, 1999).

Barriers to recruiting people from diverse backgrounds into the health service have been the subject of much theoretical and empirical research (Bharj, 1995; Baxter, 1997; Darr and Archibong, 2004), with

specific evidence to suggest a failure to attract ethnic minority groups into the health professions (Alexander, 1999; Iganski and Mason, 2001). In some instances, deficiencies in relation to equal opportunities policies within NHS organisations have been cited (Bagilhole and Stephens, 1999), and a reluctance to implement them where they are in place (Carter, 2000). A number of studies have also highlighted a lack of progression opportunities for BME managers and executives (Sheffield *et al*, 1999; Elliot *et al*, 2002; Esmail, 2005), and limited data or poor-quality monitoring of equal opportunities information (Aspinall and Anionwu, 2002; Esmail, 2005). In addition to all the inequalities at the institutional level, there is strong evidence also to suggest that BME employees are personally subjected to higher levels of bullying and harassment from their work colleagues (Beishon *et al*, 1995; Shields and Wheatley Price, 2001; Hoel and Giga, 2005).

Consequences of positive action

While there is evidence of a lack of equal opportunities information (Aspinall and Anionwu, 2002; Esmail, 2005), there is some indication of encouraging outcomes following *positive action* initiatives in the health and education sectors. Although there are considerable differences in the types of *positive action* initiatives implemented, as they are normally developed with local issues in mind (Iganski *et al*, 1998; Alexander, 1999), targeted educational, recruitment, training and mentoring initiatives have reported desired results such as increased retention rates regionally in a number of NHS trusts (NHS Employers, 2005). Similarly, in education there are examples of the benefits of *positive action* including mentoring schemes that have provided students with opportunities for guidance and resources that they would not readily have access to (Carlisle, 2005).

Although the benefits of *positive action* are evident, particularly for maximising the talent mix in organisations, there is still confusion and misunderstanding amongst designers, peers and recipients (Arora and Archibong, 2003), with the potential of a deleterious impact on morale and motivation amongst some employees if it is badly communicated or mismanaged (McDougall, 1996).

Discussion

Conceptually, *positive action* is a paradox. Its original conceptual parameters are strictly demarcated in the provisions within the relevant UK legislation in the SDA (1975) and RRA (1976) – and in the corresponding statutory guidance from the CRE and EOC. Objective measures of under-representation of social groups, opportunities for training and encouragement into further work opportunities are emphasised. Action is taken on a voluntary basis. At the same time, the discourse surrounding *positive action* in practice is both expansive and expanding, as new schemes continue to come on board. A broader, initiative-based interpretation of positive action (EOC, 2005) acts as an umbrella term that incorporates reasonable adjustment. In practice this results in positive action being contextually dependent; it is both an employer-led option, for women and BME groups, and an employee-focused obligation, for disabled people. The antecedent basis for taking positive action is strengthened in this expanded conceptual field.

Overcoming the legacy of previous and contemporary structural inequalities may be given as a reason for taking *positive action* in addition to tackling the discrimination that has led to under-representation. It could be argued that this reflects the influence of a more radical stance adding to the existing liberally informed equal opportunities interpretation of *positive action*. In this expanded, practical and pragmatic field of executive action, *positive action* is regarded as relevant throughout the employment cycle and thus includes provision for strategic pre-employment outreach activity in the community. An extensive range of possible initiatives appears within this expanded definition of *positive action*, including educating disadvantaged groups about the nature of structural inequality (Anderson, 2004). We note, however, that this field continues to emphasise the need for fairness through the setting of employment targets rather than quotas, and demands to employ the strongest candidate in recruitment situations. While *positive action* provides opportunities for previously oppressed groups, there is the possibility of a threat of a hostile response or even litigation when the concept is misunderstood or over-stretched, particularly when it is confused with the concept of positive discrimination.

There is another dimension to the conceptual field of *positive action*, in addition to the narrow and expanded forms already discussed. This is where *positive action* is implied but not directly articulated, which we may term the political aspect of the concept of *positive action*. There are occasions, perhaps most commonly in the media, when politicians, policy makers and journalists describe positive action strategies but do not use the term *positive action* in their discussions or reporting. The absence of the term *positive action* may reflect unfamiliarity with anti-discrimination terminology, or a reluctance to create any audience association with positive discrimination. It may also be a deliberate strategy when there may be a perceived need to avoid any association with liberal political values (Squires, 2004), or a desire to position the communication for

the business, rather than the public sector audience (Wrench, 2005). In view of the experience of backlash and adverse reference to positive discrimination, this may be a wise trend.

It seems likely that the conceptual interpretation of *positive action,* and its practical application, will continue to adapt over time, while retaining its core legal framework. There are two key developments that may significantly impact on the future of a collective understanding of *positive action.* The first development is that of the positive duties concerning equality and diversity, the second the founding of the single equality body, the Commission for Equality and Human Rights (CEHR) (see Dimond 2004).

The positive duty placed on public authorities to take anti-discriminatory action on issues of race as established in the RRAA (2000) is being joined by similar action on gender and disability. The Equality Act (2005), in addition to formalising the foundation of the CEHR and enacting certain anti-discriminatory measures on the grounds of religion or belief, was established to place a duty on public authorities to promote gender equality, and to tackle sex discrimination in public life (Women and Equality Unit, 2005). Similarly, the DDA (2005), due to come into force at the end of 2006, will place an equality obligation on the public sector to work to eliminate discrimination and harassment, promote positive attitudes, and encourage the active participation of disabled people in public life (Department of Work and Pensions (DWP), 2005).

It is possible that the positive duties of public authorities may shift the interpretation of choice for the public sector employer towards a stronger advocacy and/or obligation to undertake *positive action* in certain circumstances. Indeed, debate continues across Europe on the question of whether *positive action* should be voluntary or obligatory (Nowak, 2004). A culture of positive duty may bring *positive action* more closely in line with the obligation on reasonable adjustment, with the possibility of perhaps case law defining *reasonable positive action* in years to come.

The CEHR White Paper (Department of Trade and Industry (DTI), 2004) demonstrates the government's intention to create a single equality and human rights commission, drawing together the six equality strands representing age, belief and religion, disability, gender, race and sexual orientation. Although *positive action* is not explicitly mentioned in the White Paper, there are suggestions of various possible intersections here, including encouraging organisations to comply with their obligations concerning discrimination and human rights legislation and to promote and share good equality and human rights practices. Indeed, through previous experience of monitoring and evaluating the race and gender duties, the CEHR can contribute to wider discussions about the role of public bodies in encouraging equal opportunities for all diverse groups (Dimond, 2004). Moreover, recognition of the diffuse and cross-cultural nature of personal and social identity, reflected in the creation of the CEHR, may indicate new interpretations of those social groups and individuals potentially benefiting from positive action in the years to come.

Conclusion and recommendations

For employers, *positive action* can be a transformational workforce diversity tool rather than an uncompromising measure. Using the concept analysis framework reveals the ways in which *positive action,* while retaining its core legislative identity, is changing and adapting in application and thereby continuing to respond to today's employment needs for action on disability, race and gender issues. Recent action on legislation and the CEHR suggests that the context for *positive action*'s conceptual adaptation remains firmly in place. Concept analysis also uncovers the continuing need for clarity of purpose and communication amongst public sector managers seeking to use *positive action* strategically in their organisations, firstly to ensure the process is kept firmly within the law, and secondly to allay unnecessary fears and stigmatisation among the workforce of possible positive discrimination.

This paper has focused on the equality strands of disability, race and gender. The concept analysis of *positive action* could be expanded to incorporate the strands of age, religion and belief and sexual orientation, and indeed the single-equalities framework in the context of recent and forthcoming anti-discriminatory legislation. Moreover, in the light of recent findings on socio-economics, race and social mobility (Platt, 2005), consideration of the particular relationship between *positive action* and social class may also prove to be beneficial.

While this paper has mainly considered the public sector, additional research incorporating private, voluntary and community sector organisations, and commentary on the overall concept of *positive action* would be helpful. Such a study would inevitably be enriched with the inclusion of 'grey' literature, media reports, and access to internal corporate documents. Additionally, comparative research is needed to draw on European and international public and private sector anti-discriminatory measures, although this would require opening up the conceptual field beyond *positive action* as it is understood in the UK, and needs to bear in mind the international variance in terminology, legislative structures, historic conventions, case law and wider social and cultural values.

Although this analysis has drawn mostly on literature, the PAREH programme has conducted extensive qualitative interviews with public sector *positive*

action designers, recipients and peers. The findings of that aspect of the study, examining the meanings of *positive action* provided by the participants, will mark an important next step in contextualising the conceptual analysis of positive action.

ACKNOWLEDGEMENTS

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CONFLICTS OF INTEREST

None.

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