Implementation Behaviours and a Strength-Based Approach to Equality and Human Rights Implementation

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ABSTRACT

The introduction of the Public Sector Equality Duty (PSED) and the Human Rights Act were intended to establish an equality and human rights culture within public authorities. However, so far this culture has failed to take hold. Both utilise an enforcement pyramid model of regulation, where penalties increasingly progress until non-compliers comply. Using original empirical data this article explores the implementation of equality and human rights law within public authorities via semi-structured interviews. It finds three different implementation profiles: strong implementation (where individuals make the most of the resources they have and drive ever deeper implementation), mixed implementation (where individuals oscillate between deeper and perfunctory implementation), and weak implementation (where individuals avoid taking meaningful action due to feeling overwhelmed and in need of rescue). On the basis of these behaviours, it is argued that an alternative strength-based model of regulation is needed to supplement the enforcement pyramid and truly establish an equality and human rights culture within public authorities.

1. INTRODUCTION

Equality law has been widely argued to be a form of reflexive regulation.[1] As is now well known, reflexive regulation is based on the idea that society is made up of different systems, which all have their own languages and logics.[2] These different languages and logics mean that systems are 'operationally closed' to other systems so they cannot directly interact with other systems.[3] In relation to law, this means that law cannot directly regulate other systems and, if it attempts to do so, it is likely to fail.[4] However, systems are 'cognitively open' to other systems, which means they are open to signals from their environment (ie those from other systems) and they can process these signals through translation (by converting them into the system's own language and logics).[5] This means that in order to regulate other systems laws should be modelled on reflexive regulation by acting indirectly on systems to get them to reflexively adjust themselves to meet the goals of the law.[6] As a form of reflexive regulation, equality law should stimulate the other sub-systems, in this case organisations such as employers or public bodies,[7] so that those organisations then adjust and reconfigure themselves

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[1] Bob Hepple, Mary Coussey and Tufyal Choudhury, *Equality: A New Framework* (Oxford: Hart, 2000), Ch 3; Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: OUP, 2008), Ch 6; Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315; Sandra Fredman, 'The public sector equality duty' 40(4) Industrial Law Journal 405; Sandra Fredman, 'Breaking the Mold: Equality as a Proactive Duty' (2012) 60 *American Journal of Comparative Law* 265; Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122.

[2] Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 *Law and Society Review* 239, 263.

[3] Niklas Luhmann, 'Operational Closure and Structural Coupling: The Differentiation of the Legal System' (1991) 13 *Cardozo Law Review* 1419, 1424.

[4] Gunther Teubner, 'After Privatization: The Many Autonomies of Private Law' (1998) 51 *Current Legal Problems* 393.

[5] Processes of translation take place through structural coupling: Niklas Luhmann, 'Operational Closure and Structural Coupling: The Differentiation of the Legal System' (1991) 13 *Cardozo Law Review* 1419, 1427.

[6] Gunther Teubner, 'After legal instrumentalism? Strategic models of post-regulatory law' in Gunther Teubner (ed), *Dilemmas of Law in the Welfare State* (Berlin: Walter de Gruyter, 1986) *307*.

[7] Gunther Teubner, 'Company interest: the public interest of the enterprise "in itself"' in Rolf Rogowski and Ton Wilthagen (eds), *Reflexive Labour Law: Studies in Industrial Relations and Employment Regulation* (New York: Kluwer Law and Taxation Publishers, 1994) 24–25.

to meet the goals of equality law.[8] For reflexive regulation to be successful it requires three interlocking mechanisms: (1) internal scrutiny by the organisation itself; (2) the involvement of interest groups (such as those with lived experiences) who must be 'informed, consulted and engaged in the progress of change'; and (3) a model of enforcement that assists, builds capabilities and ultimately sanctions, where voluntary methods fail.[9]

Although separate from theories of reflexive regulation, responsive regulation, and particularly the enforcement pyramid,[10] have been advocated by equality and human rights scholars as an effective model of enforcement for reflexive regulation.[11] In relation to equality law, the enforcement pyramid has been adapted by Hepple, Coussey and Choudhury and subsequently refined by Hepple.[12] It has seven levels of severity, with enforcement action getting increasingly more severe as one moves up the pyramid. Progression up the enforcement pyramid only halts once compliance is secured. The seven levels outlined by Hepple are: (1) information and persuasion (including education and training); (2) internal scrutiny; (3) support for individuals and the provision of conciliation by the Equality and Human Rights Commission (EHRC); (4) inquiry and investigation by the EHRC; (5) unlawful act notices and compliance notices by the EHRC; (6) agreements in lieu of enforcement with the EHRC; and (7) sanctions.[13] This has been developed by Blackham, who recognises four levels.[14] The first level is restorative dialogue and involves information being provided, persuasion and voluntary agreements. The second level is a warning letter, including an unlawful act notice and/or a public sector equality duty

[8] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 320.

[9] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 321; Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: OUP,1992), Ch 2.

[10] John Braithwaite*, Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002) 30.

[11] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) Industrial Law Journal 315, 320–321; Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: OUP, 2008), 157.

[12] Bob Hepple, Mary Coussey and Tufyal Choudhury, *Equality: A New Framework* (Oxford: Hart, 2000) 64; Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315.

[13] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 324–330.

[14] Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 129.

(PSED) compliance notice.[15] The third level concerns enforced self-regulation, involving action plans and agreements with the EHRC.[16] Finally, the top level establishes civil penalties, with legal claims being permitted by both the EHRC and individuals.[17] The PSED is argued to be a particularly important form of reflexive regulation, as it aims to mainstream equality issues into the policies and processes of public bodies.[18] Mainstreaming is the (re)organisation, improvement, development, and evaluation of policies and processes, so that an equality perspective is incorporated at all levels and at all stages, by the actors normally involved in these policies and processes.[19] The PSED aims to stimulate public sector bodies, so that they reflexively adjust and reconfigure themselves to adopt organisation specific approaches to mainstreaming. These approaches utilise the local knowledge and expertise of those within the organisation, rather than prescribed solutions being imposed from the outside.[20] The duty is continuous and thus, public sector bodies should be constantly adapting and readjusting over time to ensure equality is ever deeper integrated within the organisation.[21]

Although significantly less discussed in comparison to equality law, similar processes have been argued to be relevant to human rights law. McCrudden has argued that, for human rights to be effectively implemented within the UK, mainstreaming is needed.[22] Although the Joint Committee on Human Rights concluded that there should be a general human rights mainstreaming duty on public bodies,[23] that would work in a similar way to the PSED, this

[15] These are both given by the EHRC: Equality Act 2006, ss 21 and 32.

[16] Equality Act 2006, ss 21 and 23.

[17] Equality Act 2006, ss 24, 28 and 30 (for EHRC claims) and Equality Act 2010, ss 114, 115, 116, 117, 120, 121 and 127 (for individual claims).

[18] Sandra Fredman, 'Breaking the Mold: Equality as a Proactive Duty' (2012) 60 *American Journal of Comparative Law* 265, 272.

[19] This is a slightly expanded version of the definition adopted by the Council of Europe: Council of Europe, Conceptual framework methodology and presentation of good practices: Final Report of Activities of the Group of Specialists on Mainstreaming (Council of Europe 1998).

[20] Sandra Fredman, 'Breaking the Mold: Equality as a Proactive Duty' (2012) 60 *American Journal of Comparative Law* 265, 272.

[21] *R (Hurley)* v *Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin).

[22] Christopher McCrudden, 'Mainstreaming Human Rights' in Colin Harvey (ed), *Human Rights in the Community: Rights as Agents for Change* (Oxford: Hart, 2005).

[23] Joint Committee on Human Rights, *The Case for a Human Rights Commission* (HL 2002–03, 67-I and II, HC 2002–03, 489-I and II) [32].

was rejected by the Government.[24] Instead, the requirement to mainstream is implicitly based on the need to meet the positive obligations of human rights.[25] For example, Article 8 imposes a positive obligation for public bodies to secure the right to effective respect for an individual's physical and psychological integrity.[26] This will need to be given different context-specific interpretations and integrated into public bodies in different ways. Thus, a GP surgery will need to consider ways to secure physical integrity during medical examinations, schools during pupil searches and social care homes during the provision of treatments. As with the PSED, human rights mainstreaming requires public bodies to pursue goal-orientated action and initiate, plan, execute and implement. These actions all require internal motivation and reflection, and organisational change.[27] Thus, in effect, the positive obligations of human rights can also be seen as a form of reflexive regulation. Like equality law generally, and the PSED in particular, Fredman recognises that there are different ways to discharge positive obligations. Thus, the bi-modal view of organisations, as being in breach or not in breach, is unsuitable. To address this challenge, Fredman argues that an enforcement pyramid, like the one discussed in relation to equality law, needs to be adopted to trigger reflexive processes within organisations.[28] There are thus many similarities between equality law and human rights law: both require mainstreaming, which is best achieved through reflexive regulation, which in turn is best advanced by an enforcement pyramid.

Yet, despite the promise of equality law as a form of reflexive regulation, the general consensus is that it has failed to live up to the promise, as, while it possesses some features of reflexive regulation, it is limited in a number of fundamental ways. Hepple is particularly critical of the limited enforcement mechanisms due to significant cuts in the EHRC's funding and the removal of the specific duties of engagement.[29] Blackham is also critical of

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[24] HM Government, *Government Response to Joint Committee on Human Rights, Eleventh Report of Session 2003–04: Commission for Equality and Human Rights: Structure, Functions and Powers* (Cm 6295, 2004) 3.

[25] Christopher McCrudden, 'Mainstreaming Human Rights' in Colin Harvey (ed), *Human Rights in the Community: Rights as Agents for Change* (Oxford: Hart, 2005) 12–13.

[26] *Milićević* v *Montenegro* (2019) 69 EHRR 11 [54].

[27] Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: OUP, 2008), 150.

[28] Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: OUP, 2008), 157.

[29] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315.

equality law's failure to fully meet the requirements of reflexive regulation, arguing that even the most severe penalties are not strong enough (with the Equality Act adopting civil rather than criminal penalties). Blackham also argues that the focus of the UK governments has been more on the lower levels of the enforcement pyramid with a reluctance to move to the higher levels; there has been limited action in the private sector; and there has been limited information flows and limited local expertise and capacity.[30] Specifically in relation to the PSED, Fredman argues that the due regard standard is too weak and that judicial review (the apex of the pyramid) is being used as a first resort rather than a last resort.[31] The only hint of optimism is expressed by Manfredi, Vickers and Clayton-Hathway who found that, although not perfect, with issues in terms of consultation in particular, the PSED was having some effect, as it had started to 'infect' organisations.[32] Consequently, a number of suggestions have been made for how equality law can be strengthened to better meet the requirements of reflexive law. These include strengthening the initial levels of the enforcement pyramid,[33] greater use of the more severe (deterrent) sanctions,[34] a stronger standard for the PSED than due regard (such as take proportionate steps or achieve equality),[35] duties on private sector organisations,[36] and duties

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[30] Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 129–130.

[31] Sandra Fredman, 'The public sector equality duty' 40(4) *Industrial Law Journal* 405; Sandra Fredman, 'Breaking the Mold: Equality as a Proactive Duty' (2012) 60 *American Journal of Comparative Law* 265.

[32] Simonetta Manfredi, Lucy Vickers and Kate Clayton-Hathway, 'The Public Sector Equality Duty: Enforcing Equality Rights Through Second-Generation Regulation' (2018) 47(3) *Industrial Law Journal* 365.

[33] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 324–328.

[34] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 334; Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 129.

[35] Sandra Fredman, 'The public sector equality duty' 40(4) *Industrial Law Journal* 405, 410; Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 137.

[36] Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 135–136.

on organisations to engage with those with lived experiences.[37] While these reforms are important and necessary, the article takes a broader perspective, arguing that more fundamental changes are needed. This is because, even a reformed and strengthened enforcement pyramid cannot, on its own, effectively judge action beyond bi-modal compliance. The enforcement pyramid thus needs to be supplemented and supported with a strength-based pyramid.

In particular, the article will focus on regulators, inspectorates and ombuds (RIOs). While there are no explicit duties of enforcement on RIOs, it has been argued that the duties on RIOs are implicit in RIOs being subject to the PSED and having to act compatibly with the European Convention on Human Rights.[38] The argument is that compliance with these duties requires the mainstreaming of equality and human rights within RIOs, which means that these values will be integrated into the enforcement work of RIOs, which in turn will cultivate mainstreaming in the organisations RIOs oversee.[39] In this way RIOs can drive 'sustainable behavioural change' in the organisations that they oversee.[40] The implicit nature of these duties has been criticised and has been given as a reason for the poor performance of RIOs so far.[41] Arguments have been made that to improve their performance, RIOs should be placed under an explicit duty.[42] As a result of

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[37] Bob Hepple, 'Enforcing equality law: two steps forward and two steps backwards for reflexive regulation' 40(4) *Industrial Law Journal* 315, 330–332; Alysia Blackham, 'Reflexive change? A quantitative review of the impact of the Equality Act 2010 on age equality measures in organizations' (2016) 16(2–3) *International Journal of Discrimination and the Law* 122, 137; Simonetta Manfredi, Lucy Vickers and Kate Clayton-Hathway, 'The Public Sector Equality Duty: Enforcing Equality Rights Through Second-Generation Regulation' (2018) 47(3) *Industrial Law Journal* 365, 394–395.

[38] Equality Act 2010, s 149 and sch 19; Human Rights Act 1998, s 6.

[39] Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission* (HC 1470, 2017–19) [120].

[40] EHRC, *Our strategic plan 2012–2015* (EHRC 2012) 12; Bob Hepple, Mary Coussey and Tufyal Choudhury, *Equality: A New Framework* (Oxford: Hart, 2000) 64; Sandra Fredman and Sarah Spencer, 'Delivering Equality: Towards an Outcome-Focused Positive Duty' (COMPAS 2006) <https://www.compas.ox.ac.uk/wp-content/uploads/ER-2006-Equal_Opportunities_Review.pdf> accessed 10 February 2022 15–16; Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission* (2017–19, HC 1470) [120].

[41] Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission* (HC 1470, 2017–19) 32; *Office for Public Management, The role and experience of inspectorates, regulators and complaints-handling bodies in promoting human rights standards in public services (Equality and Human Rights Commission, 2009)*.

[42] Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission* (HC 1470, 2017–19) [121].

their poor performance, the Women and Equalities Select Committee has recommended that the EHRC make RIOs 'a priority for investigation and enforcement action for failure to implement their PSED in their enforcement functions'.[43]

In this climate, this article explores the attempts by individuals within RIOs to integrate equality and human rights norms into their organisation.[44] Through the analysis of original empirical data in the form of semi-structured interviews with individuals responsible for implementing equality and human rights in RIOs, the implementation behaviours of implementers are explored. To aid this exploration, three implementation profiles are adopted: strong implementation (where individuals make the most of the resources they have and drive ever deeper implementation), mixed implementation (where individuals oscillate between deeper and perfunctory implementation), and weak implementation (where individuals avoid taking meaningful action due to feeling overwhelmed and in need of rescue). The enforcement pyramid will then be re-examined through the lens of these three different profiles. It will be seen that the enforcement pyramid has two major limitations that restrict its effectiveness beyond securing minimal compliance (ie advancing mainstreaming). These are that it is unable to go beyond viewing compliance and non-compliance as a binary divide and that it assumes non-compliance is always voluntary. It will be seen that these assumptions are often not true and therefore, alongside the enforcement pyramid, a different more encouraging approach is needed. This new approach utilises a strength-based pyramid, designed by Braithwaite, Makkai and Braithwaite, which works alongside and is supportive of the enforcement pyramid.[45] This supports and incentivises the mainstreaming of equality and human rights and significantly strengthens the move to reflexive regulation. The final section will sketch out what a strength-based pyramid looks like in the context of equality and human rights law.[46]

[43] Women and Equalities Committee, *Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission* (HC 1470, 2017–19) 37.

[44] The article focuses on the external work of organisations and not on the internal processes in relation to their own workforces as the implementation of equality internally was dealt with by different personnel (usually working in human resources).

[45] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham: Edward Elgar, 2007), Ch 10.

[46] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham: Edward Elgar, 2007), Ch 10.

2. METHODOLOGY

The project explores the experiences of individuals implementing equality and human rights norms within RIOs. It focuses on both equality and human rights as, while McCrudden recognises that there are differences between equality and human rights mainstreaming, such as different attitudes within government and the role of the EHRC, all of the participants integrated the two within their work, so it is not possible to neatly and cleanly separate discussion of them.[47] Additionally, while RIOs differ in their powers and remits, the focus is on RIOs as a unit, as this is a grouping used by a wide range of organisations (for example, the EHRC and the Women and Equalities Select Committee) and is used by the participants themselves (as they interact with each other on a regular basis).

In order to explore the experiences of individuals in different types of RIOs, purposive sampling was utilised that drew upon four criteria.[48] First, given that human rights are devolved in Scotland and Northern Ireland and that Northern Ireland has a different equality law regime, the project focussed on RIOs in England and Wales and sought to ensure both jurisdictions were equally represented.[49] Second, in order that the experiences of individuals could be properly explored, a focus was given to RIOs, where equality and human rights issues would be particularly prominent. In this way, individuals tasked with implementing equality and human rights within the organisation and its work should have had significant experience of attempted implementation. Third, given that RIOs can vary in size, the study aimed to ensure the experiences of

[47] Christopher McCrudden C. (2005) 'Mainstreaming Human Rights' in Colin Harvey (ed), *Human Rights in the Community: Rights as Agents for Change* (Oxford: Hart, 2005) 27.

[48] Lawrence A. Palinkas and others, 'Purposeful sampling for qualitative data collection and analysis in mixed method implementation research' (2015) 42(5) *Administration and Policy in Mental Health and Mental Health Services Research* 533; Greg Guest, Emily E. Namey and Marilyn L. Mitchell, *Collecting Qualitative Data: A Field Manual for Applied Research* (Thousand Oaks: Sage, 2013) 48–52.

[49] Although Wales has developed its own distinct approach to equality (for example, introducing more extensive specific public sector equality duties and having compulsory training for civil servants), at the time that the interviews were undertaken (2018–19) this approach was only beginning to take effect and had not made any noticeable difference to the approach of RIOs, who often fell outside the scrutiny of the Welsh Government. For example, the 2018 Welsh Ministers' Report (a quadrennial report) gives many examples of Welsh public bodies complying with the public sector equality duties but noticeable makes no reference to any RIOs: Welsh Government, 'Annual Report on Equality 2017/18: The Welsh Ministers' Report on Equality 2018' (Welsh Government 2019).

individuals at different sized RIOs were captured. Finally, given that the powers and remits of RIOs can vary significantly, the project aimed to ensure that different types of RIOs were represented (ie some regulators, some inspectorates and some ombuds) as people at these organisations may have different experiences.[50] The websites of the UK and Welsh governments were used to identify RIOs that met these criteria.[51] This gave a population of 15 RIOs, who were all contacted at the outset and asked to participate. Of these fifteen RIOs, seven agreed to take part. The seven organisations consisted of two regulators, three inspectorates and two ombuds.

A challenge with elite interviewing can be access. This was the case here with individuals from some organisations keen to take part, others being reluctant or not wanting to take part and some other organisations that did not respond to repeated requests.[52] A significant limitation was that the individuals at organisations that did initially agree to take part tended to have the most interest and knowledge around equality and human rights and were largely confident and proactive. While it was necessary to capture this perspective, the project was also interested in organisations that lacked knowledge and/or interest or had struggled to embed equality and human rights into their work. In an attempt to overcome this limitation, snowballing was used.[53] Individuals at RIOs tended to know each other and, through building positive relationships with the initial interviewees, it was possible to gain access to individuals at the organisations that had previously been reluctant or not responded to the interview requests. In this way a fuller sample of individuals and organisations was obtained. The characteristics of the individuals and organisations can be seen in the grid below.

[50] Jennifer Mason, *Qualitative researching*, (3nd edn, Thousand Oaks: Sage, 2018) Ch 3; Oliver C. Robinson, 'Sampling in interview-based qualitative research: A theoretical and practical guide' (2014) 11(1) *Qualitative Research in Psychology* 25.

[51] Gov.uk, *Departments, agencies and public bodies*. Available at: https://www.gov.uk/government/organisations (Accessed: 3 June 2023); Gov.wales, *Organisations*. Available at: https://www.gov.wales/organisations (Accessed: 3 June 2023).

[52] Robert Mikecz, 'Interviewing Elites: Addressing Methodological Issues' (2012) 18(6) Qualitative Inquiry 482; Karen Duke, 'Getting Beyond the "Official Line": Reflections on Dilemmas of Access, Knowledge and Power in Researching Policy Networks' (2002) 31(1) *Journal of Social Policy* 39.

[53] W. Lawrence Neuman, *Basics of Social Research: Qualitative and Quantitative Approaches* (3rd edn, Pearson 2018) 169–170.

Pseudonym	Size	Level of participant within RIO	Implementation profile
Organisation A	Small	Middle	Weak
Organisation B	Small	Top	Mixed
Organisation C	Large	Top	Mixed
Organisation D	Large	Middle	Strong
Organisation E	Small	Middle	Mixed
Organisation F	Large	Middle	Strong
Organisation G	Small	Middle	Mixed

Interviews were utilised as they enabled access to views, understandings and experiences that would not easily be captured via observation or questionnaire.[54] Interviews also enable the exploration of the ways in which law is mediated by organisational factors.[55] This makes it possible to explore why RIOs have been perceived to have failed to comply with their equality and human rights legal duties.[56] Semi-structured interviews were utilised as they allowed more considered responses, but, at the same time, they allowed for the use of probes and supplementary questions.[57] In this way reliability was increased as semi-structured interviews allowed for both further elaboration by participants and clarification by both the researcher and the participants.[58] The interviews adopted what Aidinlis terms a hybrid approach, where the focus was on 'law' as it is experienced by participants rather than official law (the instrumental approach) or anything in society (the constitutive approach).[59] In this way, the interviews did not focus on specific legal

[54] Bridget Byrne, 'Qualitative interviewing' in Clive Seale (ed), *Researching Society and Culture* (4th edn, Thousand Oaks: Sage, 2018) 220–221.

[55] Linda Dickens and Mark Hall, 'The Impact of Employment Legislation: Reviewing the Research' in Linda Dickens, Mark Hall and Stephen Wood (eds), *Review of Research into the Impact of Employment Relations Legislation* (DTI 2005).

[56] Simon Deakin, 'Labor and Employment Laws' in Peter Cane and Herbert M. Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2012) 313–314.

[57] Nigel King, Christine Horrocks and Joanna Brooks, *Interviews in Qualitative Research* (2nd edn, Thousand Oaks: Sage, 2019) Ch 4; Bridget Byrne, 'Qualitative interviewing' in Clive Seale (ed), *Researching Society and Culture* (4th edn, Thousand Oaks: Sage, 2018) 220–221.

[58] Paul Chaney, Civil Society Organizations' Experiences of Participative Environmental Mainstreaming: A Political Systems Perspective of a Regional European Polity' (2016) 26 Environmental Policy and Governance 510, pp.

[59] Stergios Aidinlis, 'Defining the "legal": two conceptions of legal consciousness and legal alienation in administrative justice research' (2019) 41(4) *Journal of Social Welfare and Family Law* 495, 498–501.

provisions, but allowed participants to draw on what they understand is meant by equality and human rights in the context of their work.

One of the most challenging aspects of the project was getting individuals at RIOs to agree to be interviewed. It became clear at the outset that individuals/organisations viewed their work around equality and human rights as a highly political issue and there was particular concern that any comments they made could be used against them by other organisations in the future. Within this context, an additional challenge was ensuring anonymity given that the remit of RIOs is largely unique so any discussion of their work could make them and their organisation easily identifiable. To reassure interviewees and to protect anonymity, two safeguards were incorporated into the project. First, although interviews were recorded, interviewees had the option of speaking off the record during the interview, if they wanted to provide information but did not want this to appear in the outputs. If a participant wished to speak off the record, the recording would be stopped and would only be restarted once the participant consented to this. This approach attempted to balance ensuring quality data through the recording of interviews and therefore more accurate transcripts, while at the same time allowing for the capture of fuller information in off the record comments.[60] Four of the interviewees made use of this option. Second, member-checking was also used.[61] Interviewees were sent transcripts of the interview within a week of the interview and asked to review the transcript for accuracy, anonymity (ie ensuring nothing in the transcript could identify them or their organisation) and to ensure there was nothing within the transcript that they would not want to appear within the public domain. All interviewees were able to amend the transcript and two interviewees made use of this option; the other interviewees approved the transcripts without amendment.[62]

A limitation of exploring participants' experiences of implementation through interviews is social-desirability bias (ie participants tell you what

[60] William S. Harvey, 'Strategies for conducting elite interviews' (2011) 11(4) Qualitative Research 431, 436–437; Robert L. Peabody and others, 'Interviewing political elites' (1990) 23 *Political Science and Politics* 451, 454.

[61] Kari Lancaster, 'Confidentiality, anonymity and power relations in elite interviewing: conducting qualitative policy research in a politicised domain' (2017) 20(1) *International Journal of Social Research Methodology* 93, 100; Rose Wiles R. and others (2008) 'The management of confidentiality and anonymity in social research' (2008) 11 *International Journal of Social Research Methodology* 417, 418–419.

[62] The two participants that amended the transcripts did not make amendments in a way that excluded anything said but to provide more information or to clarify comments.

they think they should be doing rather than what they actually are doing). To minimise this risk and ensure greater accuracy of the data, relevant materials (including the documentation produced by a participant's organisation and the documentation produced by relevant scrutinising bodies) were collated in advance and a content analysis undertaken, where meaningful and relevant passages of text were identified and separated from non-pertinent data.[63] Documents were examined with a 'critical eye', with the original purpose of the document and the target audience being specifically considered.[64] Documents were used to provide data on the context within which research participants operate, suggested questions to be asked during the interviews and were used to verify the findings.[65] Given the challenges of accessing elites, analysing documents in advance is important.[66] This is especially true, as is often the case for elite interviewing,[67] when the number of interviewees is small. Documents can be used to triangulate and ensure the accuracy of the findings of the study.[68] Transcripts were also checked against each other (interviewees often referred to other participants and/or their organisation during interviews).

Inductive coding was used, which involved developing summary themes from the raw data.[69] Once codes had emerged, the transcripts were then re-read in their entirety to ensure that the identified profiles and behaviours both worked for and honestly represented the data. This process was repeated once the analysis had been written up to ensure it was still representative of the data. Given the small sample size it is not possible to make broad generalisations. Instead, the intention is for the study to be

[63] Juliet Corbin and Anselm Strauss, *Basics of qualitative research: Techniques and procedures for developing grounded theory* (4th edn, Thousand Oaks: Sage, 2015) 59–61.

[64] Glenn A. Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27, 33.

[65] Glenn A. Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27, 29–30.; Rebecca S. Natow, 'The use of triangulation in qualitative studies employing elite interviews' (2020) 20(2) *Qualitative Research* 160, 161.

[66] Adrianna Kezar, 'Understanding leadership strategies for addressing the politics of diversity' (2008) 79(4) *Journal of Higher Education* 406, 415; William S. Harvey, 'Strategies for conducting elite interviews' (2011) 11(4) *Qualitative Research* 431, 434.

[67] Carol Aubrey and Döndü Durmaz, 'Policy-to-practice contexts for early childhood mathematics in England' (2012) 20(1) *International Journal of Early Years Education* 59.

[68] Sharon B. Merriam, 'What can you tell from an n of 1? Issues of validity and reliability in qualitative research' (1995) 4 *PAACE Journal of Lifelong Learning* 51.

[69] David R. Thomas, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27(2) *American Journal of Evaluation* 237.

exploratory, providing an initial look at this phenomenon.[70] On this basis, it is possible to make 'contingent empirical generalisations' which can then be tested in the future in different contexts in order to assess their wider validity.[71] Ways in which this can be done are outlined in the conclusion. The next section outlines the challenges that individuals encountered when attempting to implement equality and human rights. In the response of the participants to these challenges three distinct profiles can be observed.

3. CHALLENGES TO IMPLEMENTATION

This section will briefly discuss some of the challenges identified by participants in implementing equality and human rights into the work of RIOs. These include (1) lack of resources; (2) lack of knowledge or expertise; (3) competing pressures; and (4) leadership within the RIO. These challenges are observed in a range of different literatures exploring individual action within organisations, such as gender mainstreaming literature and social entrepreneur literature.[72] The subsequent section will then explore the different behaviours participants adopted when responding to these challenges.

A. Lack of Resources

A significant barrier to implementation is the finite number of resources RIOs possess (including money, staff, and time). Many of the interviewees explained how limited resources constrained action and had negatively affected their ability to mainstream equality and human rights within their organisation. For example, the participant from Organisation D outlined how there were thousands of staff employed by the organisation but only three people working on equality and human rights and this had led to missed opportunities: 'it's a big organisation to get around and there's a lot

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[70] Chris Gill and Naomi Cruetzfeldt, 'The "Ombuds Watchers": Collective Dissent and Legal Protest Among Users of Public Services Ombuds' (2018) 27(3) *Social and Legal Studies* 367, 377.

[71] Karl Popper, *The Logic of Scientific Discovery* (Abingdon: Routledge, 1959).

[72] For example Olena Hankivsky and Ashlee Christoffersen, 'Gender mainstreaming in the United Kingdom: Current issues and future challenges' (2011) 6(1) *British Politics* 30 and Monica Nandan, Manuel London and Tricia Bent-Goodley, 'Social Workers as Social Change Agents: Social Innovation, Social Intrapreneurship, and Social Entrepreneurship' (2015) 39(1) *Human Service Organizations: Management, Leadership and Governance* 38.

happening, and for three of us to be aware of what's happening, and sometimes we've missed opportunities to influence things early on in projects and programmes just because we're not always aware'.

Time was also a significant constraint. One interviewee at Organisation G explained how it is difficult to integrate equality and human rights within the confines of inspections: 'that's a challenge as all the time the clock is ticking and inspectors have to do one inspection a week, churn it out, inspect, look at the evidence, get the report drafted and there's thousands of settings…and there's a lot to be done in just providing some basic level of quality'. Even where staff had more interest in equality and human rights, time was still a significant constraint as outlined by the participant from Organisation D: 'our staff work really really really hard and even the people who are keen don't have time to do anything extra'. These resource constraints meant that organisations had to prioritise which actions to pursue: 'As ever with us, and any organisation it's balancing all the things we'd like to do with the resources we've got available and all the things we have to do' (Organisation G).

B. Lack of Staff Knowledge/Expertise

Staff that work at RIOs have knowledge of the sector that they oversee (eg health, education etc). The majority do not have knowledge of equality and human rights, meaning that it is difficult to integrate these norms into the work of the organisation. This can mean that inconsistencies can often arise. For example, one interviewee at Organisation D discussed the issue of uniformity in decision making: 'I think the difficulty we have is the capacity for our staff to go into things in detail when they are looking across everything…there's still a level of variability in what gets picked up that we try and improve but it's a massive job for our staff'.

Confidence was an important issue in relation to staff and often deterred staff from taking action. For example, the interviewee from Organisation D described opposition they have encountered from staff when trying to integrate equality and human rights into their organisation's work

> People are nervous about getting it wrong, there's a lot of nervousness in a way that people wouldn't be nervous about getting another topic wrong. There's an emotional engagement, particularly with equality issues, about fear of getting it wrong, that's quite tricky…And I think as well people can get overwhelmed so they can think there's nine protected characteristics, there's this many articles in

the Human Rights Act, and they see it as on top of rather than integrated into their work.

C. Competing Pressures

As can be seen above, alongside equality and human rights commitments, RIOs have many other commitments and pressures that utilise their limited resources, meaning there are less resources to devote to equality and human rights implementation. One participant (from Organisation C) outlined this reality on taking charge of the organisation: 'it's quite a challenge taking over this institution with all it challenges and this issue [equality and human rights] is a big one but it's only one issue'. Another interviewee (from Organisation G) also discussed equality and human rights having to compete with other priorities and the balancing at any point could depend on other factors (in this case political ones): 'we try our best but you will always at times have competing pressures and ultimately it's a political decision'. This accords with research by Hankivsky and Christoffersen on gender mainstreaming that found that the nature of the political process meant that long-term goals (such as making progress on equality and human rights) were much harder to focus on than more topical issues and, even where there was a strong commitment to long-term goals, they could still be subverted by other issues such as economic issues.[73]

D. Leadership

Leadership within an organisation is important as leaders have the ability to create a culture and climate more conducive to mainstreaming equality and human rights (eg, they can better negotiate the external environment, provide more resources and ensure equality and human rights has a high priority).[74] The majority of interviewees operated outside the top leadership of the organisation, and many spoke of the challenges imposed by the senior

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[73] Olena Hankivsky and Ashlee Christoffersen, 'Gender mainstreaming in the United Kingdom: Current issues and future challenges' (2011) 6 *British Politics* 30, 47.

[74] Robert A. Kagan, 'Regulatory Enforcement' in David H. Rosenbloom and Richard D. Schwartz (eds), *Handbook of Regulation and Administrative Law* (New York: Marcel Dekker, 1994); Gregory A. Aarons, Michael Hurlburt and Sarah McCue Horwitz, 'Advancing a Conceptual Model of Evidence-Based Practice Implementation in Public Service Sectors' (2011) 38(1) *Administration and Policy in Mental Health* 4.

leadership. In terms of influencing leaders, the participant at Organisation D outlined their role as 'about making sure that equality and human rights is adequately positioned in other people's work…to get the leadership understanding of what we need to do to improve'. Leadership commitment to equality and human rights is not fixed and a change of leadership can lead to a change of commitment. This was the experience of the participant at Organisation C, who explained that their organisation had previously made significant progress in integrating equality and human rights, but this work was undone with a change in leadership. Many current staff, who had subsequently joined and therefore did not remember this previous work, now opposed the integration of equality and human rights, which made the re-implementation of equality and human rights even more challenging. This confirms a similar finding by Kalyal and others that found failures can be difficult to overcome and can easily become embedded in organisational memory and lead to cynical attitudes in the future.[75]

4. THE IMPLEMENTATION OF EQUALITY AND HUMAN RIGHTS

From discussions with participants about their experiences of implementing equality and human rights within their organisation and how they respond to the challenges discussed above, three profiles of implementation were identified: strong, weak and mixed. Through these profiles it is possible to observe different behaviours that influence the strength of implementation. These profiles are not fixed and individuals can move between them at different times, influenced by the challenges that they face.

A. Strong Implementation

Stronger implementers recognise the constraints they operate in when implementing equality and human rights values. However, rather than letting these constraints overwhelm them, they draw upon their determination and passion, to drive the implementation of equality and human rights forward. They adopt a range of behaviours to further implementation. For example, obtaining maximum use of existing (limited) resources and

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[75] Hina Kalyal and others, 'If it's not worth doing half-assed, then it's not worth doing at all': Police views as to why new strategy implementation fails' (2020) 21(2) Police Practice and Research 117.

creating and drawing upon additional resources. Additionally, they can utilise the RIOs' legal framework creatively to obtain commitment to equality and human rights from the senior leadership. They often have a clear vision but are at the same time pragmatic, while being extremely reflexive and seeking constant improvement. As well as being intrepreneurs (seeking to improve equality and human rights within their own organisation), they are also extrapreneurs (using their knowledge and experience to drive improvements externally).[76]

As discussed above in relation to lack of resources, the implementers in Organisation D had missed opportunities in the past because there were three people working on equality and human rights in an organisation with thousands of staff. This has since led them to be 'nimble' in the way they work to maximise the impact the staff can have. They have engaged with the senior leadership of the organisation so that leaders understand the importance of embedding equality and human rights in projects and programmes and are committed to this goal. They have also set up regular meetings between senior leaders and the equality and human rights staff to ensure each knows what is going on and how equality and human rights can be incorporated into activities.

Additionally, while overall staff knowledge might be limited, a strong implementer can harness the knowledge and expertise that is available and utilise this to maximum effect. For example, the individual from Organisation D had strongly encouraged a staff member to use their experience to engage other staff in the organisation to great effect: 'I have to say that it's largely been the enthusiasm and skill of one of my officers who's done a lot of engagement work before who has kind of driven it and I've said "Go away and do this as it's fantastic"'. Organisation D has also engaged with rights beyond those contained within the Human Rights Act 1998, which again is the result of staff interest and knowledge: 'It's something that I think will come up on the review because the member of my team that's doing the review is very keen on international rights so I think we will be looking across some of those…I think it came about because there were individual people who've got a particular, interest, knowledge or experience'. Strong implementers also took time to ensure staff were onboard to prevent opposition to implementation in the future. This can be seen in relation to Organisation F: 'Every two months we have an all staff

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[76] Paul Tracey and Neil Stott, 'Social Innovation: A Window on Alternative Ways of Organizing and Innovating' (2017) 19(1) *Organization and Management* 51.

development day and I presented as I was doing this work. I explained what we were doing and why we were doing it, what kind of documents we were using and then some of the issues. And I set up some discussions about the tricky issues so that we could gather views and push forwards on them'.

In addition to making the most of existing resources, strong implementers can also create and draw upon additional resources. For example, the participant from Organisation D created a staff network that harnesses the interest of general staff in equality and human rights. This drastically increased the number of people within the organisation working on equality and human rights and meant that the central team (of three equality and human rights leads) can have a much more focussed role that drives implementation forward: 'The central team's role is now much more about supporting other people to do what they need to do, providing the subject-matter expertise and the leadership so it all hangs together but enabling staff to work on the issues that are most pertinent to their job roles'. The individual from Organisation D had also obtained external funding so that staff could undertake one-off equality and human rights training. However, recognising that this resource was limited they sought to maximise its effectiveness by considering ways to continue training in the future once the funding had been exhausted (eg training for new staff or further training on particular aspects of equality and human rights). To ensure continual development of staff (while at the same time developing leadership at different levels) the organisation adopted two levels of training: a basic level for all staff and then advanced training for a small number of key individuals. In future, these key individuals will take the lead on further training to ensure it is sustainable.

RIOs are set up for particular purposes and have powers that can only be used for these purposes. Most RIOs do not have equality and human rights listed as fundamental purposes within their statutory framework, which means equality and human rights implementation is often seen as unimportant, particularly if it complicates the achievement of the fundamental purposes of the organisation. Rather than letting this limit equality and human rights implementation, strong implementers can utilise the central and fundamental nature of a RIO's purpose to their own advantage by linking the achievement of the fundamental purposes of the organisation with the implementation of equality and human rights. For example, the participant from Organisation F outlined that 'there's nothing explicit in the mandate about human rights other than the fact that we're looking at conditions which are obviously human rights issues'. The participant from Organisation D made a similar point: there is 'a link between our

core purpose and equality and human rights which goes beyond our legal duties…[and therefore if we are to meet our core purpose] then that does automatically engage equality and human rights issues'.

Strong implementers tend to be very passionate about equality and human rights and use this passion to drive implementation forward. They have a clear vision and are seeking to push the realisation of this further every day. They are also evolving as the organisation evolves and constantly seeking deeper and more advanced implementation. This passion and drive can be seen in the participant from Organisation D: 'I've brought this with me, that's our one-page summary of our human rights approach…and I have that stuck up by my desk and I look at that at least once a day to check where we are on it'.

Strong implementers are also agile, having to evolve as the organisation changes. This can be seen in Organisation D, where a change in approach to regulation, has drastically changed how equality and human rights figure in the regulation process going forward. While recognising the challenges this poses, strong implementers are quick to put in places measures to ensure the progress made in equality and human rights implementation is not lost

> The issue with equality and human rights is that we haven't got that stream of information that we have on some of the other things, so that's a major challenge. And when we don't have that, that's when we can miss things and then there can be these kinds of catastrophic failures where no one has picked them up. I'm not saying we're moving towards where that is more likely to happen because obviously, we're putting measures in place to make sure that we've got much better local working with other bodies, better information streams, much more nuanced risk measurement.

Alongside evolving to meet changing circumstances within the organisation, strong implementers tend to be extremely reflexive and seek constant improvement. For example, the individual from Organisation F undertakes regular scoping exercises to determine what human rights standards exist internationally (far exceeding the rights listed within the Human Rights Act 1998) and uses these to increase implementation within the organisation: 'the [human rights] standards are not always very high so my thinking is in that case you need to use all the standards that there are to really make sure that you're at the forefront of the thinking and as far ahead of the game as you can be'. The position is similar in Organisation D, where the participant was undertaking a gap analysis to determine the direction of future work:

'We're doing at the moment a gap analysis, of whether specific groups of people or specific rights or specific issues have come up where we could have done more of a human rights approach on those issues'.

Although ambitious, strong implementers are not idealistic and can be pragmatic if pragmatism will further advance implementation. For example, Organisation D utilises FREDA principles (Fairness, Respect, Equality, Dignity, and Autonomy) rather than explicitly referring to articles of the European Convention on Human Rights, even though this is criticised in some quarters

> I really don't believe that for a lot of services…that it's realistic to expect people to understand in detail human rights law. But what they do need to be able to do, at least at management level, is to be able to apply human rights principles for resolving difficult situations…FREDA is really good on a simple basis for understanding what people are entitled to.

The individual at organisation D also recognises the reality of equality and human rights standards for people not well versed in these standards, and outlines realistic ways that these standards can be advanced within this context

> people can get overwhelmed so they can think there's nine protected characteristics, there's this many articles in the Human Rights Act, on top of, they see it as on top of rather than integrated in. We've kind of tackled some of that by having some very specific equality objectives, so we expect people to look for equality issues that are service specific…We had one about reasonable adjustments for people with a learning disability…So we've tried to sometimes coalesce people around manageable topics.

Strong implementers do not aim to simply advance equality and human rights within their own organisation but also to share the knowledge and experience they have gained to influence equality and human rights implementation externally. For example, participants from both Organisations D and F were heavily involved in the activities of external bodies that focussed on equality and human rights issues. Organisation F, in particular, had used their experience to feedback into the development of international standards, and some of the work the organisation had produced was being widely used both within the UK and internationally. Organisation F was also informing policy development nationally: 'we obviously use our evidence to inform policy and we report a lot to parliamentary committees…I'd like to think that because our standards make us look at things that are human

rights issues we bring a human rights lens when we respond to consultations or discussions'.

B. Weak Implementation

While strong implementers are not defeated by the constraints they work within and in some cases even challenge or utilise these constraints to further implementation, weak implementers are weighed down by the constraints and overwhelmed by the task at hand. They thus avoid taking action until this is no longer possible. When they do take action this can often be ad hoc and segregated from other activities within the organisation. There can also be frequent setbacks and repeated attempts to start again, with starting again being easier than tackling the barriers to driving implementation further. Finally, while there are external interactions, these are often limited and their potential to help with equality and human rights implementation is often not realised.

The participant from Organisation A describes the difficulties they have experienced while attempting to implement equality and human rights within their organisation: 'Over the years, I have been here quite a long time, it has been very difficult to incorporate it and we have in the past, probably been quite inconsistent and not systematic and it has largely been dependent on individuals and whether or not they had confidence and interest in the area'. The documentation produced by Organisation A shows a history of stops and starts in regard to equality and human rights. When asked about this, the participant from Organisation A, outlines the overwhelming nature of implementing equality and human rights within the organisation and how this leads to conscious avoidance

> I think fundamentally it is because it's too big. It's just too big and too complicated. And it's very easy not to do anything about it. Nothing happens if you don't tackle it. You know, there are no repercussions if you don't, if you ignore it and pretend it's not there. I feel fundamentally it's just because it is too big and you know, even for me.

The difficulty of implementation plus the overwhelming feeling of drowning by weak implementers means that they are much more willing to be defeated when they encounter constraints. This can be contrasted with strong implementers, who although they also encounter constraints and setbacks, have the drive to still push implementation forward. This can be seen

when the participant from organisation A outlines some of the constraints faced by their organisation and uses them to justify the limited approach taken by the organisation: 'I know Northern Ireland went down the whole human rights based approach, they had a lot of support and extra funding for that and we didn't have that' and 'it would be super helpful for us to have a full-time expert in equality and human rights who could, because I'm sure there's lots of stuff that probably we don't see that somebody with, you know, with significant expertise probably would see'. This leads to the expectation that if implementation is going to be advanced within the organisation greater resources need to be provided and that external experts need to take the lead: 'it needs a bigger push from somebody else, that we can then use as a bit of a platform'.

That is not to say that weak implementers never take action but that any actions taken tend to be ad hoc and segregated. This can be contrasted with strong implementers, who have a clear strategy, are constantly trying to evolve and advance, and attempt to ensure equality and human rights are central and integrated into all aspects of an organisation's work. For example, the participant from organisation A outlines the ad hoc nature of integrating equality and human rights into the organisation's workload

> We haven't had any training, none of us have had any training and there is a reason for that, we've had training in the past, and it just has absolutely no effect whatsoever because the landscape is so huge and so complicated and so legal, that people will sit there and it's all very interesting and then they go away and can't apply it to their casework. So we decided not to do training, just to say, here you go people, have a go and see where you get to.

Equality and human rights were generally seen as less important to weak implementers and were therefore often segregated. This can be seen within organisation A where equality and human rights were determined not to be relevant to one area of the organisation's work because that area focussed on 'specific and tangible things'. While reference had been made to equality and human rights issues on occasion, in some reports within the organisation there was a tendency not to include them as references to equality and human rights 'could detract or be a distraction' from the main finding and organisation A did not want regulatees 'starting to get anxious about our suggestion that they might have breached human rights. We don't want them to get hung up on that'.

Finally, in contrast to strong implementers who feed into and often lead external interactions, weak implementers have very limited external

interactions around equality and human rights and tend to not fully realise the potential that external interactions possess. For example, the participant from Organisation A outlines the limited interactions they have had with external bodies that are much more active in this area: 'there are times when we might want to share information but that would be on a very specific issue, we wouldn't do it as sort of a general thing. There would have to be a need for a specific reason…Other than that it would be very very generic. I have been to sort of meetings and conferences and things where these organisations are represented but it would be just a general discussion, it would not be anything very specific'. There is a recognition that more could be made of these encounters but that there are obstacles to this: 'it's tough in the hurly burly of working life, when you've got other things to do to always follow up interesting things'.

C. Mixed Implementation

Implementers that have a mixed record of implementation combine aspects of both strong and weak implementation. They are not as overwhelmed and defeated by equality and human rights implementation as weak implementers, but they lack the drive for constant improvement that characterises strong implementers. They have a better understanding of equality and human rights than weak implementers but it is less sophisticated than that of strong implementers. This allows them to recognise many of the same opportunities as strong implementers but they are less likely to take these opportunities, as the default is a reluctance to act. Where implementation is mixed, implementers do tend to engage in external interactions and see the benefits of these, but they are much more likely to follow rather than lead. Overall, the tendency is to do enough but not to push actions too far.

As with both strong and weak implementers, those with a mixed implementation record recognise the challenges of implementation but are neither overwhelmed or driven by these challenges. As the participant from Organisation G recognised, equality and human rights implementation is 'a process not without its challenges. The difficulties and challenges are kind of inevitable and the right sort of difficulties and challenges'. Yet, these challenges lead to a tension between whether to adopt weak implementation behaviours (and avoid or make very superficial changes) or strong implementation behaviours (and make more challenging but fundamental changes). Those with a mixed implementation record tend to oscillate between both

weak and strong implementation as seen in relation to Organisation G: 'our challenge is we've got our set methodology…And then we get new material coming…My challenge is how do I get the new material into the existing methodology? Or do we start from scratch and create a new methodology?'. Action is taken to implement equality and human rights but this tends to be more passive, relying on the actions of others. For example, organisation E outlines that their 'legislatory basis is provided by the Government and they will ensure that rights' issues, equalities issues were in the basic legislation. Again, whether it is always explicitly there, I don't know, but there's very clear expectations'.

Those with a mixed implementation record tended to have a better understanding of equality and human rights than weak implementers, but this understanding is less concrete than that of strong implementers, so engagement with equality and human rights tends to be more woolly. For example, Organisation B talks about equality and human rights being 'instinctively built into the things that we look at' rather than being clearly integrated. A similar approach can be seen in relation to Organisation G: 'essentially I think our position is, we put people at the heart of everything that we do and it's not just words, we are trying to make that a reality, what does that mean in practice?...If we are looking at [X] by doing so we are implicitly, and it may be often implicit rather than explicit, doing something in relation to human rights legislation'. A similar approach is taken to capturing excellence: 'We always want providers to aspire to be excellent. We always try to recognise good practice and promote it. Can I think of a specific example where we might have said in terms of human rights this is excellent what are you doing here? I can't'.

Those with a mixed implementation record are capable of recognising opportunities, but are more willing to allow constraints to limit their actions, meaning that they are significantly less likely to realise those opportunities than strong implementers. This can be seen in relation to Organisation B: 'There are things that we could look at. I think we could probably go deeper into some of those issues if we had the resource and if we had the time. I think it's hard not to skew it in particular directions then though because the time we spend looking at that, is that the most important thing to look at? It could be argued, couldn't it, that there are other things that we should be looking at. So we have a finite amount of time when we go into places'. A similar situation exists in Organisation G where lots of opportunities have been recognised but constraints mean these have as yet not been acted upon:

when the reports are produced, I think there is an argument to say that perhaps we can do more in terms of drawing out to the reader that this is actually a human rights issue. I think we could do more of that in our reports. It would probably be good for us at some point in the not too distant future to have a view across all that we do and produce some kind of overview. If we are arguing that it's implicit in what we do you can argue then that that's fine but at regular points perhaps we should make it explicit by saying…these are the kinds of issues around human rights that are emerging and this is the bit of human rights that is most relevant here. We haven't ever done that, it probably would be quite a good thing to do. You could take that one stage further and say there might be a case at some point to actually do a thematic review which is a desktop exercise…As ever with us, and any organisations, it's balancing all the things we'd like to do with the resources we've got available and all the things we have to do.

This can be contrasted with strong implementers who under similar constraints still manage to find a way to instigate these initiatives.

Organisations with mixed implementation can take positive action. For example, Organisation C drew attention to the situation of a group of individuals 'whose human rights have been, and are being, ignored or abused in a way which is entirely unacceptable' and this had been well received. However, while this had encouraged further action in the future, equality and human rights were still not given the same importance as they are by strong implementers. This means that it always possible to stall or regress if an issue perceived as more pressing arises. For example, the participant from Organisation C also described how an external political decision to expand the organisation's remit meant that its workload increased drastically overnight with no increase in resources. This led to its previous work on equality and human rights being immediately 'pushed to one side and regarded as either something which was already ingrained or not something that was necessary'.

Whereas strong implementers are always looking for new actions that can be taken to embed equality and human rights more deeply into an organisation, the default for those with a mixed implementation record is a hesitancy to act or a willingness to act within limits. For example, the participant from Organisation C describes their more cautious approach to equality and human rights implementation: 'In my position you don't make bold statements about what you are going to do. It's too early. You behave in an evidence-based way. I want to get this going as quickly as possible and the best way to do this is to use existing legal mechanisms so that it is not controversial and then you review that and see if you want to go beyond that'. Often,

those with a mixed record only take actions because they feel pressure to act. The participant from Organisation G outlined that the organisation's attempt to mainstream equality and human rights had begun when they had received external criticism from another organisation, not only for equality and human rights not appearing obviously in their work, but for not even making any reference to equality and human rights in their mission statement and literature. In contrast to weak implementers who are largely waiting for someone to assist them, those with mixed implementation records recognise they have a role in equality and human rights enforcement but that their role is subsidiary to that of other bodies. This can be seen from the participant from Organisation C: 'I don't think you can segment it so that only one body deals with it. I think lots of bodies have to deal with it. But we have to recognise that the legal expertise about how to construct the framework will come from someone other than us'.

Finally, those with mixed implementation records engage externally with other actors more frequently and productively than weak implementers but compared to strong implementers tend to follow rather than take the lead in external activities. This can be seen with Organisation G where the participant 'can recall coming back from [external] meetings and writing notes for people in this organisation about what we might do different and so on. I can't think of examples though but it certainly has had an influence'. It can also be seen in Organisation B: 'We're always learning. It is quite interesting to have a look at the work of other organisations…it's useful to speak [to individuals from other organisations] and see the approach they take. And then it makes us reflect on the way that we do things and sometimes we'll find things that we'll change and sometimes we won't'.

5. DESIGNING THE REGULATORY ENVIRONMENT TO DRIVE DEEPER IMPLEMENTATION

It was seen that all the participants from RIOs experienced the same challenges when attempting to implement equality and human rights within their organisation: a shortage of resources (be these financial, staff, or time); a general lack of knowledge and expertise around equality and human rights in the organisation; competing pressures from other obligations and priorities; and differing commitments to equality and human rights by the senior leadership in the organisation. However, the participants did not respond to these challenges in the same way: some adopted behaviours that further strong implementation (making the most of the resources they have and

driving ever deeper implementation), some adopted behaviours that led to a mixed record of implementation (oscillating between deeper and perfunctory implementation), and some utilised behaviours that led to weak implementation (avoiding taking meaningful action due to feeling overwhelmed and in need of rescue). Given the importance of implementation to the realisation of equality and human rights, this final section considers how the external regulatory environment can be structured to encourage and support more implementers to move towards stronger implementation.

A. From an Enforcement Pyramid to a Strength-Based Pyramid

As discussed in the introduction, one of the distinctive elements of equality and human rights implementation is that it is organisation specific (ie the actions that need to be taken will vary from organisation to organisation depending on the specific features and context of the organisation). In response to this, the enforcement pyramid has been suggested where enforcement action gets increasingly severe until compliance is secured. However, the enforcement pyramid suffers from two central limitations. First, it views compliance as binary (ie an organisation is either in compliance or in breach). It is unable to recognise and address different degrees of compliance. The mainstreaming of equality and human rights within organisations is not a one-time event but a continuous act involving ever deeper implementation and will vary from organisation to organisation. Beyond ensuring basic compliance (ie that organisations are meeting their basic duties, for example, having due regard or complying with human rights) the enforcement pyramid is limited and cannot advance implementation beyond this.[77] Thus, it is unable to distinguish between strong and mixed implementation. It does not recognise and reward the innovativeness of strong implementers or draw on and utilise their good practice. The enforcement pyramid also does not support or incentivise those with mixed implementation records to go further.

Second, the enforcement pyramid presumes that non-compliance is voluntary and that increasingly severe sanctions are needed to ensure compliance. However, weaker implementation can often be due to lack of confidence, resources and/or knowledge, which was seen in relation to both

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[77] David Barrett, 'The importance of regulators and inspectorates to the realisation of equality and human rights: ensuring compliance and supporting mainstreaming' [2020] *Public Law* 56, 60.

those with weak and mixed implementation behaviours. In this context, it is unlikely that increasingly punitive penalties will be conducive to the furtherance of quality implementation but instead result in perfunctory compliance. Therefore, to increase implementation of equality and human rights by individuals within organisations, we need to think beyond the enforcement pyramid, and instead utilise the strength-based pyramid.

The strength-based pyramid was originally put forward by Braithwaite, Makkai and Braithwaite, and although much less utilised than the enforcement pyramid, is better able to further equality and human rights implementation.[78] Whereas the enforcement pyramid is about ensuring minimum standards are met, the strength-based pyramid 'seeks to maximise quality by pulling standards up through a ceiling' and is thus concerned with advancing 'continuous improvement'.[79] The key difference between the two pyramids is that while the sanctions increase as the regulator(s) move up the enforcement pyramid, the rewards increase as the regulator(s) move up the strength-based pyramid. Both then aim to incentivise organisations (and individuals responsible for implementation within those organisations) to improve (comply in the enforcement pyramid to avoid increasing sanctions or to implement in the strength-based pyramid to secure increasing rewards). The enforcement and strength-based pyramids are alternative rather than complementary strategies. For example, if a previously compliant organisation regresses the regulator(s) can move from the strength-based pyramid to the enforcement pyramid.[80] The base of the enforcement and strength-based pyramids are very similar with both involving education and persuasion. The enforcement pyramid focuses on education and persuasion around a problem (ie non-compliance), whereas the strength-based pyramid focuses on education and persuasion about a strength (ie something the organisation is doing well which could be developed). The next level of the strength-based pyramid involves informal praise for progress that has been made. The next step then involves a prize or a grant to resource/encourage/facilitate strength-building. This is followed by escalated prizes or grants. At the apex of the strength-based pyramid are academy awards.

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[78] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham: Edward Elgar, 2007), Ch 10.

[79] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham: Edward Elgar, 2007) 318.

[80] John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (Cheltenham: Edward Elgar, 2007) 319.

B. An Equality and Human Rights Strength-Based Pyramid

It has been seen that a lack of progress by individuals adopting weak or mixed implementation behaviours is not from intentional resistance but a lack of confidence and/or being overcome by barriers. On this basis the starting point for equality and human rights regulation should be the strength-based pyramid, rather than the enforcement pyramid. Historically, the strength-based pyramid has been focussed at the organisation level, and while it is likely that this will have some effect on individual implementers, this cannot be assumed.[81] Therefore, as well as incentivising organisations to improve, the regulatory system should also seek to incentivise individual implementers directly. The more coercive sanctions that are contained within the enforcement pyramid (EHRC or court involvement) lurk in the background and can easily be utilised if organisations are purposefully or negligently not complying with their equality and human rights obligations.[82]

(i) Education and Persuasion

In terms of education, this should focus on providing organisations (and the individuals that are responsible for implementing equality and human rights within the organisations) with the knowledge and expertise that they need (and are currently lacking) to begin to implement equality and human rights norms into their organisations. This could take the form of training or supportive resources (such as guides or highlighting good practice).[83] Some organisations already provide training on equality and human rights [for example, the British Institute of Human Rights (BIHR) on the Human Rights Act and Just Fair in relation to economic and social rights] although, currently a lack of resources, mean that it would be impossible for these organisations to offer this training to all the individuals and organisations

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[81] Harold Sætren and Peter Hupe, 'Policy Implementation in an Age of Governance' in Edoardo Ongaro and Sandra Van Thiel (eds), *The Palgrave Handbook of Public Administration and Management in Europe* (London: Palgrave Macmillan, 2018).

[82] David Barrett, 'The Regulatory Space of Equality and Human Rights Law in Britain: the Role of the Equality and Human Rights Commission' (2019) 39(2) *Legal Studies* 247.

[83] It should be noted that some of these aspects, such as training, are present in Wales. However, interviews with the Welsh participants suggest that the effectiveness of these could be enhanced.

that need it.[84] Broadening access to this training could be achieved by state funding and the requirement for a handful of individuals from each organisation (including the individual or individuals responsible for implementing equality and human rights) to attend this training. Alternatively, training could be provided by an organisation such as the EHRC, although it would be more effective if enforcement (which the EHRC are involved in) was kept separate from encouragement (which would work best where individuals could be honest and open about any fears they experience or challenges they face, without concerns about adverse repercussions later).[85] What is important is that any training is organisation specific so it is not seen as abstract and irrelevant by implementers (as it was by the individual from Organisation A) but directly relevant to the organisation. This is more likely if the training is provided by organisations that have knowledge/expertise of the area the organisation operates in, which would again support organisations other than the EHRC providing training (although the EHRC could step in to fill any gaps).[86] An example of such education in practice is the training that was delivered by the BIHR to staff at the Care Quality Commission, which was facilitated by the EHRC.[87] This approach could be extended to other RIOs to strengthen knowledge and expertise more widely (although it is likely that the EHRC would need its funding increased to facilitate this).

Where the EHRC would have an important role is in relation to guidance. The Commission can work with training organisations and implementers to produce guides that can provide ongoing support to implementers.[88] The Commission can also promote equality and human rights and make it clear why the implementation of equality and human rights is good for organisations and their service delivery. This is often

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[84] The British Institute of Human Rights, 'Human Rights Training' (BIHR) <https://www.bihr.org.uk/training> accessed 4 February 2022; Just Fair, 'Upcoming Events' (Just Fair) <https://justfair.org.uk/news-and-events/> accessed 4 February 2022.

[85] Fiona Haines, *Corporate Regulation: Beyond Punish or Persuade* (Oxford: OUP, 1997) 219; Richard Johnstone, 'Putting the Regulated Back into Regulation' (1999) 26(3) *Journal of Law and Society* 378.

[86] David Barrett, 'The Regulatory Space of Equality and Human Rights Law in Britain: the Role of the Equality and Human Rights Commission' (2019) 39(2) *Legal Studies* 247.

[87] BIHR, 'BIHR Delivering Training Programme for the Care Quality Commission' <https://www.bihr.org.uk/news/bihrtrainingcqc> accessed 26 November 2022; BIHR, 'Working with Regulators and Public Services' <https://www.bihr.org.uk/regulators> accessed 26 November 2022.

[88] For example: EHRC, *Human Rights in Action: Case Studies from Regulators, Inspectorates and Ombudsmen* (EHRC 2014).

more effectively achieved by appealing to the professional ethics of individuals and could be used to persuade individual implementers of the merits of continuous implementation of equality and human rights.[89] This would aid the implementation of the individual at Organisation A who adopted behaviours that were likely to lead to weak implementation. It would build up both their and their organisation's knowledge and expertise of equality and human rights so the full-time expert that they felt they needed would come from inside the organisation rather than waiting for an external expert to come and rescue them. The EHRC have begun to provide guidance in the form of the Ombudsman quick reference tool, which outlines the relevant rights to situations encountered by different types of ombuds (eg health and social care, criminal justice etc.), explains the content of the different rights and what should be considered.[90] This could be extended to regulators and inspectorates as well and supplemented with practical training to support RIOs to apply the guidance in the concrete situations they encounter.[91]

(ii) Validation and Encouragement

The next stage in the strength-pyramid would be validation and encouragement. This would involve organisations outlining the actions they had taken to implement equality and human rights norms within the organisation and receiving feedback on this. To facilitate this would require two mechanisms. First, there must be a requirement to share information.[92] This can be seen with the specific PSED that requires public bodies to publish yearly information to show compliance with the duty.[93] This duty could be extended to human rights, so that, as well as being required to publish equality

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[89] Lars Tummers and others, 'Public Professionals and Policy Implementation' (2012) 14(8) *Public Management Review* 1041; Marta Rawłuszko, 'Gender mainstreaming revisited: Lessons from Poland' (2019) 26(1) *European Journal of Women's Studies* 70.

[90] EHRC, 'Which human rights apply? Ombudsman schemes quick reference tool' (EHRC 26 July 2019) <https://www.equalityhumanrights.com/en/advice-and-guidance-human-rights-multipage-guide/which-human-rights-apply-ombudsman-schemes-quick> accessed 26 November 2022.

[91] Michael O'Flaherty and George Ulrich, 'The Professionalization of Human Rights Field Work' (2010) 2(1) *Journal of Human Rights Practice* 1.

[92] Karen Yeung, 'Government by publicity management: Sunlight or spin?' [2005] *Public Law* 360.

[93] Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, SI 2017/353.

information, organisations would also have to publish human rights implementation information (for example, as is currently required in Ireland).[94]

Second, there must be bodies that can use this information to provide feedback. This might include service users, third sector bodies and/or the EHRC. While this feedback would all be valuable and useful, this stage is likely to prove particularly effective if feedback is provided by individuals at other organisations in similar positions to the publishing organisation. In this way a network can be formed where good practice is shared. The EHRC have done this to some extent by publishing case studies of different RIOs as a way to share the good practice of RIOs.[95] However, space would also be needed for staff at RIOs to discuss any issues they are encountering and collectively working through how these could potentially be resolved. This could either be a community where all parties are equal or it could be steered by a network manager who would ensure continued focus on collaboration, sharing, and feedback.[96] This could work like the RIO forum which is a forum run by the EHRC to share best practice between RIOs, although this has often been stop-start.[97] The forum utilises orchestration, where the Commission orchestrates RIOs by enlisting them and supporting them to integrate equality and human rights into their work.[98] Through these voluntary relationships, the EHRC can increase its reach and increase the realisation of equality and human rights within society.[99]

Alternatively, it could work like the National Preventative Mechanism (a group of 21 RIOs that work together to coordinate the monitoring of places of detention). This is coordinated by HM Inspectorate of Prisons (England and Wales) and involves sharing and discussing their practices in

[94] Irish Human Rights and Equality Commission Act 2014, s 42.

[95] EHRC, *Human Rights in Action: Case studies from Regulators, Inspectorates and Ombudsmen* (EHRC 2014).

[96] Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd edn, Oxford: OUP, 2012) 160; Walter Kickert and Joop Koppenjan, 'Public Management and Network Management: An Overview' in Walter Kickert, Erik-Hans Klijn and Joop Koppenjan (eds), *Managing Complex Networks: Strategies for the Public Sector* (Thousand Oaks: Sage, 1997).

[97] EHRC, *Human Rights in Action: Case Studies from Regulators, Inspectorates and Ombudsmen* (EHRC 2014).

[98] Kenneth W. Abbott and others, 'Orchestration: Global Governance through Intermediaries' in Kenneth W. Abbott and others (eds), *International Organizations as Orchestrators* (Cambridge: Cambridge University Press, 2015); Michael Blauberger and Berthold Rittberger, 'Conceptualising and theorising EU regulatory networks' (2015) 9 *Regulation and Governance* 367; Tom Pegram, 'Global human rights governance and orchestration: National human rights institutions as intermediaries' 21(3) *European Journal of International Relations* 595.

[99] EHRC, *Strategic Plan 2016–19* (EHRC 2016) 18.

this area and working together on joint projects.[100] This is a form of horizontal accountability where RIOs are motivated to improve their practices to maintain and enhance their reputation in the eyes of other network members. This stimulates co-operation and learning in members.[101] Again this would aid the implementation of the individual at Organisation A, who had adopted behaviours that were likely to lead to weak implementation. Through working with individuals from other organisations, it would be seen that obstacles and challenges are common between organisations, and organisations could support each other and provide validation for successful initiatives. In this way, implementation would not feel so overwhelming.

(iii) Grants

The next stage up the pyramid would be the awarding of grants. Organisations could apply either singularly or collectively (for example, a network) for grants to further the implementation of equality and human rights within the organisation or sector. Eligibility requirements could be established to incentivise moving up the pyramid. For example, grants could only be awarded to organisations that are part of a network and who have engaged with a range of service users around equality and human rights (ie who have satisfactorily completed the previous stage). The EHRC would be particularly well placed to determine which organisations or networks should be awarded grants each year. The Commission has the power to make grants but stopped doing so when its budget was significantly reduced and would thus need to have its funding increased (or be given specific project funding) to enable it to begin making grants again.[102] Conditions could also be attached to grants to ensure that the money is used for equality and human rights implementation, and that the outcomes of the grant are recorded and disseminated to share good practice and advance learning. Grants would be particularly useful for individuals and organisations with mixed implementation records. For example, it would aid the individuals at organisations B and G, who had recognised opportunities to further implement equality and

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[100]National Preventative Mechanism, *Monitoring places of detention: Eleventh Annual Report of the United Kingdom's National Preventative Mechanism 1 April 2019–31 March 2020* (Cp 366, 2021).

[101]Martini Maggetti, 'Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review' (2010) *Living Reviews in Democracy* 1.

[102]Equality Act 2006, s 17; EHRC, Strategic plan 2012–15 (The Stationery Office 2012) 6.

human rights norms within their organisations, but who lacked the resources to take those opportunities forward.

(iv) Accreditation and Awards

The apex of the pyramid would be an accreditation scheme. Organisations that had particularly excelled in equality and human rights could apply to be accredited. Again, the EHRC (or a similarly situated body) could determine if organisations have met the accreditation requirements. Accreditation would bring reputational advantages from service users and confidence from stakeholders. The accreditation scheme could adopt a binary accredited/not accredited model or it could adopt a model similar to Athena SWAN where accreditation is tiered (bronze, silver, and gold) to encourage continuing and innovative implementation.[103] It should be noted that the Athena SWAN scheme has been subject to criticisms; with the most relevant one being that universities ensure that their awards are 'elaborately featured and mobilised as a vehicle for short-term micro-level change and reputational gain', rather than institutional-level cultural and transformational change'.[104] Thus, it would be important to ensure that there are effective assessment and support mechanisms to support cultural and transformational changes rather than short-term superficial changes.[105] The other levels of the strength-based pyramid (ie education and encouragement) should also help to ensure that awards are not used performatively. To ensure implementation is constantly progressing and evolving as the organisation changes, it would be important to make sure that organisations are re-accredited at regular intervals to ensure they are still meeting the criteria for the accreditation scheme. Awards could also be given to individual implementers to recognise and encourage the innovativeness of those with strong implementation behaviours. For example, the individual from organisation D could be recognised for their commitment to ensuring all staff were trained and that staff were recruited to drive implementation further, and the individual at organisation

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[103] 'Athena Swan Charter' (Advance HE) <https://www.advance-he.ac.uk/equality-charters/athena-swan-charter> accessed 11 February 2022.

[104] Emily Yarrow and Karen Johnston, 'Athena SWAN: "Institutional peacocking" in the neoliberal university' (2023) 30(3) *Gender, Work and Organisation* 757, 758.

[105] Charikleia Tzanakou, Kate Clayton-Hathway and Anne Laura Humbert, 'Certifying Gender Equality in Research: Lessons Learnt From Athena SWAN and Total E-Quality Award Schemes' (2021) 6 Frontiers in Sociology 11.

F could be recognised for their development and promotion of international equality and human rights standards.

6. CONCLUSION

Many scholars have argued that equality law (Hepple, Fredman and Blackham), and to a lesser extent human rights (Fredman), are forms of reflexive regulation. As forms of reflexive regulation, equality and human rights laws require organisations to adjust and reconfigure themselves to mainstream the values of equality and human rights. This requires a model of enforcement that assists organisations, builds capabilities and ultimately sanctions organisations if they fail to comply. It has been argued by scholars that this is best achieved by an enforcement pyramid where enforcement action increases in severity until compliance is secured. Through the analysis of original empirical data, implementation of equality and human rights by individuals within regulators, inspectorates, and ombuds was explored. Some participants adopted behaviours that furthered strong implementation (making the most of the resources they had and driving ever deeper implementation), some adopted behaviours that led to a mixed record of implementation (oscillating between deeper and perfunctory implementation), and some utilised behaviours that led to weak implementation (avoiding taking meaningful action due to feeling overwhelmed and in need of rescue). By exploring the enforcement pyramid through the lens of implementation behaviours two key limitations can be seen. First, the enforcement pyramid is only able to view the actions of organisations bi-modally, ie either organisations are complying with the law or they are not complying with the law. The enforcement pyramid has nothing to say about the different quality of implementation beyond mere compliance, so it would be unable to distinguish between the behaviours of strong and mixed implementers, for example. In particular, it does nothing to recognise the innovativeness of strong implementers, does nothing to share their good practice, and is unable to support or incentivise those with mixed implementation records to go further. Second, the enforcement pyramid assumes that non-compliance is voluntary and that punishments should get increasingly more severe until regulatees choose to comply. However, this is not always the case, as can be seen with the individual who adopted weak implementation behaviours due to lacking confidence and feeling overwhelmed rather than intentional choosing not to comply. In this context, ever severe punishment is unlikely

to secure meaningful mainstreaming and instead is likely to result in minimal and perfunctory performance. What is needed is encouragement and support, but this cannot be adequately provided by the enforcement pyramid. Instead, drawing on the work of Braithwaite, Makkai and Braithwaite, it was argued that a strength-based pyramid, which would work alongside the enforcement based pyramid, should be adopted. This would involve increasing incentives in the form of education and persuasion, validation and encouragement, grants and awards, that would hopefully work to incentivise individuals and their organisations to embed equality and human rights ever deeper into the organisation and service provision.

The study of implementation and the strength-based pyramid has important implications for future research. First, challenges to implementation were outlined but quantitative research is needed to determine if particular factors are more likely to lead to individuals adopting particular implementation behaviours, and in particular identifying the specific factors that support strong implementation. This would then have important implications for the strength-based pyramid and what would best support RIOs to more deeply implement equality and human rights. Second, implementation was explored in the context of RIOs, however RIOs are not radically different from other public sector organisations, so there is utility in exploring whether individuals implementing equality and human rights at other organisations could adopt similar implementation behaviours and the consequences of this. Third, the study focussed upon equality and human rights implementation, however, it could be the case that similar processes are required for other continuing duties and thus, there would be a benefit to exploring whether the strength-based pyramid could be extended beyond the context of equality and human rights law, for example to the Prevent duty.[106] Finally, the strength-based pyramid was outlined as a possible solution to encourage individuals to become strong implementers, and incentivise them to implement equality and human rights norms ever deeper into their organisation. Given the limited use that has been made of the strength-based pyramid generally in regulation literature, there would be a benefit to empirically exploring if it would actually improve equality and human rights implementation, and whether particular details (such as particular types of education) may make it more effective.

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[106] Counter-Terrorism and Security Act 2015, .