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A reconstructive study of HR practitioners' enactment of equality: the discourses of 'legal guardianship'

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**A RECONSTRUCTIVE STUDY OF HR PRACTITIONERS' ENACTMENT
OF EQUALITY: THE DISCOURSES OF 'LEGAL GUARDIANSHIP'**

By

HELEN MORTIMORE

A thesis submitted to the University of Plymouth

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Abstract

Helen Mortimore

A reconstructive study of HR practitioners' enactment of equality: the discourses of 'legal guardianship'

The thesis examines the enactment of workplace equality through an analysis of HR generalist talk. The primary data is contextualised by a review of the literature on HR, equality and diversity, and the regulatory terrain.

The study is based on interviews with HR practitioners from 40 UK organisations of different sizes/sectors in 2014. The methodology underpinning the analysis is informed by a form of critical discourse analysis which considers lived experiences in their broader contexts (Edley, 2001).

The findings indicate that operational HR practice in respect of equality and diversity is constituted mainly of compliance to the equality legislation. HR practitioners enact a 'legal guardian' (Wright & Snell, 2005) role, seeking first and foremost to protect their organisations from the threat of litigation. Legal guardianship is delegitimised by the dominant discourses of strategic HRM and diversity management. Nonetheless, the legal guardian role is orientated to mainstream HRM expectations of 'contribution' whilst also incorporating a more covert employee advocacy role, which is accomplished through various proxies. The level of complexity and breadth of HR practices associated with the achievement of equality compliance challenges perspectives of equality law as providing a low threshold of rights in the employment relationship.

The findings and discussion further challenge the neat demarcation of HR from personnel management in the literature, presenting a perspective of HR practice that is both nuanced and relatively consistent across sectors. The thesis considers the means by which a regulatory role for HR is unintentionally *ensured by* the dominant HRM discourse.

Talk of the HR/line manager relationship in the enactment of equality highlights that roles are relatively stable and that the HR function retains considerable control of processes and outcomes whilst demonstrating a commitment *in talk* to the principle of devolution. The thesis thereby problematizes the ongoing predication of 'successful' HRM on the devolution of operational people management to line managers, and the perspective that continuing devolution is the trajectory of practice.

HR practitioner talk indicates the processes by which the equality legislation is given meaning and highlights the significance of the (thus far under-acknowledged) employment lawyer/HR practitioner relationship to understandings of HR and the enactment of equality.

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Signed:

A handwritten signature in black ink, appearing to read "J. M. Moore". The signature is written in a cursive style with some loops and flourishes.

Date: 10th March 2016

Introduction

1.1 Overview of the thesis

The purpose of this introductory section is to outline the concepts which underpin the research and to argue the relevance of the study to human resource (HR) scholarship. This section addresses why the perspectives of HR practitioners are significant to the enactment of workplace equality, and identifies the approach of the research towards the typically collocated terms of 'equality' and 'diversity'. The section introduces the key issues within the context of regulation pertinent to a contemporary study of HR and equality. The section concludes by outlining the rationale for a discourse-analytic approach in the context of this enquiry.

The study examines the perspectives of HR practitioners who work at an operational level and who identify as 'generalists'. Farnham (1984, p. 99) defines 'generalists' as normally undertaking a large number of tasks across what was then 'personnel' activity. Similarly for current HR generalists, according to the CIPD (2015b), 'variety is the order of the day'. This research provides a voice to generalists in respect of equality and diversity; a field where in-depth analyses of HR perspectives on the realities of enactment are largely absent. This reflects a broader trend in scholarship *vis à vis* operational-level HR which has the consequence that little is known about HR on the ground (Paauwe & Boselie, 2005; Thompson, 2011). There is a resultant risk that conceptions of HR become reified without an examination of the experiences of practice (Guest, 1987). Lack of academic interest in operational HR is arguably an outcome of the HR profession's quest for recognition as a strategic function (Francis & Keegan, 2006; Marchington, 2008) and of the

mantra that successful HRM is predicated on the devolution of operational people management to line managers (Guest, 1987; Holt Larsen & Brewster, 2003; Purcell, 2012; Renwick, 2003; Storey, 2001; Thornhill & Saunders, 2013). Ulrich's (1997) construction of HR roles, particularly the notion of 'business partnering', has a normative force which dominates practitioners' understanding of how their role ought to be constituted. An analysis of practitioner talk enables an examination of how closely talk that is normative resembles talk of action.

The absence of HR practitioner voice in the field of equality and diversity creates an incomplete picture of enactment that impacts on our understanding of how HR 'do' equality *with* and *to* other organisational actors, specifically line managers, employment lawyers, employees and trade union representatives. It is an underpinning, *a priori* contention of this study that a considerable proportion of 'equality and diversity' work undertaken in organisations involves HR generalists, even where diversity specialists are also employed. This contention, the premise for the research, is founded on the researcher's background as a generalist and is obliquely evidenced in diversity management research which acknowledges the ongoing importance of compliance to the equalities regulation. Tatli's (2011) investigation into diversity practice and practitioners for example identifies that legal compliance issues continue to drive organisational policies and initiatives at the level of practice. The trend of studies to focus on diversity management and diversity specialists rather than HR generalists skews knowledge creation in this field, specifically obfuscating *equality* and the role of HR generalists. The study examines the discursive processes whereby the significance of equality and

its enactment by HR generalists become obscured in discourses of 'business partnering' and 'diversity management'.

In the literature review, equality and diversity are examined as distinct concepts which designate different approaches to the treatment and use of employees in the employment relationship. Equality has its basis in long-established, yet not uniformly interpreted, human rights discourse, and remains the recognised concept in the legal sphere (Shah, 2011). Equality has become discursively maligned as it has been succeeded and/or subsumed by concepts of diversity in management discourse and a large proportion of scholarly outputs (Oswick & Noon, 2014; Oswick, 2011). Originally a radical, academic concept oriented to addressing the perceived failures of equal opportunities and legislation to engender appropriate progress (Kirton & Greene, 2010), diversity is now arguably more often understood in its business case form. This is a utilitarian concept where employees' difference is valued only insofar as this difference can benefit the organisation (Hyman et al., 2012). The diversity management literature tends to concentrate on the benefits of a diverse workforce for employers but neglects to consider the realities of practice (Foster & Harris, 2005).

Nkomo and Hoobler (2014, p. 245) highlight that HRM scholars' and practitioners' use of the terms diversity, inclusion and discrimination, 'are often fuzzy in meaning and vary dependent on the geographical, political, and organizational context.' Despite the clearly demarcated discursive trajectory of equality and diversity in the literature, organisational policies often still contain both terms in their titles and content, and 'equality and diversity' and its shortened form 'E and D' can often be used as a term to *appear* to denote one

set of practices rather than two distinct approaches. This study examines the collocation of 'equality' and 'diversity', and investigates what the term/terms denote when used by HR practitioners.

The study additionally draws from the literature on regulatory space (MacKenzie & Martínez Lucio, 2014) to place the enactment of equality by HR practitioners in a broader context of how the different actors engaged in regulating the employment relationship are mandated within their spheres of influence. The construction of the legislation is examined from the perspective that this provides categories of employees and types of discrimination that are 'good to think with' (Parker, 2007, p. 79) and that the form of the law is therefore hugely significant in how equality is enacted. The forms that the legislation takes are shaped by government, with successive governments constituted of different parties taking the view, to different degrees, that regulation constitutes a 'burden' to business (Atkinson et al, 2014; Edwards et al., 2004; Pollert, 2007). The enactment of equality therefore unfolds in the context of a political discourse that legislation is antithetical to economic growth, which aligns with Ulrich's (1997) conception of HRM. The contribution of HR practitioners 'doing' equality in these political and HRM frames of reference is not self-evident; however the perceived risk of litigation, specifically the financial and reputational risks associated with receiving an employment tribunal claim, coupled with the legal complexity surrounding compliance to the equalities legislation, provide HR practitioners with a substantive role, and one that does make a valid, if not often recognised, contribution.

In order to explore the nuances of HR practitioners' enactment of equality, a qualitative, specifically a discourse-analytic methodology, is used in this study. This methodology informs both the theoretical base for the enquiry and the methods of data collection. Qualitative research enables the researcher to access the subjective experiences of individuals within work organisations (Cassell et al., 2006, p. 291). Qualitative studies which focus on the everyday interactions within work organisations can make the components of organisational processes visible to external parties such as policy makers (Miller et al., 2004). The discourse-analytic approach of this study is oriented to 'disentangling the processes through which the social world of organisations is constituted' (Phillips & Oswick, 2012, p. 438). Following Keegan and Francis (2010, p. 879), the thesis analyses 'how HR practitioners discursively constitute their own role, and how they ascribe particular positions to themselves and others'. This enables an examination of the nuanced processes and relationships through which 'equality' is performed in organisations.

Further reflecting Keegan and Francis (2010, p. 873), the study considers the ways in which practitioner speech 'interacts with broader social and material practices'. The study examines practitioner talk of the enactment of equality in context, considering the historical backdrop to contemporary practice (Hardy, 2001) and the temporal and geographic locations (Tatli & Özbilgin, 2012b) of the study. Studying organisational-level discourse within broader social contexts is recognised as challenging (Hardy, 2001; Keegan & Francis, 2010). Within this study, the historical and temporal contexts are considered in a review of the human resources, equality and diversity, and regulatory

literature. The geographic context of the South West is examined empirically in the first of the two chapters which focus on the findings and analysis.

Francis (2002) proposes that, while the findings of discursive HR research should be understood in the particular context within which they occur, contextually-understood findings have relevance in raising wider questions of HRM. By situating this study in the field of HR practice, and by taking a discourse-analytic approach, the study responds to Tatli and Özbilgin's recommendations that 'diversity' research consider not only marginalised groups, but also the role of majorities and privilege within organisational processes, relations and structures (Tatli & Özbilgin, 2012a, 2012b). As Acker (2006) highlights, power relations between organisational actors and the way in which work is apportioned are intrinsic to discussions of equality in the employment context.

1.2 The reconstructive approach of the thesis

The approach taken in this study towards HR's role in the enactment of equality is reconstructive, and the study seeks to provide the beginning of a 'critically performative' (Spicer et al., 2009) dialogue with the HR profession regarding the operational role undertaken by practitioners. This section explains 'reconstruction' and 'critical performativity' and argues their appropriateness to the aims of this research.

Reconstruction is defined by Jules and Good (2014) as a 'both-and' approach as opposed to the 'either-or' agendas of 'mainstream' and critical research. The literature considered 'mainstream' tends to seek the means by which

bottom-line performance can be enhanced, while critical literature places emphasis on social justice for employees, frequently demonstrating an anti-performative stance (Wickert & Schaefer, 2015, p. 108). The 'both-and' stance proposed by Jules and Good (2014) allows for an examination of the nuances of practice.

Alvesson and Spicer (2012, p. 376) propose a 'critical performative approach' to which is both critical/emancipatory, in that it questions widely-held assumptions, and moves beyond the 'naïve celebrations' of managerialist scholarship (ibid., p. 369), and is also performative, in that it aims to have an impact on practice by engaging reconstructively with discourse. A reconstructive approach would involve developing awareness within the HR profession that meanings are discursively constituted, rather than fixed.

The reconstructive 'both-and' stance of the study enables the key finding that HR practitioners enact a role that seeks to balance the often competing demands of performance and fairness, 'role tensions' (Boxall and Purcell, 2011) in the HR profession that are examined in more depth in Section 2.2.7. The relative balance achieved by the HR practitioners in light of these competing demands is likely to be problematic or unsatisfactory to scholars who have either a mainstream or a 'purist' critical (Alvesson et al., 2009 p.15) perspective on the employment relationship. The pursuit, however, of 'either-or' agendas renders research into the management of HRM 'tensions' of limited value to practitioners (Aust et al., 2015, p. 194). Visser (2010, p. 474) proposes that a 'rapprochement' between mainstream and critical scholarship could increase the relevance of research to those outside of academia.

Research tends to frame managers, including HR managers, as lacking agency and as faced with considerable ambiguity in their roles (Aust et al., 2015; Wickert & Schaefer, 2015). The reconstructive approach of this study adopts a methodological approach, discussed in Chapter 5, that considers the agency of the HR practitioners as well as the ways in which their practice is informed and constrained by the normative discourses of HRM. The point of orientation in critically performative research is participants' experiences, and from there to broaden the debate to the wider implications of these micro-level practices through critical questioning (Spicer et al., 2009). This requires the researcher to pay attention to the perspectives of participants that do not fit with theory (ibid).

The study involves the researcher's 'micro-engagement' with practitioners (Wickert & Schaefer, 2015, p. 107) with a view to beginning a reconstructive dialogue with the HR profession through publication of the findings. Wickert and Schaefer (2015, p. 107) identify that micro-engagement is the means by which researchers can 'ally' with manager-participants in order to provide spaces where, through the performative effects of language, new practices can be 'talked into existence'. In this respect, the approach of micro-engagement is incremental rather than radical (ibid). This study arguably constitutes the beginning of this dialogic process in that before spaces for new practices can be established in talk, the realities of practice *as they stand* require recognition: currently, these realities are talked out of existence through the discursive dominance of HR Business Partnering and diversity management.

1.3 The contribution of the thesis

Reflecting Oswick and Noon's call for scholarship to 'move beyond the unhealthy marginalization of valuable approaches simply because they are not fashionable' (2014, p. 36), this study examines how equality and a regulatory role for HR are discursively positioned as unfashionable. The study finds that, despite this discursive marginalisation, practitioner talk foregrounds a regulatory role for practitioners in their interplay with other organisational actors, and emphasising legal compliance.

The analysis of HR practitioner constructions of themselves and the other organisational actors engaged in the enactment of equality firstly contributes to understanding of the actors' respective legitimate roles (Keegan & Francis, 2010) within regulatory space in work organisations. Secondly the analysis highlights the processes whereby 'knowledge' of good practice in respect of employment law is constructed. Thirdly the findings provide insight into the HR/line manager relationship; specifically the differences between normative talk and talk of practice.

By taking a cross-sector and operational-level focus, the thesis addresses a gap in the literature. Academics writing in the field of HR have identified the relative lack of empirical studies which examine operational-level practice (Thompson, 2011; Watson, 2004). Bowen and Ostroff highlight that research on HRM practices and systems typically focus on contributions from 'a higher-level manager or HR executive' (2004, p. 216). Mainstream HRM is also argued to focus on HR practice in large scale corporations, largely ignoring practice in medium and small organisations (Delbridge & Keenoy, 2010). Renwick, for example, suggests that line manager approaches towards HRM

may vary according to the size of the organisation, specifically that the approaches of managers in large organisations may be more advanced than those working in SMEs (Renwick, 2003).

Research into organisational diversity reflects a similar trend in focus. Studies have tended to focus on diversity managers (Kirton & Greene, 2010; Tatli, 2011), diversity management in large organisations (Foster & Harris, 2005; Tatli, 2011) and/or diversity management in organisations recognised either for their good practice in this area (Zanoni & Janssens, 2004) or for their social justice mission (Tomlinson & Schwabenland, 2009). Kirton and Greene (2010) further note that most of the diversity management research in the UK has been conducted in the public sector. Oswick (2011) suggests that we know very little about the relationships between diversity, equality and inclusion in the everyday language of practitioners.

The tendency to locate both HR and diversity research in large corporations is arguably driven by the search for evidence of good practice. In analysing the talk of operational HR practitioners from different sectors and sizes of organisations, this study considers the realities of practice in a much wider range of organisations than is typically the case in HR or organisational diversity research. This approach addresses a number of issues identified with the extant research as discussed below.

Hope-Hailey et al. (2005) suggest that we know little about how HR roles are played out in organisations. Currie and Procter (2001) propose that we lack a clear idea of how the relationship between HR practitioners and line managers works in practice, and caution against viewing line managers as a single

group. Watson (2004, p. 454) argues that a critical analysis of enactment should take into account the 'micropolitical manoeuvres of managerial relationships' and the wider 'political economy of employment relationships' in which these exchanges occur. This would contribute to understanding of 'substantive issues' beyond the management of human resources itself (Watson, 1977, p. xi). The analysis of HR practitioner talk presented in this thesis provides insight into the ways in which the various organisational actors, i.e. line managers, employment lawyers, employees, and trade union representatives, interact with HR practitioners in set processes and power relationships in their 'doing' of equality. The study provides insight into the HR/line manager relationship, specifically what HR and line managers do in the enactment of equality, how HR practitioners construct different categories (Baker, 2004, p. 174) of line managers, and how the construction of these categories is performative (Burman & Parker, 1993) on the part of the HR practitioners.

Sheehan et al. (2014, p. 115) highlight that whilst there is a wealth of research which focuses on the relationship between HRM practices and organisational performance, the 'impact' of the role played by HR professionals receives much less attention. This study seeks to examine how HR practitioners' enactment of equality can be understood in terms of the legitimate types of 'contribution' that the HR function is expected to produce. As identified by Keegan and Francis (2010), particular discursive framings of HR normalise and prioritise certain HR approaches; practitioners' talk is informed by this normalising discourse, yet it also demonstrates that the requirements of the law impact on the work of HR in ways largely eschewed in contemporary HRM

discourse. Examining the realities of HR practice will have implications for attraction to and retention within the HR profession, particularly in respect of how the role tensions of financial short-termism and employee advocacy unfold in practice (Brown et al., 2009). The reconstructive purpose of this study is to examine the value of HR practitioners 'doing' equality to organisations.

1.4 Aims and objectives of the thesis

The aim of this research is to examine how the role undertaken by HR in respect of equality is constructed in practitioner talk. Drawing on 40 interviews with HR practitioners from a range of sectors in the South West of England, as indicated in Appendix 1, and employing a discourse-analytic approach, the study is constituted of the following questions:

1. How do the constructions of HR's enactment of equality draw from, modify and/or contend constructions of HR and HR roles as presented in the literature?
2. How are the relationships between HR practitioners and other organisational actors operating in 'regulatory space' constructed in talk?
3. How does talk of HR's role in the enactment of equality inform our understanding of equality and the equalities legislation?

Reflecting Truss (2001, p. 1134), the aims of this study are 'to go beyond the rhetorical level, which has been the focus of much of the 'best practices' literature, and ask: what is *really* going on (...)?' at the level of enactment.

1.5 The structure of the thesis

The structure of this thesis is as follows: further to this introductory chapter, there are three chapters which review the academic literature. The first of these chapters, Chapter 2, considers HR, including perspectives on personnel management, as these are pertinent to HR practitioners maintaining a 'regulatory' role. The chapter also considers the emergence of HRM and the discursive constructions of 'legitimate' HR work as framed by the HR 'business partner' concept. The chapter additionally considers the literature on the HR/line manager relationship. Chapter 3 discusses the literature on equality and diversity, specifically the concepts of equal opportunities, diversity, intersectional theory and the business case for diversity. Each of these concepts is discussed drawing on critical perspectives in the literature. The final chapter which reviews the literature, Chapter 4, considers the literature on regulation and legislation as relevant to this study and comprises sections which focus on HR practitioners in the enactment of regulation, the construction and practice of the Equality Act 2010, and the employment tribunal system.

Chapters 5 and 6 present the methodology and methods of the study. Chapter 5 sets out the rationale for the critical social constructionist paradigm which underpins this inquiry and the discourse-analytic ideology and methodology employed. Chapter 6 details the methods of the data collection and the associated ethical and evaluative considerations.

The findings and analysis of the study are discussed in Chapters 7 and 8: Chapter 7 considers HR practitioners' ownership of legal guardianship. The discourses analysed in this chapter are the geographical context for the study,

specifically the ways in which 'how far down we are' in the South West peninsula affects the enactment of HR; the focus on compliance in talk; HR's role in 'protecting' the organisation; the claim to employment law knowledge; the relationship with employment lawyers and the performance of the 'employee champion' role by proxy. The focus of Chapter 8 is on talk of risk and control. The discourses analysed in this chapter are HR's control of the borders and line manager 'freedom' within the borders; tribunal talk which involves talk of awareness and risk; the different subject positions attributed to line managers in the enactment of equality, and employees' awareness of rights.

Chapter 9 discusses the findings of the study. Reflecting the research questions, the discussion chapter includes sections which consider legal guardianship in respect of paradigms of personnel management and HRM, the 'contribution' of legal guardianship, the HR/line manager relationship, power and control, legal guardianship in respect of the discourses of E and D, and how the findings contribute to understanding of the legislation in practice. Chapter 10 concludes the thesis. This chapter indicates how the aims and focus of the study have been addressed, sets out the contributions of the research to scholarship and practice, acknowledges the limitations of the study, and additionally indicates the potential for further research.

Literature Review

In order to fully contextualise the primary research data of this study into HR's enactment of equality, the extant literature considered draws from the fields of human resource management, equality and diversity management, industrial law, and industrial relations. Commensurate with the lower-case 'critical' and social constructionist methodology of the study discussed in Chapter 5, the literature reviewed is principally critical in orientation. The three chapters of the literature review discuss the human resources, equality and diversity, and regulatory literature respectively. The three chapters are sequenced to build upon one another: as this study is oriented to developing understanding of HR practice, the human resources literature is the point of departure. The discussion of the equality and diversity literature that follows concludes with a section that considers the enactment of equality, thereby building on the HR *and* equality and diversity chapters. The third chapter, which considers the constructive force of the legislation and the concept of regulatory space, concludes with a section on the regulatory role of HR: as such, this section builds from the earlier chapters and represents the culmination of the literature review.

2 Human resources

This is the first of three chapters that review the literature. This chapter considers the mainstream and critical contexts of HR research, the emergence of HRM as a discursive replacement to personnel management, and the constructions of 'legitimate' HR work as framed by the HR 'business partner' concept (Keegan & Francis, 2010). The chapter examines the role tensions ensuing from the normative constructions of HRM and the questioning of the

HR profession's credibility. The chapter additionally considers the literature on the HR/line manager relationship and the contrasting perspectives on HR 'bureaucracy' presented in scholarship, placing these themes in the context of the enactment of equality. Throughout the chapter, there is an evaluative discussion of the ways in which these discourses position the role of HR.

2.1 The mainstream and critical contexts of HR research

Watson (2010) proposes that research should be clear on its standpoint regarding the use of the term HRM, specifically whether 'HRM' is used to denote the distinctive 'new' kind of management activity that emerged in the later part of the 20th century or refers more broadly to practice concerned with employment in the workplace. This study uses HRM in the first sense given above and the term 'HR' to refer to HR practitioners and the HR function more broadly. This is with the purpose of differentiating between the normative constructions of HRM as presented in the academic and practitioner literature, and the realities of HR practice which, despite being informed by HRM, are not necessarily always commensurate with its prescriptions.

HRM has been a contentious subject in both academia and industry since its emergence in the UK in the 1980s (Harley & Hardy, 2004; Maxwell & Farquharson, 2008). Delbridge and Keenoy (2010, p. 1763) suggest that 'HRM has emerged as a global discourse of corporate capitalism'; as such, there is a vibrant critical scholarship questioning the rationale and evidence for the dominance of HRM in the field of employment and people management. Harley and Hardy (2004) propose that the mainstream vision of HRM, constituted by a focus on managerial prerogative and 'bottom-line'

contribution, has come to be seen as 'true' and is unlikely to be dislodged from its prominent position in academic discourse in the near future.

There is limited interaction between mainstream HRM research, which focuses on performance, and the critical HR literature (Boselie et al., 2009). The mainstream/critical HRM debate has produced fireworks, disconnected monologues and an intellectual impasse (Janssens & Steyaert, 2009). A rapprochement of the two perspectives is considered unlikely (Delbridge & Keenoy 2010). The discussion in this chapter is drawn principally from critical HR scholarship. Despite the contention of critical scholars that HRM is conceptually fragmented, empirically incoherent and theoretically vacuous (Keenoy, 1999) and that it is a 'symbolic label behind which lurks multifarious practices' (Storey, 1995, p. 7), HRM has become an international framework used to analyse a wide range of issues (Delbridge & Keenoy, 2010).

Mainstream HRM research is 'moribund' from the perspective of critical scholars, who argue that it is characterised by a largely managerialist, prescriptive discourse (Keegan & Boselie, 2006) and increasingly homogenous research perspectives (Delbridge & Keenoy, 2010). Watson (2010, p. 915) argues that the critical study of HRM is necessary in order to counter the tendency for academics of HRM to act as advisors on 'best practice' who legitimise corporate interests. Critical scholars argue that the teaching of HRM in UK business schools reinforces the managerialist, consensus approach of research (Keegan & Boselie, 2006). By contrast, 'dissensus' approaches in HR research draw attention to hidden and less desirable aspects of practice (ibid p. 1508). Harley and Hardy contend the notion that HRM has colonised the discourse on the employment relationship

whilst acknowledging that, in resisting HRM, critical perspectives reinforce the dominance of HRM, reacting to it rather than 'setting the agenda' (2004, p. 393). Notably, industrial relations scholarship is critical of HRM not just through a rejection of its unitarist approach, but due to a perception that it is 'innocuous and uninteresting' (Marsden, 1997, p. 109).

Keenoy (1999, p. 16) suggests that HRM, IR and personnel management are not alternative approaches but 'different aspects of the same'. Theoretical and empirical studies have nonetheless sought to identify the ways in which HRM and personnel management are distinct from one another as approaches to people management. These distinctions are considered in the next section.

2.2 From personnel management to HRM

This section discusses those features considered to be salient in the constitution of HRM, specifically the differentiation between personnel management, the focus in HRM discourse on a strategic role for HR, the rhetoric of HR business partnering, the unitarist framework underpinning HRM, and the emphasis on 'high performance' and 'high commitment' work practices.

2.2.1 Personnel management

During the 1970s, personnel managers played an important role in 'industrial democracy' (Boselie et al., 2009, p. 462) by undertaking negotiations with unions in a period of significant union activism (Foote & Robinson, 1999). The personnel function was widely perceived to take a fair approach to listening to both employer and employees (Marchington, 2008). Diminishing union power tends to be presented in scholarship as a crisis of traditional industrial

relations, situated in the context of a new regime of employment regulation in the 1980s, the rise of HRM, and an associated, more assertive managerial prerogative (Martínez Lucio & Simpson, 1992).

Although the personnel function experienced a diminishing role in collective negotiation, the increase in employment law protecting individuals at work focused managerial attention on human resource management (Farnham, 1984). Legge (1995, p. 9) proposes that, in addition to their role in industrial relations, personnel specialists had begun to derive confidence as the 'interpreters and implementers' of the protective employment legislation introduced by Labour governments in the late 1960s and 1970s. This aspect of the personnel /HR practitioner role, key to the central argument of this thesis, is developed in section 4.4.

Legge (1995) highlights that the literature on what personnel specialists actually did in practice presented a disparaging picture. This honest negativity can be juxtaposed with the perspective that the normative constructions of HRM, by contrast, ought to be less aspirational (Maxwell & Farquharson, 2008). The progressive appearance of HRM as a concept led to academics consigning personnel management 'to the managerial backwaters' (Torrington & Hall, 1996, p. 82). Discursively, the metaphors and mythologies of HRM provide a rationale for casting the past as 'problematic' and for the development of the HRM project as a replacement for personnel management as 'inevitable' (Martínez Lucio & Simpson, 1992, p. 174). This is reflected in the work of Guest (1987), whose juxtaposition of personnel management and normative description of HRM uses the headings 'The Failure of Personnel Management' and 'The Decline in Trade Union Pressure'. As the 'decline' of

trade union pressure can be evidenced by the restrictions placed on trade union activity and declining membership, this has the force of inferring that the 'failure' of personnel management is similarly measurable and has 'facticity'.

Guest's (1987) normative proposition of the differences between personnel management and HRM characterises the salient features of personnel management as short term and reactive, focused on compliance and external control, pluralist, bureaucratic, professional and oriented to cost minimisation. By contrast, Guest constructs HRM as characterised by a long-term, strategic focus, an orientation to commitment and self-control, devolved and flexible roles, and a regard for people as assets. Hoque and Noon (2001) empirically analyse differences between personnel and HR practitioners by their respective qualifications, their influence on strategic thinking, the level of devolution to line managers and the adoption of practices associated with HRM, thereby identifying these four factors as salient in determining personnel versus HR modes of enactment. Devolution, the strategic orientation of HRM and the practices associated with HRM are discussed below. Rather than qualifications, the following sections consider the professional standing of HR with regard to credibility.

2.2.2 A unitarist framework

As 'fundamentally unitarist', HRM is argued to have little tolerance for multiple interest groups (Storey, 1995, p. 7). The shift to a unitarist frame of reference (Foote & Robinson, 1999) privileges employer interests and underemphasises employee rights (Keegan & Francis, 2010). The processes associated with HRM are individualised which has the effect of rendering collectivist discourses outdated (Holmes, 1995). In US management discourse, two

approaches to inculcating a strong employee/employer relationship in the individualised context are identified: the 'high road' approach to winning hearts and minds, and the 'low road' tactic of deliberately reducing union influence (Guest, 2001, p. 105). These approaches share similarities with the 'hard' and 'soft' models of HRM, discussed below.

The hard model represents a focus on the integration of HR policies, processes and systems with an organisation's overall strategy (Legge, 1995). The emphasis is on increasing shareholder value (Boselie et al., 2009) and a utilitarian perspective of employees as a resource (Legge, 1995). The soft approach is 'stakeholder' rather than shareholder oriented (Boselie et al., 2009, p. 463). The notion of soft HRM is founded in the premise that valuing and involving employees will encourage commitment and that competitive advantage will be achieved through this increased level of commitment (ibid). Francis (2002, p. 445) cautions against an approach which defines 'hard and soft practices as separate concrete entities'. Harley and Hardy (2004) note that it is possible to implement hard HRM using the language of soft HRM. Legge (1995) concurs that the two approaches are not necessarily incompatible and highlights that there are both hard and soft elements in the normative descriptions of HRM.

Ulrich's (1997) model of the strategic HR business partner is argued to have been instrumental in discounting the plurality of the employment relationship (Hailey et al., 2005), as is the dominance of positivist North American research into the employment relationship (Guest, 1987; Harley & Hardy, 2004). The separation between pluralistic personnel management and unitarist HRM is perhaps not as stark as many commentaries suggest. In stating that the

current, dominant conception of HRM is 'more openly and avowedly oriented towards the needs of employers', Marchington (2008) appears to infer that an orientation to management and the organisation had been evident in the personnel management paradigm, albeit less overtly so. Further, despite the emergence of HRM, 'launched' at 'status-conscious personnel specialists' (Keenoy, 1990, p. 3) pluralistic personnel management had 'quietly survived' (Keenoy, 1990, p. 6). Further, the discussion in the HRM literature of the 'decline' of 'collective and adversarial issues' (Guest, 1987, p. 504) suggests that adversarial employment relationships are erasable as part of collective organisation: the literature concerning the employment tribunal system, discussed in section 4.3, provides evidence that the harmony of the employment relationship implicated in normative constructions of HRM is simplistic and naïve.

2.2.3 Strategic HRM

Purcell (2001, p. 59) highlights that the integration of HRM with strategy is agreed by 'virtually all authors' to be '*the* distinctive feature of HRM, compared with personnel' [emphasis in original]. Maxwell and Farquharson (2008) note that there is a tendency in to assume that HRM invariably means a strategic focus on the management of people. Boxall and Purcell (2011, p. 184) argue that 'strategic' is 'an overworked word' in the HRM context. A strategic role, often equated with 'gaining a seat at the top table' has been considered necessary in order for HR practitioners to be counted as valued contributors (Marchington, 2008). A seat at the top table is argued to be attainable for the profession where it forgoes its welfare origins and learns to speak the language of business performance (Francis & Keegan, 2006).

Increasing involvement in HR strategy and reduced involvement in operational matters are constructed as the 'ideal' trajectory for the HR function (Torrington & Hall, 1996, p. 81). Torrington and Hall note that involvement at the level of strategic and devolution of operational tasks to line managers were accepted and aspired to by HR practitioners (ibid). Keegan and Francis (2010) demonstrate that Ulrich's (1997) 'strategic partner' role has become relatively synonymous in practitioner talk with the HR Business Partner job title. Wright similarly found that practitioners identified strongly with the discourse of HR 'business partner' and 'internal consultant as a preferred work identity' (2008, p. 1072), and highlights this as a strong reflection of the prescription within the HR literature. Wright notes that there is a bifurcation of the HR profession between 'routine transactional' and 'strategic transformational' activities, and that this encourages competition *within* the profession (2008, p. 1063) [emphasis in original]. Purcell (2012, pp. 162–4) identifies four goals within 'strategic HR management': the achievement of cost-effective labour, the achievement of organisational flexibility, the preservation of 'management prerogative' and the requirement to achieve social legitimacy. The final goal of social legitimacy is cited by Purcell as the 'counter weight' to the other three managerial concerns and the goal that mandates 'at its basic level' an acceptance of the need to comply with employment legislation (2012, p. 163).

Wright (2008, p. 1075) notes that the reality of much HR work fails to resemble the ideals of 'strategic advice' and 'change agency'. There is evidence that, where certain members of the HR function take a 'business partner' role, other, more traditional aspects of HR/personnel are simply maintained by other members of the team (Pritchard, 2010; Sheehan et al., 2014). Additionally, the

work of 'business partners' can involve established activities that, whilst not fashionable, are essential, along with increasing demands from 'internal clients' (Wright, 2008, p. 1075). The work of the HR Business Partner may therefore not be as distinct from other HR- and personnel manager-type roles, and the use of the HR business partner job title within HR functions may mask the existence of other HR roles which continue to undertake more traditional, transactional tasks. In sum, the literature presents a mixed picture as to whether talk of the enactment of equality would vary according to the job title of the research participants in this study, and the role-orientation that the title signifies. According to the logic of the normative, mainstream HRM literature, line managers should be undertaking people management activities, including those relating to equality and diversity, at a routine, transactional, operational level where their HR colleague is an HR business partner; the same literature would suggest that more equality and diversity work of this kind continues to be undertaken by the HR function where the titles HR Manager/Advisor are used. This delineation is examined further in section 2.3 which considers devolution of HRM to line managers.

Where HR takes a purely strategic role, this is argued not to lead to sustainable high performance and also to lead to a situation where employees feel increasingly estranged from the HR function (Hope-Hailey et al., 2005). Within the business partner model, employee relations are reinterpreted in a unitarist framework where the task of the business partner becomes that of treating employees with dignity whilst ensuring that goals of efficiency and performance remain common to all stakeholders (Foote & Robinson, 1999; Francis & Keegan, 2006). The challenge implicit in Ulrich's model therefore is

that employee-centred work, while considered essential to organisational effectiveness, is difficult to capture as a measure in accounting terms (Brown et al., 2009).

Despite the theoretical status of the 'employee contribution' role in Ulrich's (1997) model, employee advocacy is framed as an operational concern (Keegan & Francis, 2010). Practitioners construct the 'employee champion piece' as outmoded, related to routine administration, and, as such, not core to current HR work (Keegan & Francis, 2010). Sheehan et al. (2014) similarly found that those practitioners seen to be biased towards employees were perceived to have less strategic capability and credibility. Holt Larsen and Brewster (2003, p. 231) suggest that, where HR take a 'strategic partner' approach, this may give rise to line managers adopting the employee champion role in an effort 'to protect their staff from the hard-nosed interventions of HR'. Whilst the employee champion role is tasked with treating employees 'fairly and with dignity' (Keegan & Francis, 2010, p. 875) and may ostensibly appear the HR 'role' most associated with the enactment of equality, there is little empirical investigation into whether this is the case.

2.2.4 Best practice and best fit

A further defining feature of HRM is the contention between 'best practice' and 'best fit' approaches (Paauwe & Boselie, 2003). The 'best practice' stance proposes the success of certain HRM approaches regardless of an organisation's characteristics (Paauwe & Boselie, 2003). The 'best fit' perspective argues that certain HRM strategies work best in particular types of organisation, specifically that there is integration between the organisation's overarching strategy and its HRM policies and practices. Schuler and Jackson

(1987) build on Porter's (1980) typology of competitive strategies to propose 'best fit' HR strategies. There is an assumption within this model that 'cost leadership' will only require low employee involvement and 'personnel management', whilst 'differentiation' will have a high concern for creative involvement, requiring more sophisticated HRM. This perspective posits that attempts to apply a human resource strategy with established workforces who are not inclined to 'display high intrinsic motivation at work' will perhaps be both undesirable and unfeasible (Guest, 1987, p. 516).

Purcell (2001) suggests that it is not possible for HRM to be both strategic, and to constitute one set of 'best' practices. Purcell cautions that the notion of best practice 'leads us into a utopian cul-de-sac' (1999, p. 36). This is firstly on the basis that organisations cannot simultaneously adopt the same practices and differentiate themselves from their competitors. Secondly, Purcell problematizes Guest's (1987) argument for HRM strategy to integrate with marketing, finance and operations strategy in the context of 'best practice': given that that sectors adopt different approaches to marketing, finance and operations, it is illogical that one set of HRM practices will 'cohere' with these other strategies. Truss (2001) further challenges whether it is possible to identify a universal set of high performance HR practices given that organisations are, at an informal level, inimitable. In respect of the enactment of equality, the voluntaristic 'business case' arguments for diversity management, discussed in Chapter 3, fit more readily in the best practice/best fit debate than a consideration of how an organisation through its HR function may implement the equalities legislation. If the implementation of the equalities legislation were to be considered in terms of best practice/best fit concepts,

then this would align more with arguments of best practice on the basis that the legislative framework does not differentiate between types of organisations.

2.2.5 High commitment, high performance

Identified with the 'best practice' arguments, a concern to identify which practices constitute 'high commitment, high performance' HRM is a further key preoccupation in mainstream HR research (Delbridge & Keenoy, 2010; Francis, 2002; Hailey et al., 2005). Purcell (2001) argues that the quest to establish the connection between HRM and business success, particularly high commitment management (HCM) and its North American variant, high performance work systems, (HPWS) had overtaken the search for the linkages of HRM and strategy. HPWS focus on individual reward systems whilst HCM aims to achieve high performance through the slightly more indirect route of inculcating commitment to the culture of the organisation. The pursuit of evidence for 'high performance' HRM arguably leads scholars to focus their studies in 'top employer organisations' (Maxwell & Farquharson, 2008, p. 319). Legge (2001, p. 25) highlights that there is little consensus among proponents of the relationship between HRM and high-performance as to *which* practices will contribute to 'high performance'.

Guest (1987) highlights that there is an assumption in the high commitment literature that committed employees will demonstrate higher levels of satisfaction, productivity and adaptability. Guest further notes that, rather than 'to the organisation', employees may be committed to their careers (ibid, p.513). Truss identifies that the theoretical bases for the linkage between HRM and performance are founded on the assumption that *having* appropriate HRM

policies inevitably leads to their effective implementation (2001, p. 1126). Truss proposes that, whilst studies into high performance work practices have provided insight into some of the mechanisms which organisations can use to generate improved performance, these studies can overlook the role of other significant contextual factors in producing outcomes. HR research tends to focus on policies and strategies rather than on the role played by organisational actors, and HR as a function, in their enactment (Hope-Hailey et al., 2005). In this study, the role of organisational actors as constructed by HR practitioners is the specific focus of the analysis. As a qualitative study, this investigation into the enactment of equality by HR is able to consider the nuanced context within which practice takes place and does not seek to identify a particular 'best' practice.

Francis (2002) identifies that the high-commitment HRM model is underpinned by positivist assumptions. Positivist assumptions that HRM practices can easily be defined and measured (Francis & Sinclair, 2003) have encouraged HR to succumb to the 'mantra' of measurement (Marchington, 2008, p. 10). The necessity for HR to reduce costs, increase organisational competitiveness and align HR practice with business strategy 'are presented as urgent and inevitable' (Keegan & Francis, 2010, p. 878). The 'bottom-line imperative' of high performance dominates many discussions of how HRM makes a contribution to organisations (Hope-Hailey et al., 2005: 49). Whatever form the HR function takes, there is an increasing level of pressure for the function to prove its value (Holt Larsen & Brewster, 2003) particularly in the wake of the financial crisis of 2008 which heightened attention on efficiency and competitiveness (Dobson, 2013). Hoque and Noon (2001) note the

vulnerability of HR in the face of sceptical managers if the function is unable to demonstrate its unique contribution. Measuring the contribution of the HR function is however fraught with difficulties (Cunningham & Hyman, 1999). Wright and Snell (2005) suggest that, no matter how extensive or useful the metrics developed by HR are, they do not wholly succeed in producing the desired effect of convincing other organisational actors of the value that HR adds. This suggests that demonstrating the contribution of the enactment of equality will be problematic for HR practitioners in the wider context that even more 'strategically-aligned' HR tasks prove challenging in this respect.

The pressure to demonstrate financial contribution has implications for how 'legitimate' HR work is defined (Keegan & Francis, 2010), specifically, the discursive construction of HR work in terms of the language of competitive advantage is leading to the elimination of tasks which relate to employee advocacy and fairness (ibid). The financial performance orientation of much HRM literature typically focuses on short-term outcomes, namely a focus on shareholder returns in the private sector, or cost-reduction in service provision in the public sector, and ignores longer-term indicators and those indicators pertaining to impacts on employees (Marchington, 2008). Whittaker and Marchington (2003) suggest that line managers are likely to take people management issues less seriously than production or service targets. This discursive framing leads to a tendency for practitioners to use business terms and expressions to construct what they want to do and be in their roles (Keegan & Francis, 2010) The dominant 'strategic' business partner discourse is however contested by some practitioners (Keegan & Francis, 2010). This study, in examining the enactment of equality by HR practitioners, provides an

analysis of how the different discursive constructions of HR roles are interpreted in practice.

2.2.6 Credibility

HR practitioners are constructed as a relatively weak professional group. Specifically, HR practitioners face issues of powerlessness or marginality in decision-making, are not able to defend the boundaries of their professional expertise, and lack clarity in specifying the contribution of the function (Caldwell, 2003). In this context, the HR profession's 'struggle to win credibility' is deemed to be ongoing (Watson, 2007, p. 142). As observed by Wright (2008, p. 1063), HR practitioners have demonstrated a recurrent concern for the status of HRM and for its standing as a managerial profession. The development of personnel/HR reveals 'an occupation engaged in a process of professionalization', and one that has had limited success in this process (Wright, 2008, p. 1066). HRM's position as a 'lower-status function' is attributed by Gollan (2012, p. 291) to the function's lack of financial literacy. Torrington and Hall (1996, p. 83) suggest that issues for the profession stem in part from business schools: the teaching of HRM sets inappropriate, idealized agendas that, whilst theoretically sound, are unachievable in practice, thereby undermining the confidence and effectiveness of practitioners .

Practitioners' appetite for status (Caldwell, 2003; Keenoy, 1990) and particular interest in self-labelling (Watson, 2007, p. 142) is colourfully documented. Kennoy (1990, p. 3) for example, notes the 'Gadarene rush' that characterised the profession's switch from personnel to HR, a transition also defined in the literature as a 'metamorphosis' (Cunningham & Hyman, 1999; Foote &

Robinson, 1999). The HR profession has 'allowed itself to be seduced by the glittering prize of becoming a 'business partner'' (Thompson, 2011, pp. 363–364), a shift which has been celebrated by the CIPD (Francis & Keegan, 2006). The shift has been heralded arguably on the basis that the HR business partner and strategic partner labels 'offer (the promise of) some relief from the chronic lack of professional status of HR functionaries, and the marginalization of HR work' (Keegan & Francis, 2010, p. 891). Guest and King (2004, p. 422) however suggest that HR professionals have largely failed to secure the 'capitalist righteousness' they have sought as business partners.

The concept of a strategic role for HR is problematized on two fronts: firstly, HR functions, whilst often succeeding in gaining a seat at the top table, have had limited success in permeating strategic decision-making with their organisations, 'in effect being asked to help choose the wallpaper once the house has been designed and built' (Marchington, 2008, p. 8). In this context, whilst HR managers aspire to a strategic role, they are nonetheless still 'required to fulfil their duties as a functional expert' (Gollan, 2012, p. 298). Secondly the orientation towards a strategic role devalues operational level duties and the specialist expertise long held at the heart of the profession (Keegan & Francis, 2010). This suggests that the strategic role is somewhat illusory, and that the force of the illusion serves to undermine the value of the operational realities still undertaken by HR practitioners. Parker (2007, p. 74) suggests that a professional identity, which provides its professionals with a source of identification outside of their employing organisation, can be a resource used to make 'a claim to a unique understanding of what the organisation should do'. This could be argued to align with 'best practice'

arguments, and also to reflect the CIPD's (2012) *Revised Code of Professional Conduct* which sets out the institutes expectations of practitioner conduct under the headings of 'Professional Competence and Behaviour', 'Ethical Standards and Integrity', 'Representative of the Profession', and 'Stewardship'. Part of the analysis undertaken in this study is to consider how, as legal guardians, HR practitioners enact these four 'fundamental principles' of HR professionalism (CIPD, 2012, p. 1).

2.2.7 Role tension

In addition to issues of credibility and status, Purcell (2012, p. 174) notes that, unlike most other management 'specialisms', HR has 'always been beset with ambiguities and tensions'. At the heart of the role tensions in HR is the challenge of reconciling the demands of efficiency with those of social justice in the employment relationship (Boxall & Purcell, 2011). Wright and Snell (2005, p. 178) identify that HR practitioners encounter professional conflict in seeking to balance competing economic and ethical demands, and suggest that practitioners may be prepared to 'take a shortcut' towards business leader-status by sacrificing professional ethics. Such short-cuts are encouraged by HRM discourse, in which business concerns 'swamp' issues of employee well-being (Keegan & Francis, 2010). The ability of HR practitioners to influence ethical practice in their organisations is considered dependent on both the values of their organisation and on their own status and credibility (Foote & Robinson, 1999).

Caldwell (2003) problematizes both Storey's (1992) fourfold typology of personnel roles and Ulrich's (1997) multiple roles model on the basis that neither model can accommodate the tensions between competing role

demands, expectations of performance and new challenges to professional expertise. Caldwell notes that most of the practitioners interviewed in his study 'had multiple roles' (2003, p. 990). Constructions of HR 'types' will, however, both implicitly and explicitly inform practitioner perceptions of their roles; Ulrich's conception has, for example, been 'widely endorsed by UK practitioners' (Caldwell, 2003, p. 984).

De Gama et al. (2012) suggest that HRM sits in judgement of employees whilst offering an illusion of proximity. In this context, HR practitioners have a strong awareness of 'their in-between space' (de Gama et al., 2012, p. 102). This reflects elements of Farnham's (1984) 'third party role' of personnel, and further, De Gama et al. suggest, Bauman's (1993) concept of 'the Third'. Bauman (1993, p. 113) proposes that 'the Third' is encountered when we enter the 'realm of Social Order ruled by Justice'; the Third is a disinterested party ostensibly tasked with objectivity who acts as the umpire to two parties, themselves 'replaceable' (1993, p. 114). In taking a judgemental, 'third' role, HR practitioners may appear to be acting as the arbiters of fairness, as categorised by the pluralistic personnel paradigm; however, in the now dominant unitary framework, the neutrality is illusory. Whilst 'the Other' from whom the HR practitioners are separated in this concept is most immediately employees, it may also arguably include line managers, upon whom the HR function may act as an umpire.

The majority of respondents in Foote and Robinson's study of HR practitioners (Foote & Robinson, 1999, pp. 95–96) were categorised by the authors as 'honest brokers' falling between either a highly ethical or 'organisational role'. Among the majority 'honest broker' category, the view that providing support

to line managers and directing business change were more important than looking after the needs of employees prevailed. Demonstrating insider status to the HR profession, Wright and Snell propose that 'we are the guardians of our organisations. We guard and preserve strategic capability, people and values' (2005, p. 177). Again emphasising 'insider status' (Taylor, 2001a), Wright and Snell argue that '[w]hen we fail to guard these things, our firms fail—financially, strategically, legally, and morally' (2005, p. 178). This rallying call to guardianship is interesting in that it infers that the challenge of the apparently conflicting goals of achieving economic efficiency and maintaining values is understood as intrinsically part of the role of HR.

Wright and Snell (2005) construct four aspects of guardianship for HR: strategic, ethical, legal and financial. The 'strategic' element 'is concerned with building an organization capable of delivering customer outcomes', with a focus on 'processes, technologies, culture, and the skills and commitment of the workforce' (Wright & Snell, 2005, p. 180). The ethical dimension relates 'to doing what is morally right' thereby prioritising 'social responsibility, organizational values, and individual integrity'. The legal 'values' aspect of HR's role places emphasis on 'not violating the law. Priority is given to compliance with existing legal and regulatory systems and the avoidance of lawsuits and legal proceedings'. Thompson (2011, p. 364) argues that it is unrealistic that a 'return' to ethical practice will happen unless prescribed by regulation; drawing on Wright and Snell's definitions, this suggests that there may be a nuanced link between HR's legal compliance and ethical roles. This is particularly salient in HR practitioner's enactment of equality.

2.3 Devolution of HR practice to line managers

This section considers the discursive prominence afforded to the concept of devolving HR practice to line managers, the HR/line manager relationship, and line manager competency in delivering HRM. Devolution, were it accomplished in practice, would position line managers as the principle enactors of workplace equality at an operational level.

2.3.1 The context of devolution

Currie and Procter (2001) highlight that the relationship between the HR function and line managers has long been identified as important in HRM. Both mainstream and critical scholars accept that an increased role for line managers is a characteristic of HRM (Thornhill & Saunders, 2013). Storey (2001) identifies the importance of devolution to line managers within the HRM paradigm. Guest's (1987, p. 504) normative construction argues for HRM to be a 'mainstream management activity' which is, therefore, 'too important to be left to often marginally located personnel managers'. Renwick proposes that, whilst line managers have always been involved in managing human resources, HRM places them 'centre stage' (2003, p. 262). As line managers were already involved in the daily routine of people management activities prior to the introduction of devolved HRM (Keenoy, 1990; Renwick, 2003), the business partner argument that responsibility for people management should be devolved to the line is misleading (Keenoy, 1990). Gollan (2012) suggests that the relationship between the HR function and line management is a relatively underdeveloped area in HR research both in theory development and empirical data.

Whilst the notion of line managers accepting greater responsibility for HRM is now 'received wisdom' (Holt Larsen & Brewster, 2003, p. 228), the UK and Ireland, nations who appear to most subscribe to this notion, are 'consistently near the least devolved end of the spectrum' in practice (Holt Larsen & Brewster, 2003, p. 240). Torrington and Hall (1996, p. 94) argue that the push to devolve operational issues to line managers was 'often a pragmatic response to a fashionable idea' as opposed to 'a thought-out strategy', and that devolution was arguably harder to achieve than involvement in HR strategy. Purcell (2012, p. 172) proposes that the 'movement' towards making line managers more responsible for HR practices continues. Investigating the different practices of those practitioners with 'personnel' and 'HR' job titles respectively, Hoque and Noon (2001) found that, where there was an HR practitioner, *authority* was more likely to have been devolved to line managers. Therefore, where personnel managers both 'did' and 'decided', HR practitioners continued to 'do' but relinquished the decision-making to line managers [my use of quotation marks]. 'Authority' as a term, is perhaps indicative of both power and responsibility. Sheehan et al. (2014) identify that devolution creates a paradox for HRM, namely that HR sets out to relinquish *power*, but maintains the *responsibility* for the effective management of human resources, thus decoupling power and responsibility. Holt Larsen and Brewster (2003, p. 238) note that devolution to line managers is something of a 'moveable feast', in that certain aspects of HRM are more likely to be devolved than others. Bond and Wise (2003) note that there is a lack of consensus in the literature regarding which HR practices have been devolved

to line managers, as research has focused on different practices and different sectors.

Devolution to the line would diminish the need for HR practitioners (Cunningham & Hyman, 1995, 1999; Holt Larsen & Brewster, 2003; Renwick, 2003). This is considered desirable for organisations in that the HR function represents an overhead cost (Holt Larsen & Brewster, 2003). This is discursively presented as positive for the HR profession: Cunningham and Hyman (1999, p. 11) for example, propose that an 'optimistic' outcome of devolution to line managers would be the freeing of HR practitioners from the 'burdensome toil of conducting routine techniques', defined as 'training, selection and recruitment, discipline and dismissal, appraisal, counselling [and] pay level activities'. Whilst this is 'optimistic' in respect of theoretically securing a more strategic role for HR as a profession, a reduction of HR's involvement in 'routine' tasks is less than optimistic in terms of the likely reduction in HR positions overall. Torrington and Hall note two different perspectives towards devolution among [the then] personnel specialists: 'single-minded careerists' keen to be free of the 'handicap' of an operational role, and those who were apprehensive of devolution and saw this as 'selling off the family silver' (1996, p. 93).

A further purpose of devolution of people management is the lifting of controls and restrictions placed on line managers by the HR function (Holt Larsen & Brewster, 2003, p. 229). Line managers and HR specialists however agree that heavy workloads and the pressures of short-term targets are the principle barriers to line manager involvement in HR activities (Maxwell & Watson, 2006). Renwick (2003, p. 276) proposes that this could lead to the creation of

a 'structural hole', where neither the HR function nor line managers undertake people management tasks effectively. Gollan (2012, pp. 288–289) similarly suggests that the roles of the HR manager and line managers in the context of devolved responsibility are often not clearly thought through, and questions whether the sharing of responsibility would lead to increased status for HR specialists, or rather to 'HR specialists losing control over both the process and outcomes in ways that inhibit, rather than help the firm.' Currie and Procter (2001, p. 54) suggest that HR managers appear to want to hold onto at least some of their operational responsibilities, and that there is a sense that 'operational and strategic concerns should not be regarded as substitutes for each other'. As such, assisting managers with decision-making at an operational level, rather than being a finite step in the process towards the accomplishment of strategic HRM, is arguably an ongoing element of strategic HRM. As Renwick (2003, p. 272) notes, '[t]he line are reliant on HR to do HR work properly'. Research into line manager and HR roles in the enactment of HRM therefore suggests a 'seamless transfer' of responsibility from HR practitioners to line managers is proving to be a challenge (Currie & Procter, 2001, p. 54).

Legal matters are likely to involve heavy involvement by HR specialists, as the cost-saving of reducing headcount in the HR function could lead to an increased risk of costs arising from line managers' inappropriate or even illegal decisions (Holt Larsen & Brewster, 2003). In order to examine devolution further, the next section considers the notion of 'partnership' between HR and line managers, studies of line manager competency, and the HR/line manager relationship.

2.3.2 The HR/line manager relationship

Research presents a mixed picture in terms of the relationships between HR practitioners and line managers. Renwick (2003) found significant conflicts and tensions in the 'partnership' between HR and line managers. Maxwell and Watson (2006, p. 1153) similarly found that HR specialists and line managers 'often have dissonant opinions on human resource management' and that line manager/HR partnerships do not generally operate as effectively as intended. Bond and Wise (2003) highlight that a 'good' relationship between HR and line managers does not necessarily lead to managers having better knowledge of policies. Maxwell and Watson (2006) propose that there is a correlation between firm performance and HR specialists' and line managers' perceptions of their working relationship: business units where perceptions of the relationship are most divergent perform poorly, whilst the best performing business units are those where there is the greatest convergence of perceptions. Maxwell and Farquharson (2008) by contrast found little evidence of 'challenging relationships' between HR specialists and line managers. Whittaker and Marchington (2003) describe how the HR and line manager 'partnership' can comprise HR providing the framework for line manager decision-making in, for example, recruitment and selection.

Maxwell and Farquharson (2008) found that HRM is regarded as a specialist function, with the purpose of supporting managers in delivering operational-level HRM. Maxwell and Watson (2006) suggest that the support given to line managers by HR specialists includes support with recruitment and retention, appraisals, and advice on disciplinary matters. HR specialists were found to rate this support more highly than line managers (Maxwell & Watson, 2006).

Maxwell and Watson infer from this that greater support could be offered to line managers, and highlight that line managers perceive that they require more training in respect of people management. Bond and Wise similarly highlight issues around a lack of training; including specifically that training intended for line managers was not necessarily reaching them (2003). Counter to the logic of devolution, the requirement that line managers develop new and enhanced people management skills would involve more rather than less input from HR (Keenoy, 1990). Cunningham and Hyman (1999) problematize the value of training in the context of line manager perceptions of *experience* as being the best mode of developing people management competence. As argued by Torrington and Hall, 'expertise and experience are developed and enriched by specialist attention in a way that a general manager with a much more diverse agenda will never achieve' (1996, p. 95).

Line managers need well-designed HR practices in order to motivate and reward employees, to manage performance and to deal with employee needs (Purcell & Hutchinson, 2007). Increased devolution to line managers would require an upskilling of line managers to ensure adherence to in-house policies and legal requirements (Whittaker & Marchington, 2003). Bond and Wise (2003) propose that, whilst it is the role of the HR function to ensure that their organisation complies with employment regulation, line managers play an increasing role in determining employee access to their rights. Whittaker and Marchington found that senior line managers were overwhelmingly of the opinion that issues with wider legal or policy implications should continue to be dealt with predominantly by HR practitioners (2003). Cunningham and Hyman (1999) found that, where line managers expressed satisfaction with

the support offered by personnel/HR specialists, this related to the provision of advice in the background and to clarification of rules and regulations in employment matters. Foster and Harris argue that increased legislation will lead to line managers needing more support and guidance from HR (2005). Bond and Wise (2003) propose that line managers require clear and accurate knowledge of the statutory rights of employees and the voluntary provisions made by the organisation.

Holt Larsen and Brewster (2003) suggest that, whilst line managers have responsibility for HRM in their areas, the responsibility of HRM *across the organisation* is that of HR specialists. The notion of consistency as integral to the success of HRM is discussed further in section 2.4.2. Physical distance between line managers and HR practitioners is identified as having a negative impact on the HR function's ability to communicate effectively (Bond & Wise, 2003) and to provide line managers with the direct and immediate, 'hands-on' support they state that they require, and to which line managers had grown accustomed in the era of personnel management (Whittaker & Marchington, 2003, p. 256). Holt Larsen and Brewster (2003, p. 240) note that, in many organisations where responsibility has been devolved, it is only a short period of time before the HR department finds it necessary to monitor line manager activity and line managers begin to ask for HR specialists' help with 'exceptional' cases, with the outcome that 'devolution' starts to reflect previous modes of interaction and enactment.

Torrington and Hall found that, although the then personnel departments had begun to relinquish some authority and responsibility, they retained an active, joint *involvement* with line managers 'to a greater extent than might be

expected according to the models representing the ideal' (1996, p. 92). Currie and Procter (2001, p. 66) found that the HR function of an NHS hospital 'organises itself so that HR professionals work closely with middle managers. This ensures that the vision of the corporate centre (...) and operational 'reality' are linked.' The authors' empirical findings indicate that this 'close work' involves HR practitioners giving different levels of support to managers depending on their level (2001, p. 63) and the personnel adviser being there 'whenever needed' (2001, p. 65). Whilst talk of linking the corporate vision with operational reality aligns with normative constructions of HRM, the inference of 'close work...whenever needed' is more aligned to the 'handmaiden' role of personnel 'a service provider at the behest of the line' (Storey, 1992, p. 172). Wright and Snell (2005, pp. 179–80) suggest that HR practitioners 'have obsessed about doing whatever is asked of by the line, whenever it is asked', proposing that this approach of working at the behest of line managers is exacerbated in periods of economic downturn. Wright and Snell suggest that this creates a situation whereby the HR function neglects the building of HR capability, which renders valuable HR contribution unsustainable (2005, p. 180). Using the metaphor of marathon runners who neglect to eat, Wright and Snell argue that it is only a matter of time before the function, or the individual 'runner', the practitioner, collapses (ibid).

Townsend et al. (2012, p. 207) suggest that the role of middle managers is one of the central components of the 'black box' of firm performance, i.e. the 'intervening variables that mediate the link between HRM and performance'. The literature suggests that line managers undertake their role with significant assistance from HR. Maxwell and Watson (2006) highlight a disparity between

HR specialist and line manager ratings of line manager competency in the enactment of HR, with just under half of HR specialists rating line managers as competent. Renwick (2003) similarly noted that line managers lacked capability and responsibility in some aspects of HR work (2003). In earlier research, personnel specialists perceived line managers as lacking in the skills required to take on devolved people management responsibility (Torrington & Hall, 1996), thus this view is an enduring feature of HR practitioner discourse. The discrepancy between HR practitioners' view of line manager competency, and line managers' own view of this could be caused by the gap that exists between what is formally required in HR policy and what is actually delivered by front line managers (Purcell & Hutchinson, 2007).

Hope-Hailey et al. (2005) found that the devolution of people management responsibility to line managers was problematic in that line managers lacked the capability and motivation to take on people management issues. There is a lack of incentive for line managers to contribute the same effort into people management as their primary task, as it is only their performance in their primary task which is measured (ibid). Line manager effort in respect of people management is therefore discretionary but will be influenced by the range and design of HR practices that they are expected to implement (Purcell & Hutchinson, 2007). This line of argument posits that line managers do not possess the necessary competency in people management to operate independently from HR support (Whittaker & Marchington, 2003). By contrast, HR practitioner talk in the study conducted by Keegan and Francis (2010, p. 890) indicates practitioners' favourable descriptions of 'self-sufficient

managers' and the link made in talk with a more strategic approach in HR. Here, devolution to the line is positively constituted.

Sikora and Ferris (2014, p. 271) argue that, whilst in most organisations the HR function is responsible for developing effective HR practices, it is ultimately line managers who implement the practices. Policies that are well-designed may be poorly implemented by line managers (Purcell & Hutchinson, 2007, p. 4; Sikora & Ferris, 2014, p. 272). The roles of line managers and HR in the enactment of equality is considered in more depth in Section 3.8. The next section in this chapter considers policies and processes, and the discourse of 'bureaucracy' in HR practice further.

2.4 'Bureaucracy' and fair process

This section discusses the contrasting constructions in the mainstream and critical literature of policies, procedures and processes, and the importance of consistency in HR practice.

2.4.1 Mainstream and critical views of 'bureaucracy'

Watson (2010, p. 919), drawing on the Weberian concept of bureaucracy, defines HRM as involving:

'the control and coordination of work tasks through a hierarchy of appropriately qualified office holders, whose authority derives from their expertise and who rationally devise a system of rules and procedures that are calculated to provide the most appropriate means of achieving specified ends'.

Watson suggests that HR managers are the 'appropriately qualified office holders'. This positive appropriation of bureaucracy for HR contrasts with

mainstream perspectives which construct rules and procedures as antithetical to business development. Storey (1995, p. 3) for example constructs 'pragmatic' and 'procedure-based' organisations as distinct to those that are 'innovative': the implication being that an organisation becomes 'innovative' in moving to HRM and leaving behind pragmatism and procedures. In Storey's discussion of 'The Warwick Study' (1995, p. 5), respondents (a range of employees at different organisational levels, not specifically HR practitioners) constructed 'business need' as the norm in terms of 'a guide to action', and associated this with a perspective which cast 'procedures, rules and contractual arrangements' as 'impediments to effective performance'. Guest and King similarly argue that operational directors perceive HR procedures to be 'an obstructive nightmare' (2004, p. 420).

The approach towards rules and procedures in the HRM discourse is in part a response to managers finding 'legal constraints' particularly frustrating (Whittaker & Marchington, 2003, p. 248). Foster and Harris note that, whilst line managers complain about excessive rules and bureaucracy, they demonstrate an awareness that fair procedures play an equally important role as substantive issues in employment tribunal claims and are 'ultimately likely to prefer the comfort zone of operating within clearly prescribed boundaries' (2005, p. 14). Renwick (2003, p. 273) found that line managers welcomed HR keeping them 'on the right track, especially when it came to matters concerning employment law.' Therefore, although the 'new' and dominant HRM paradigm is implicitly conceived in 'post-bureaucratic organisations' (Watson, 2010, p. 920), the extra-organisational regulatory context has the ability to disrupt

elements of the HRM paradigm and to foreground/necessitate the 'bureaucratic' processes identified by Watson.

It is perhaps also an oversimplification to construct high performance HRM scholarship as anti-process and policy. Bowen and Ostroff (2004, p. 206) define an 'HRM system' [my emphasis] as comprising a set of practices 'largely driven by the strategic goals and values of the organization', where the HRM practices 'help direct human resources in meeting this goal.' For an HRM system to be successful, Bowen and Ostroff (2004, p. 213) identify the importance of interactional justice, where managers 'openly and respectfully' explain reasons for decisions and outcomes. To enact interactional justice appropriately, line managers require competency and time. Employees can judge each individual HR practice and its application in terms of its utility to them, and in terms of fairness and legitimacy (Purcell & Hutchinson, 2007). Consistency is often cited as a key component in the fairness of an HRM policy: this is considered in the following section.

2.4.2 Consistency

Bowen and Ostroff (2004) discuss the importance of consistency in HRM messages: where a system is perceived to be both consistent and fair, Bowen and Ostroff suggest that this fosters a desirable consensus among individuals in an organisation. Whittaker and Marchington (2003, p. 250) suggest that HR involvement is highest where 'issues of consistency and expertise are most important'. Farnham (1984) similarly identifies that appropriate advice and assistance from the personnel function ensures equity and consistency in the application of policies. De Gama et al. (2012, p. 106) however argue that the HR function is 'the umpire of fairness and conscience *for* the organisation' as

opposed to being the 'critic and conscience of an organisation'. As such, HR practitioners acting '*on Others rather than for them*' (de Gama et al., 2012, p. 104). In this respect, the unitarist orientation of HRM appears to have played a significant role in demarcating the allegiance of HR practitioners in the enactment of 'fairness' and 'consistency'.

Foster and Harris (2005) propose that line managers regard centrally developed HR procedures the best method of ensuring consistency in order to minimise the risk of litigation. The limitation of this approach is that consistency is a relative principle and the pursuit of consistency in itself 'will not act as a catalyst for progressive employment practices' (ibid., p. 7). Kirton and Greene (2010, p. 257) however also found that devolution to the line coupled with a 'noninterventionist approach from the HR centre' was a problematic arrangement in some organisations: managers were believed to be perpetuating vertical segregation by unfairly giving low performance ratings to particular a social group in relation to another and decision-making in respect of flexible working requests was seen to vary widely from manager to manager.

Bond and Wise (2003) suggest that new regulation needs to be communicated more quickly and effectively to line managers, and raise a concern regarding the potential for inconsistent application of policies by line managers where responsibility has been devolved. Bond and Wise appear to level the blame for line managers' variable level or lack of knowledge of regulation at the HR function, attributing this to 'poor communication, training and support' (2003, p. 71). Bond and Wise propose that accurate awareness of policies among line managers is higher where policies are clearly codified in a handbook and

have been in place for some time. Bond and Wise also suggest that it is challenging for 'already overworked' managers to keep up to date with the latest regulatory changes, the inference being that this task remains the responsibility of the HR function (2003, p. 70).

Whilst line managers are identified as being poor at making HRM policy (Holt Larsen & Brewster, 2003), the theory of HR/line manager 'partnership' is that HR specialists and line managers will share in the creation of policy as well as in its implementation, with a view that this joint approach will lead to more realistic chances of implementation (ibid).

2.5 Conclusion to Chapter 2

This chapter has considered the portrayal in the literature of the journey of the HR profession from personnel management to HRM, the enduring issue of credibility and role tensions depicted as marring the profession, the foregrounding of devolution of HRM to line managers, and the contrasting views on HR 'bureaucracy'.

The discussion within the chapter arguably demonstrates that the 'involvement' of HR in people management is represented by a rhetorical commitment to HRM and devolution with an ongoing operational role for HR in practice. Renwick (2003) concludes that it is false to assume a split between a strategic role for the HR function and devolved operational HR responsibility for line managers, given that, in practice, the HR function is required to input a high level of participation to support line managers with 'devolved' HR practices, particularly concerning employee relations. Notably, Holt Larsen and Brewster (2003) found that line managers and HR specialists can be as

equally unwilling to accept devolution. This is supported by Renwick (2003) and Torrington and Hall (1996).

The literature therefore suggests that, contrary to the generic construction of devolution espoused in HR business partner discourse, the enactment of equality will involve significant input from the HR function and less devolved practice. This would serve to make the enactment of operational equality problematic for individual HR practitioners, and the profession as a body, in that such practice is delegitimised by the dominant discourse of HRM. The primary research undertaken in this study considers how this discursive illegitimacy is represented in talk. The purpose of this analysis is to consider the ways in which dominant discourses succeed rhetorically and whether there is evidence that these discourses have translated into action at an operational level. Having examined HR practice in this chapter, the following chapters of the literature review discuss theoretical and empirical research into equality and diversity, regulatory space and legislation, in order to analyse the specific equality enactment context for HR.

3 Equality and diversity

This second chapter of the three chapters which review the extant literature considers equality and diversity. This section examines the theories and critiques of equal opportunities which underpin the UK legislation, and additionally considers the diversity paradigm, intersectional theory, the business case for diversity management, and the merit principle. The final two sections discuss trade unions in the E and D context, and the enactment of E and D in organisations. The construction of the current UK equality legislation is discussed in its political and regulatory context in Chapter 4.

3.1 Equal opportunities

This section considers the discursive positions of equality in relation to diversity, the concept of equal opportunities, the basis of the legal framework in the UK on 'liberal' equality, and the critiques of this approach.

3.1.1 Equality as a discourse

Oswick and Noon identify equality, diversity and inclusion as 'anti-discrimination approaches' (2014, p. 35). Scholarship has demonstrated an interest in defining and classifying equality, diversity and inclusion as 'etymologically different' (2014, p. 23). The aim of establishing the conceptual distance between these terms has the effect of accentuating their differences (ibid). Oswick (2011, p. 18) argues that equal opportunities (EO) approaches are often presented as inferior to diversity management initiatives. EO approaches are portrayed as 'old, tired, failing and reliant on regulation imposed by the government,' whereas, in stark contrast, diversity management is presented as 'new, fresh and full of potential, with an emphasis on responsible self-regulation of organizations guided by the free market'

(Oswick & Noon, 2014, p. 25). 'Diversity' however does not appeal so powerfully to our sense of justice (Benschop, 2001).

Oswick (2011, p. 31) identifies that the prospects for equality, as a discourse, are not good in that, while equality continues to attract technical interest in law, and phenomenological interest in the social sciences, the interests of business and management scholars are more stimulated by the 'seductive' business-oriented discourses of diversity. Tomlinson and Schwabenland (2009) propose that the tension between the utilitarian business case arguments for diversity, and the approach founded on social justice and human rights represents a crucial point of debate in the E and D field.

The diversity management literature within business and management scholarship, discussed in this chapter at section 3.2, positions the equal opportunities approach as 'backwards, less developed, not adapted to current organizational needs and unfairly selective in those it assists' (Oswick & Noon, 2014, p. 25). Talk of 'managing diversity' and 'valuing diversity' pervades management journals, HR networks, and business education (Edelman et al., 2001, p. 1590). By contrast, the legal sphere retains a linguistic focus on equality, which remains 'a cherished value in the treasure trove of Western jurisprudence' (Shah, 2011, p. 77). Roper and Tatli (2014) argue that, despite the emphasis placed on voluntarism and the diversity management paradigm, it is legal enforcement which continues to have the most significant influence on the planning, design and implementation of organisational equality and diversity policies.

Oswick and Noon (2014, p. 32) propose that practitioners have been the primary 'fashion setters' in promulgating the different discourses of equality and diversity over time, and that 'practitioner-focused insight pre-dated serious academic engagement rather than the other way around' (2014, p. 34). Managers, and in particular management consultants, play a significant role in constructing 'new managerial rhetorics' (Edelman et al., 2001, p. 1594). Townsend and Wilkinson note that 'diversity' is the third most popular key word in the articles published in *Human Resource Management* between 2003 and 2012 (Townsend & Wilkinson, 2014, p. 204). Notably, in their list of the top 40 article keywords, 'equality' does not appear. Townsend and Wilkinson highlight that research tagged with the 'diversity' keyword may involve discussions of the legislative context, and that the choice of keyword may be informed by 'journal suitability requirements' (2014, p. 206).

Tatli (2011, p. 239) uses the terms 'critical diversity management' and 'mainstream diversity management' to differentiate between studies 'which explore discrimination in employment around group-based disadvantage' and 'mainstream studies, which investigate performance related outcomes of diversity.' Tatli thus includes the social justice case for equality *within* the term 'diversity', rather than using 'equality and diversity' as the overarching term. This is indicative of a trend within the literature. Thus, in much the same way that 'IR is increasingly subsumed to HRM' (Marsden, 1997, p. 110) discussions of equality have been subsumed into a grand discourse of diversity in management and critical literature (Oswick, 2011, p. 30).

3.1.2 Equal opportunities and liberal equality

Riva (2015) argues that the role of the state in aiming to realize equality of opportunity is an established part of Western political culture, and that, even where inequalities persist and in some instances are increasing, few citizens would describe inequalities based on characteristic as just or right. The distinction Riva makes between 'just' and 'right' is considered in the analysis of practitioner talk in section 7.7. Whilst the *principle* of equality of opportunity is uncontroversial and widely accepted (Arneson, 2013), Riva (2015, p. 295) notes that the application of equal opportunities remains contentious, and that the focus has tended to be on 'whose and which opportunities' rather than on defining what is meant by an 'opportunity'. Riva explains that an 'opportunity' could mean an option or a chance; whilst 'opportunity as option' is preferable to 'opportunity as chance' for the individual, the ability of the individual to avail themselves of the option depends on their access to/control over resources as much as the existence of the option. Riva clarifies that the principle of equal opportunities tends to refer to the opportunities that an individual has, although it is by their membership of a social group that the individual is advantaged or disadvantaged. The focus on the individual in the legislation and the employment relationship is discussed further in Chapter 4.

Riddell and Watson (2011) propose four dimensions of equality: economic, cultural, affective and representational equality, highlighting that attempts to enhance the recognition of equality groups can ignore the fact that a lack of social status is often based in economic inequality. Fredman (2001, p. 155) identifies that equality legislation is underpinned by the values of individual dignity and worth; restitution, redistribution and democracy, where 'dignity' is

often linked to freedom of choice, and the propensity to achieve a 'good life'. Restitutionary aims could be realised by financial compensation to an individual (Fredman, 2001), as in the employment tribunal model discussed in section 4.3. Restitution could also take the form of removing discriminatory barriers with the aim of benefiting the group (Fredman, 2001: 156). Fredman considers that the redistributive approach to equality 'is usually left vague' in terms of the form of measurement that analysing this approach could take (ibid). The fourth possible 'value' of equality, participative democracy, casts the provision of voice for marginalised groups in decision-making processes as fundamental to achieving genuine equality.

Jewson and Mason (1986, p. 312) propose two approaches within the EO paradigm: the 'liberal' and 'radical' approaches. Liberal EO is defined as comprising a focus on fair procedures, bureaucratisation of decision-making, e.g. through training, and an emphasis on 'justice seen to be done'. Notably, it additionally comprises positive action, that is, an approach to encouraging participation and application from under-represented groups which falls short of advantaging these groups at the point of decision-making, thereby protecting the 'merit principle' discussed in Section 3.5. Radical EO is constituted by a focus on fair distribution of rewards, the politicisation of decision-making, positive discrimination, and consciousness-raising in training.

The legal framework for equality in the UK reflects, in the main, the 'liberal' conception of equality of opportunity. This pre-'business case' conception of equality reflects the Kantian position that treating people with respect is an end in itself (Liff & Dickens, 2000, p. 85). Equality practice in organisations, based

on equality of opportunity, has a 'felt fairness': it is well-understood, and employees know when they have a legitimate basis to challenge their employer (Liff, 1999, p. 66). However, equal opportunities practice is procedural, and therefore its focus is on behaviours rather than seeking to change attitudes and beliefs (ibid). Nkomo and Hoobler (2014, p. 251) highlight that the rationale for equal opportunities and positive action were constructed in the US as 'simply "the right thing to do"'. It is arguably important to note that the location of positive action in the 'liberal' EO paradigm (Jewson & Mason, 1986) reflects the US more than the UK context: in the UK, EO policies have not relied on positive action (Kirton & Greene, 2010, p. 258). For the purposes of this study, EO is therefore taken not to include positive action, unless indicated.

The liberal construction of equality/EO has been open to a number of criticisms, introduced below, which have arguably contributed to its decreased currency in the scholarly literature. The first critique relates to the feasibility and desirability of same/symmetrical outcomes (Foster & Williams, 2011; Liff & Wajcman, 1996; Lorbiecki & Jack, 2000). The second critique relates to the failure of liberal equality to recognise and address the impact of historic disadvantage (Foster & Williams, 2011). The third critique of liberal equality is that regulation can be circumvented by organisations and that the focus becomes that of procedures, not outcomes (Kirton & Greene, 2000) thus encouraging a culture of compliance (Klarsfeld et al., 2012) rather than a genuine commitment to change. The fourth critique is that the liberal approach entails the categorisation of groups, and that this encourages essentialism.

3.1.2.1 The critique of 'sameness' and the 'neutral' standard

Equality based on sameness can be perceived to be detrimental, as it suggests that there is only one way of working (Lorbiecki & Jack, 2000). 'Sameness', or the aim of 'symmetrical' outcomes (Foster & Williams, 2011, p. 326), is not necessarily feasible or desirable (Liff & Wajcman, 1996) based as it is on a standard established by the concept of 'the white male norm' (Solanke, 2011, p. 348; Townley, 1994, p. 157).

Liff (1999, p. 96) argues that, whilst there has been widespread criticism of the 'white male' comparator used within equality, there has been less critical attention paid to the principle of judging individuals against a 'neutral standard', with the result that the principle of equal treatment remains intrinsic in approaches to equality in the UK. The principle of neutrality which underpins the majority of the legislation has become the 'cornerstone' of organisational equality policies, and is at odds with the concept of recognising difference (Foster & Harris, 2005). The concept of recognising difference is discussed further in section 3.2. Fredman (2001, p. 154) argues that the apparent commitment to neutrality in equality legislation 'masks an insistence on a particular set of values, based on those of the dominant culture': the dominant group therefore stands for universality rather than its own specificity and the premise of a universal, abstract individual is deceptive.

The universality of the dominant group is reflected in both critical and mainstream scholarship which considers the employment relationship. Nyathi and Harney (2007, p. 189) identify that, in labour process scholarship, discussions of 'the generic worker' omit 'the whiteness (or otherwise) of these workers, their masculinity (or otherwise), their heteronormativity (or

otherwise), their ethnicity (or otherwise)'. The construction of the ideal employee in HRM performance literature is a similarly abstract notion of a person (Benschop, 2001). The apparently abstract/neutral construction is however based on a male benchmark (Dickens, 1998) and presents an ideal that men can more readily conform to (Acker, 2012; Liff & Wajcman, 1996). In our contemporary 'long hours' culture (Costas & Fleming, 2009), the idealised 'unencumbered' worker (Acker, 2006, p. 448) is argued to be intrinsically masculine (Dick & Nadin, 2006). Dickens (1998, p. 25) suggests the purportedly neutral but recognisably male template of employment presents women with a 'Procrustean bed'.

3.1.2.2 The failure of equal opportunities to address historical disadvantage

Liberal equality is argued to fail to recognise the impact of historic disadvantage in the perpetuation of inequality (Foster & Williams, 2011). Where we are conscious of advantage, we may see this as deserved within our meritocratic systems (Acker, 2006). In response to this inadequacy, the 'radical' approach (Jewson & Mason, 1986) to equality emerged. This approach emphasises equality of outcomes e.g. through methods such as positive action and positive discrimination. From the radical perspective it is argued that positive action and discrimination can address disadvantage that is historical and structural, e.g. where a group has been systematically confined to particular jobs (Wrench, 2005). The radical stance casts equality as a moral right that should be pursued with regulatory sanctions, regardless of cost or inefficiency implications for employing organisations (Liff & Dickens, 2000). Kirton and Greene (2010, p. 252), locating positive action within the EO paradigm, note that positive action has met with resistance and backlash for

'perceived violation of the merit principle'. The root of contention with the equalities legislation in the UK is that, with the exception of disability and to an extent pregnancy and maternity, the law limits scope for positive action (Barnes & Ashtiany, 2003; Dickens, 2007).

3.1.2.3 Compliance culture and pro-voluntarism

Pro-voluntarist arguments posit that diversity policies could be perceived as more meaningful where an organisation is seen to implement them on a voluntary basis (Bell et al., 2011) and that regulation leads to a 'culture of compliance' (Klarsfeld et al., 2012, p. 2). A blended approach is advocated by Healy et al. (2011) and Demuijnck (2009) on the basis that whilst necessary, policy and legislation alone are insufficient to counter discriminatory practice. There is strong support for the argument that progress towards equality is only possible where there is a threat of sanction for non-compliance (Acker, 2006; Hepple, 2011a; Jonsen et al., 2013). As O'Conneide (2007, p. 148) observes, 'the 'carrot' of promoting equal opportunities 'becomes more attractive when the 'stick' of enforcement is a real threat.' Critical scholars cite voluntaristic diversity management as 'fashionable' (Noon, 2007, p. 773), a 'trend' (Wrench, 2005, p. 73). Given these 'partisan tendencies' (Dick & Cassell, 2002, p. 953), 'diversity', used within the literature as the overarching term for both diversity *and* equality, is argued to be trapped in the binary of equality regulation and business case voluntarism (Klarsfeld et al., 2012; van Dijk et al. 2012) and a consequently polarized debate (Jonsen et al., 2013; Tatli, 2011).

The perceived paradigm shift from equality to diversity is argued to be discursive, and not reflected in practice (Foster & Harris, 2005; Healy et al., 2011; Tatli, 2011). Practice is still dominated by the necessity for compliance

(Foster & Harris, 2005; Tatli, 2011). Foster and Harris (2005) suggest that, whilst diversity management is appealing to managers, it remains a concept that lacks clarity in terms of how it should be implemented within the regulatory framework. The difference between equality and diversity can be argued to be a false dichotomy, given that both 'sameness' and 'difference' are judged against a male standard (Liff & Wajcman, 1996, p. 80).

3.1.2.4 Essentializing difference

Equality categories derive both from civil rights movements and categories of difference that have more recently been recognised as salient in the workplace (Dickens, 2007; Tatli & Özbilgin, 2012b). The structure of the directives which pre-date and inform the structure of the current regulation, the Equality Act 2010 (EA 2010), contribute to essentialist, fixed perceptions of group definitions (Fredman, 2001). Kirton and Greene (2010, p. 255) found that organisational actors perceived that the EO paradigm unhelpfully 'pigeon-holed' people according to their social group. Studies undertaken by Tomlinson and Schwabenland (2009) and Zanoni and Janssens (2004) similarly highlight that managers and HR practitioners respectively demonstrate a tendency to homogenise and essentialize group identity in the context of diversity management.

In respect of the characteristics of the individual employee, the UK equality regulation reflects the 'ocularcentricity' of law: the tendency that law regulates what it can see (Solanke, 2011, p. 336). In this way the Sex Discrimination Act 1975 constructs women and men with no other identity, and the Race Relations Act constructs people with just racial identities. Equality law removes

and reduces complexity in order to create identities conducive to regulation, stripping individuals of their plurality (ibid).

Critical scholarship focusing on gender and race rejects the liberal notion of separate, essentialist categories (Adib & Guerrier, 2003). Existing equality group categories are criticised for inadequately reflecting heterogeneity within groups, rendering differences within groups invisible (Fredman, 2001). The term 'ethnic minority', for example, covers a range of people with substantially different experiences of employment (Healy et al., 2011, p. 9), while Woodhams and Danieli observe that disabled people could be viewed as a group of unique individuals 'who have been artificially united by an historical desire to circumscribe 'groupness'' (2000, p. 405). The counter argument to the critique of equality group categories is that, if we divide equality groups into subgroups, we risk overlooking common patterns of discrimination and disadvantage (Healy et al., 2011).

The single-strand approach to equality, referred to pejoratively as a 'silo' approach, can be argued to obscure and oversimplify our multi-characteristic identities (Acker, 2006, p. 442). Liff (1997, p. 11) questions whether anything meaningful can be said about the collective experience of all women or whether any generalizations are undermined by other 'cross-cutting' identities. Solanke (2011) proposes that the influence of the silos is hard to escape and that even progressive campaigns are informed by silo equality. This is supported by Kirton and Greene (2010) who found that in organisations where there had been discursive shift towards diversity management, accompanied by constructions of the EO paradigm as unhelpful in its categorisation of

people by social group membership, there was nonetheless a continued focus on initiatives targeted at social groups.

3.2 Diversity

The diversity paradigm originated in the US from the perceived failure of EO and the increasing demographic complexity of the labour market (Kirton & Greene, 2009). Although diversity has 'radical roots', it has come to be associated with a 'managerially driven agenda' that advances the 'business case', i.e. the argument that workforce diversity increases competitive advantage (Tomlinson & Schwabenland, 2009, p. 102). This section discusses the paradigm of diversity and how it is conceptually different to equal opportunities; section 3.4 considers the business case for diversity management, which is a related, yet distinct concept.

The scholarly paradigm for diversity is differentiated from equality paradigms in its focus on the individual (Barnes & Ashtiany, 2003) and by the capacity of the paradigm to encompass difference beyond the limited categories provided for in the legislation (Liff, 1999; Tomlinson & Schwabenland, 2009). Barnes and Ashtiany (2003) suggest that the focus on the individual is of particular significance rhetorically as diversity strategies can thereby be presented as implicating everyone. Group membership remains relevant as measures to promote diversity take into account the effects of social group membership on life chances and experiences (ibid). Notably, whilst diversity discourses take

the individual as the starting point, diversity management operates far less individualistically than the equality law (ibid).

Liff (1997) proposes that the case for diversity arises from the perceived failure of equalities policies to change perceptions and practices. In the diversity paradigm, reacting to regulation is constructed as an old-fashioned and defensive approach associated with EO (Kirton & Greene, 2010). Proponents of diversity management create a discourse that diminishes the value of social justice arguments that pertain to equality and legislation (Edelman et al., 2001; Noon, 2007), emphasising the 'failure' of the previous EO model (Edelman et al., 2001, p. 1602). Nonetheless, diversity initiatives are informed by the equality legislation in that they must not 'stray beyond the confines of lawful positive action' (Barnes & Ashtiany, 2003, p. 282). Further, in the current UK context, whilst the diversity paradigm with its emphasis on voluntarism may have overshadowed older equal opportunities discourse, there has been a substantial increase in the characteristics protected by anti-discrimination law, and organisational claims regarding diversity should be 'situated in this more complex legal environment' (Kirton & Greene, 2009, pp. 159–60). Chapter 4 considers the specific legal context within which HR practitioners enact equality.

Liff (1999) identifies two approaches within the paradigm: 'dissolving differences' and 'valuing differences'. The 'dissolving differences' approach represents a departure from group-based equality paradigms. The rationale for this perspective is that 'people are not defined by their social group membership and instead vary along a myriad of dimensions' (Liff, 1999, p. 71). Kirton and Greene (2000, p. 4) highlight the value of this approach in

facilitating an understanding of 'intragroup and intergroup difference', which traditional equality approaches had neglected. The critique of the dissolving differences approach is that this perspective trivializes the significance of social group identity and overlooks the negative impact that social group membership has on employment outcomes (Kirton & Greene, 2010; Noon, 2007). This inclusive approach to types of difference can lead to diversity becoming 'meaningless as a policy paradigm' (Kirton & Greene, 2010, p. 251) and a 'more encompassing and concealing term' than equality (Benschop, 2001, p. 1166). At the level of practice, the broader scope of diversity could lead to fewer resources being allocated to practice targeted at 'traditional' strands, such as gender (ibid).

The 'valuing difference' approach represents a move away from the focus on the negative aspects of difference, such as discrimination, in the EO paradigm (Kirton & Greene, 2010, p. 254). The implicit claim in the 'valuing differences' approach is that, in managing 'diverse' employees effectively, improved equality outcomes will follow without the requirement for specific interventions (ibid). Barmes and Ashtiany (2003, p. 281) found that organisational diversity management initiatives in the banking sector tended to focus on achieving change without a consideration of 'apportioning blame for past wrongs'. This reflects Lorbiecki and Jack's (2000, pp. 25, 28) argument that diversity management 'rests on a fantasy' of 'a clean slate on which the memories of privilege and subordination leave no mark'. Diversity scholarship has developed to consider, not unproblematically, the application of intersectional theory to our understanding of employment. This is considered in the next section.

3.3 Intersectional theory

Intersectional theory addresses the phenomenon that, as individuals, we are not constituted by characteristics in isolation; rather we are constituted by our multiple characteristics. The call for increased understanding of intersectionality originated in feminist scholarship (Acker, 2006; Wånggren & Sellberg, 2012) and more specifically in black feminism (Healy et al., 2011; Solanke, 2011). A focus on intersectional research is now well established in diversity scholarship (Squires, 2008) although, despite recent interest, intersectionality remains under-theorized and under-operationalized (Tatli & Özbilgin, 2012b).

Dual systems theories i.e. whereby gender and class inequality are acknowledged as interconnected, but as related to two distinct systems of inequality, have been criticized as an inadequate understanding of intersectional identity (Adib & Guerrier, 2003). Intersectional identity is argued to be more complex than a multiplication of difference (Adib & Guerrier, 2003; Fournier, 2002; Solanke, 2011; Tatli & Özbilgin, 2012a; Wright, 2011) The interlocking of multiple strands is 'not additive but interactive' (Özbilgin et al., Beauregard, Tatli, & Bell, 2011, p. 188), a 'fusion' (Adib & Guerrier, 2003, p. 417) which can have both positive and, more usually, negative outcomes for individuals. Fredman (2011, p. 414) proposes that 'some of the most egregious discrimination' occurs where two marginalised identities intersect.

An intersectional focus allows the development of understanding in relation to the operation of privilege as well as disadvantage. Intersectional privilege enables the more advantaged members of disadvantaged groups to 'colonise'

resources (Vickers, 2011, p. 152). Lorbiecki and Jack (2000, p. 26) argue that 'being diverse in multiplicitous ways constitutes a dilution of one aspect of one's identity and a reduction of one's status', thus in being both for example, black and disabled, one experiences both diminished black identity and diminished disabled identity. In this example, by constructing a black able-bodied identity and a white disabled identity that are the neutral norm, and which have the effect of othering within intersectional identity, group membership norms play a role in reinforcing privilege, disadvantage and the *status quo*.

Tatli and Özbilgin (2012a) advocate a sector-focused approach to understanding intersectionality in the workplace, as sectors produce specific constructions of disadvantage and privilege in the wider contexts of societal privilege. The organisational context in which identities are constructed is considered significant (Adib & Guerrier, 2003). Zanoni and Janssens (2007) advocate taking a fully agentic perspective and a rethink of the organisation as the *a priori* location for equality and diversity research. Acker (2012) suggests that ethnographic and case study methodology provide the best insights into intersectionality at work. Empirical studies which analyse intersectionality in particular sector contexts can produce surprising results (Tatli & Özbilgin, 2012b). Wright (2011) for example found that being a woman and being a lesbian can reduce gendered constraints in the transport and construction industries. Tatli and Özbilgin (2012a) however caution against findings which appear to show traditional categories of advantage as sources of privilege, suggesting that apparent gay male and female advantage in the

arts and cultural sector belies the complexity of class, race, religious and abled privilege.

Although scholarship broadly embraces the development of intersectional concepts, with calls for further intersectional approaches to research (Wånggren & Sellberg, 2012), an intersectional approach to research is problematized: Vincent et al. (2012, p. 261) for example note that intersectionality lacks theoretical specificity and highlight the frustrating ambiguity and ambivalence of intersectional work. Intersectionality may always be partial (Healy et al., 2011). Scholarly research into marginalised groups typically focuses on one or two groups and raises a call for further intersectionality whilst stopping short of committing to a viable process for achieving this (Acker, 2006; Bell et al., 2011; Berry & Bell, 2012; Holgate et al., 2012). Billing (2011) and Özbilgin et al. (2011) suggest that considering all the variations is impossible. Taken to its logical conclusion, the reasoning of intersectionality would reduce difference to the 'smallest unit of analysis, the employee', (Healy et al., 2011, p. 10). A focus on unique individuals would mean that diversity 'collapses into meaninglessness' (Barnes & Ashtiany, 2003, p. 290). In the workplace context, individual uniqueness would render systems for promoting and measuring diversity unfeasible (ibid).

A further counterargument to the pursuit of intersectionality is that it could dilute the collective progress of equality groups (Healy et al., 2011; Moore & Wright, 2012). Özbilgin et al. (2011) recommend that the inclusion of all forms of diversity would represent an impossible task for the researcher, and advocate critical judgement in selecting the categories salient to the given context. Tatli and Özbilgin (2012b, p. 185) note that word count limits applied

to academic papers limit the researcher in being able to 'do justice to more than one form of difference.' Similarly, in work organisations, the practicalities of implementing diversity initiatives tend to concentrate on particular issues based on group membership, specifically women and ethnic minorities (Barnes & Ashtiany, 2003).

Solanke (2011, pp. 343–4) discusses the relatively progressive perspective of the US judiciary, which accepts that 'discrimination against black females can exist even in the absence of discrimination against black men or white women'. The creation of the EHRC gave rise to optimism that equality institutions in the UK would have an improved ability to consider issues of intersectionality (Squires, 2008). Wright et al. (2011, p. 464) highlight that the amalgamation of the legacy commissions and the extension of protection to new characteristics 'were motivated by desire to take a more intersectional approach to discrimination'. Significantly, an amendment to the EA 2010 relating to 'dual discrimination' has been formulated, but not commenced. The construction of Section 14 of the EA 2010 means that silos are, paradoxically, predominant within the legal conception of intersectionality in the UK (Solanke, 2011). The non-commencement of Section 14 of the EA 2010, which would have allowed intersectional claims on the grounds of two protected characteristics, was announced by the Coalition in the 2011 budget as part of the document 'The plan for growth' (Wright et al., 2011, p. 436). The Home Office communiqué regarding the non-commencement of Section 14 announces it 'as one of many ways to reduce the cost of regulation on businesses. It will save businesses approximately £3 million each year' (Home Office, 2012). 'Dual discrimination'

is thereby constructed as antithetical to economic growth: this discourse of 'regulatory burden' is further considered in Chapter 4.

3.4 The business case for diversity

The 'dissolving differences' and 'valuing differences' approaches to diversity, in themselves, are not immediately attractive to organisations. This has led to scholarship's interest in establishing the business case for diversity. Liff (1997, p. 19) argues that an enhanced understanding and recognition of difference would lead to differences being 'genuinely welcome on their own terms' whilst acknowledging that, in practice, it is difficult to see how this approach would be attractive to organisations. The business case for employing a diverse workforce originated in the human relations school, where the concept was termed 'group member heterogeneity' (Edelman et al., 2001, p. 1628). Liff (1999) argues that the concept of 'managing diversity' highlights a general problem in HRM, namely that employees are heterogeneous and, as such, unlikely to respond to, or benefit from any particular people management strategy in an equal manner.

Whilst the thrust of the business case for diversity also espouses the value of difference, this is on the basis that difference will lead to competitive advantage (Hyman et al., 2012) rather than difference being valid in its own right. In this prevailing economic rationale, the social justice and inclusion concepts of diversity are accepted only insofar as they achieve the economically desirable outcome (Hyman et al., 2012) and are likely to be viewed as serendipitous (Barnes & Ashtiany, 2003). Oswick and Noon (2014) identify that the prospect of reduced litigation is part of the economic argument

for diversity management as a replacement for equal opportunities. The existence of equality legislation can be viewed as antagonistic to the promotion of diversity, with the language of diversity designed to place distance between 'modern initiatives' and anti-discrimination law (Barnes & Ashtiany, 2003, p. 278). In focusing attention on profit as the key reason for adopting a new managerial model such as diversity management, attention is taken away from legal ideals and those employees protected by the law (Edelman et al., 2001).

Diversity rhetoric expanded the concept of diversity beyond those groups protected by legislation to include a wide array of characteristics (Ahonen et al, 2013; Edelman et al., 2001). The expansion of the diversity concept extends to privileged groups, and this inclusive approach serves to deny the significance of systemic discrimination (Nkomo & Hoobler, 2014). Nkomo and Hoobler refer to these inclusive diversity strategies as 'feel-good types of diluted diversity management' and highlight that they were more palatable to members of the dominant group (2014, p. 252). This broad notion of diversity is more consistent with older concepts of 'team heterogeneity' and less threatening to managerial prerogative (Edelman et al., 2001, p. 1632). Arguably therefore, the broader notion of diversity is in part more attractive to managers because it draws on an older, more established business discourse. Diversity is cited as having more appeal to managers than equality, given its comparative lack of timetables, measurability and accountability (Kelly & Dobbin, 1998) and to management scholars in its link with business objectives (Oswick, 2011).

The UK version of diversity management emanated from the desire 'to anchor equality objectives to broader business and organisational objectives'

following the failure of equality to do so (Kirton & Greene, 2000, p. 6). Lorbiecki and Jack (2000, p. 21) suggest that the economic arguments for diversity 'were highly seductive' as they tapped into fears that traditional organisational models would not be successful in globalised markets. The business case rhetoric was swiftly appropriated by international companies (van Dijk et al., 2012), suggesting that internationalisation has been key to the success of diversity as a management concept, and perhaps that diversity will be a more dominant discourse in multinationals than non-multinationals.

The utilitarian business case for diversity gained credence in the UK in the context of successive Conservative governments and their policies of deregulation (Foster & Williams, 2011; Liff & Dickens, 2000) and in the US in response to the backlash against affirmative action (van Dijk et al., 2012). This reflects the argument that the social justice aims of equality can be better served by downplaying the moral rationale and instead highlighting the business advantages of equality action (Liff & Dickens, 2000). Dickens and Hall (2006) caution that, where fairness becomes conditional and contingent on an alignment with economic arguments, this risks entering a terrain where it becomes possible to articulate the business case *against* social justice and equality. The positive, optimistic and 'undoubtedly appealing' message underpinning diversity management has been much criticised in the US and in Europe (Kirton & Greene, 2010, p. 251). Diversity management may indirectly lead to more equality in society but this is not guaranteed (Wrench, 2005). Whilst a moral commitment is not entirely absent from diversity management, it is not central as it is in the EO paradigm (Kirton & Greene, 2010). Noon

(2007) argues that it is wrong to believe that the market economy will ensure equality, given that this was not the case before the introduction of regulation.

In celebrating the individual and therefore individualism (Jonsen et al., 2013; Marsden, 1997; Noon, 2007), diversity can be seen to belong to neo-liberal discourse (Noon, 2007; Tomlinson & Schwabenland, 2009). This individualistic discourse is nonetheless used to infer that difference creates collective, i.e. organisational or societal, strength: 'The Government believes that our society and our economy are strongest when everyone has the opportunity to contribute. In the current economic climate it is more important than ever that we draw on the talents of all' (Government Equalities Office, 2012, p. 1.1). This meritocratic brand of diversity management, replete with 'easy pluralism' (Cavanaugh, 1997, p. 40), concentrates on the achievement of organisational goals, rather than the needs of employees (Foster & Williams, 2011; Tomlinson & Schwabenland, 2009). The organization is cast as 'a facilitator empowering able individuals to realize their full potential and then dedicate it to corporate goals' (Liff, 1997). In stressing the importance of committed individuals (Liff & Wajcman, 1996) diversity management can be seen not just as the attempt to instil a meritocratic results-orientated discourse, but as an attempt also to reduce the collective nature of equality and thereby the leverage equality issues can provide trade unions (Wrench, 2005).

The specific links between diversity and competitiveness are rarely explained (Marsden, 1997) and since the late 1990s, critical scholarship has challenged the self-evident correctness of the business case argument (Benschop, 2001; Wrench, 2005). Kirton and Greene (2010) identify that proof of bottom-line contribution is required in the private sector for any initiative which draws on

'hard' resources. Critical literature problematizes the empirical evidence which has been provided in support of diversity management (van Dijk et al., 2012) and argues that the alleged benefits are overstated (Wrench, 2005). The dubious rationale for the business case (Jonsen et al., 2013) is gaining more attention within the prevailing discourse of austerity. The business case could be articulated *against* diversity management (Dickens, 1999; Greene & Kirton, 2011; Noon, 2007; Tomlinson & Schwabenland, 2009) given that 'diversity programs have so far had a spotty record of success' (Acker, 2012, p. 22).

Nkomo and Hoobler (2014) note that organisational interest in diversity management generated expedient opportunities for HR practitioners and academics in terms of consultancy and publication and that HRM research during the era of the emergence of the business case for diversity tended to focus on two areas: documenting continued discriminatory outcomes in the workplace and seeking to evidence the business case. Following a review of the HRM literature from January 2000 to November 2011, Nkomo and Hoobler argue that researchers appear to consider that their fellow academics and/or practitioners remain unconvinced of the benefits of a diverse workforce and therefore continue to seek further evidence in support of diversity

3.5 The merit principle

Kirton and Greene (2010) observe that approaches that do not violate the merit principle have tended to dominate the diversity field. Managers continue to value people most similar to them and make decisions based on stereotypes (Liff & Wajcman, 1996): this homophilic practice, evident in processes such as recruitment and retention, is non-meritocratic (Jonsen et al., 2013). The value

attached to certain competencies or attitudes, and therefore merit, is socially constructed (Tomei, 2003). Liff and Dickens (2000, p. 86) highlight that, whilst socially constructed 'merit' disadvantages women and minority groups, it is difficult to challenge merit as a concept.

The enactment-level approach to diversity management is therefore not 'neutral' as a concept or in its outcomes: it 'threatens to propagate substantive injustice' (Marsden, 1997, p. 109). Even progressive organisations who seek to be inclusive can fail to recognise that jobs are socially constructed (Dick & Nadin, 2006; Dickens, 1998) and competencies or role requirements reflect and reproduce the interests of certain groups (Dick & Nadin, 2006). This critique of the business case for diversity argues that it offers no challenge to existing power relations (Tomlinson & Schwabenland, 2009) i.e. systematic white male privilege (Cavanaugh, 1997; Liff & Dickens, 2000; Liff, 1997, 1999). If one rejects the conclusion that straight white men are superior to others, then 'the only alternative is that people are not being judged on their merits unless it is meritorious to be a straight white man' (Jacques, 1997, p. 89). As such, the *status quo* constitutes positive discrimination for white men (ibid). Elmes and Connelley (1997) identify that straight white males need to believe that their ascendancy, and the relative plateauing of other groups, is a consequence of their competence and skill, rather than a result of situational or external factors.

Taking this line of thinking a stage further, Cavanaugh (1997, p. 44) argues that celebrating workplace diversity can be understood as a 'pre-emptive ideological project', by a 'select group of white males' that aims to neutralize the Other before demographic trends have a politicising effect. Therefore,

Cavanaugh suggests, appeals for a more tolerant workplace today will possibly head off unsettling questions tomorrow. Cavanaugh questions whether diversity, in its denial of structural power imbalances, intentionally sustains privileged hierarchies. As Noon (2007, p. 775) observes '[d]iversity discourses are not constructed to confront power relations, dominant ideologies or organizational goals.' This is a perspective endorsed by Tatli (2011, p. 247) who questions whether organisations are genuinely convinced about the business case for diversity, or whether they use this discourse to reduce employee diversity to an individual level and 'as an ideological apparatus to resist further regulation'. Ultimately, our conceptions of, and attempts to enact equality and diversity could be said to amount to 'middle-class radicalism' (Fleming & Spicer, 2003, p. 161) in that they have been 'absorbed by the state and corporate apparatuses so that an element of vitality is maintained without seriously threatening the foundations of these institutions'; institutions which can be seen to remain 'inviolable' in their hierarchy (Acker, 2006, p. 449).

3.6 Inclusion

Roberson (2006) identifies that there has been a shift in US practitioner literature from diversity to inclusion. This is supported by Oswick (2011) who notes that the discourse of inclusion is embedded more in practice than in academia. Oswick and Noon (2014, p. 26) suggest that, while 'inclusion' is cast as the 'next stage in the evolutionary process' from equal opportunities and diversity management, what distinguishes 'inclusion' from diversity management is not explicit.

Inclusion is constructed as a response to the critique that diversity management initiatives tend to be targeted at those who arguably need the least help within their social group, such as 'highly-qualified, middle-senior level women' (Kirton & Greene, 2010, p. 259). Discourses of both equality and diversity can be used to legitimate and reproduce existing power relations between managers and employees, thereby shifting attention away from the ongoing relevance of class dynamics in the employment relationship (Zanoni & Janssens, 2004). Oswick (2011) supports the view that inclusion has the capacity, as a concept, to integrate aspects of class and thereby address the failure of diversity management in this area. Oswick however is not optimistic that inclusion will accomplish this in practice (ibid).

Whilst diversity management is argued by critical academics to be more oriented to the needs of managers than employees, inclusion is perhaps further aligned to the unitarist framework for people management. Discourses of diversity focus primarily the heterogeneity of the employee constituent, which is a given; inclusion is the challenge of harnessing this difference for competitive advantage (Oswick, 2011; Roberson, 2006) and further, a means of avoiding the backlash of majority/advantaged groups who react with scepticism and resistance to initiatives perceived to unfairly assist diverse employees (Roberson, 2006). Inclusion perhaps most closely perpetuates the unitarist assumption that employee interests can be aligned with the interests of the organisation (Foote & Robinson, 1999) and the aim to inculcate an organisational identity, 'a common culture, [a] sense of community', (M. Parker, 2007, p. 64). In this context, *having* a diverse identity is welcomed; it is the *enactment* of an identity which does not align with the organisation's

'one way' which can become problematic. Alvesson et al. (2008, p. 16) suggest that human resource management techniques regulate the identity of subordinate employees in a seductive process whereby employees 'calibrate' their 'senses of self with a restricted catalogue of corporate-approved identities'. As Guerrier and Wilson's (2011, p. 191) investigation into representations of diversity on UK websites demonstrates, organisations purport to value different characteristics in a wider context of 'like-mindedness' where 'you can be a different coloured ice cream but you are still an ice-cream'. Otherness is effectively 'dissolved' as individuals rise above differences and join together 'in the solidarity of a common purpose, the organization's success' (Cavanaugh, 1997, p. 44). Inclusion, therefore, does not represent a new or daunting ideological initiative to the HR practitioner; rather it is a more convenient label than diversity to apply to the existing unitarist approaches underpinning HRM.

3.7 Equality, diversity and trade unions

Hepple (2012, pp. 61–62) argues that unions were historically suspicious of legal regulation in respect of equality and 'in denial' about the extent of racial discrimination in employment. The male, trade union and manual worker perspective has traditionally dominated employee relations discourse (Brook & Lucas, 2012; Holgate et al., 2012). Unions leadership is dominated by white, able-bodied men (Holgate et al., 2012; Klarsfeld et al., 2012); those who are 'pale, male and stale' (Ledwith, 2012, p. 346). Trade unions are fundamentally class-based organisations (Moore & Wright, 2012) and class has been the preoccupying issue of 'equality' for unions. Currently, unions demonstrate considerable scepticism towards diversity and remain proponents of equality

(Klarsfeld et al., 2012). Unions are fearful that highlighting a plurality and diversity of interests could undermine solidarity over bargaining issues, thereby weakening their influence and power (Kirton & Greene, 2006). Diversity, therefore, is not owned by employees or their union representatives (Noon, 2007).

The Labour government of 1997-2010 identified an important role for trade unions in contributing towards the effective implementation and delivery of the more inclusive equality legislation (Bacon & Hoque, 2012). Workplace equality is however increasingly reliant on statutory provisions given the decline of union membership and the coverage of collective representation (Foster & Williams, 2011). The rise of individualised employment processes is discussed further in section 4.1.1. Unions have been actively, perhaps expediently, recruiting disadvantaged groups in the face of decreasing membership (Hyman et al., 2012). In addition to boosting membership, this is argued to help 'staid and bureaucratic institutions recover their former social legitimacy and moral purpose' (Hyman et al., 2012, p. 286).

Hepple (2012) indicates that there are many thousands of trade union equality representatives who advise and support members and who themselves are appointed and supported by their respective trade unions. The resources available to equality reps, and their skills in navigating casework, are problematized in the literature. The previous Labour government financially supported the TUC's equality representative initiative (Bacon & Hoque, 2012) however the Labour government rejected union calls to include provision for equality reps. to have time off, training and facilities included in the EA 2010 (Bacon & Hoque, 2012; Hepple, 2012; Moore & Wright, 2012). Reps'

effectiveness is dependent on the willingness of employers to recognise and consult with them (Hepple, 2012).

Equality reps often face difficulty in discerning whether an issue is an 'employment issue' or an 'equalities issue' (Moore & Wright, 2012, p. 442) and reps in the public sector requesting that their employers undertake Equality Impact Assessments were unsuccessful (Wright et al., 2011; Moore & Wright, 2012). Nonetheless, equality reps perceive that they have a positive impact across the equality strands in their organisations (Bacon & Hoque, 2012). Bacon and Hoque (2012) suggest that equality representatives' effectiveness could be enhanced with statutory facility time.

The overwhelming majority of trade union equality reps have hybrid roles (Bacon & Hoque, 2012), raising the question of how much commitment and personal interest they can devote to the equality part of their role. Hybridisation could be the outcome of equality reps securing facilities time etc. for equality matters through their other role (Bacon & Hoque, 2012; Moore & Wright, 2012). The union Equality Representative model, reflecting the inclusive nature of the regulation, risks losing sight of group-based disadvantage (Moore & Wright, 2012). Moore and Wright (2012, p. 441) suggest that equality is perhaps being 'diluted', noting the reluctance of equality reps to identify themselves in terms of their race, gender, class, sexuality, disability or age, preferring to define their activism in broader terms of equality and justice.

Whilst industrial relations literature generally equates employee voice with union representation, non-union voice for equality groups is discussed more positively by equality and diversity scholars. Conley (2012) proposes that new

actors in industrial relations could use equality legislation to challenge government economic policy in light of the diminished membership of the unions and the representation gap affecting particular sectors and types of employment. Colgan and McKearney (2012) suggest that, in the case of work in organisations to improve the experiences of LGBT staff, the original impetus has come from LGBT staff themselves. Equality scholarship discusses the possibilities that non-union voice and union groups can co-exist to the benefit of equality groups. Colgan and McKearney suggest that membership of both may overlap. Conley (2012) proposes that social movements might compete with or complement trade unions in pursuing gender equality.

The literature therefore presents a mixed picture of the relationship that trade unions have with equality and diversity. The literature suggests that HR practitioner talk may reference trade unions, but that they are unlikely to play a significant role in the enactment of equality at an operational level. The literature which considers HR in the enactment of equality and diversity is considered in the next section.

[3.8 The enactment of equality and diversity](#)

This section discusses the literature which considers how EO and diversity management translate into policy at the level of the organisation, perspectives on HR and line managers in the enactment of equality, and the suggestion that ownership of diversity management should be taken out of the HR function.

[3.8.1 EO and diversity management at the level of policy](#)

Organisations in the UK appear to take a 'mix and match' approach to EO and diversity management (Kirton & Greene, 2010, p. 260). Liff (1999) argues that equal opportunities policies are a bureaucratic means of eradicating social

differences from organisational decision-making. Van Dijk et al. (2012, p. 77) propose that 'blended' diversity practices i.e. those that consider equal opportunities *and* diversity management may produce negative outcomes in that this combination can give rise to practices and rhetorics which are not aligned to one another, and may also be incongruent to the strategy of the organisation. This misalignment, Van Dijk et al. suggest, could lead to 'diversity scepticism' and 'diversity opportunism', where employees may have their diversity celebrated one day and find themselves discarded the next. Kirton and Greene (2010, p. 251) argue that the rhetoric of the business case could be used by organisations to justify 'non-action beyond the requirements of the law. Implicit in these arguments are the notions that compliance to the equality legislation represents an impoverished approach, and that process can be used by organisations/their HR functions to obfuscate genuine issues of inequality. This study questions this position as a perspective on the legislation, specifically the actions involved in its enactment, and the effects of its enactment.

Foster and Harris (2005) identify that organisational approaches to equality in the UK developed in response to legislation introduced by UK governments since the mid-1970s. Dobbin et al. (1993) highlight that the introduction of equal opportunities legislation in the US similarly led to a greater focus on more formalised and efficient personnel processes for example for recruitment and selection. The legislative approach that underpinned the precursors to the EA 2010, the Sex Discrimination Act (SDA) 1975 and the Race Relations Act (RRA) 1976 in the UK aimed at ensuring equal treatment (Foster & Williams, 2011; Liff & Dickens, 2000). The separate commissions for and approaches to

sex, race and disability were reflected at the level of policy in work organisations, where it was usual for organisations to have separate EO policies for gender, ethnicity, disability and age (Hoque & Noon, 2004). The 'neutral treatment' principle of much of the regulation has become central to organisational policies and processes, which are oriented to 'sameness of treatment' (Foster & Harris, 2005, p. 6). Those workplaces seen to be leading the way in terms of substantive policies were identified as larger workplaces, the public sector, and workplaces with HR/personnel specialists (Hoque & Noon, 2004). Hoque and Noon found that, whilst the message that equality was 'good for business' had penetrated UK workplaces, this tended to manifest in 'empty shell' policies, rather than substantive policies, that is, policies that link to more proactive EO *practices* (2004, p. 497).

The alignment of strategic HRM and diversity management should, according to the logic of the mainstream literature, see the development of innovative policies geared towards greater reciprocity in the employment relationship, benefiting the organisation in terms of increased productivity, reduced staff turnover and absenteeism. Liff (1999) argues that locating responsibility for equality policies in personnel is advantageous in that understanding and expertise can be concentrated but disadvantageous in that equality issues are divorced from strategic decision-making. Diversity management is an under-developed and under-regarded dimension of strategic HRM (Foster & Harris, 2005), Benschop (2001: 1166) noting the 'profound silence about diversity which typifies so many HRM debates'. The silence in respect of diversity belies the significant work involving HR and line managers that concerns equality compliance occurring at an operational level.

3.8.2 HR and line managers in the enactment of equality and diversity

Wilson (2007) captures the essence of the conflict of equality and diversity in HR practice: the HR function is required to harness difference in order to ensure competitive advantage for the organisation yet the HR function is simultaneously tasked with ensuring the absence of difference to establish equal treatment. A key argument of this thesis is that the diversity element constitutes a much smaller part of HR practice and enactment than the equality element. This is evidenced by the literature.

Benschop (2001) identifies that there can be a shift from diversity to equality in the life-cycle of an employee within an organisation, i.e. the employee is recruited as a part of a strategy to employ a diverse workforce; following this phase the worker is then subject to promotion, appraisal, development and other HRM activities in the context of equal opportunities. Equality enactment therefore is an important consideration in HR work involving what Cunningham and Hyman (1995, p. 14) describe as the 'harder aspects of employee relations', namely recruitment, discipline and absence control. As such, studies not specifically concerned with equality enactment but which focus on issues that require due regard to equality, such as the enactment of discipline (e.g. Jones and Saundry, 2012), can provide pertinent insight into the HR/line manager relationship.

Liff and Wajcman (1996, p. 81) propose that personnel /human resources departments tend to 'initiate and control' equality policies in the UK, emphasising the bureaucratic and policing role of HR in respect of equality. Holt Larsen and Brewster (2003, p. 231) suggest that Ulrich's 'administrative expert' could be realised in two contrasting ways: either as a valuable source

of advice for line managers on how to enact HR practices, or as ‘the worst kind of bureaucrat, insisting that the systems drive the organisational behaviour’. Liff and Wajcman (1996) appear to be aligning HR practice in respect of equality with this ‘worst kind of bureaucrat.’ Broadly, the perspective of HR as bureaucratic is supported by the literature which examines the HR/line manager relationship, although the studies identified below indicate that the legislative context goes some way to justify this approach.

In the context of discipline, Jones and Saundry found that the interplay between HR and line managers, often overlooked in the literature, is key to understanding ‘the shape, nature and outcomes’ of procedure and process (2012, p. 252). Jones and Saundry found that HR practitioners ascribe responsibility for decision-making to line managers. This apparent devolution occurs in a complex legal terrain where HR take on the role of advisor and legal expert. Increased legislation/regulation is identified by front line managers as a key external driver to the changes they have seen in their role (Hales, 2005). In the specific case of equality, Foster and Harris proposed in 2005 that a growth in anti-discrimination law could give rise to a situation where line managers felt increasingly ‘vulnerable, defensive and lacking in expertise’ (2005, p. 14). As discussed in Chapter 4, the anti-discrimination law has increased in the period since this study was undertaken. Foster and Harris (2005) highlight that line managers are familiar with consistency as a defence against claims of discrimination, and regard a diversity agenda, with its attention to individual differences, as having the potential to lead to an increase in both perceptions and claims of unfair treatment. Foster and Harris further identify that line managers found equality regulation confusing, in that an

employee could seek to be considered 'as both the same and different', e.g. by seeking to be treated the same as other applicants during a recruitment process and then requesting to have their particular needs as a parent recognised through a flexible working request (2005, p. 12).

Legal complexity has created a situation where line managers are 'increasingly dependent' on the HR function for support (Jones and Saundry, 2012, p. 260) and also often to sanction decision-making (Hales, 2005). This 'support' is the subject of substantial critique: line managers in the NHS-based study undertaken by Hutchinson and Purcell (2010) reported that HR were slow to respond and produced bureaucratic policies that frequently changed. Additionally, HR were seen as too distant from the front line (Hutchinson and Purcell, 2010) and as protecting the organisation rather than supporting the interests of line managers (Jones and Saundry, 2012). This supports Storey's argument that the focus of HRM is the management of managers themselves (2007). The finding of this study add further, in-depth perspectives of HR to our understanding of how management is controlled by HR and the orientation of HR to first and foremost protect the organisation.

Foster and Harris (2005) argue that viewing diversity management as a logical development of EO fails to acknowledge how challenging diversity management is for line managers to translate into practice. Foster and Harris note that a concern to avoid potential litigation dominates line managers' talk of diversity management (2005, p. 13). This suggests that compliance to the equality law dominates 'diversity management' at the level of organisational practice in such a way that it curiously inversely mirrors the dominance of diversity management over equality and compliance in the literature.

Kirton and Greene (2010) indicate that diversity practitioners name lack of line manager buy-in as the most significant barrier to the implementation of diversity management. Foster and Harris (2005) found that the implementation of diversity management is hindered by line managers' conceptual confusion over equality and diversity, as apparently conflicting concepts, and the pressure of other work demands, rather than arising from their objections to the principles of diversity management. Greene and Kirton (2011, p. 29) propose that managers confuse the business case for diversity with the need to avoid claims to employment tribunals. The literature discussed in this section would suggest that this perception arises from the counsel of HR and emphasis placed by HR on compliance and legal risk.

3.8.3 [The case against HR having responsibility for diversity management](#)

The value of involving those outside of the HR function in the development of meaningful policy is advocated in the diversity management literature (Kandola & Fullerton, 1998). Foster and Harris (2005) concur that including all parties in the employment relationship in the creation of policy contributes to the development of appropriate and achievable diversity practices. Foster and Harris' findings support organisationally realistic 'home grown' solutions to managing diversity and, as such, appear to support the notion of a 'best fit' rather than 'best practice' approach to HR when applied in the diversity context. This is supported by the existence in some organisations of 'diversity champions'; these are managers whose substantive role is not related to diversity who 'champion' diversity with their operational areas and contribute to the development of policy (Kirton & Greene, 2009).

The accounting practitioner literature, supported by established diversity academics including Özbilgin and Tatli, goes a stage further in making the case that the HR function lacks the necessary skills and demonstrates the wrong attitude to maintain responsibility for diversity management. An ACCA study (2014) suggests that finance professionals bring the analytical ability to present a clear business case and that finance should work with HR to identify the most appropriate measures for analysing diversity impacts. The ACCA report foregrounds the perspective of Nikki Walker, a diversity and inclusion specialist, who states: 'Most diversity leaders are HR professionals and commercial analysis may not fit in their natural skill set (...) HR may not have the necessary skills to put governance procedures in place, but finance does this already' (ACCA, 2014, p. 13). This critique of HR aligns with the perspective in the HRM literature that a less operational role for HR requires HR specialists to have statistical skills to enable monitoring and benchmarking (Torrington & Hall, 1996). The 2014 ACCA study further proposes that the HR community is in some cases to be the most resistant function to diversity interventions. This arguably reflects the 'turf war' between 'rival occupational communities' regarding the control over people management in organisations identified by Wright (2008, p. 1082).

[3.9 Conclusion to Chapter 3](#)

This second chapter of the three chapters which review the extant literature has discussed equality and diversity, examining the theories and critiques of equal opportunities which underpin the UK legislation, the diversity paradigm, intersectional theory, and the business case for diversity management, the concept of inclusion, and the merit principle. The final sections of the chapter

considered the trade unions in the context of equality and diversity, and the enactment of equality and diversity in work organisations, with a particular focus on the role played by HR and line managers.

The trajectory of equal opportunities to diversity management is discursively similar to that of personnel management to HRM. Diversity has been 'enthusiastically heralded as the new paradigm' (Healy et al., 2011, p. 10), born of its precursor equality in much the same way that HRM was born of personnel (Dickens, 1999; Greene & Kirton, 2011; Kirton, Greene, & Dean, 2007). The instrumental approach to employees implicit in HRM (Keenoy, 1990) reflects the utilitarian nature of the business case for diversity management. Benschop (2001) notes that the debate concerning the impact of HRM on performance shares similarities with discussions of the effect of diversity on performance.

Torrington and Hall argue that personnel management had not delivered equal opportunities in the workplace (1996, p. 94). This perspective locates personnel management and equal opportunities as failed projects, and implicitly related to one another in their failure. The North American hyperbole associated with both diversity and HRM nourishes critical analyses of both as being managerialist from a British/European, critical perspective (Greene & Kirton, 2011; Oswick, 2011; Zanoni, Janssens, Benschop, & Nkomo, 2010). The individualistic focus of diversity management reflects the discourse of HR managers (Squires, 2008) and strategic HRM in that it marks a departure from the collective focus of IR (Liff & Wajcman, 1996; Marsden, 1997). In strategic HRM, people *more generally* will only come first where there is an economic benefit for an organisation in pursuing such a strategy (Keenoy, 1990). Van

Dijk et al. (2012) identify that contingent attitudes towards marginalised employees occur in employment contexts where all employees are treated contingently. In the business context, referring to employees as 'resources' and as an 'asset' constructs them solely as a means to an end (van Dijk et al., 2012, p. 77). This contravenes Kantian rights-based ethics specifically the perspective that people 'should be treated as ends in themselves, never as a means to an end' (Winstanley & Woodall, 2000, p. 10).

Whilst the diversity rhetoric represents a weakened ideal of employment rights, by virtue of its relative popularity with managers, it has the propensity to impact more positively on the lives of employees than the legislation (Edelman et al., 2001). Purcell (2012, p. 162) however suggests that attempts to assert the business case and employers' interests as a means for garnering support for employment rights, as in the management of diversity, is 'often unconvincing'.

Implicitly, deregulation and voluntarism could lead to a diminished requirement for HR professionals. This study considers whether, according to the logic of deregulation and voluntarism HR practitioners and/or other organisational actors are devoting less time and resource to equality, and if not, why this is the case. Based on the literature, as line managers and organisations more broadly require diversity managers and HR practitioners to ensure compliance rather than to manage diversity, it is actually in the self-serving interests of diversity and HR practitioners that the shift to diversity management remains partial.

The findings of Guest and King (2004: 419) suggest that, without the force of regulation, 'HR bureaucracy designed to promote fairness' is unlikely to be

accepted or appropriately implemented in organisations. Roper and Tatli (2014, p. 266) suggest that equality and diversity in the UK had reached an equilibrium which was then damaged by the 2008 economic crisis, identifying the vulnerability for equality and diversity in the context of the Coalition and Conservative governments' agenda of reducing the deficit. This regulatory/legislative context is examined in the following chapter, Chapter 4, the final of the three chapters which review the literature.

4. Legislation and regulation

This chapter, the third of the three chapters which review the literature, considers the development of the anti-discrimination law in the UK, HR practitioners' role in 'regulating' the employment relationship, and the employment tribunal system. This is the specific legislative context within which HR practitioners enact equality within their organisations.

4.1 The legislative context

The section considers the development of anti-discrimination law in the UK, the construction of the current legislation, specifically the Equality Act 2010, and the discourse of regulation as a 'burden' to business. This section additionally examines the literature that identifies the basis of equality in human rights law, the Public Sector Equality Duty, 'family-friendly' and other equality-related legislation, and the much-diminished role of the 'overseeing body', the Equality and Human Rights Commission. Whilst not all of these contributing factors to the equality context may be directly referenced by HR practitioners in their discussions of their legal guardian role, they nonetheless underpin equality practice in the UK, and their presence and absence in practitioner talk provides insight into how they have variously succeeded in achieving relevance at the level of organisational enactment.

development of anti-discrimination law, the individualised construction of rights, the discursive construction of legislation as a 'burden' to business, and the systemic hostility, identified by the critical literature, which impedes progress towards equality in the UK. The section examines how political discourse shapes perceptions of regulation (Carter et al., 2009).

4.1.1 The development of anti-discrimination law

This section considers the two main phases in the development of anti-discrimination law: the post-Donovan era and the laws enacted in the Blair Government. The section further considers the approach of the Coalition Government towards equality legislation in the UK.

4.1.1.1 Post Donovan employment law

Commenced in 1965 (Seifert, 2015), The Royal Commission chaired by Lord Donovan presented both an analysis and 'prescription for change' in respect of British industrial relations (Ackers, 2014, p. 77). The previously effective formal system of collective bargaining had become prone to a 'chaotic and unprofessional' informal system (ibid) and there was a drive by elites to establish more competitiveness within industry (Martínez Lucio, 2015). The resulting focus on labour processes and worker performance increased interest in a range of 'institutions and factors' underpinning the employment relationship, including the role of the state and employment laws (Seifert, 2015, p. 746-7).

The Wilson Labour Government of 1964-70 had a modernising agenda in respect of employment (Martínez Lucio, 2015) and the first piece of anti-discrimination law, the Equal Pay Act of 1970, was introduced in the 'final days' of this government in response to the 1968 strike by the women of the Ford Motor Company (McKay, 2011, p. 11). The two subsequent equality laws, the Sex Discrimination Act (SDA) of 1975 and the Race Relations Act (RRA) of 1976, were commenced at a time when the EU began to turn its attention to anti-discrimination, with specific regard at that point only to sex equality (ibid, pp. 10-11). Seifert (2015) highlights that the SDA and RRA were introduced

by the returning Wilson Labour Government of 1974 as part of a raft of favourable employment legislation designed to appease the unions in exchange for a wage freeze. This approach split the Labour party, failed to solve issues of productivity, and led to the downfall of this Wilson Government precipitated by the Winter of Discontent (ibid). Heery (2011) notes that employment law, now most vehemently contested by the neo-liberal political right, was previously opposed by the political left and centre on the basis of its destabilising impact on collective, voluntarist employment agreements, and that industrial relations literature is replete with critiques that employment law lacks efficacy. Arguably from its inception in the 1970s, equality law in the UK has been the subject of critique, for very different reasons, in both left- and right-leaning discourses.

Legislation in respect of disability did not follow until the Disability Decimation Act of 1995 and much later for Sexual Orientation (2003), Religion (2003) and Age (2006) (Conley, 2013). These post-millennium additions were the result of European Directives on Equal Treatment (ibid) and formed part of a 'stream of legislation' introduced by the Labour government of 1997-2010 (Edwards et al., 2004, p. 246) linked to the Blair Government's decision to sign the social protocol of the Social Chapter. This is discussed below.

[4.1.1.2 Equality law under the Blair Government](#)

In the first weeks of the 1997-2001 Blair Government, Britain's opt-out from the social chapter of the Maastricht treaty, which went on to become the Amsterdam treaty, ended (Riddell, 2005). In 2000, the European Commission issued an Employment Directive requiring member states to enact legislation to protect employees on the grounds of age, disability, sexual orientation, and

religious belief which, with the exception of disability, were at that point unprotected characteristics in UK employment (Spencer, 2008). This move by the EU forced 'the future machinery for promoting and enforcing equality legislation' onto the agenda of the Blair Government (ibid, p.6).

Whilst the EU is acknowledged as strongly influencing UK employment legislation (Dickens & Hall, 2006; Dickens, 2007, 2012c), Hyman et al. (2012) contest the portrayal of the EU as a continued proponent of equalities legislation, citing its dysfunctional decision-making architecture and current neoliberal bias as inhibiting further advances in equality. Pollert (2007, p. 115) similarly rejects the notion that the EU is socially-oriented, citing the trajectory of the EU away from its previous 'social democratic regulatory project' towards the free market, transnational capital and deregulation. Curran and Quinn (2012, p. 464) suggest that the impact of legislation prompted by EU directives can depend on the 'readiness' of a member state, where readiness is based on the length of time the issue has been under debate in the state and the acceptance of the underlying concept. As such, Curran and Quinn found that race equality legislation was more readily accepted than employee information and consultation legislation in Ireland, highlighting that even where employers express support for regulation, they still tend to resist its enactment.

The 'expansion of the protectorate' (McCrudden, 2008, p. 206) under the Blair Government, which reflected the expanding scope of the equalities law in the US (Dobbin & Sutton, 1998), arguably contributed to the 'juridification of the employment relationship' with law and legal norms shaping management policy and permeating industrial relations practice (Dickens & Hall, 2006, p. 338). Morris (2012, p. 10) suggests that individual rights have become, for

many employees, the main source of protection, and that these rights are particularly important in respect of termination of employment, discipline and equality. Drawing on the institutional theory proposed by DiMaggio and Powell (1983), Paauwe and Boselie (2003) propose that increased legislation can lead to greater homogeneity in HRM practices at the level of the organisation.

4.1.1.3 The Coalition Government

Hepple (2011a, p. 333) proposes that the argument of 'reducing bureaucracy and cutting red tape' was a pretext on the part of the Coalition government. This pretext is arguably the intention to reduce equality systems and to further 'meritocratic' outcomes on ideological rather than purely financial grounds. Although we are encouraged to perceive a reduction in equality as a by-product of austerity measures, an agenda of discriminatory practice may be consciously pursued (Holgate et al., 2012) in 'ostensibly hostile environments' (Healy et al., 2011, p. 14). Conley (2012) notes that there is no real commitment on the part of the judiciary to address the gap between rhetoric and compliance. In the case of the Fawcett Society's challenge to budget cuts on the grounds that the cuts were disproportionately unfair to women, the Society is argued to have failed due to the judiciary's lack of neutrality in a case which concerned the state, the country's largest employer (ibid).

4.1.2 The basis of equality in human rights law

Equality concepts and regulation are underpinned by broader, more fundamental concepts of human rights. The UK employment relationship exists in a context where employees currently have recourse to the European Court of Justice, or where the application of UK equality regulation through the tribunal system has failed to protect their human rights, the European Court of

Human Rights. Although tangible outcomes appear to be limited to a number of high profile cases, these outcomes contribute to the tenor of workplace discussions regarding casework. A discussion of human rights can be seen to provide context to both theoretical discussions of equality and diversity and have relevance for workplace enactment.

Noon (2007, p. 781) argues that '[e]quality of opportunity is a human right based in moral legitimacy (social justice), rather than economic circumstance. Its base is therefore an inalienable right that is universal.' Human rights are freedoms and entitlements that each person possesses by virtue of being a person, rather than as a 'contingent gift of the state' (Hoffman & Rowe, 2010; Morand & Merriman, 2012; Wadham et al., 2011). Assertions of universalism in human rights discourse are, however, 'deeply controversial' (McCrudden, 2008, p. 698). 'Universal' rights are 'subject to exceptions and limitations' (Hoffman & Rowe, 2010, p. 12), ensuring that the law requires constant reinterpretation (Habermas in McCarthy, 1988). This requirement arguably necessitates an operational actor role of 'interpreter', a role indicated to have been undertaken by personnel/HR specialists in both the UK and US (Edelman et al., 2001; Legge, 1995). In the current context, Hoffman and Rowe (2010) propose that the scope and meaning of the European Convention for the Protection of Human Rights, discussed below, may develop over time.

McCrudden (2008) argues that the concept of dignity plays a central role in contemporary human rights discourse, noting the difference between individualistic and communitarian concepts of dignity. Hoffman and Rowe (Hoffman & Rowe, 2010, p. 11) argue that the focus on rights ensures that individuals rather than collective interests are the focus of law. Hoffman and

Rowe suggest that 'rights' could mean: a claim to, a freedom to do, a power to do, and an immunity from. Wadham et al. (2011, p. 2) propose that it is generally accepted that rights contain both a positive 'claim-right' and a negative 'liberty right', and that rights entail responsibilities. Wadham et al. argue that English lawyers have traditionally remained sceptical of human rights as a positive concept, preferring instead to focus on the negative concept of liberties. As such English common law has never expressly set out the rights that an individual possesses (Hoffman & Rowe, 2010). Prior to the enactment of the Human Rights Act (1988), Britain was almost alone among western democracies in this respect in having no positive guarantee of rights (Wadham et al., 2011).

Wadham et al. (2011) suggest that the European Convention for the Protection of Human Rights (ECHR) has had a profound impact on English law and on international human rights jurisprudence. McCrudden (2008, p. 721) states that the Human Rights Act 1998 'effectively incorporated the ECHR into domestic UK law'. The Act is argued by Hoffman and Rowe (2010) to be a piece of constitutional legislation, therefore one of the most important statutes ever passed in the UK. The ECHR is, however, considered an imperfect treaty with gaps remaining in the protection of human rights in the UK (Wadham et al., 2011). Wadham et al. suggest that although the Convention 'is a 'living instrument', the values it embodies are those of a different generation' (2011, p. 7). The application of Article 14, which pertains most directly to anti-discrimination, is considered problematic: it is 'parasitic' in that it relates to the other rights set out in the Convention rather than providing a free-standing set of rights:

Article 14: 'The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

The phrases 'any grounds such as', and 'other status' have been broadly defined by EU member states (Howard, 2011; Wadham et al., 2011). A free-standing equality right, Protocol 12, was introduced in the Convention in 2005: this provided a right to non-discrimination which does not need to 'piggy-back' on the other Convention rights (Wadham et al., 2011: 309). The Protocol has been stymied by the UK and other EU member states who have 'decided not to ratify it' (Wadham et al., 2011, p. 309).

Hoffman and Rowe (2010) suggest that the Human Rights Act 1998 created a major shift in how we view one another as citizens and an individualisation of rights. In addition to 'transforming the legal landscape', academics writing in the field of rights hoped that the HRA would impact on social and political culture (Wadham et al., 2011, p. 11). The Act has not been successful in its aims of creating an institutional human rights culture; public bodies have taken the approach of 'Strasbourg-proofing' policies and procedures to avoid legal action (Wadham et al., 2011, p. 12). At the centre of the 'policy turbulence around the human rights agenda' is a discussion regarding the balance of individual rights and the rights of the wider community (Riddell & Watson, 2011, p. 194) with the Act is widely blamed for privileging the rights of terrorists and criminals (Wadham et al., 2011). The Conservative Election Manifesto of 2010 included a commitment to repeal the HRA, although this commitment did

not feature in the subsequent Coalition agreement with the Liberal Democrats (Riddell & Watson, 2011).

4.1.3 The Equality Act 2010

The formal legal model for equality in the UK shares its underpinning aim with that of civil rights law in the US in that, unlike some conceptions of diversity, it does not pertain to 'a random list of attributes, rather it embraces a moral ideal that groups of citizens who have been subject to past discrimination are now entitled to special protection against further discrimination and to fair opportunity in employment' (Edelman et al., 2001, p. 1616). Group-based differences and legal compliance issues continue to drive organizational policies and initiatives at the level of practice (Tatli, 2011) and therefore an examination of the literature on the construction and scope of the equalities legislation links to the discussion of HR, theories of equality and diversity, and regulatory space in setting the context for this empirical study.

As discussed above in Section 4.1.1, the Labour government introduced a 'surge' of new legal activity targeted at discrimination at the start of the new millennium (Fredman, 2001, p. 145). This surge culminated in the EA 2010, a bold, inclusive construction considered 'a major landmark in the long struggle for equal rights' (Hepple, 2011b, p. 1). The impact and resistance to new legislation can be influenced according to whether it builds on existing regulation or seeks to 'trail-blaze' (Dickens & Hall, 2006, p. 348). The view of scholarship is that the EA 2010 'harmonises, clarifies and extends' (Hepple, 2011b, p. 1) previous equality legislation. The preceding regulation is described as 'a bewildering array' (Fredman, 2001, p. 145), a 'tangled and incoherent mess' (Lester & Clapinska, 2005, p. 175), and 'complex and

byzantine' (O'Conneide, 2007, p. 141). As such, the EA 2010 had the effect of streamlining the inconsistencies in the previous legislation and adding further protected characteristics, thereby ostensibly rendering the legislation easier to apply whilst increasing the number of ways in which an employee could potentially claim discrimination.

The EA 2010 defines nine 'protected characteristics': age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. Roper and Tatli (2014) identify that very few organisations make E and D provision for categories which fall outside the scope of the legislation. The legislation is argued to represent a minimum approach (Purcell, 2012) but in its scope includes protection for majority and advantaged groups in certain categories, e.g. men, people who are white, and heterosexuals. The EA 2010, like US anti-discrimination law, therefore 'protects everyone' but is largely employed by members of disadvantaged groups (Nielsen et al., 2010, p. 177). The 'one size fits all' approach to equality is identified as potentially problematic (Fredman, 2011; O'Conneide, 2007) or even dangerous (Mccolgan, 2009; Vickers, 2011). This suggests that the enactment of equality at an operational level by organisational actors could present challenges that are both technical and moral.

4.1.4 Protection under the EA 2010

Fredman (2001) notes that the method by which equality groups are categorised is problematic. Equality categories derive both from civil rights movements and categories of difference that have more recently been recognised as salient in the workplace (Tatli & Özbilgin, 2012b). The structure

of the directives, which pre-date and inform the structure of the EA 2010, contribute to essentialist, fixed perceptions of group definitions (Fredman, 2001). McCrudden (2008, p. 206) argues that the role of anti-discrimination law protects individual self-identity rather than focusing on group-based economic disadvantage, and that this is 'consistent with the trend toward the growth of identity politics in British society and more broadly'. Nyathi and Harney (2007, p. 187) comment that the term 'identity politics' is often used pejoratively, in the same way as the term 'political correctness', by the political right and the media.

Equality policies in the UK have been framed in a manner that displaces theoretical and practical considerations of economic inequality (Squires, 2008). Riddell and Watson (2011, p. 194) cite the ambiguity of the status of social class within the institutions governing equality and human rights as one of the 'loose ends' left by the previous Labour government. The Coalition's equality rhetoric features an apparent undertaking to address socio-economic disadvantage (Government Equalities Office, 2012, p. 1.4). Fredman (2011, p. 427) however notes that it is 'both a great disappointment and constitutionally dubious' that the government has declared an intention not to bring into force a proposed socioeconomic disadvantage duty in section 1 of the EA 2010.

At the level of the organisation, the EA 2010 constructs a situation for operational human resource practitioners whereby class and/or socio-economic status are not sources of potential litigation, and therefore not on the watch-list of HR practitioners as they navigate case work. This enactment-level observation correlates with academic observations on the location of class as one of the key taboos within our hegemonic frame of reference (Tatli

et al., 2012 where some perceived inequalities may be related to, but not identified with, class (Acker, 2006). Class inequality in the workplace is relatively invisible and widely accepted (Acker, 2012). Wright et al. (2011) suggest that unions take up intersectional cases within the prevailing legal parameters, i.e. those of the EA 2010. As discrimination on the grounds of class cannot be pursued in litigation, unions representing members are encouraged to construct cases ignoring reference to class in order to legitimise claims. This forces a construction of cases that skews their origin and could in part explain the perception of employment tribunal claims as 'vexatious' (Busby & McDermont, 2012, p. 173). The discourse of 'vexatious' claims is considered further in section 4.3. The literature suggests that HR practitioners are less likely to make explicit reference to class and socio-economic status than the protected characteristics of the EA 2010, although inference of class and socio-economic difference may be discernible in practitioner talk.

The EA 2010 provides protection from discrimination from direct and indirect discrimination, harassment and victimisation. The definition of direct discrimination in the EA 2010 follows the preceding directives in adhering to the principle of consistent treatment (Fredman, 2001). Thus the major legal obligation of the equalities regulation is contained within 'direct discrimination', that is, 'to treat similarly situated people the same' whilst imposing no particular *standard* of conduct (Barnes & Ashtiany, 2003, p. 280). (Schroeder et al., 2008, p. ii) suggest that direct discrimination on the basis of social group is declining whilst indirect effects continue to advantage the prospects of white men.

Indirect discrimination 'refers to norms, procedures and practices that appear to be neutral, but whose application disproportionately affects members of certain groups' (Tomei, 2003, p. 403). The construction of indirect discrimination in UK equality law leads to the reactive diagnosis of discrimination rather than aiming to achieve equality in outcomes (Fredman, 2001). Indirect discrimination proves difficult to detect, particularly where outcomes disproportionately affect, but do not entirely exclude, members of particular groups in the workforce (Tomei, 2003). Fredman (2001) proposes that the individual and reactive nature of indirect discrimination will result in it having only a minor role in engendering change.

The EA 2010 continues the provision set in the Disability Discrimination Act 1995, which differed from the SDA 1975 and the RRA 1976, in allowing for different and unequal treatment of disabled people (Foster & Williams, 2011) through the concept of 'reasonable adjustment'. Unlike the other equality strands, comparing a disabled person with a non-disabled person would not result in equality of outcomes (Hepple, 2011b; Lawson, 2011). The EA 2010 therefore includes the provision of 'disability discrimination', which allows 'more favourable treatment' of disabled people (Hepple, 2011b) and imposes the duty of 'reasonable adjustment'. Lawson (2011) raises the question of whether the approach taken toward disability should be applied to the other protected characteristics. This would constitute a 'levelling-up' for the other strands which would be entirely counter the de-regulatory trends of successive governments.

4.1.5 The public sector equality duty

The public and private sectors in the UK present a two-tier system in terms of equality and diversity (Foster & Williams, 2011). Schroeder et al. (2008) propose that the public sector employee constituent is composed of disproportionately high numbers of women and ethnic minorities. The attraction of the public sector to traditionally disadvantaged groups is argued to be partly due to the more positive approaches to equality in the sector (Riddell & Watson, 2011). Proactively pursuing an equality and diversity agenda in the private sector is more challenging given that there is less regulatory leverage (Dickens, 2007; Holgate et al., 2012) particularly in the 'post-crisis' economy (Riddell & Watson, 2011, p. 194).

The public sector equality duty does not provide additional rights for individuals but instead places responsibility with public authorities (Conley, 2012). The recognition that discrimination in society extends beyond the limitations of direct and indirect discrimination led to the development of positive duties, which were pioneered in Northern Ireland (Fredman, 2001). Until November 2010, public sector organisations had a general duty to advance equality of opportunity and foster good relations between groups (Hepple, 2011a). Whilst this is frequently presented as a duty to 'promote' equality (e.g. Dickens & Hall, 2006, p. 348), Hepple emphasises that 'advance' is not synonym for 'promote'. Rather than requiring action to produce results, the duty is to have 'due regard' to specific equality goals (Fredman, 2011, p. 408). The positive duties in the public sector were seen to represent a major breakthrough in that they required authorities to take the initiative in removing discrimination and

inequality as opposed to the individual rights-based model where a claim is made after discrimination is alleged to have occurred (Conley, 2012).

The critiques of the duty in the literature highlight that the duty risks prioritising equality groups to the detriment of those living in poverty more generally (Fredman, 2011) and that the effects of the duty have been limited in that 'advancing' equality of opportunity is not a duty to eliminate unlawful discrimination (Hepple, 2012, p. 61). A further critique is the perception that public sector organisations in the UK are obsessed with the minutiae of compliance rather than engendering genuine organizational change (Klarsfeld et al., 2012; Vickers, 2011). Public sector equality initiatives can deteriorate into bureaucratic processes, particularly where outside enforcement is ineffectual (Acker, 2006). A widely-held view exists that some public bodies had tended to focus on paper exercises and adherence to process rather than whether the process had led to improvements in equality (Hepple, 2012, p. 60). The 'tick box mentality' of the public sector (Vickers, 2011, p. 137) provided the Coalition government with a popular target for reform. In the prevailing shift towards reduced bureaucracy, there is already evidence of public bodies jettisoning equality and diversity practice i.e. monitoring and impact assessments (Hepple, 2011a). The duty to 'promote' was removed by the Conservative government in November 2010 (Roper & Tatli, 2014, p. 273).

It is hard to discern how far the differences highlighted between the public and private sector in the literature pertain to the operational enactment of equality by organisational actors; the public sector equality initiatives identified in the literature as overly-bureaucratic and subject to the reductionist agenda of

recent and current governments are arguably separate to the daily enactment of equality as it manifests in transactional, routine HRM processes.

4.1.6 Other equalities legislation

In addition to the EA 2010, other 'family-friendly' statutory entitlements relating to circumstance rather than characteristics have been introduced which relate to equality at work. These include parental leave, emergency time off for dependents and 'non-standard working' (Dickens & Hall, 2006, pp. 344–5). Some of these entitlements were increased as part of Coalition government's commitment to fairness and the family (Hoque & Bacon, 2014). The Conservatives have supported the statutory leaves associated with children in terms of providing more flexibility of how leave is taken by two parents, (Williams & Scott, 2011). Carter et al. (2009, p. 263) highlight that the development of regulation in the area of 'work-life balance' appears to conflict with the broader trend of reducing employment legislation. There was demonstrably less inclination on the part of the Coalition government to deconstruct provisions pertaining to the 'family' when compared to the EA 2010. The Coalition's 'family-friendly' rhetoric was borne of a belief in the intrinsic value of 'the family' and an attempt to broaden the Conservative party's electoral appeal to middle-class liberals (ibid). Legislation, which is 'EU driven' also exists to protect part-time and other 'non-standard' employees (Dickens, 2007, p. 467).

4.1.7 The overseeing body

Jonsen et al. (2013, p. 280), state that '[o]nly through an overseeing body (...), which has the social good as its *raison d'être*, can the collapse of the diverse workforce, and its equal representation be prevented'. Dickens (2007, p. 475)

similarly argues that 'agency enforcement' plays an important role in tackling structural discrimination that individual complaints raised in the tribunal system cannot address. This section considers scholarship's discussion of the 'overseeing body', the Equality and Human Rights Commission (EHRC), considering the debates of its purpose and scope, the critical yet aspirational tone of scholarship at its inception, and the observations in contemporary literature regarding its current, diminished status. Whilst the commission, in its current form, is unlikely to be referenced by HR practitioners in talk, its formation and fortunes provide an important context to understanding the intentions underpinning the EA 2010.

4.1.8 The 'burden' of regulation

The free market model *expects* the effects of legislation to be costly to work organisations (Edwards et al., 2004, p. 252 my emphasis) and employment laws are frequently constructed as a 'burden' inhibiting business growth (Atkinson et al., 2014; Edwards et al., 2004; Heery, 2011; Pollert, 2007). Specifically, the current range and influence of employment regulation is regarded as antithetical to business interests and as damaging to job creation and competitiveness (Purcell, 2012). Dickens (2012b, p. 209) identifies that 'deregulation ideology' positions rights against competitiveness without supporting evidence. As such, the 'burden of regulation' is a dominant discursive construction and the realities of practice are more complicated than presented by the discourse (Atkinson et al., 2014, p. 3). Dickens and Hall (2006) highlight that employer surveys can cover a wide range of 'burdens', for example, environmental and planning legislation, and taxation: as such, it is not always easy to discern which legislation causes employers particular

dissatisfaction and the costs of compliance vary between the different types of legislation (Carter et al., 2009). Edwards et al. (2004) found that the law is not uniformly applied in that older laws were more embedded in practice than newer legislation, although this finding is contended by Carter et al. (2009) who found that, in small businesses, maternity leave, the most established item of legislation considered in their survey of attitudes, was cited by business owners as having the most negative effect. Purcell (2012) suggests that laws that accord with notions of fairness and which are not seen to pose too much of a burden are more likely to be accepted. The literature therefore presents a mixed picture of employer perceptions of how embedded legislation is in the workplace.

It is unclear whether it is the legislation *per se* or issues such as the frequency with which requirements change, the complexity of the regulation or the associated administration which vex employers (Dickens & Hall, 2006). Edwards et al. (2004) propose that the effect of legislation on organisations at an operational level includes extra administrative costs, potential higher labour costs, and impeded autonomy in respect of decision-making. The resistance to the managerial resource required to ensure compliance is frequently labelled the 'red tape' argument (Purcell, 2012, p. 159). Employers and others were invited to indicate which rights should be removed as part of the Coalition Government's 'Red Tape Challenge' (Dickens, 2012b, p. 209). Dickens (2012b) acknowledges that complying with some aspects of equality legislation may incur costs at the level of the firm whilst the benefits are experienced at a societal level. Dickens and Hall (2006) suggest that responding to employer concerns about legislation may not always serve

longer term competitive interests, whilst Edwards et al. (2004) highlight that employment legislation 'shock' may spur an organisation to work more efficiently and can lead to positively-viewed, progressive changes in employment practices. Employment legislation can also be welcomed by employers where it outlaws unscrupulous practice on the part of competitors (Purcell, 2012).

The EHRC, and its forerunners, the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC), were conceived to promote broader strategies against discrimination and disadvantage than the complaints-based approach (Hepple, 2011a). The establishment of the EHRC was met with mixed reactions (O'Conneide, 2007, p. 141). The inclusion of a combined remit of equality and human rights was supported on the basis that the two concepts derive from the same underlying principle (Wadham et al., 2011). Human rights activists have however criticised the EHRC for focusing on equality issues to the detriment of its human rights remit (Riddell & Watson, 2011). At the inception of the Human Rights Act 1998, the failure to create an institution to promote understanding and awareness of the benefits of human rights left the Act vulnerable to attack, a failure that was 'belatedly remedied' with the establishment of the EHRC (Wadham et al., 2011, p. 12).

Whilst there were 'high aspirations in some quarters' that the EHRC would prove transformational (Niven, 2008, p. 17), equality activists expressed

concerns that the creation of the single Commission could result in the loss of valuable group-based resources and that a hierarchy of strands could emerge (Foster & Williams, 2011). The response to the concept of a single commission was enthusiastic on the part of the groups associated with the newly protected equality characteristics and notably cooler from the commissions of established equality categories and their associated activist groups (Foster & Williams, 2011; Lester & Clapinska, 2005). The amalgamation of the existing equality duties and the extension to further characteristics were generated by an aim to take a more intersectional approach to legislation (Wright et al., 2011; Niven, 2008) and from the perspective that a single commission ought to be better equipped to target cross-strand and multiple forms of discrimination, and to carry good practice across the equality strands (O’Cinneide, 2007). Despite the powers initially accorded to the EHRC, concerns were raised that the new single commission would concentrate on “soft’ promotional activities rather than on hard, messy and controversial enforcement work’, and that the single commission might be more prone to ‘bureaucratic inertia’ (O’Cinneide, 2007, p. 143).

The Coalition government cut the budget of the EHRC from £70m (at its inception) to £26m by 2015 (Klarsfeld et al., 2012). The Coalition expressed an intention to ‘radically reform’ the EHRC, with plans to ‘scrap vague, unnecessary and obsolete provisions from the Equality Act 2006’, having already implemented a Framework Document which ‘clarifies the relationship’ between the EHRC and the government and establishes ‘tighter financial controls’ (Government Equalities Office, 2012, p. 2.25). Lester and Clapinska (2005, p. 178) suggest that independence from government interference and

adequate resourcing were key, minimum conditions for the success of the EHRC, stating that ‘there is little point in creating a toothless human rights commission as a statutory pressure group’. Hepple (2011a, p. 325) argues that the Government’s reductions of the EHRC’s budget and remit will change the body from a ‘promoter of societal change to the much more restricted one of law enforcer’. Systemic hostility towards the equalities bodies is argued not to be a new phenomenon: the bold approach of the original commission, the CRE was curbed by judicial hostility and insufficient resources (Dickens, 2007; Hepple, 2011a; Shah, 2011).

4.2 Employment tribunals

Employment tribunals, ‘the final resort for legal enforcement of employment rights’ (Pollert, 2007, p. 100) have become the expedient enforcement option for handling the increasing number of employment rights (Dickens, 2012c). Critical management scholarship and successive governments have both taken a negative stance towards the ‘retrospective, individualised victim-centred complaints approach’ (Dickens, 2007, p. 473) of the tribunal system and related individualised organisational-level processes for very different reasons. Critical scholars highlight evidence of the limited impact of individual rights and the tribunal system in tackling continuing unfairness experienced at work whilst the business community and successive governments, constituted of different political parties, construct regulation as a ‘burden’ to business which threatens organisational prerogative (Atkinson et al., 2014; Curran & Quinn, 2012). This section considers how both parties construct the tribunal system as flawed.

The perspective of critical scholarship is that, rather than engendering positive institutional change, our complaints-based tribunal system is counter-productive in that it generates a short-term, negative and defensive approach (Hepple, 2011a) and an individualistic process that obscures the collective dimensions of inequality and discrimination (Jonsen et al., 2013). Individual litigation is recognised as having a limited ability to engender societal change (Fletcher & O'Brien, 2008; O'Connell, 2007) as 'successful' claims do not generally lead to an employer addressing practice that disadvantages wider groups of employees (Wright et al., 2011). The remedy is generally financial compensation (Morris, 2012), with the dispute crystallised into the negotiation of this financial package (Busby & McDermont, 2012). Nielsen et al. (2010), discussing US anti-discrimination law suggest that employer defendants agree to settle cases for modest sums on pragmatic grounds, refusing to accept that they discriminated but not trusting the legal system to vindicate their actions. This, Nielsen et al. propose renders a critical examination of the conditions within the organisation that gave rise to the claim unlikely.

Liff and Dickens (2000, p. 95) argued that the UK equality regulation had, to that point, failed given 'the difficulties in bringing cases, low levels of applicant success and, until recently at least, low levels of compensation'. The literature identifies the unpleasantness of the tribunal system for the individual complainant. The time and monetary costs involved with litigation place 'a heavy burden on the individual complainant's energy and resources' (Fredman, 2011, p. 408). Pollert (2007) argues that, the employment tribunal system was born of a tradition which eschewed the formality of legal process and state control, specifically, the Donovan Report of 1968. The Donovan

report [para 578] took the view that the then industrial tribunals should provide an 'easily accessible, speedy, informal and inexpensive procedure' (Morris, 2012, p. 14). Despite the intentions underpinning the establishment of the tribunals, the contemporary operation of ETs closely resembles legalistic, confrontational court process whilst claimants lack a system of representation and support provided by the state (Pollert, 2007).

Scholarly research has focused on the perspective of outcomes for claimants from a theoretical viewpoint and there is little independent empirical research that looks at the experiences of applicants to tribunals (Busby & McDermont, 2012). Theoretical perspectives and the rare empirical research take a similarly pro-claimant stance: O'Conneide (2007) for example proposes that discrimination in the workplace will remain unchallenged due to lack of support for those individuals with a claim. Healy et al. (2011) comment that, in diversity cases, the partial understanding of the judiciary has an adverse effect on claimants. Busby and McDermont (2012, p. 167) highlight that 'vulnerable workers' perceive employment tribunals as formal and discouraging; as 'barriers to justice'. In terms of tribunal claims linked to disability discrimination, Lawson (2011, p. 231) highlights the discomfort associated with 'having the details of one's impairment and its limiting effects publicly scrutinised'. Defendants (employers) frequently challenge the disabled status of claimants. Thus the focus of disability tribunal cases can turn to the functional limitations of the claimant, including mobility and continence, rather than the discriminatory practice of the employer (ibid).

Wright et al., (2011) highlight the under-reporting of applications which are settled pre-hearing. The receipt of a tribunal claim is also an unpleasant and

costly process for an organisation. HR practitioners are usually tasked with the brokering of a discreet settlement. In this process, the alleged discrimination and potential penalties have no visibility or status at the level of the organisation, or beyond.

The Coalition government of 2010-2015, claiming to represent the collective voice of organisations, took the position that claims *en masse*, were ‘vexatious’ manifesting in a ‘rising backlash against the ET system’ (Busby & McDermont, 2012, p. 173). Notably, the rhetoric of ‘litigious, vexatious claims’ predated the Coalition government, and featured in the discourse of New Labour in 2001 (Pollert, 2007, p. 124). Morris (2012) identifies that, as early as 1994, the Employment Department proposed reforms to the tribunal system aimed at reducing the volume of cases and the cost demands on public expenditure. Governments of different colours have therefore shared a view of the employment tribunal ‘problem’ (Dickens, 2012a, p. 29).

A key argument against the ‘free’ tribunal system was ‘the absence of penalties for pursuing spurious claims against employers’ (Curran & Quinn, 2012, p. 474). Vince Cable called for radical reform to employment law, citing that the current system is ‘far too costly, time-consuming and complex’ for employers and that ‘it is too easy to make unmerited claims’ (Vince Cable’s speech to the EEF in Busby & McDermont, 2012, p. 166). At the time of writing, whilst the EA 2010 is still intact, ‘access to justice’ in respect of raising a claim relating to the Act has been affected by the introduction of tribunal fees.

Nielsen et al. (2010, p. 180) suggest that, whilst there are ‘clear instances of “frivolous” or “smoking gun” cases’ most cases fall in between these extremes.

This study examines this space that exists between the polarised rhetorical extremes in the tribunal debate by considering talk of equality enactment. This enactment includes casework which in some instances has the potential to result in a tribunal claim and which is much more typically resolved within organisations with the involvement of HR.

4.3 HR practitioners' role in 'regulating' the employment relationship

This discussion of HR practitioners as regulatory actors focuses specifically on the theoretical and empirical literature which examines the operational workplace context whilst also taking into account the role of the wider contexts influencing this enactment. As this is a discourse-analytic study, the discussion specifically considers the interplay of the dominant discourses of HR with the national regulatory context in shaping the realities of enactment for practitioners.

This section considers the concept of regulatory space, the regulatory roles constructed for HR practitioners in the literature, namely the roles of 'regulator' (Storey, 1992) 'custodians' and 'gatekeepers' (Purcell, 2012); roles which most closely align with Wright and Snell's (2005) 'legal guardians'.

4.3.1 Regulatory space

MacKenzie and Martínez Lucio (2014) discuss how the regulatory terrain of employment is constituted of levels, spaces and sites, and populated by regulatory actors who appropriate roles. Edwards et al. (2004) similarly identify the importance of relationships inside an organisation, along with the nature of a particular law, and the competitive context of a firm, in shaping the effect of a law in practice. Dickens and Hall (2006) highlight that the relationship and power balance between line managers and HR practitioners, and the presence

of unions, will impact on the implementation of regulation. Purcell (2012, p. 178) states that 'social players' have the most influence on the effectiveness of employment rights. Dickens (2012b) defines the effectiveness of employment rights as the reduction of the likelihood of ill-treatment being experienced in the workplace. Reflecting industrial relations scholarship more broadly, the effects of legislation are often considered in terms of the power relationship between employers and employees (e.g. Edwards et al., 2004). As the focus of this study is human resource practice, this section specifically considers human resource practitioners as regulatory actors.

The 'site' of employment regulation represents the point where regulatory actors interact and arrive at outcomes (MacKenzie & Martínez Lucio, 2014). The site is 'circumscribed by regulatory *space*, a recognised boundary of jurisdiction for the regulatory processes in question' where actors operate within their own spheres of influence (ibid). MacKenzie and Martínez Lucio identify that the boundaries are fluid and contested by both existing and new actors, leading to 'regulatory transfer' over time (ibid). The concept of regulatory transfer problematizes normative constructions of HRM which construct a regulatory role for HR as outmoded; the roles of organisational actors in respect of regulation will transfer, augment and diminish over time and will additionally vary according to their national legislative contexts. The notion of regulatory transfer therefore supports the re-examination of the role of HR in the enactment of equality compliance. Regulatory space operates at different levels, i.e. at the level of the workplace, regional/national structures, and supranational mechanisms for regulation: levels which, whilst discrete, are mutually informing (ibid).

Dickens and Hall (2006) propose that the application of regulation involves an interaction with the pre-existing environment into which it is introduced, for example embedded practice, tradition and established behaviours. The individualization of employment rights and rise of HRM has, ironically, led to the state becoming more active in terms of regulating work in a number of areas including equality (Martínez Lucio & Stuart, 2011). The law in practice is constituted by managerial understandings of law (Edelman et al., 2001), that is, the law passes through the lenses of both employment lawyers and HR practitioners in a process of interpretation. This discursive development of the meaning of law is discussed further in Chapter 5 which presents the methodological approaches underpinning this study.

Edwards et al. (2004, p. 262) infer that an organisation needs to be 'sufficiently formal to employ a personnel manager' and that the presence of an HR specialist is linked to the presence of a 'very clear approach' to issues such as discipline. The experience of an employment tribunal can be one of the factors that prompt organisations to change their behaviour (Edelman et al., 1999) specifically by taking a more formal approach (Edwards et al., 2004). Atkinson et al. (2014, p. 12) found that medium-sized firms established formal systems in part to ensure greater compliance to the legislation and protection from tribunals. The introduction of process for this purpose is identified by Edelman et al. (1999, p. 12) as an 'insulator' against potential litigation.

4.3.2 Regulators, custodians and gatekeepers

Personnel specialists had begun to derive confidence as the 'interpreters and implementers' of the protective employment legislation introduced by Labour governments in the late 1960s and 1970s (Legge, 1995, p. 9) Legge presents

personnel's role in this respect as a form of 'deviant innovation', that is, the 'attempt by personnel specialists to gain acceptance for a different kind of organisational success criteria, reflective of social as much as business values, by which their contribution could be judged' (ibid: 12-13). Whilst Legge indicates that employment law, including equality regulation, provided personnel specialists with a durable form of deviant innovation as experts within their organisations, she notes that the confidence specialists derived from this diminished in the Thatcher era.

The personnel/HR role most readily aligned with regulation is Storey's (1992) 'regulator' construction. 'Regulators' 'were interventionists involved in the traditional and essentially tactical role of formulating, promulgating and monitoring the observance of employment rules and industrial relations policy' (Caldwell, 2003, p. 986). In Storey's construction, the regulator can appear to act strategically in that they may be involved in 'big' decisions, however these decisions rarely relate to the strategic orientation of the organisation (1992, p. 176). The regulator maintains a significant presence operationally, and line managers working with a regulator can 'feel displaced and upstaged' (ibid). Notably, Storey talks of the regulator role as potentially becoming defunct, situating the role in practitioner talk which is aspirational in that it cites the evolution of the personnel role away from regulation to more 'modern activities' including development, communication and leadership (1992, p. 177). This talk is located in a broader rejection by practitioners of pluralist frames of reference for the practice of personnel (ibid). Interestingly therefore, the regulator role is an outmoded, unappealing role from the point of its construction.

Reflecting Storey's construction, the legitimacy of the regulator role was perceived to have diminished in the context of the dismantling of collective bargaining (Caldwell, 2003; Cunningham & Hyman, 1999). Participants in the study undertaken by Caldwell (2003, p. 998) indicated however that the regulator role was being 'refuelled' or 'reborn' 'by a plethora of new social and employment legislation, as well as new ethical business policies'. As there is now an additional wealth of employment legislation including equalities legislation that includes a much broader range of employee characteristics, this suggests that the regulatory role will have been sustained in HR practice, and is perhaps, to draw on Caldwell's analogy, reignited with each change to the employment law terrain. Caldwell further notes that 'the complexity and scale of new legislation made personnel people increasingly dependent on specialist advice and the expertise of employment lawyers' (ibid). Employment lawyers arguably constitute 'new entrants' as actors in the employment regulatory space as defined by MacKenzie and Martínez Lucio (2014). Edelman et al. (1992) highlight that personnel managers in the US were part of a cadre of professionals, which also included employment lawyers, diversity specialists and management consultants, who were the 'key interpreters' of US civil rights laws. This is also the position of Edelman et al. in 2001, suggesting that this legislative 'interpreter' role endured, despite the rise at that time of diversity management rhetoric.

Purcell separates HR practitioners into two types in respect of employment rights: 'custodians of rights' and 'gatekeepers' (2012, p. 161). 'Custodians' champion both employment rights and good management practice; Purcell proposes that this involves encouraging the use of alternative dispute

procedures within the organisation. 'Gatekeepers' are defined by Purcell as those HR practitioners who minimise exposure to litigation and who act as problem-solvers while lacking the authority to change management behaviour. Wright and Snell's (2005, p. 180) construction of HR practitioners as 'legal guardians' perhaps aligns most closely with Purcell's 'gatekeeper'. Wright and Snell suggest that the 'legal guardian' aspect of HR's role prioritises compliance to legal and regulatory systems with the aim of avoiding legal proceedings. Purcell (2012) and Wright and Snell (2005) are relatively unusual in constructing roles relating to legislation for HR practitioners in the more recent context of HRM.

MacKenzie and Martínez Lucio (2014, p. 200) propose that the professionalization of human resource managers, which has led to a 'stronger hand' for the CIPD and impacted on the pedagogy of teaching in business schools, has been intrinsic in the individualisation of employment regulation. A regulatory role for HR, in respect of individualised employment rights, is unintentionally *ensured by*, rather than incidental to, the dominant HRM discourse. HRM discourse tends to focus on multinational corporations with an ensuing preoccupation in practitioner literature and research on globalised modes of operating *across* national regulatory spaces (MacKenzie & Lucio, 2014). This emphasis has the effect of discursively foregrounding diversity management and of marginalising the relevance of national legislation and regulatory space in the employment relationship.

4.3.3 Legislative compliance

Compliance is commonly constructed as antithetical to commitment in models of HRM. Legge (1995, p. 174) highlights that normative models of HRM

disparage 'externally imposed bureaucratic control systems' which generate 'reactive rather than proactive behaviour'. The development of normative models of HRM appears to have been founded on the premise that 'externally imposed bureaucratic control systems' would not resurface, and that the development of strategies to enhance employee commitment would predominate. This view is demonstrated by Gollan (2012) who argues that the culture of compliance which previously drove institutions and systems of work are now perceived to be part of past vested interest.

The 'regulatory' role is thereby eschewed in HRM discourse. As Francis and Keegan (2006) highlight, Ulrich's (1997) paradigm prescribes HR practitioner roles as defined along two axes: strategic versus operational, and process versus people. Storey's (1992) typology similarly arranges four roles using a strategic/tactical *qua* operational axis, but along a second 'interventionary/non-interventionary' axis. As such the 'regulator' in Storey's typology, by representing the tactical and interventionary space in the typology, is both process- and people-oriented, thereby presenting an operational, process and people-oriented role that does not have a direct equivalent in Ulrich's typology.

Normative models of HRM fail to countenance that high levels of employment regulation would return. The dominant 'commitment' rhetoric currently co-exists in the UK context in a re-emergence of high levels of employment regulation brought in under consecutive Labour governments. This regulation was retained in the subsequent Conservative/Liberal Democrat coalition government, arguably given that the 'more savage instincts' of Conservative policy agendas in respect of the employment regulatory space were tempered

by the coalition partners (MacKenzie & Martínez Lucio, 2014, p. 197). Further, normative constructions of HRM fail to acknowledge that the emphasis on individual rights and diminishing union strength was in part achieved by the 'aggressive colonisation' of the regulatory space by HRM (MacKenzie & Martínez Lucio, 2014, p. 198), thereby creating, or re-creating a role for HR practitioners within this space.

MacKenzie and Martínez Lucio (2014, p. 203) argue that the 'colonisers' of regulatory space must be seen to provide a more effective regime of regulation when compared to previous regimes. As the dominant HRM discourse however rejects a regulatory role for HR, this creates a situation whereby HR practice involves a significant regulatory role of its own creation, but where this role is under-acknowledged and arguably undervalued in terms of the industry it generates for practitioners. This casts the HR profession in general on the side of the detractors of the tribunal system rather than seeking to demonstrate the 'superiority' of this as a regime (MacKenzie & Lucio, 2014, p. 203) when compared to the previous system of collective bargaining.

As Edelman et al. (2001) observe, the breadth and ambiguity of law means that it is rarely read directly by employers; rather, most organisations rely to some extent on the legal profession who provide workshops and send legal updates to HR practitioners. As such, the law is 'filtered through a variety of lenses, and colored by different professional backgrounds' (Edelman et al., 2001, p. 1596) in its interpretation and eventual enactment. This, Edelman et al. propose, can lead to the perception of inflated litigious risk, identified by Roehling and Wright (2006, p. 207) as 'legal centric decision-making' which occurs disproportionately to the force and scope of the actual legislation in the

US workplace. Potentially, this phenomenon could occur in the UK, with a focus on key cases found in favour of claimants in a wider context where the success rate of employment tribunal cases in the UK is poor (Dickens, 2007; Morris, 2012; Pollert, 2007). Edelman et al. (2001) suggest that the rationale for drawing attention to legal risk on the part of the lawyers is to extend the market for their services whereas for the HR professionals the motivation is that of inflating their own status within their organisation. Such discussion of legal expertise in the context of HR's status is rare.

Watson (1977, p. 51) highlights that the growth in employment legislation in the 1970s had put personnel specialists 'increasingly in touch with one another' within their (large) organisations in order to create a shared understanding of how to implement legislative requirements given their common liability. More recently, legal professionals, who interact with HR practitioners in a range of organisations, are a source of 'normative isomorphism' (DiMaggio & Powell, 1983, p. 152): that is, the social process whereby professional associations promulgate normative rules regarding organisational and professional behaviour. DiMaggio and Powell (1983, p. 152) additionally posit that state regulation subjects work organisations to 'coercive isomorphism', noting that the professional power, which contributes to normative isomorphism, is in part conferred by the state. Dobbin and Sutton (1998, p. 442) identify that the 'new organizational institutionalism' proposed by DiMaggio and Powell positioned the state as a significant force shaping work organisations. Paauwe and Boselie (2003, p. 61) suggest that coercive and normative isomorphism, two parts of the three processes of 'new institutionalism' proposed by DiMaggio and Powell (1983), contribute to

homogeneity in HR practice across institutions. Heery and Frege (2006, p. 602) propose that organisations that formulate standards of good practice on equality and diversity, among other issues 'often with an eye to pre-empting legal regulation' contribute to isomorphism in employment practice. Edelman et al. (2001) propose that, once the professionals within an organisation adopt a construction of law, that construction is likely to become embedded as part of the organisation's culture. The discursive processes whereby law is given meaning across legal, management, and organisational fields are discussed further in section 5.6.

4.4 Conclusion to Chapter 4

This chapter, the final of the three chapters which review the literature, has considered the legislative context in respect of employment, HR practitioners' role in 'regulating' the employment relationship, the Equality Act 2010, and the employment tribunal system. Carter et al. (2009) propose that the HR literature tends to take the stance that regulation is desirable in the protection it provides to employees and that its adverse effects on work organisations are overstated. This is arguably an over-simplified overview of the regulatory, equality and diversity, and HR literature as reviewed in chapters 2-4.

The recent tribunal/legislative rhetoric contrasts sharply with the aspirational tone of the equality and industrial law literature at the beginning of the millennium: Fredman (2001, p. 168) for example stated at that time that positive duties were 'certainly the direction of the future'. The more recent governmental drive to reduce bureaucracy and introduce austerity measures are anticipated to impinge on equality outcomes (Greene & Kirton, 2011; Holgate et al., 2012; Tatli et al., 2012).

Underpinned by the discussion thus far of HR, equality and diversity, and the regulatory terrain, this study aims to consider how HR practitioners undertake equality work within this specific regulatory context. The following two chapters consider the appropriateness of discourse-analytic methodology to the aims of this research.

5 Methodology: theoretical perspectives underpinning the research

This is the first of the two chapters which discuss the research methodology of the study. Guba and Lincoln (1994) state that questions of method are secondary to questions of paradigm and, accordingly, this chapter provides the justification for the research paradigm underpinning this study whilst chapter 6 details the method of the data collection. This chapter examines critical social constructionism as a paradigm, lower-case criticality, organisational discourse, discourse analytic methodology, agents in the field, and discursive constructions of compliance.

5.1 Critical social constructionism

A paradigm is 'the basic belief system or worldview' that guides not only the methods of data collection used by a researcher, but also in their selection of the ontological and epistemological values underpinning their research (Guba & Lincoln, 1994). Guba and Lincoln (1994, p. 108) present paradigms of inquiry as defined by the answers to three fundamental questions, relating to ontology, epistemology and methodology respectively. Firstly, the ontological question concerns the form of reality, and therefore what can be known about reality. Secondly, the epistemological question concerns the relationship between the 'knower' and what can be known. Thirdly, the methodological question relates to how the inquirer (the 'knower') will go about finding out what they believe can be known. The answer to each question informs the answers to the subsequent question(s). Rather than arguing that a particular paradigm is incontrovertibly 'right', Guba and Lincoln advise that the *utility* of a particular paradigm is persuasively argued (1994, p. 108). The paradigm underpinning this study is critical social constructionism as defined and discussed by

Jørgensen and Phillips (2002). Arguably, this is an approach located principally in the 'constructivist' paradigm as presented by Guba and Lincoln (1994). Social constructionist analysis is currently expanding, diversifying, and claiming an increasingly prominent position in qualitative research (Holstein & Gubrium, 2008, p. 173).

The ontology of Guba and Lincoln's (1994, p. 111) 'constructivist' paradigm is relativist; the perspective that 'realities' are multiple, and held by individuals based on their social interactions. Whilst these 'realities' are individual, there may be commonalities for individuals with shared characteristics or experiences. This represents a significantly different ontological perspective to that of positivist research which dominates management and organisation studies (Contu & Willmott, 2005).

The rationale for positivism and 'the scientific method' in the social sciences can be seen as the drive to replicate the perceived objective rigour of inquiry in the natural sciences (Hughes & Sharrock, 1997). Whilst positivist research is not necessarily managerialist, and managerialist research not necessarily positivist, the two are often conflated from critical perspectives, arguably on the basis that positivist research is perceived to unwittingly reproduce existing social power relations (Howell, 2013). Diversity, in the context of positivist research, is perceived to be an 'objective fact that can be described, measured and used', (Zanoni & Janssens, 2004, p. 57). Ahonen et al. (2013, p. 8) argue that diversity research which fails to reflexively interrogate its own processes can only produce 'dislocated knowledge that is unaware of the conditions of its own production'. Mainstream, largely positivist research into HRM is seen

to be similarly unreflexive and consensus-orientated (Delbridge, 2011; Janssens & Steyaert, 2009; Keegan & Boselie, 2006; Thompson, 2011).

Social constructionism contends the positivist notion that truth can be deduced through scientific process (Sarup, 1988). In line with other qualitative research approaches, the underlying premise within this methodology is that there is no one, single truth (Denzin & Lincoln, 2008). Social constructionism and discourse-analytic methodologies draw from the principle shared by structuralism and poststructuralism that phenomena and social objects do not exist independently of their discursively-shaped meanings (Boje et al., 2004; Chia, 2000; Phillips & Hardy, 2002; Potter & Edwards, 2001). This perspective places language as central to the construction of meaning. Referred to as the 'linguistic turn' in scholarship, these perspectives place a focus on the role of language in constituting rather than simply reflecting reality (Phillips & Oswick, 2012, p. 438).

Structuralism posits that the relationship between a thing or concept, 'the signified', and its name, its lexical 'signifier', whilst not random is arbitrary (Craib, 1992; Easthope, 1990; Potter & Wetherell, 1987). Poststructuralism modifies structuralist theory by rejecting the notion of language as stable and unchangeable (Jørgensen & Phillips, 2002; Sarup, 1988). Language, from a poststructuralist perspective, is the 'site where meanings are created and changed' (Taylor, 2001b, p. 6). 'Knowledge' and 'truth' therefore, rather than fixed, are 'linguistic entities constantly open to revision' (Johnson & Duberley, 2003, p. 1285). Linguistic descriptions serve not just to reflect and explain the world, but also to construct it (Kincheloe & McLaren, 2005). 'Diversity', as an example, is a discourse; that is, a social construction created through

language (Zanoni & Janssens, 2004) which will have different meanings in different contexts at different times.

As multiple, conflicting perspectives and discourses presented in any given context are equally valid, the notion of an objective truth becomes an impossibility (Burr, 1995). Given that there is perceived to be no objective truth, different accounts can only be assessed in relation to one another (Burr, 1995). This is presented as being the 'problem' of relativism (Burr, 1995, p. 60). Critics position relativism as an 'illogical and irrational abyss' where all claims to knowledge are equally valid (Smith & Hodkinson, 2005, p. 921). Accepting and working within the concept of relativism does not preclude the researcher taking a critical stance to the processes which produce meaning (Ainsworth & Hardy, 2004; Jørgensen & Phillips, 2002). Within the concept of relativism, the role of the researcher is the examination of the ways in which individual constructions coalesce around consensus (Guba & Lincoln, 1994), and the reasons for this. In any given context, meanings are *relatively* stable and changes in meaning are achieved through collective, social processes (Jørgensen & Phillips, 2002).

Critical social constructionist approaches consider the processes whereby socially-constructed meanings attain the status of common-sense (Burr, 1995), and *how* particular discourses become naturalized as 'knowledge' (Ahonen et al., 2013, p. 3). As such, discourse-analytic research into the enactment of equality and diversity could provide insight that positivist and managerialist studies do not seek to capture. Ahonen et al. (2013, p. 16) propose that the management of diversity is 'accomplished through struggle over meanings'. By exploring patterns of language use, researchers can

highlight how social constructions become 'imbued with meaning' through an analysis of language choice and lexical manoeuvres in talk (Ainsworth & Hardy, 2004, p. 241).

The epistemological approach in this paradigm does not assume that the researcher is objective, rather the approach is transactional and the subjectivity of the researcher *vis à vis* the production of the data with research participants is acknowledged (Guba & Lincoln, 1994). The researcher and the participants co-construct knowledge through the process of the investigation, and that knowledge is not seen to exist *a priori*. As such, the conventional distinction between ontology and epistemology disappears (Guba & Lincoln, 1994).

5.2 Reconstructive research

Ainsworth and Hardy (2004) propose that critical discourse-analytic approaches combine criticality and social constructionism. Poststructuralist discourse analytic approaches suffuse constructionism with wider cultural, historical and institutional concerns (Holstein & Gubrium, 2008). Burr (1995) argues that social constructionism requires the researcher to take a critical stance towards the taken for granted. Critique can take the form either of research conducted with a specific political agenda, or research conducted with 'a broad commitment to exploring the social and political implications of findings' (Wetherell, 2001a, p. 385). This study is underpinned by the second of these approaches and this section examines the rationale for this stance.

Social constructionism and critical theory diverge in terms of the form and aim of criticality. Critical theory is argued to be the critique of ideology, the unmasking of dominant, taken for granted understandings of reality, thereby

creating possibilities for change (Jørgensen & Phillips, 2002). The development of critical theory recognises that dominant forms of reason are often conceived in the interests of dominant groups. Rather than negating these forms of reason, critical theory seeks to identify their origins and functions, with an overarching agenda of emancipation (Alvesson & Deetz, 2001; McCarthy, 1988).

Cavanaugh (1997, p. 37) proposes that critical theory, in acknowledging the centrality of language and the essentializing nature of social hegemony, 'supplies the missing conceptual muscle needed to reconnect diversity with its politics'. Critical theories relevant to equality and diversity include feminism, Marxism, Queer Theory, Critical Race Theory and post-colonial theory. These theories reflect Heidegger's argument that research should penetrate those elements that are inherited in a given context (Howell, 2013; Salaman, 1998).

Critical theories draw on Heidegger's concept of inheritance in that they critique notions of 'unearned advantage' which can be seen to be based on an enduring legacy of oppression (Leonardo, 2004, p. 141). 'Unearned advantage' is intrinsic to the creation of hegemonic practice and prejudice, specifically 'the ignorance of the White middle-class bias' (Tatli & Özbilgin, 2012a, p. 261). The tension between critical and social constructionist paradigms lies in the presumption within the critical paradigm that a truth exists behind the discourses evident in texts to which the researcher has privileged access, and that the process of revealing this truth is free of power (Jørgensen & Phillips, 2002). This study does not draw from a particular critical theory nor seek to generate findings which contribute to improving the working lives of a particular social group that is recognised to encounter disadvantage in the

workplace. Rather, the study takes a phenomenological approach to the enactment of equality and diversity by HR practitioners, and seeks to contribute to knowledge of what this enactment involves.

Guba and Lincoln (1994) identify understanding and reconstruction as the aims of constructionist research. Delbridge and Keenoy (2010) propose that in-depth qualitative analyses, in particular, various forms of discourse analysis, have been influential in the *deconstruction* of HRM. Janssens and Steyaert (2009, p. 152) argue for greater reflexivity in HRM research and for less polarization of mainstream HRM and 'deconstructive' research, advocating 'reconstructive' research in which researchers 'expose and connect different assumptions (...) to open up new ways of thinking.' Arguably a reconstructive approach would also question the critical perception of power as incontrovertibly negative (Ahonen et al., 2013): whilst HR managers are 'privileged speakers in the creation of 'local' hegemonic discourses of diversity', (Zanoni & Janssens, 2004, p. 56), an analysis of practitioner talk could indicate ways in which practitioners use mechanisms of HRM and power for morally-defensible outcomes.

The orientation of the thesis to the discussion of operational HR, the enactment of equality, and discourse-analytic approach arguably positions this research outside of those themes and research methodologies which constitute mainstream, 'consensus' HRM scholarship. Neither does the research neatly fit into the Critical category of 'dissensus'. Jacques (1997) argues that reflexive and dissensus approaches within HRM teaching are arguably only permissible insofar as they serve to reinforce the orthodox position, and this can arguably be extrapolated to the research interests of

HRM scholars. Jacques (1997, p. 101) notes that many business school departments locate 'the "Good" Other', a 'house radical' whose identity falls into one of the equality groups and who manifests a tolerable level of dissent without affecting established power structures. The presence of the 'house radical' is encouraged, as they embody the dominant cultural values to a greater extent than they manifest dissent. The acceptance of the 'house radical', Jacques proposes, 'inoculates' against others who may attempt to assert their culture. Rather than manifesting 'dissent', this research constitutes a reconstructive challenge: this has the propensity to be more disruptive to the *status quo* of HRM 'knowledge' than a critical study which adheres to the partisan norms of mainstream/critical adversarialism.

Fairclough (2008) argues that it is the responsibility of academics to bring ideas and knowledge to wider audiences than scholarship. The interests and expectations of academic, managerial and participant audiences may conflict (Buchanan & Bryman, 2007) and the researcher may need to consider what methodological approaches are considered credible by gatekeepers in these different contexts (ibid). A phenomenological, social constructionist approach may be more readily received by HR practitioners as a body as opposed to a study which is perceived to be 'political' in orientation. Nyathi and Harney (2007, p. 185) comment that academics citing anti-racist, queer or feminist critiques in their teaching or research can be 'considered divisive, ill-mannered, boring, or threatening'. In seeking to address the enactment of equality and diversity through the lens of the HR practitioner, as opposed to, for example, focusing on the experiences of a particular group of employees, this research and its outcomes may gain access to a wider and more

mainstream audience. Such an approach would however be open to the critique that it lacks the boldness and specificity of critiques which are overtly queer or feminist, for example.

5.3 Organisational discourse

Organizational discourse draws on, and contributes to, a wide range of organisational scholarship. As a field, organisational discourse considers 'the collaborative processes by which individuals construct their knowledge and understanding of their organizational world' (Francis & Sinclair, 2003, p. 685). The multidisciplinary roots of organisational discourse analysis (Grant et al., 2001; Hardy, 2001) lead to a variety of perspectives on what constitutes 'discourse' (Grant et al., 2001). Whilst a discourse approach can include a wide range of different methods reflecting the different disciplinary fields which have contributed to 'organisational discourse', there is a common interest in how language and discourse function to constitute organisational life (Holmes, 1995; Phillips & Oswick, 2012).

Texts and talk are viewed as social practices which constitute knowledge of self and the organization (Francis & Sinclair, 2003). Discourses are created through 'intertextuality' (Grant et al., 2001; Hardy, 2001): the process of organizational discourse analysis is argued to be 'intertextual' in that interpretations of what is being accomplished in talk/text are informed by understanding of other texts and conversations (Keenoy & Oswick, 2004). Intertextuality is the capacity for a discourse to gain legitimacy through its relationships with other discourses, and the institutions and social practices to which these discourses relate (Holmes, 1995). The patterns of meanings associated with a particular discourse may differ across the domains in which

that discourse appears (Holmes, 1995), therefore the talk of HR practitioners working at an operational level may differ from the talk of diversity specialists and senior HR practitioners.

Theory and empirical work relating to discourse has increased significantly (Hardy, 2001; Phillips & Oswick, 2012) and, as the field is not aimed at a specific aspect of organisational theory, it can be used to generate new insights across a range of organisational issues and inform existing management theory, including mainstream scholarship (Grant et al., 2001). Rather than aiming to replace traditional methods of analysis, discourse-analytic studies are complementary to them (Phillips & Oswick, 2012). Discourse-analytic researchers must however be prepared to defend their methodological choices, and are faced with the challenge of whether and how to relate their analyses to 'other' theoretical work in management and organisation studies (Hardy, 2001). The insights gained from a discourse-analytic study, faced with the 'politics of publishing' (Buchanan & Bryman, 2007, p. 491) may not succeed as readily as a positivist study. Buchanan and Bryman highlight the 'epistemological privileging of certain forms of knowledge by those in editorial positions' and the prioritization of quantitative research in the field of organisational behaviour (ibid).

The study of organizational discourse is considered problematic in respect of the relationship between organisational 'text' and broader, societal context (Hardy, 2001). Whilst researchers should locate discourses in their social contexts (Grant et al., 2001; Hardy, 2001) accounting for both the micro- and macro- levels of discourse in the same study is a challenging task for the

researcher (Keegan and Francis, 2010). The approach taken in this study to text and context is examined in the following section.

5.4 Discourse-analytic methodology

Discourse is a popular term used in various ways, which can lead to confusion (Alvesson & Kärreman, 2000; Potter & Wetherell, 1987). The ubiquitous use of the term means that discourse runs the risk of 'standing for everything, and thus nothing' (Alvesson & Kärreman, 2000, p. 1128). This section aims to make the particular interpretation of discourse analysis applied in this study explicit, and to argue its appropriateness to the aims of the research.

Alvesson and Kärreman (2000: 1126) note that scholarship takes two distinct approaches to discourse: firstly the study of text and talk at the local level of social action, and secondly the analysis of social reality as a discursive construction, suggesting that the former relates to 'discourses' and the latter 'Discourses'. The focus of this study is on 'discourses'.

For lower-case discourses, I draw on Potter and Wetherell's (1987, p. 138) definition of 'interpretive repertoires': 'The interpretive repertoire is basically a lexicon or register of terms and metaphors drawn upon to characterize and evaluate actions and events.' This approach to discourse analysis differs to Critical Discourse Analysis (CDA) as proposed by Fairclough (1992, 2005, and 2008) in that the analysis focuses on the overall performative force of, usually talk, whereas CDA generally involves a more fine-grained linguistic analysis of composed, written texts.

Alvesson and Kärreman (2000, p. 1133) define four versions of discourse analysis based on the 'range' of the discursive focus involved: a 'micro-

discursive' approach, where the focus is on language use in text and micro-context, a 'meso-discursive' approach, which seeks broader patterns beyond the text and generalizes to 'similar local contexts', a 'Grand Discourse' approach, which may refer to dominating ideology, and a 'Mega-Discourse' approach, which typically focuses on 'more or less standardized ways of referring to/constituting a certain type of phenomenon, e.g. (...) diversity'. Alvesson and Kärreman (2000, p. 1133) identify Potter and Wetherell's (1987) concept of discourse as 'micro-discourse', where the research process involves a 'detailed study of language use in specific micro-contexts'. Potter (2004, p. 204) identifies that this kind is discourse analysis as 'overwhelmingly qualitative', highlighting that whilst this approach does not reject quantification *per se*, counting and coding techniques can obscure the performative aspects of text and talk. The issue of quantification is considered further in Section 6.4.1.

As discussed below, Edley's (2001) critical variant of Potter and Wetherell's approach takes considers how grand- and mega- discourses are constituted by individuals in micro- and meso-discourses. The focus of this discourse-analytic approach is to examine the local deployment of discourses in the context of their broader social implications (Edley, 2001). Therefore, whilst the focus of this study is ostensibly the micro discourses of individual practitioners iterating their experiences of enacting equality in their respective organisations, these discussions relate to, implicate and are informed by practitioners' understandings of the discourses of their practitioner networks, the HR profession and of equality and regulation. As such, the range of the study overcomes the problematic delineation of the different levels of

discourse which, whilst demarcated by scholars, are 'difficult to meaningfully disentangle' (Phillips & Oswick, 2012, p. 457). Further, this study attempts to address Phillips and Oswick's critique that, beyond CDA, there is limited research that 'traverses' the different levels of organisational discourse (2012, p. 461).

People draw on discourses to in order to accomplish social action in particular contexts of interaction (Jørgensen & Phillips, 2002) and the focus of analysis is on the rhetorical organisation of talk and text rather than on the linguistic constitution of text (Jørgensen & Phillips, 2002; Wood and Kroger, 2000). People's talk has both meaning and force, i.e. talk is both *about* things, and also *does* things (Wood and Kroger, 2000, pp. 4–5). The perspective underpinning this study is that talk itself is a form of action (Grant et al., 2001; Wood and Kroger, 2000) and that rather than merely reflecting reality, HRM techniques actively create reality (Townley, 1994). As Phillips et al. (2004) propose, coherent and structured discourses present a more unified view of social reality and the more accepted discourses become, the greater the cost of enacting contrary behaviours.

Silverman (2004) identifies that, whilst most qualitative researchers champion the research subject's point of view, they do not question how this viewpoint is informed. Phillips and Oswick (2012, pp. 449, 445) highlight that the contribution of discourse analytic research is that it 'opens up the "black box" of institutional processes in a way that other methods of empirical investigation cannot': this is accomplished by examining the ways in which social reality is produced and 'held in place'.

Commensurate with the ontological and epistemological position detailed above, this methodology takes the position that both external 'reality' and internal 'mind', rather than objective and testable/falsifiable, are constructed by people in language as they undertake practical tasks (Potter & Edwards, 2001, p. 103). This can be seen to constitute a dialogic form of discourse analysis in that it explicitly acknowledges a multiplicity of discourses, potentially permitting a multitude of realities which may overlap and permeate one another (Grant et al., 1998).

The ideological perspectives underpinning the work of Edley and colleagues are distinct from that ideological stance on which Critical Discourse Analysis (CDA), as undertaken by Fairclough and Chouliaraki (2010) is founded. The former approach tends to use the term 'interpretive repertoire' while Critical Discourse Analysis (CDA) uses the term 'discourse'. Potter and Wetherell define an 'interpretive repertoire' as basically a lexicon or register of terms and metaphors drawn upon to characterize and evaluate actions and events' (1987, p. 138). Edley (2001, p. 202) notes that the difference in terminology is 'predominantly a matter of disciplinary 'ring-fencing'' to denote the different ideological standpoints.

The term 'discourse' tends to be used by scholars whose work draws from Foucault (e.g. 1975) and examines the operation of power within institutions. The Foucauldian perspective tends towards a view of people as subjectified (Edley, 2001). Interest in a Foucauldian understanding of organisations has developed in the HRM literature from discussion about the capacity of HRM rhetoric to create meaning (Francis, 2002). The concept of interpretive repertoires is used by scholars who place more emphasis on human agency:

in comparison to discourses, interpretive repertoires are therefore 'seen as less monolithic. Indeed, they are viewed as much smaller and more fragmented, offering speakers a whole range of different rhetorical opportunities' (Edley, 2001, p. 202). This interpretive practice therefore 'offers breathing room for choice and action' in contrast to Foucauldian analysis (Holstein & Gubrium, 2008, p. 192) which Holstein and Gubrium suggest draws from Foucault's inclination to 'overestimate the predominance of discourses in constructing the horizons of meaning' (2008, p. 192). The approach responds to Dickens' (1998) observation that agency is missing from debates in much HR literature. In an expansive critique of Foucauldian discourse analysis, Reed (2000) identifies five points of contention, namely that a Foucauldian approach tends to ignore materiality, prioritises radical relativist epistemology, downplays the significance of agency, focuses on local rather than institutional power relations, and that attention exclusively on text obfuscates the physical realities of discrimination. This overview of Reed's critique draws additionally from the summary provided by Boje et al. (2004). Whilst not a direct response to Reed's critique, the following sections aim to locate the approach in this study in the context of the points raised.

In alignment with Reed (2000), Fairclough and Chouliaraki (2010) locate CDA in a critical realist paradigm, where the discursive element of research relates to a further, measurable dimension of 'reality'. Potter and Wetherell (1987) problematize the proposition that the discursive relates to an external world which is objective and non-discursive. The approach developed by Potter and Wetherell (1987) is argued to share the critical aims of other discourse-analytic methodologies (Jørgensen & Phillips, 2002), however Burr (1995) suggests

that in Potter and Wetherell's approach it remains unclear who is constructing interpretive repertoires and why. The discursive approach developed by social psychologists is argued to focus on the ways in which discourses reify particular phenomena (Phillips & Hardy, 2002) rather than questioning the wider social and political implications arising from the analysis of a text (Burr, 1995; Fairclough, 1992; Jørgensen & Phillips, 2002; Phillips & Hardy, 2002). This un-critical social constructionist approach can mask the collective nature of inequality and marginalization (Nyathi & Harney, 2007). This reflects Holstein and Gubrium's observation that qualitative research is traditionally concerned with *what* and *how* questions, and views *why* questions as far more problematic in that they require 'inferential leaps' (2008, p. 193). Holstein and Gubrium suggest that, in order to attend to *why* questions, the researcher should 'designate a domain of explanation for that which is to be explained' (ibid). How the domain of explanation for this study is constituted is discussed in the following sections.

Edley (2001) and the later work of Wetherell (Wetherell & Edley, 1999; Wetherell, 2001b) modify the approach of Potter and Wetherell (1987) and Potter and Edwards (2001) by recognising that some constructions attain more dominance than others and that not all constructions are equally available. The critical discourse-analytic approach proposed by Edley (2001) therefore seeks to analyse processes of normalization and naturalisation and to critically question whose interests are served by dominant discursive formations. This critical approach takes the position that 'the social world is not constituted *ab initio* in every conversation' and that particular interpretive repertoires pervade and attain more stability than others (Edley & Wetherell, 1997, p. 182) Edley's

(2001) critical discourse-analytic approach reflects the social constructionist position that 'knowledge', rather than being objective fact, represents a certain construction that has been deemed to represent truth (Burr, 1995, p. 63). Wider cultural analyses are considered in a study where the empirical focus remains wholly discursive (Edley & Wetherell, 1999).

Phillips and Oswick (2012) discuss the critiques of studies that are exclusively discursive and that do not consider materiality, proposing that discourse analysis should continue to develop rather than manifest an outright rejection of materiality. The approach underpinning this study is fundamentally one of methodological pluralism, that is, that studies which consider materiality may be appropriate for the investigation of other organisational phenomena; however, the construction of the individualised, clandestine employment relationship does not provide a measurable materiality other than the statistics of the employment tribunals, which represent the end game in a very small proportion of case work. It is the argument of this study that the enactment of equality compliance exists overwhelmingly in talk and that an exclusively discursive study is appropriate for this reason.

As discourses become shared and recurrent in usage, they recur, with dominant discourses attaining the status of 'common sense' (Wetherell, 2001b, p. 16). Chapters 2-3 discussed how HRM, HR business partnering, diversity management, and regulation as a burden have achieved success as discourses. This critical approach to notions of 'common sense' is shared by CDA; however, in contrast to the CDA framework proposed by Fairclough (2005), which posits a focus on the role of totalising discourses in creating 'common sense', Wetherell (2001b, p. 16) perceives such accounts as 'plural,

inconsistent, achieved through discursive work, constantly needing to be brought into being over and over again’.

Edley’s (2001) critical discourse-analytic approach draws on the theoretical perspective of Billig et al., (1988) in respect of totalising ideological discourse. Billig et al. accept the influence of ‘intellectual ideologies’ such as Marxism, but problematize the perception of intellectual ideologies as ‘giant, socially shared schema’ through which we experience the world (1988, p. 29). It is in this respect that the approach of Billig et al. to grand- or mega-discourses diverges with CDA. Billig’s approach aligns with Holstein and Gubrium’s argument for ‘Working Against Totalization’ which posits that actors in a given context ‘build up their shared realities in diverse, locally nuanced, and biographically informed terms’ (Holstein & Gubrium, 2008, p. 192).

Billig et al. propose that additional ‘lived’ ideologies influence notions of common sense (1988, p. 27). Lived ideologies present a similar concept to culture in that both concepts ‘seek to describe the social patterning of everyday thinking’ (Billig et al., 1988, p. 28). Lived ideologies are arguably also conceptually close to ‘meso-discourses’ as proposed by Alvesson and Kärreman (2000). The concept of lived ideologies is commensurate with organisational discourse theory which ‘does not deny that certain discourses may dominate, but it maintains that such dominance is an ongoing struggle among competing discourses, continually reproduced or transformed through day-to-day communicative practices’ (Hardy, 2001, p. 28).

Billig et al. problematize the notion that the relationship between intellectual and lived ideologies is simple: ‘It should not be assumed that the consistencies

of theory are somehow imposed upon the schemata of everyday life' (1988, p. 32). From Billig et al.'s perspective, 'common sense' therefore has no unitary meaning (Edley, 2001, p. 203). Wetherell and Edley (1999) argue that where ideological perspectives, such as feminism, appear fragmented and more chaotic in discursive representations than in their extant theoretical forms, this is not intended to result in 'political quietism' and the abandonment of struggles against unequal social relations.

5.5 Agency

Both 'top-down' theories of agency and structure, i.e. society influences individuals, and 'bottom-up' theories i.e. individuals influence society, are considered problematic from a social constructionist perspective (Burr, 1995). The agency-structure debate can be seen as a false dichotomy, itself a construction (ibid). Rather than perceiving the individual and society as separate, related entities, they can be considered elements that contribute to a single phenomenon; a phenomenon comprising of 'individuals, the social practices they engage in, the social structure within which they live and the discourses which frame their thought and experience' (Burr, 1995, pp. 110–111).

Social constructionism focuses on the routine interactions of people and challenges the notion that social phenomena are explained by social structures (Burr, 1995). The focus is therefore on practices and processes rather than structures (ibid). Reflecting a social constructionist perspective on agency and structure, Leitch and Palmer (2010) contend Fairclough's (2005) position that the two concepts can be analysed separately, arguing that they are intertwined. Critical discourse-analytic studies which draw from the work

of Foucault are critiqued for treating discourses as independent of human agency (Reed, 2000). Watson (2004) suggests that Foucauldian analyses of HRM, such as the work of Townley (1994), should be complemented by studies of agency. The perspective on agency in this study draws from Potter and Wetherell (1987) as discussed below.

The discourse-analytic approach developed by Potter and Wetherell (1987) places emphasis on individuals both as products of discourse and as producers of discourse in interaction (Jørgensen & Phillips, 2002). The approach presented by Potter and Wetherell, from which Edley's (2001) critical position is drawn, 'imbues the person with agency' and perceives people as negotiating credible moral positions (Burr, 1995, p. 120). As such the available interpretive repertoires will be drawn on by agents to accomplish different outcomes (Burr, 1995).

5.6 Discursive constructions of compliance

A field of action plays a constitutive role in the production of discourse and a discourse can begin in one field and traverse into another (Wodak, 2001). As Holstein and Gubrium observe, 'what one institutional site brings to bear is not necessarily what another puts into practice' (2008, p. 192). Phillips et al. (2004) note that institutional research and theory has tended to be founded on realist perspectives which, from a discourse-analytic perspective, has led to a disconnect between the organisational practices and the discursive processes that constitute them.

Regulation, Edelman et al. (2001, pp. 1630–1) propose, is 'a key point of overlap between legal and organizational fields', and the transition of legislation leads those in regulatory roles to 'grapple' with compliance whilst

satisfying other organisational requirements. The legal and organizational fields are also, Edelman suggest, overlapped by the management field, which is constituted of business schools, the different management professions, and 'logics about good management' (2001, p. 1630). The meaning of law which regulates work organisations unfolds dynamically across these fields (Edelman et al., 1999). Phillips and Oswick (2012, p. 448) argue for the value of framing the translation of 'institutions' across fields as a discursive process. The argument that equality compliance constitutes an 'institution' as defined by Phillips et al. (2004) is presented in section 8.6 at the conclusion of the first of the findings and analysis chapters.

Based on an empirical analysis of case law, Edelman et al. (1999) suggest that the interaction of the respective fields in the construction of legal meaning is as follows. Organisational actors co-construct the meaning of compliance, thereby legitimising certain compliance strategies. To begin with, these strategies are based on 'accounts, stories and myths about how organizations should respond to law' as the substantive law itself has no meaning at the level of the organisation (1999, p. 407). Edelman et al. note that many of the claims made in the personnel practitioner press in respect of compliance were founded on generalizations from the experiences of single practitioners, or suppositions (1999, p. 418). Initially, the strategies developed from this practitioner discourse are not reflected in judicial judgements of what constitutes 'good practice'. Over time, these interpretations of the law in practice succeed in permeating judicial decision-making and the compliance strategies become identifiably vindicated as means of mitigating legal risk. Such strategies thereby attain an aura of 'fairness and efficacy' and, further, a

'market rationality' in that they are seen to lead to the avoidance of legal costs (1999, p. 411). Edelman et al. (1999) focus their study on US equal employment opportunities law and the development of grievance procedures by HR practitioners as a means to 'insulate themselves from legal liability' (1999, p. 407). Edelman et al. argue that the US equalities regulation is particularly ambiguous and controversial, and that therefore the iterative development of compliance strategies by organisational actors in respect of equality is especially vibrant. Dobbin and Sutton (1998) propose that the frequent changes made to laws, and their apparent ambiguity, lead organisations to commit a considerable level of resource to ensure compliance.

By considering talk of equality compliance in the context of interpretative repertoires, we can begin to understand the limitations and possibilities that exist for the construction of self and other within the field, that is the 'subject positions' (Edley, 2001; Jørgensen & Phillips, 2002; Nelson Phillips et al., 2004) available in talk to the respective organisational actors as they negotiate the meanings of compliance. A post-structuralist concept (Wood and Kroger, 2000), subject positions provide us with a means of making sense of ourselves (Wetherell, 2001b) and can be considered as 'locations' within a conversation where identities are made relevant by specific ways of talking (Edley, 2001, p. 210). Specifically, a subject position is 'created in and through talk as the speakers and hearers take themselves up as persons' (Davies & Harré, 1990, p. 62).

Constructing subject positions for other actors implicated in talk arguably reflects Baker's (2004, p. 174) notion of 'membership categorisation' in talk

where interview participants construct categories of 'people, places and things that underpin talk', including 'standard relational pairs', such as in this study HR practitioners and line managers, and 'contrast pairs', for example 'good' and 'dinosaur' line managers, discussed in section 8.3. Baker suggests that these categories are sometimes named, and sometimes implied in talk through the activities that are associated to them (ibid). As Baker notes, the subject positions/categories attributed to other social actors by the HR practitioners interviewed are 'the speakers' 'puppets' and part of their construction of a world which to them is 'recognizably familiar, orderly and moral' (2004, p. 175). It is therefore both the value and the limitation of this study that the other organisational actors, that is, the line managers, employment lawyers, employees and trade union representatives, can only be understood as they are constructed from the perspectives of HR practitioners.

Harré and Davies (1990, p. 43) explain that a subject position will incorporate both a conceptual repertoire and locate people 'within the structure of rights for those that use that repertoire'. Therefore an analysis of talk can enable us to start to examine the boundaries that exist for constructions of self and other i.e. what it is possible to say about a group of people and what by implication it is not permissible to say (Edley, 2001). Subject positions can perhaps therefore be predicted by our prior knowledge of a particular subject area (Wetherell, 1998). Within discourses, there are conventions governing who is able to talk, and what they are able to say (Craib, 1992; Kincheloe & McLaren, 2005). The research process should therefore involve a critical consideration of how voice is constrained by unequal access to discourses (Burr, 1995). The possibilities for the constructions of subject positions are seen to be informed

by history and already constituted by existing discourses (Harley & Hardy, 2004; Wetherell, 1998).

In the context of this study, given the position of HR practitioners in the organisational context and their professional studies, it is not perhaps so much restriction on access to discourses that will limit talk; rather talk will be informed/ constrained by practitioners seeking to provide 'correct' answers. Practitioner talk will be influenced by 'managerial fashion setters' who construct 'cultural problems that require attention' and provide the 'solutions' to these problems (Edelman et al., 2001, p. 1595). These solutions are presented as new managerial models that are the 'most rational –and natural-way to proceed' (ibid). HR practitioners will discuss their practice against a backdrop which has seen ideological shifts 'from condoned, overtly discriminatory HRM practices', to equal opportunity, to valuing diversity, to inclusion (Nkomo & Hoobler, 2014, p. 246).

5.7 Summary of the research methodology

This chapter has presented the critical social constructionist paradigm underpinning this research study. This has included a discussion of lower-case criticality, organisational discourse, discourse analytic methodology, agency and discursive constructions of compliance.

Harley and Hardy (2004, p. 393) highlight that 'orthodox' mainstream, positive research is composed of powerful discourses while critical scholarship necessarily draws from discourses which may be less familiar to readers. Harley and Hardy further note that critical research does not translate into the 'reified, abstract prescriptions', or the statistics and models, that are readily absorbed by the consumers of scholarship (ibid). In taking a discourse-analytic

approach which draws from the approach of critical social psychologists, the underlying philosophy of this study is perhaps unusual even within the field of discourse-analytic studies of HR. This chapter has presented the rationale for this approach, and the following chapter examines how the principles identified further inform the methods of data collection used in the study.

6 Research methods

This section presents the methods of the data collection for this study, specifically how participants were recruited into the study, the processes of interviewing and transcription, and the analytical approach used to generate findings. This discussion includes the rationale for focusing the analysis on the identification of subject positions and discourses in the data. The chapter concludes with a discussion of how discourse-analytic research can be evaluated and a section on the ethical processes underpinning the research.

6.1 Sampling and participants

This section discusses the selection of the sample of research participants, the relationships of the researcher to the participants, and the approach to capturing information on the participants as individuals.

Jørgensen and Phillips (2002, p. 12) suggest that 'there is no correct, natural limit' to sample size in discourse-analytic research. In terms of sample size, discourse-analytic studies can diverge radically from traditional methods (Potter & Wetherell, 1987). While qualitative researchers in general tend to work with 'small samples of people, nested in their context and studied in-depth' (Miles et al., 2014, p. 31) the relatively small sample size of discourse-analytic studies is frequently considered problematic, as judgments tend to be based on number of participants rather than the, often substantial, size of the data set collected (Wood and Kroger, 2000). Potter and Wetherell (1987, p. 161) propose that the success of a discourse-analytic study is not dependent on sample size and that a larger sample size can add to the work involved without adding anything to the analysis. This study is based on 40 semi-structured interviews, each lasting an average of approximately 50 minutes;

this number of interviews was judged to be appropriate in respect of allowing meaningful findings to be derived from the data. There are 41 participants, as two of the participants represent the same organisation and took part in the same interview.

This study uses a non-probability sample, based on the judgement of the researcher to achieve the particular aims of the research (Henry, 1990). Of the non-probability sample types, the sample is 'purposive', as defined by Oliver (2006). Samples are purposive where the researcher approaches particular individuals to participate in the research. The researcher selects potential participants on the basis that they are likely to agree to take part and that their contributions will be relevant and in-depth (ibid).

Taylor (2001b) proposes that the researcher should account for their relationship with the participants. Eleven practitioners were known to the researcher prior to the study; they are either ex-colleagues or practitioners with whom the researcher completed the Masters in Personnel and Development. 30 practitioners were contacts established for the purposes of this research, principally through the LinkedIn networking site. A total of 180 human resources practitioners, whose roles were wholly or partially operational, were initially contacted: the LinkedIn site is useful in this respect as many profiles display content similar to that of a CV. The approach taken was to continue to contact HR generalists until 40 interviews had been undertaken, as such the sample was not wholly pre-specified before the commencement of the fieldwork (Miles et al., 2014).

Data collected for this study on participants comprised of their job title, their sex, organisational sector, size of organisation and whether the organisation recognised unions. This is provided at Appendix 1. A review of studies also involving practitioners suggests that the value of the data collected on participants arguably lies in the simple demonstration of who comprises the sample, rather than generating findings which are linked to the particular characteristics of the participants. Broadly, the findings of this study reflect those of Hales' (2005, p. 484) study of front line managers, namely that the diversity of the participants contrasts 'with consistency in the *role* itself'. Further examples are identifiable in the literature. De Gama et al. (2012), whose research into the ethics of HRM also involved interviews with 40 HR practitioners, collected and published the age range, gender, industry sector, job title and years of HR service of their participants. De Gama et al. briefly report on the representation of their participants in the age and gender categories using percentages. The authors comment that they found no evidence of significant differences in respect of gender during their analyses, and highlight no further significant findings in respect of the other categories under which participant data were collected. Caldwell (2003) provides the position, age range, length of service range, sex, industry sector, turnover and number of employees for 98 personnel and HR manager respondents. Caldwell comments briefly that responses appeared not to vary according to these personal and organisational characteristics. Foster and Harris (2005) provide an overview of their participant constituent: gender split, the age profile and ethnicity. Their 40 participants comprised managers and a small number of HR specialists. Foster and Harris comment that, although the diversity of

participants was an important consideration, the main priority of the study was to obtain the views of staff members with a responsibility for interpretation and application of the organisation's equality and diversity policies. Foster and Harris' study identifies no significant trends in respect of the relationship between participants' characteristics and their responses, but notes a relationship between job role and response.

From a discourse-analytic perspective, discerning significance by broad category becomes problematic in the sense that this approach risks essentializing difference. Coupland (2007) cautions against creating a logic that suggests participants, in an equalities context, are speaking as members of a particular group. Wood and Kroger (2000) suggest that researchers will invariably make observations regarding the characteristics of their research participants, for example their age and gender. Wood and Kroger however identify that recording such information can be problematic in that the potential forms in which such data is captured are multiple, always selective, and may not reflect the characteristics that are relevant to participants.

6.2 Interviews

Interviewing is cited by Fontana and Frey (2005) as one of the most common and powerful means by which we try to understand people. This section focuses firstly on the researcher's active role in co-constructing the dialogue of the interview, and therefore the data produced. This discussion draws from the social constructionist and discourse-analytic literature. The section then considers the format of the interview, drawing additionally on the more general qualitative research methods literature.

6.2.1 A reflexive view on the role of the researcher in the collection and analysis of data

A research approach that is reflexive involves the researcher's critical evaluation of the ways in which their identity and position *vis à vis* their participants may inform and influence all stages of the research process (Berger, 2015). Researcher neutrality is arguably always unfeasible in social science research (Buchanan & Bryman, 2007), particularly in a context where the researcher is part of the culture in which the research is located. Phillips and Hardy (2002) suggest that discourse analysts are unable to step out of those discourses in which they are located. Given that the discourse-analytic task is that of questioning perceptions of common sense (Phillips & Hardy, 2002), a critical, reflexive approach to the research process allows for the researcher's own perceptions, as far as is practicable, to be acknowledged (Wetherell, 2001b). Taylor (2001b) highlights that reflexivity is a basic feature of social science research more broadly than discourse-analytic approaches, researcher and world acting upon each other in a loop.

Within social constructionist research, the researcher is a 'passionate participant' (Guba & Lincoln, 1994, p. 112) and, as such, the interview process constitutes data 'making' rather than data 'collection' (Baker, 2004, p. 163). Although interviews are constructed out of the moves of both participants, discourse analysts are perceived as typically failing to examine their role in the production of the discourse under analysis (Sherrard, 1991). The interview is a specific discursive situation where the interviewer's own construction of the issues impacts on the local context (Phillips & Hardy, 2002; Wetherell & Edley, 1999). Kvale (1996) argues that, the co-determination of results being unavoidable, it is important to have an awareness of one's presuppositions

and modes of influence, and to aim to take these into account in the interpretation of the data. The aim of the following sections is therefore to make the researcher's role, as a former HR practitioner, explicit in respect of the collection and analysis of the data.

Denzin and Lincoln (2008, p. 28) highlight that, behind the research terminology used in each study 'stands the personal biography of the researcher', who speaks from their own configuration of characteristics. The researcher's identity, for example their gender, age, appearance and accent, can influence the data collected from interviews (Taylor, 2001b). As this study focuses on HR practitioners' perceptions of the interplay between the different actors and the processes of enactment, this has arguably foregrounded the researcher's 'insider' (Berger, 2015; Taylor, 2001a) identity as a former HR practitioner throughout the research process. This identity was signalled to potential participants from the outset as the researcher's MCIPD status and former roles in HR are presented on LinkedIn, and would typically have been viewed by potential participants at the initial point of contact from the researcher. Once the interviewer's presentational guise is set, it leaves a profound impression on participants and can influence the success of the research project (Fontana and Frey, 2005). Participants may reveal more to researchers with whom they share characteristics, and an insider-researcher may pick up on clues in talk that an outsider would miss (Berger, 2015).

Fontana and Frey argue that, whilst a close rapport with participants 'opens doors to more informed research', the researcher is at risk of becoming a spokesperson for the participants and losing objectivity (2005, p. 708). Kvale (1996) similarly proposes that interviewers may closely relate to their

participants to the point of reporting and interpreting everything from their participants' perspectives. Taylor (2001a, p. 321) suggests that it may be more 'honest' in terms of the power difference between researcher and participant for the researcher not to try to approach participants as an insider (2001b, p. 17). Arguably, whilst it wasn't an explicit intention of the researcher to emphasise an HR identity, the mode of engaging with participants through LinkedIn made this unavoidable.

At times, the researcher's contribution was immediately and instinctively that of 'fellow practitioner', as there was a strong identification with the circumstances described by the participants. This involved the researcher responding to participants' own questions and the exchange of views and experiences of the enactment of equality and the role of HR more broadly. The earlier interviews in a research study can inform the later interviews (Francis, 2002; Kvale, 1996). In the later stages of the data collection, the participants were keen to know how far the data collection had progressed, and in would occasionally seek to draw on previous interviews for a viewpoint on a particular issue. In the case of participant 34 for example, the conversation turned to the significance of job titles, the participant asking the researcher whether, during the course of the interviews, differences were apparent between practitioners' functions in a way that reflected the different HR job titles. The participant's question derived from her concern that her post as a 'Personnel Manager' was incommensurate with 'HR Business Partner' and other HR-titled roles. As this interview took place towards the end of the data collection, the researcher was able to enter into a dialogue with the practitioner on this, and to express the view that the enactment of equality appeared strikingly uniform, and that

therefore the distinctions drawn in scholarship between Personnel Management, HR Management and HR Business Partnering did not appear to manifest in practice.

The epistemological stance in this study recognises the subjective role of the researcher. Additionally, an explicit aim of this study is specifically to provide operational HR practitioners with a voice within research. This involves a consideration of whether the researcher's reading would make sense from the perspectives of the participants (Wood and Kroger, 2000). Whilst the researcher is not objective within this approach, this is not to say that the analysis of talk avoids commentary which could be problematic from the perspective of the practitioner. Chapter 8, for example, where practitioners' use of threat metrics to dissuade line managers from certain decisions and courses of action is analysed, is arguably a facet of HR practice that few practitioners would immediately lay claim to.

Discourse-analytic approaches in general are perceived to prioritise subjectivity (Grant et al., 1998) with the importance of researcher reflexivity emphasised by key CDA theorists (Leitch & Palmer, 2010). Potter and Wetherell (1987) discuss the honest reflexivity of the discourse analyst. Edley's (2001) approach posits that the researcher cannot restrict their analysis to what *participants* say in a given interactional sequence and ought to include the researcher's questions in the presentation of findings. In this study, the researcher's HR knowledge influenced the construction of the questions in the semi-structured interviews. For example, in the interview with Participant 5, the researcher's probing on whether 'informal' discussions with employees regarding inappropriate/potentially discriminatory comments are

recorded was informed by the researcher's own experience of recorded 'informal' discussions as a phenomenon of HR practice:

H: So it's completely sort of, you know, completely off the record?

P5: It can be, yes, yeah.

H: Whereas sometimes informally in HR you still have a note of an informal meeting, even though it was informal.

P5: Yeah. We do still have, you know, if we have a, if we're resolving something informally there will still be notes of it and it will be put on the individual's file, we'll write to them after the informal meeting and say we talked about this, we agreed this.

Whilst the significance of the researcher's influence as former practitioner is recognised in this study, the practicalities of including the specific question constructions in the findings chapters are constrained by both word count and the need to present talk succinctly to an audience that comprises non-discourse analytic researchers.

6.2.2 The format of the interview

Writing from the perspective of qualitative research interviews in general rather than specifically discourse-analytic research, Kvale (1996) suggests that there is no common procedure for interview research and that the openness and flexibility of the interview situation require the researcher to both prepare thoroughly and to decide *in situ* how best to respond to potentially new lines of discussion (Kvale, 1996). As such, the planned questions of semi-structured

research interview should seek to generate responses to themes considered relevant *a priori* and should also facilitate discussion by the participants of pertinent emergent themes. Interviewing therefore resembles a craft in that it relies more on judgement than the application of rules (Kvale, 1996, p. 105). The questions used in the interviews are included in Appendix 2. These questions were not rigidly or sequentially adhered to, but nonetheless informed the underlying structure of the interviews. Semi-structured interviews enable the researcher to approach the same issue more than once in an interview, over a number of different topics (Potter & Wetherell, 1987) thereby allowing the researcher to secure rich data on themes of particular interest.

Fontana and Frey (2005) describe the exchanges of an interview as constituting of a collaborative effort that leads to mutually-constructed and context-specific outcome. The aim of the dialogue between researcher and participant in the interview is to produce descriptions of the life world experiences of the participant (Kvale, 1996). There is an evident power imbalance in the research interview, as the researcher steers the course of the dialogue (*ibid*); the participant expects this as a convention of the interview scenario.

The interviews commenced with open 'introducing questions' (Kvale, 1996, p. 132) such as 'Can you tell me about your role?'. This type of question can yield 'spontaneous, rich descriptions' (*ibid*) which can then be followed up. Participants are often encouraged to continue with descriptions where the researcher nods, pauses, or utters 'mm' (Kvale, 1996, p. 133). Although conscious of the use of these emollient tactics in the interviews, the researcher was unprepared for the high incidence of 'mm' utterances that contributed to

the dialogue until the point of transcription. The approach taken to these 'continuers' (Silverman, 2013, p. 299) in the presentation of the findings is discussed below.

Twenty-four of the interviews were held in the participants' places of work. A further eleven interviews were held in Plymouth Business School. Five of the interviews were held in public locations: cafés and hotels. Whilst the background noise of the public locations generally made the process of transcription more challenging, the different locations do not appear to have had any particular impact on the interview dialogues.

6.3 Transcription

The process of transcription is significant as it is a process of interpretation in itself (Kvale, 1996) which overlaps with analysis (Wood and Kroger, 2000) yet it is also 'tedious and time-consuming' (Burman & Parker, 1993, p. 156). Potter and Wetherell (1987) propose that the ratio of audio recording to time required for verbatim transcription is 1:10 which was found by the researcher to be the case. A quarter of the transcription was undertaken by the researcher, and the services of a professional transcriber were engaged for the remaining three quarters of the recordings. The researcher listened to each audio file whilst reading each externally-completed transcript to check accuracy and consistency in transcription style: the accuracy of the externally-completed transcripts was very high and the only 'errors' were of company names, which are redacted in the analysis and discussion, and some HR terminology, e.g. 'TUPE'. The externally-completed transcripts included more explanation of tone, provided in square brackets as indicated below; this prompted the

researcher to revisit the earlier transcriptions and to add indications of where the tone used was significant to the meaning and exchange of the dialogue.

In respect of the transcription of pauses and speech, the two sets of transcripts were comparable and no changes were required in either set: the protocols for these elements of the transcription had been agreed with the external transcriber in advance. In verbatim discourse transcription, there is frequently no unequivocal answer as to where some sentences end (Kvale, 1996, p. 164); it was this aspect of the transcription process that the researcher found to be the most challenging, frequently questioning my demarcation of sentences and clauses.

Burr (1995) suggests that the discourse-analytic approach to transcription developed by Potter and Wetherell (1987) adheres to stringent principles regarding the representation of, for example pauses, hesitations and overlaps. Arguably juxtaposing their approach with the fine-grained transcription of Conversation Analysis, Potter and Wetherell (1987, p. 166) propose that the 'fine details of timing and intonation are not crucial'. Transcription conventions are used in this study with the aim that the transcribed excerpts cited remain accessible to those without a specific, discursive interest (Wood and Kroger, 2000). The simple verbatim discourse transcription notation used in the study is adapted from Edley (2006):

s.l. = sounds like

... = short pause up to 3 seconds

..... = medium pause up to 5 seconds

..... = pause up to 10 seconds

[text] = Further explanation, e.g. [high tone], [softly spoken], [surprised]

Silverman (2013, p. 299) advocates 'low inference description' which involves providing the reader with long extracts of data and which include the interviewer's question and their 'continuers' (e.g. 'mm hmm'). Jørgensen and Phillips (2002) concur that both questions and answers should be transcribed and analysed if an interview is to be regarded as social interaction. The appearance of talk rendered as verbatim text in this way poses two problems: firstly, it can appear notably unlike the neat, short extracts of talk which ordinarily feature in journal articles of qualitative research, including that in the field of organisational discourse. Secondly, the appearance of verbatim text can be patronising and stigmatizing from the perspective of a participant (Wood and Kroger, 2000). With these problems in mind, the appearance of the text as transcribed in the Findings and Analysis and Discussion chapters preserves hesitations and reformulations as heard, but largely omits the related interview questions and the researcher's continuers (i.e. the 'mm' utterances). Additionally, to enhance readability, some short sections of text are edited. This is indicated by: (...). This is with the intention of achieving a balance between a fidelity to the original text and the overall readability of the text for a general audience, and further that any unease that participants may have with the appearance of contributions would be offset by the importance attributed to their voice in the study as a whole.

6.4 Analytical approach

This section considers the challenges in discourse analytic process and the analytic process used in this study to generate findings from practitioner talk.

6.4.1 Discourse-analytic process

There is no set procedure for producing findings from a transcript (Fairclough, 1992; Fowler et al., 1979; Potter & Wetherell, 1987). Burr argues that researchers frequently offer no information regarding the 'coding' process employed (1995, p. 183). Jørgensen and Phillips (2002) recommend that readers be given the possibility of evaluating each step in the analytic process. As such, this section aims to make the steps involved in the analysis of the data explicit.

Discourse analysis is counter our usual skill of skim-reading for salient points and focuses much more on nuance, fragments, contradictions and vagaries (Potter & Wetherell, 1987). Phillips and Hardy (2002) suggest that the standardization of methods available in other qualitative methods is not appropriate to discourse analytic research. As such, discourse analysis constitutes a 'craft skill' (Potter, 2004, p. 204) which does not readily conform to more traditional qualitative coding techniques as proposed by Saldaña (2012).

Quantification is generally, although not universally, rejected by discourse-analytic scholars. In qualitative research more broadly, Silverman (2013, p. 298) advocates simple counting techniques as offering a means for the reader to survey the entire data set. Silverman proposes that this is usually unavailable to the reader in intensive qualitative research. Hardy (2001) applies this approach in a discussion of discourse-analytic method, explaining a process whereby the number of times a theme occurs in the data is indicated in tabular form. Wood and Kroger (2000, pp. 136–7) state that there are good reasons not to seek to quantify, as this can 'ride roughshod over meaning' by

placing a focus on only that which is countable. Wood and Kroger further suggest that inappropriate quantification can be unscientific (ibid). Discourse, Wood and Kroger argue, may be appropriately described using quantitative expressions that are non-numerical, for example 'occasionally' or 'rarely' (2000, p. 138). On the basis of Hardy's (2001) argument and model, this study includes basic counting techniques to identify to the reader the number of times a discourse occurs in the transcripts of talk, and the number of practitioners who iterate the discourse.

Phillips and Hardy note that, whilst liberating, the lack of standardisation in discourse-analytic work can prove daunting (2002). Data in discourse analytic research can be messy and complex (Leitch & Palmer, 2010). The absence of rules requires the researcher to 'follow hunches' and to develop 'tentative schemes which may need to be abandoned or revised' (Wetherell & Potter, 1998, p. 177). This can lead to several iterations, where initial unsuccessful iterations are abandoned (Pritchard, 2010).

Hardy (2001) and Phillips et al. (2004) caution that discourse-analytic researchers must defend their methodological choices, and are faced with the challenge of whether and how to relate their analyses to 'other' theoretical work in management and organisation studies. Discourse-analytic studies which do not connect with other bodies of research are seen to be disconnected from the mainstream (Hardy, 2001) and self-referential (Phillips et al., 2004). This study is framed in such a way that the findings are related to key themes in the fields of HR, E and D and regulation, each of which is constituted by a broad range of methodological approaches.

Accounts of false starts in discourse analytic research are perhaps absent from much published work given that '[e]ditorial requirements promote a distorted technical picture of scientific research as a logical, linear process' which is far removed from the surprises and changes involved in the actual research process (Kvale, 1996, p. 83). Phillips and Hardy (2002) argue that discourse-analytic researchers should develop and justify an analytical approach suitable to their particular study. Edley (2001, pp. 198–199) suggests that familiarity with one's data, enhanced by being the person who conducted the interviews and through repeated rereading of the transcripts, allows the researcher to gain an understanding of the discursive terrain that constitutes a particular topic and to 'recognise patterns across different people's talk'. Increasing familiarity with the transcripts led to the identification of the legal guardian role which HR practitioners construct for themselves: rather than practitioners explicitly naming this role, it is constituted by a number of discourses. Additionally, the subject positions that HR practitioners construct for the other actors engaged in the enactment of equality were identified, that is, the line managers, the employment lawyers, the employees and the trade union reps. Other aspects of talk referred to the enactment of diversity: this constituted a much smaller amount of talk, and the rationale for not including an analysis of this talk is given in section 6.4.3. The following section discusses the rationale and process for the identification of subject positions and seeks to explain why legal guardianship is identified as a 'role' as opposed to a subject position.

6.4.2 Identifying subject positions and discourses in the data

Rather than identifying any particular subject position as 'true', the purpose of identifying a subject position is to examine what may be said to be accomplished by its use (Edley, 2001; Stenner, 1993). It is this performative aspect of subject positions that Burman and Parker (1993, p. 157) suggest can be neglected in discourse-analytic studies, the researcher often focussing on the identification of subject positions rather than examining the ways in which language 'always does things, always reproduces or transforms social relationships'. Reflecting the concern in organisational discourse scholarship that too close a concern for language can be at the expense of a clear focus on wider organisational issues (Phillips & Oswick, 2012), the analysis in this study is not a fine-grained linguistic analysis, rather the aim is to identify patterns in practitioner talk of relevance to the fields of HR, equality and regulation. The Findings and Analysis chapter which follows provides an analysis of the subject positions identified and how these subject positions reflect on the HR practitioners who construct them. The subsequent Discussion chapter will focus on relating this analysis to the existing literature, in order to contextualise the findings of this study in the context of the broader debates of HR and of equality and diversity, and to contribute to knowledge in these two areas of scholarship.

Edley (2001, p. 210) proposes that identifying subject positions in the data is 'largely a matter of experience and intensive (re)reading', the researcher needing to remain aware of 'who is implied by a particular discourse or interpretive repertoire'. The identification of subject positions will be further informed by reference back to the aims and underlying premises of the study

(Taylor, 2001a). In addition to subject positions which relate to the theoretical frame, new themes [subject positions] will emerge in the reading of the data (Jørgensen & Phillips, 2002, p. 124).

The approach taken to analysing the data and identifying subject positions draws from Hardy (2001). The first step considered which organisational actors are identified in each text: HR practitioner talk discussed the HR practitioners themselves, line managers, employees, trade union reps and employment lawyers. The second step considered how the subjects are constituted by practitioners. For the subject positions, *in vivo* coding, where participants' own language is used (Saldaña, 2012, p. 3) generated the name for the subject position, e.g. 'dinosaur line managers'. This is one of the immediate distinctions between the quite specific subject positions which HR practitioners construct for other actors, and the much larger, complex legal guardian role which is evident in several identifiable discourses, but which is not labelled by HR.

The discourses of the legal guardian role and the subject positions identified for the other organisational actors by HR practitioners are presented in Table 1:

Table 1: Discourses of the legal guardian role

Discourse	Performative aspect of the discourse	Number of practitioners	Number of instances
How far down we are	Constructs the South West context of enactment: less ethnically diverse and prone to attract candidates looking to 'take their foot off the pedal'	29	58
Focus on compliance	Talk which locates legal guardianship intertextually in the wider discourses of equality and diversity, and the role of HR	19	26
'My job is to protect you'	Talk of ownership of the role of protecting the organisation as a whole, and its line managers, from litigation	14	21
The claim to employment law knowledge	A claim to specialism and expertise; juxtaposes the complexity of employment law with line managers who are 'too busy' to deal with this	12	17
'Well, the solicitor says...'	The requirement to back HR advice with the force of the external legal advisor	15	18
Doing the right thing	Utilitarian arguments and ethical arguments often presented in such a way that it is difficult to disentangle them	19	32
Border control	Talk of HR controlling the borders of legally permissible practice	20	32
Tribunal talk	Talk of raising awareness, consequences and risk associated with employment tribunals	17	23
Good line managers	Know to check with HR	25	34

Hand-held line managers	Too reliant on HR	17	21
Dinosaur line managers	Exhibit old-fashioned and risky behaviour; attempt to resist HR	19	39
'I know my rights'	Talk of trade union reps and employees in the context of rights and awareness:	28	39
	Puppet reps: Enable the HR practitioner to fulfil an employee champion role by proxy		
	Linkers: Reps who highlight members' characteristics when representing them in individualised HR processes		
	Rights-Googlers: Employees aware of their rights: sometimes misinformed about specifics		
	Passive South West employees: Less aware of rights and less volatile than employees elsewhere in the country		
The bedrock of process	The importance of process; Controlling line manager decision-making by only devolving elements of HR processes	17	31

The identification of the subject positions and the discourses relating to the legal guardian role involved the use of NVivo software, although the software undertakes no analysis of use to the nuanced processes of discourse analysis (Wood and Kroger, 2000) and is instead used to store transcripts and to store the manually-identified instances of each subject position/discourse within easily retrievable files. For discourse analysis, the NVivo software simply provides an easily-navigable electronic storage system for the analysis that would otherwise be carried out on hard copy. As Saldaña (2012) suggests, even proponents of CAQDAS software recommend the occasional use of hard-copies of transcripts and coloured pens to enable the researcher to view the data afresh. As such, part of the checking of the subject positions/discourses was undertaken on hard copy.

The subject positions identified in practitioner talk are not mutually exclusive; practitioners can attribute multiple, sometimes contradictory subject positions to other organisational actors in talk. Wood and Kroger (2000, p.100) suggest that social-constructionist perspectives, and discourse-analytic perspectives in particular, emphasize 'the notion of selves as multiple and shifting'. This is the case with the 'good' and 'hand-held' line manager subject positions, discussed in Chapter 8, Section 8.3, where the behaviours described for both subject positions are identifiably the same, and where the different subject positions indicate differing views by HR practitioners on line managers checking with HR.

6.4.3 The inclusion of dissensus

Following Potter and Wetherell (1987, p. 170), 'dissensus' within subject positions and the legal guardian discourses is included in the analysis. The rationale for this approach is 'the notion of confirmation through exception', that is, that the status of exceptions confirms the 'explanatory scope' of the scheme in question (ibid). This process of accounting for exceptions and alternatives is identified by Wood and Kroger (2000) as a means of establishing coherence in a study, which constitutes a mode of evaluating the research, discussed as below. Seale (1999, p. 71) argues that the willingness to seek 'disconfirming evidence' and to allow this to modify the general notions arising in the analysis constitutes a 'scientific attitude' (ibid). The discourse-analytic researcher's approach of employing probing and follow-up questions encourages participants to speak fully, thereby increasing the variability in talk in comparison to other qualitative interviewing approaches (Wood and Kroger, 2000) which are more oriented towards identifying consistency within data.

As part of this approach sections of the transcribed texts are identified as belonging together not only for similarity, but for things in common, 'even if, paradoxically, that commonality consists of difference' (Saldaña, 2012, p. 6). In discourse-analytic research, it is often 'marginal cases' that are the most interesting (Wood and Kroger, 2000, p. 88) and variation in accounts is considered more important than consistency (Burman & Parker, 1993; Potter & Wetherell, 1987). The role of the researcher is to question why the variation is there (Wetherell, 1998).

6.5 Evaluating discourse-analytic method

Many of the researchers whose qualitative work is founded on critical, social constructionist, post-structuralist and postmodernist paradigms reject positivist

and post-positivist criteria for the evaluation of method (Denzin & Lincoln, 2008). Johnson et al. (2006) argue that qualitative research is a heterogeneous field drawing from diverse philosophical concepts, and that it is therefore inappropriate to designate one system of method evaluation. The methodological rigour of discourse-analytic research is frequently challenged (Grant et al., 2001; Hardy, 2001). This places a requirement on discourse-analytic researchers to evidence that forms of data analysis are systematic (Grant et al., 2001; Hardy, 2001) using alternative criteria to those in use in mainstream quantitative research and even, as argued by Johnson et al. (2006) criteria that are different to those appropriate to other forms of qualitative research.

Johnson et al. (2006, p. 146) identify reliability, validity and generalizability as the conventional modes of evaluating positivist research, arguing that it is 'ludicrous' to apply these criteria to evaluate postmodernist studies. Taylor (2001a) argues that the conventional criteria by which academic work is evaluated are reliability, validity and replicability. 'Reliability' refers to the consistency of measurement within a study. In positivist epistemology, any deviations from the pre-set interview questions by the interviewer are judged to threaten the reliability of the research (Jørgensen & Phillips, 2002). Further, answers which do not fit that which the question is seeking to measure are deemed 'incorrect' (ibid). Thus 'reliability' is said to refer to the consistency of the results obtained (Kvale, 1996). As discussed above, this orientation to 'prove' consistency is not aligned to discourse-analytic approaches.

As 'reliability' in its conventional sense is at odds with discourse-analytic approaches, so too are the mainstream evaluative concepts of 'validity' and 'replicability'. 'Validity' pertains to the 'truth' or 'accuracy' of the generalizations

made by the researcher, while 'replicability' requires a project to be of a suitable standard (in terms of its reliability and validity) to enable the research to be undertaken again with similar or identical results (Taylor, 2001a). The aim, therefore, of mainstream research is to produce results which attest the 'real state of the world' (Wood and Kroger, 2000, p. 166). As the social-constructionist perspective underpinning the discourse-analytic methodology in this study perceives 'truth' and 'realism' to be social constructions, with shifting, multiple meanings, there is therefore no basis for selecting an account as a truer, more valid or better version of 'reality' than another (ibid). Taylor (2001a) suggests that, while a critique of discourse-analytic work may be that it is partial and subjective, the counter-argument to this from a discourse-analytic perspective is that all knowledge produced by research is partial and situated. The criteria involved in the evaluation of conventional research are 'socially-constructed, disputable, negotiable and arguably arbitrary' (Wood and Kroger, 2000, p. 166), and it would not be possible for any researcher to claim that their work was 'value-neutral' (ibid).

The discourse-analytic research methods literature highlights that alternative modes of evaluating discourse-analytic work are more appropriate than mainstream definitions (Wood and Kroger, 2000). Taylor (2001a) suggests that there are no specific criteria for the evaluation of discourse-analytic work, and each researcher is required to present their specific argument for the value of their analysis. Wetherell (1998) notes that the absence of a single set of evaluative criteria does not preclude discourse analysts from attempting to establish their own standards for analysis, or deter editors from making evaluative judgements. Johnson et al. (2006) argue for the different fields of qualitative research to establish bespoke evaluative criteria deriving from their *a priori*

philosophical commitments, and to reflexively focus on how these commitments are then consistently reflected in the methodological practice of that field.

This study arguably aligns with the 'mode of engagement' that Johnson et al. (2006) designate as 'affirmative postmodernism', in that it is informed by discursive/subjectivist ontology and subjectivist epistemology. Johnson et al. demarcate 'soft' postmodernism and 'hard' or 'affirmative' postmodernism using distinctions that reflect the discussion in section 5.4, namely that 'soft' postmodernism relates closely to critical theory whilst 'hard' or 'affirmative' postmodernism problematizes critical theory's presumption of objective truth in its identification of structurally-based oppression.

Johnson et al. (2006, p. 153) propose that the promulgation of specific evaluative criteria for affirmative postmodern research 'remains somewhat nebulous' whilst proposing that the evaluation should concern 'how research unsettles those discourses that have become more privileged than others by encouraging resistance and space for alternative texts, discourses, narratives or language games without advocating any preference' (2006, p. 145). Arguably, the notion that the researcher can produce research without preference, which hints at objectivity, is at odds with the recognised subjectivity of the epistemological stance. Discourses are not 'waiting to be found' but emerge through the researcher's reading of the text (Burman & Parker, 1993, p. 156). Therefore, of the evaluative criteria that Johnson et al. (2006, p. 147) propose for affirmative postmodernist research, namely 'heteroglossia' and the decentring of the author, this study appropriates 'heteroglossia', defined below, as a criterion whilst rejecting the decentring of the author as an appropriate criterion.

The evaluation of the research methods in this study draw additionally on Wood and Kroger's (2000: 167) concepts of warrantability and coherence, and Riessman's (1993) concept of 'pragmatic use'.

6.5.1 Heteroglossia

'Heteroglossia' is defined as the giving of voice to previously silenced textual domains (Johnson et al., 2006). This study fulfils the criterion of heteroglossia in that it gives voice to operational HR practitioners, whose voices are largely unheard in qualitative studies. The study similarly provides voice to the discursively maligned domain of equality which is conventionally presented as an outmoded component of diversity.

6.5.2 Warrantability

Wood and Kroger define 'warrantability' as a reformulation of 'validity', proposing that an analysis is 'warrantable' where it is trustworthy and sound (2000, p. 167). Trustworthiness relates to the orderliness of the conduct, recording and reporting of the research, and to the ability of the researcher to make available the full transcripts (ibid). As such, the trustworthiness of the research is linked to the accountability of the researcher and an analysis is 'sound' where the researcher provides a demonstration of the analytical steps taken (ibid p. 170).

6.5.3 Coherence

Wood and Kroger (2000) further argue that discourse-analytic work should be coherent: an analytic claim is coherent where the exceptions and alternatives in the data have been accounted for. As discussed in section 6.4.3, dissensus is included within the designated discourses, as the dissensus is often constructed in a way that emphasises the normalcy of the consensus within the discourse whilst also disrupting the notion that it is uniformly applicable. For work to be coherent, it must also demonstrate that the analyses cohere in a well-developed

argument (Wood and Kroger, 2000). Reflecting the importance of including dissensus within the analysis, Wood and Kroger clarify that they interpret 'coherence' as referring to the coherence of the analysis rather than the coherence of the discourse (ibid p. 174).

6.5.4 Pragmatic use

Riessman's (1993) notion of 'pragmatic use' refers to the extent that a study provides a base for research by other scholars. Taylor (2001a) proposes that research should be located in the context of existing scholarship, seeking to build on or challenge the claims of this scholarship. Wood and Kroger (2000) suggest that it is best to avoid *a priori* judgments concerning the generalizability of discourse-analytic work and to assess each study individually in respect of the reasonableness of any inferences made. While the findings of discursive HR research should be understood in the particular context within which they occur, the findings have relevance in raising wider questions of HRM (Francis, 2002).

Taylor (2001a) suggests that Riessman's (1993) talk of 'pragmatic' use is similar to the concept of 'fruitfulness', as proposed by Potter and Wetherell (1987, p. 171). Potter and Wetherell define 'fruitfulness' as the most powerful criterion in establishing the validity of discourse-analytic work. The term refers to 'the scope of an analytic scheme to make sense of new kinds of discourse'. Potter and Wetherell's use of 'new' here is interesting, as the possibilities for the constructions of subject positions are seen to be informed by history (Edley, 2001), and already constituted by existing discourses (Wetherell, 1998). Subject positions can perhaps therefore be predicted by our prior knowledge of a particular subject area (Wetherell, 1998). As such, discourses are not 'new', although the force of Potter and Wetherell's use of 'new' here could refer to the newness of the discourses in respect of who is given a voice within them, which

reflects the selection by Johnson et al. of heteroglossia (above) as an evaluative criterion (2006, p. 147).

6.6 Research ethics

Taylor (2001b, p. 20) proposes that ethical concerns are always relevant given the power relations between the researcher and participants in a study. This section discusses the ethical considerations relevant to this study, specifically the principles of informed consent, confidentiality, and the right to withdraw.

The researcher should obtain informed consent from participants regarding their involvement and the use of the data they provide (Taylor, 2001b). There is 'an obligation on the researcher to inform the participants *as is practicable* and to obtain consent in advance' (Taylor, 2001b, p. 21 my emphasis). In response to the initial application for the study to be approved, the University's Ethical Committee indicated that more detailed information was required in the description of the research provided to participants. The revised submission supplied a more detailed section on how the findings would be produced. This necessitated a brief overview of the discourse-analytic approach of the study. The level of detail on the discourse-analytic methodology of the study provided to the HR practitioners who expressed an interest in participating did not appear to deter their agreement to participate.

This information includes an explanation that, where a practitioner would like to contribute to the research but would not wish to be recorded, there are no suitable alternatives given the discourse-analytic approach. Kvale (1996, p. 128) notes that the interviewee may bring up topics once the recording has stopped: this was the case in several of the interviews in this study; these off record continuations cannot for ethical and methodological reasons, be admissible as data. Firstly, as

Saldaña (2012, p. 29) suggests, researchers must be 'rigorously ethical' in the respectful treatment of participants. Secondly, were participants to agree to the inclusion of non-recorded material in the study, this would pose a challenging methodological problem in that non-recorded contribution could not be subject to the same analytic process as the transcribed interview dialogues?

Kvale (1996) and Taylor (2001b) suggest that it may be necessary to alter or remove other information that may lead to the identification of participants. Participants' identities have remained confidential throughout the research process. Specifically, any possible, specific, individual identifiers, e.g. names of persons and organisations, have been redacted from, or edited in the sections of text reported in the findings and analysis. Kvale (1996) recommends changing the names and other identifying features of participants. Taylor (2001b) further suggests that the researcher should be particularly mindful of the implications of participants who are identifiable within a small community. Kvale (1996, p. 115) proposes that there may be exceptions to this in cases where a participant is identifiable through a characteristic and gives their consent to being identifiable. Among the participants in this study, one practitioner in particular contributed a significant amount of personal information relating to one of her own characteristics. This was discussed with her after the interview as potentially rendering her identifiable. This practitioner is an active ambassador for this characteristic both regionally and nationally and confirmed that she was comfortable with potentially being recognised in the data.

In respect of the secure storage of the data collected and information held on the participants, all data relating to the research has been stored securely. On the transcripts held in NVivo, participants are identified only by codes, and the list of

participant names is stored separately. Practitioners were provided with information on the intended use of the data, namely that it would be used within the PhD thesis and in academic journal articles. A further identified aim is that the CIPD would use the findings to inform their work and the guidance / resources they produce for practitioners. Practitioners were provided with the option of contacting the researcher with any questions they had about the research. Participants were reminded that their decision to participate would need to be voluntary, and they should take time to reflect before making their decision. They were further provided with the right to withdraw up to the date of the planned end of the data collection and the start of the data analysis with the proviso that it may not be feasible to deal with a request to withdraw once the data analysis had commenced. No requests to withdraw were received from participants.

6.7 Summary of the research methods

This section has presented the methods of the data collection for this study, specifically how participants were recruited into the study, the processes of interviewing and transcription, and the analytical approach used to generate findings. This discussion included the rationale for focusing the analysis on the identification of subject positions and discourses within the data. The chapter concluded with a discussion of how discourse-analytic research can be evaluated, and a section on the ethical processes undertaken during the research process.

7 Legal guardianship

This is the first chapter of two which consider the findings of the study, and analyse the data collected. This chapter examines HR practitioners' 'legal guardianship'. Practitioner talk of legal guardianship constituted the greater part of the data, and also provided the richest data in respect of the implications for how operational HR and E and D are understood.

7.1 Overview of the legal guardian role

The use of 'legal guardian' as the title for this thesis and as the label for the enactment of legal compliance by HR practitioners is an appropriation of Wright and Snell's (2005) use of this term. Wright and Snell (2005, p. 180) define legal guardianship as that aspect of an HR practitioner's role that prioritises compliance to legal and regulatory systems with the aim of avoiding legal proceedings. An analysis of the data collected for this study indicates that talk of 'legal guardianship' constitutes a high proportion of the amount of HR practitioner talk on the subject of operational-level E and D, and also that this talk provides the richest data in respect of how it informs understanding of the realities of HR practice, of HR's relationship with other organisational actors, and of what constitutes E and D on the ground from an HR perspective. The findings therefore expand and modify Wright and Snell's (2005) definition.

The findings problematize Purcell's (2012) demarcation of HR practitioners into 'custodians of rights' and 'gatekeepers'. The construction of 'custodians' embodies the more desirable traits of simultaneously championing rights and good management practice, and of utilising alternative dispute procedures, whereas 'gatekeepers' minimise legal risk and problem-solve without authority to change line manager behaviour (ibid p.161). The findings of this study indicate that legal guardianship is a nuanced amalgam of both these 'types', moreover,

as the findings demonstrate and as discussed further in chapter 9, the power and authority *vis à vis* line managers that HR practitioners discursively claim is different to the power/authority *held* by the HR function, and there is a uniform downplaying of the sway and influence that HR retains.

Bowen and Ostroff (2004, p. 210), drawing on the work of Kelman and Hamilton (1989), suggest that the relevance of an HRM system is in part a function of the level of influence the enacting agent(s) are perceived to have: influence is brought to bear depending on the personal characteristics of the agent and can include 'his or her prestige, special knowledge or expertise, representativeness, control of resources, and ability to apply sanctions'. The following discourses of legal guardianship indicate that HR practitioners derive influence from their knowledge of employment law, and in their ability to orient line managers' decision-making away from illegality. The analysis of legal guardianship talk does not, however, provide an unproblematic 'solution' to the issues surrounding the HR function's purpose and credibility.

Paradigms of HRM largely silence any role that HR currently has in respect of external regulation. The dominant HRM paradigm is based in market-oriented, unitarist frameworks which do not consider the role played by the state in constructing, and altering, equality law, and the resulting impact this has on the work of HR generalists. Talk of the significance of the legislation and of HR's 'guardianship' in protecting the organisation from potential litigation looms large in the data despite the illegitimacy of legal guardianship as a role for HR in the more dominant models of HRM. Ostensibly, whilst legal guardianship appears far removed from HR business partnering and Ulrich's calls for practitioners to move 'beyond the roles of policy police and regulatory watchdogs' (1997, p. viii), the

legal guardianship aspect of HR generalist practice are shown in these findings and analysis chapters to represent a hybridisation of HRM and personnel management discourses.

The mix of HRM and personnel management discourses is evident in extracts of practitioner talk such as the following:

P5: ...I want to try and enable them to deliver it but I just want them to do it so it's fair. I always say to them imagine we're in a tribunal, how can you defend that what you did was fair?

The practitioner's aim to '*enable them to deliver*' clearly aligns with HR business partner discourse while '*I just want them to do it so it's fair*' suggests that the practitioner is further motivated to achieving outcomes that are morally fair. The final statement of the extract highlights the importance of the legislation and the threat of the tribunal in this context, and it is challenging to discern how far moral fairness exists independently of 'fair' as understood in a legal context. Legal guardianship in the main can be seen to reflect the suggestion by de Gama et al. (2012, p. 106) that the HR function is 'the umpire of fairness and the conscience for the organisation' as opposed to being the 'critic and conscience of an organisation', however one of the discourses of legal guardianship, the discourse of 'doing the right thing' and talk within this discourse of the employee champion role by proxy demonstrate that an *a priori* orientation to serve the interests of the organisation does not preclude ethical and employee-oriented action.

Oswick (2011, p. 18) argues that the prospects for equality, as a discourse, are not good in the context of management scholarship given that management scholars are more stimulated by the 'seductive' business-oriented discourses of diversity. The volume of talk on legal guardianship in this study is evidence that

equality endures as a significant element of operational people management practice. Thompson (2011) argues that the strength that HR could derive from the recognition and regulation of employee interests has been gradually diminishing; the findings of this study suggests that, whilst the *public* credibility and ownership of legal guardianship may have diminished, the amount of this type of work within HR generalist practice has not:

P39: So, I think, when does HR become redundant? When you don't need a, a law to influence people's decisions. And...will that ever happen? Of course it won't...

This perspective demonstrates HR practitioners' ownership of legal guardianship within and for their organisations, and reflects the findings of Torrington and Hall who noted that a proportion of then personnel specialists viewed the mooted devolution of people management as 'selling off the family silver' (Torrington & Hall, 1996, p. 93). Therefore, whilst the literature disparages of a contemporary, regulatory role for HR, this arguably reflects the hypotheses orienting current studies, their underpinning agendas, and the lack of voice given to operational HR generalists within these studies.

HR practitioners are argued to be unable to defend the boundaries of their professional expertise and lack clarity in expressing the contribution of the function (Caldwell, 2003). From a reconstructive perspective, the findings and analysis are presented with the intent that this study enables HR practitioners to do this, although this may require practitioners and the HR profession to reappraise strongly-held views on what constitutes 'legitimate' HR work that is publicly acknowledged and credited.

This chapter firstly considers the significance of the geographic location of the study. The chapter proceeds to examine focus of compliance in talk, practitioners' claim to employment law knowledge, the HR/employment lawyer relationship, and finally discourses of 'doing the right thing' and of performing the 'employee champion' role by proxy. This chapter is followed by a further chapter on the findings and analysis of the primary data which focuses on practitioner talk of risk and control.

7.2 How far down we are

Tatli and Özbilgin (2012) propose a framework for diversity research which requires the researcher to consider the temporal and geographic contexts within which data is collected, on the basis that understandings and practice will manifest differently according to the specific configurations of time and place within which they occur. The temporal location of the research has been identified through the review of the literature, which situates the enactment of equality by HR practitioners in the contexts of the current political discourses of reducing regulatory 'burden' and in a discursive terrain where the dominant discourses are those of diversity management and HR business partnering. The geographic location of the study is considered through an examination of practitioner talk.

The discourse of 'how far down we are' discursively constructs the South West as '*a long way from civilisation*' [Practitioner 35], reflecting the peripheral location of the South West region both geographically and economically (Jones & MacLeod, 2004). Bristol is indicated to be the beginning of the region in the context of candidates' disbelief at how much further away Devon and Cornwall are located:

P20: I mean truthfully in the last graduate intake that we did (...) we had people that came down from London and were absolutely shocked we were further down than Bristol.

The discourse of '*how far down we are*' includes the notion that there is not 'much diversity' in the region, the challenging employment context for employees who are not white British, the problems associated with attracting appropriately-skilled employees to the region, the 'life-style choice' of moving into the area, the 'problem' of attracting those who wish to 'take their foot off the pedal', and the notion that each of these issues deepens the further down the peninsula one travels.

Practitioners often cautiously and apologetically began their discussions of equality and diversity within their organisations with an acknowledgment that their employee constituent was not 'diverse':

P3: ...how do I address this? (...) We don't have, erm, a very diverse workforce down here in the South West is what I'm trying to say, I suppose...

This was generally framed in the context of this being 'representative' for the area given its demographics, with public sector practitioners noting that their targets in respect of BAME (Black, Asian, and Minority Ethnic) recruitment are based on national norms, which leads to a permanent under-achievement against these targets. A number of practitioners quantified the representation of BAME staff, presenting statistics which indicate the ethnic homogeneity of 'typical' workplaces relative to similar workplaces in other UK regions:

P29: ...we have a few people that have dual nationality passports and things like that but it's not, we have 3 probably out of 130 probably, but that's probably representative of Cornwall, who's down here actually...

A number of practitioners identified that their organisations had an atypically diverse employee constituent for the region, thereby reinforcing the normalcy of ethnic homogeneity in most other organisations.

Notably, practitioners very quickly discussed 'diversity' specifically in terms of ethnic diversity, rather than in the context of other equality/diversity groups. Diversity scholars frequently identify gender and race, along with class, as the most salient categories of difference (Acker, 2006; Acker, 2012; Kirton & Greene, 2000), although more recently scholars have challenged this approach (Özbilgin et al., 2011; Tatli & Özbilgin, 2012b). Whilst equality emerged with a focus on race in the US, in the UK, the focus was on gender (Kirton & Greene, 2000; Liff & Wajcman, 1996; Liff, 1997). In this context, the South West practitioners' immediate and unprompted construction of 'diversity' as pertaining specifically to race/ethnicity is interesting. It could indicate the impact of diversity discourses which originate in the US, or perhaps practitioners' consciousness of ethnic diversity is heightened by its visible absence.

The lack of immediate association of the term 'diversity' to characteristics other than ethnicity is notable. The lack of reference to class is perhaps explained by the constructive nature of the legislation in providing terms that practitioners are expected to use to categorise employees (Parker, 2007), however the lack of immediate association of 'diversity' as a concept with gender in the workplace cannot be explained in this way. When the interviews proceeded and the focus moved to descriptions of daily practice, discussions were much more oriented to equality and compliance rather than diversity. In this phase of the discussions, issues relating to a range of equality categories, often illustrated with examples of individual case work, were discussed. The characteristic that emerged as the

most 'salient' (Tatli & Özbilgin, 2012b) was disability. This is a further aspect of practice that can be attributed to the constructive nature of the EA 2010 in that the process of discerning whether an employee has a disability is often a much more involved and complicated process than usual categorisation under the other protected characteristics of the Act.

The relative lack of ethnic diversity in South West workplaces was occasionally considered by practitioners from the perspective of employees and candidates considering work in the region. These discussions constructed a challenging employment environment for those who are not white British. Here the phrasing of those practitioners not originally from the South West region was notably less cautious than those practitioners originally from the area. Practitioner 28 makes a comparison between the South West and London, where he worked previously, referring to attitudes in the South West towards people from ethnic minority groups as '*like going back 50 years sometimes*'. Practitioners 4 and 38 suggest that is a combination of the physical distance involved in reaching the region and the lack of ethnic diversity that candidates are faced with on arrival that deters good candidates from '*east or North of Bristol*' from accepting job offers in the South West.

Practitioners cited the challenges associated with recruitment for senior and specialist positions in the South West. This was most acutely expressed by those in various technical sectors, reflecting Jones and MacLeod's (2004, p. 440) observation that 'high-tech projects' in Devon and Cornwall are isolated. Practitioners in these sectors identified that other regions have a critical mass of similar organisations which serve to encourage candidates to settle in that area, as the concentration of organisations provides them with prospects of career

progression whilst avoiding the need to move. As practitioner 32 highlights ‘we just don’t have competitors that we can steal from’. This creates a situation whereby those who are aiming to ‘forge a stellar career’ [practitioner 4] do not remain in or move into the area.

As noted by practitioner 16, moving to, or remaining in the South West can be a ‘lifestyle choice’. This ‘choice’ is presented differently according to the age profile of who specifically is making the choice. Practitioner 23 describes the relocation to the South West in the context of a young company with a young employee constituent:

P23: ...when we moved the HQ to Exeter, quite a few of our London employees took the move to the South West for a better work life balance (...) we’re 20 minutes from the beach, we’re close to Dartmoor so people can kind of chill out in the evening.

Here, the young organisation has mandated the shift to a ‘better’ location in terms of lifestyle by relocating its main office. The marketing of job roles the South West in the context of a pleasant outdoors lifestyle is identified as problematic by practitioner 33:

P33: ...actually showing images of beautiful beaches, and sunshine actually when you were talking about people doing some work in some of the most deprived, economically deprived areas of the country, pretty beaches wasn’t really the image that you were trying, should’ve been trying to sell.

Across a range of different sectors and types of organisations, HR practitioners construct the South West region as having the tendency to lose the ‘right’ kinds of candidate, and to attract the ‘wrong’ types:

P7: ... people do tend to apply thinking, "oh we'll come down to the South West to retire and just finish off my days, and just pootle along".

This is linked to a discourse of a problematic older workforce. Age is constructed by practitioners in talk in distinctly gerontological and institutional frames. Coupland et al. (2008, p. 422) identify that the gerontological frame of reference is predicated on a biological model of age as reduction in ability and physical decline, and that the institutional model, which draws from HRM theory, views the age of employees in economic terms.

P28: You might get people towards the end of their career, yeah, great, I'm going to come down and wind down, sorry, it's not the people we want to come down to wind down, we want the young and thrusting, so that can be a problem.

P24: We have some pockets of the organisation where we're really concerned about an ageing workforce, so our [name of team], for example, um, 48% of them are over 50.

The inference in talk is that individual employees who are not '*young and thrusting*' make a weaker contribution, whilst an aging workforce more generally presents issues of succession which were more controllable for organisations and HR practitioners in terms of timings and cost before the removal of the Default Retirement Age (DRA) in 2011. It is perhaps the relatively recent removal of the DRA, which legally enabled practice now constructed as age discrimination, that leads to talk of age that is noticeably utilitarian. The DRA is constructed as having been an expedient means of exiting employees who would otherwise have been managed with a process, e.g. capability. Its removal has placed a requirement on organisations to manage the performance issues of older employees where previously it was not worth '*rocking the boat*' and managing the employee in a process which left them feeling '*devalued*'

[practitioner 17] when compulsory retirement had been on the horizon. Practitioner 26 cites the removal of the DRA as *'one of the worst pieces of legislation they could have brought in'*, citing his unease at needing to use the capability process to dismiss older workers:

U26: ...that's not a very nice conversation to have. It should be, you know, a cake, a party and a carriage clock – not a (...) after all these years you're not capable of doing this job anymore for a health reason. And it doesn't sit comfortably with me.

Practitioner 7 notes that this conversation is even more challenging for line managers to have with employees that they know particularly well. Line managers' proximity to their direct reports is often cited as one of the rationales for devolution of HRM to the line. In the case of performance capability discussions with older employees, the involvement of HR can help to alleviate the inter-personal undesirability of a line manager taking responsibility for this conversation with an employee with whom he/she has a close and perhaps long-standing relationship.

Practitioner 17 reflects the cynicism in the critical literature (Coupland et al., 2008) regarding the intentions behind the removal of the DRA:

P17: So I don't know whether the government actually thought about it as a whole, or just thought well actually, if we get rid of the default retirement age we'll all work longer and that will be good, so therefore we're not taking our pension.

Practitioner views on the removal of the DRA demonstrate the influence of the legislation in shaping the employment relationship as it unfolds in and constrains the daily decision-making of organisational actors.

7.3 The focus on compliance in talk

Practitioner talk of operational E and D in this study focused more on 'doing equality' than diversity. Talk of 'doing equality' has therefore provided much richer data than talk of diversity, and is the focus of these findings and analysis chapters. The chapters explore the ways in which practitioners discuss equality and the doing of compliance in the context of the regulation, and highlight how talk implicates certain roles played by the different organisational actors involved at the enactment level. These organisational actors are: the HR practitioners themselves, who enact a 'legal guardian role'; line managers, who are variously portrayed as 'good', 'hand-held' or 'dinosaur' line managers; the employment lawyers, who are uncritically and almost uniformly characterised as knowledge holders and providers, and employees, who are constructed in the context of their awareness of rights.

The findings of this study indicate that the perceived risk of costs arising from line managers' inappropriate or even illegal decisions (Holt Larsen & Brewster, 2003) legitimises HR practitioners' 'legal guardian' role. The focus on compliance in HR practitioner talk of operational equality and diversity supports the (rather brief) argument in the HRM literature that legal matters still require the involvement of HR specialists (Holt Larsen & Brewster, 2003). This is situated within a wider discourse that devolution of operational-level HR to line managers is desirable (Torrington & Hall, 1996), but problematic in respect of equality and diversity.

Practitioners indicate that, whilst *they* understand concepts of diversity, line managers do not, and that this in part shapes the focus for the HR practitioner on equality:

P24: ...it's definitely the 'equality' thing, it's that belief that we have to do it the same to be equal. I don't think 'diversity' is a word that managers understand.

Equality law is cited by several practitioners as a benchmark by which 'better practice' is constructed. As identified by practitioner 9: *'it gives us a framework to keep monitoring and checking against'*. This is referred to as 'legislatively-prompted voluntarism' by Hall (1994, p. 104). Dickens and Hall (2006) similarly highlight that employers' willingness to go beyond compliance is an indirect consequence of the extant law.

Of the discourses of equality and diversity discussed in the literature review, it is the discourse of equal opportunities which dominates practitioner talk:

P5: ...I guess more what I've talked about in, in the run of my job is equality, it's about people being given equality of opportunity. Erm, the diversity side of things is a much, much smaller part of my role and it doesn't come across my desk nearly as often.

This discourse most closely reflects the construction of the legislation and indicates how closely practitioner talk of equality and diversity is oriented to ensuring compliance. As indicated by practitioner 12, much of the training relating to equality and diversity discussed by the HR generalists in the study focuses on raising 'awareness' of how the EA 2010 applies in practice: *'we move on to protective characteristics, how they impact, we just try and translate the Equality Act in to how it would relate to the team on a day to day basis'*. The prevalent discourse of 'raising awareness' is further examined in Chapter 8 which considers talk of risk and control.

The regulation is constructed consistently in talk as both a force that is 'right' and a force that instils fear. As such, the legislation is identified by HR practitioners

as having been instrumental in advancing good equality and diversity practice, whilst the ‘threat’ it poses is omnipresent.

P24: Yeah, I do think that, um...I've been in HR for, er, 20, just...just under 20 years and (...), you know, the change in that time has been phenomenal and the law has been the thing that's been the catalyst for that change. There is a huge fear around, you know, 'am I going to get a case brought against me', um, 'how would we defend if this person claimed this'.

Notably, there are no instances in the data collected where practitioners question the construction of, or the rationale for, the legislation. The EA 2010 is positioned as a formidable and complex entity in talk, reminiscent of the ‘externally imposed bureaucratic control systems’ identified by Legge (1995, p. 174) which are widely considered to be ‘outdated and part of vested interest’ (Gollan, 2012, p. 302). The questions surrounding the future of the equality regulation which feature in the literature (Williams & Scott, 2011) were not an element of practitioner talk.

As the data for this study were collected at the end of 2013 and the first part of 2014, practitioner talk was just starting to consider the impact of the introduction of tribunal fees on the likelihood of claims being raised by their employees. At that point, the ‘risk’ was not seen to have diminished, or to be likely to.

P15: Because of the no win, no fee type thing and more people have...are bringing cases etc. and even with the change in ACAS, you know, the fact that they're gonna have to pay, actually if they don't work they don't pay so there's still the element of risk there. So would think there's more of a cultural about claiming now, so actually we have to be more...the risk is higher for us, so therefore, it's more paperwork.

The ‘risk’ is perceived to exist in both the press noise *outside* the organisation, as indicated by practitioner 6: ‘*the rise in litigious sort of incidents outside of the*

business that we've seen, read in the press and things', and in *internal* experience of tribunals: practitioner 12 for example, in discussing the content of E and D training delivered in-house mentions *'we chat a little bit about tribunals, mainly at manager level because we do get them'*. This 'tribunal talk' is further examined in the next chapter. Roehling and Wright (2006, p. 612) highlight that the press in the US focus disproportionately on cases won by claimants and on higher than average awards to claimants. Practitioners interviewed in this study draw not only from press accounts, which could be argued to skew the likelihood of litigious risk, but also from their own experiences of claims, which present a more tangible, lived experience of litigious 'threat'.

The approach of many of the HR practitioners interviewed to the enactment of compliance is illustrated by practitioner 33:

P33: ...often in HR I find in my experience the case work that you get involved in is for example an employee not performing or not behaving as they should (...) if this ends up in court because we need to take some firm action here, how are we going to make sure that this is focused on the fact that they weren't performing or behaving and not putting the company at risk by er, allowing that employee or their solicitors to focus on something that is to do with a protected characteristic of the law. So that's actually sadly one of the ways in my day to day work that we have to think of managing those legal risks, which as a HR advisor I know that equality and diversity is about but more than that but that's the, one of the areas where it comes into my daily life as an advisor.

This excerpt, which is characteristic of a large proportion of practitioner talk, demonstrates that compliance becomes a factor for consideration at the point where the organisation has commenced a process, for example here performance capability and disciplinary processes are cited; other processes mentioned in talk include recruitment selection, redundancy selection and pay

awards. The risk is posed by the capacity for the employee within this process to make a claim based on their having a protected characteristic. This capacity is examined further in Chapter 8.

Notably in the above excerpt, the practitioner expresses sadness that this focus on compliance due to the potential risk of litigation is the main way in which E and D feature in her daily work. This arguably reflects that the actions described are reactive, and informed by regulation, both of which are constructed by Ulrich (1997) as antithetical to 'strategic' HRM, and indicates practitioners' ill-ease with work which more closely resembles outmoded personnel management role types. This is a key focus of the discussion in Chapter 9. The practitioner's sadness at the focus on compliance and regret that her practice does not involve '*more than that*' arguably reflects the dominance of diversity discourses above older discourse of equal opportunities.

In the context of the literature which focuses on diversity specialists e.g. Tatli (2011), practitioner 20 provides an interesting insight into the different orientations of the roles of diversity practitioner and HR generalist, having previously worked as a diversity specialist:

P20: ...when you're a generalist you can go so far down the business case route, um, but then actually what you want to put in place are effective processes and policies that will build what you're trying to get anyway, because you don't have time...because you've got so many other things [laughing] to do (...) When you're a generalist you know you may not get their hearts. You got to make sure their minds are on-board and they know what they've got to do in this workplace (...) Now when you're a diversity specialist, you are trying to change people's hearts and minds.

This excerpt indicates that the role of the HR generalist in respect of equality and diversity *may* involve the winning of hearts, whilst further affirming that there is

an emphasis in practice of regulating employee behaviour to ensure compliance. The dissensus perspectives on the centrality of compliance are those sections of practitioner talk which, as above, juxtapose compliance with diversity. These instances of dissensus have the force of demonstrating that 'equality and diversity' in work organisations is constituted primarily of equality and compliance from the viewpoint of the generalist HR practitioner, but not exclusively so.

The next section considers legal guardianship in practitioner talk of 'protecting' the organisation.

7.4 'My job is to protect you': protecting managers, protecting the organisation

HR's legal guardianship is usually constructed in talk from the perspective of the protection afforded to line managers, and the organisation, from the risk of employment tribunal claims rather than to the protection afforded to employees e.g. from discrimination. 'Legal guardianship' therefore, is not oriented to the 'employee champion' role (Ulrich, 1997, p. 29). This concurs with Guest and King's (2004, p. 415) suggestion that Ulrich's 'employee contribution' role 'seems now to focus on helping managers manage effectively, rather than representing employees' views to management.' Legal guardianship therefore, whilst ostensibly appearing not to fit with HRM discourses rooted in market-oriented ideology, nonetheless fits these discourses in the respect that it is identifiably unitarist in its underlying motivation, in contrast to 'pluralist' personnel management (Keenoy, 1990). HR practitioners can, however, seek to fulfil the 'employee champion' role by proxy and this is discussed in section 7.7.

Talk demonstrates that it is not that employees' rights and welfare are unimportant to HR practitioners, rather the point of orientation for practitioners is first and foremost ensuring compliance for the organisation. Talk suggests that

practitioners perceive that this approach will also entail 'right' outcomes for employees. As practitioner 39 explains:

P39: We're here to support the interests of the business, at the end of the day, to protect its reputation, to make sure it doesn't get itself into difficulty from a legal point of view; to do the right things in terms of its employees...

Implicit in this talk is the perspective that the equality legislation ensures that 'right things' happen to employees, and thereby that protecting the organisation from potential legal action will engender fair treatment for employees. The easy logic of this juxtaposition is however problematized in talk. The challenges posed by attempting to achieve 'right' outcomes for both the organisation and the employees are discussed further in section 7.7 where the discourse of 'doing the right thing' is examined. This section now considers what making sure that the organisation 'doesn't get itself into difficulty' involves.

Practitioner 11 demonstrates 'legal guardianship' in her talk of explaining to line managers the rationale for quizzing them in situations where an employee is in an HRM process:

P11: (...) I basically always start off and say, "I need to ask these questions because I need to make sure we're going down the right route and that I'm protecting you guys and my job is not just to advise you, but it's also to protect you".

Such talk indicates that legal guardianship is constituted from the two, often conflicting, paradigms of personnel management and HRM. HR's role in 'protecting' the organisation highlights a unitarist orientation to the serving the needs of the organisation, whilst the job of supporting line managers is drawn from the discourse of HR business partnering. The need to protect and the desirability of advising lead to a situation where HR practitioners often service

line managers in the respect that they act as the receivers and resolvers of line managers' strong reactions:

P15: I've made it quite clear with them that, that they can use me as a sounding board. So if they're frustrated or ticked off about anything, I'm happy for them to come and vent it out in my office. So that they don't go and do that to the directors, and bother them with it all, or whatever. But also it protects them...

This represents a construction of 'double protection' delivered by the HR practitioner in that they maintain their first orientation to protecting the organisation, and further to this, act to 'protect' the line managers from needing to escalate their frustrations to senior figures *within* the organisation. Arguably this functions as self-protection for the HR practitioner, in that legal guardianship is perceived to be the responsibility of HR (Wright & Snell, 2005) and such escalations to senior figures by line managers would signify a failing on the part of the HR function and/or the individual practitioner. This responsibility is evident within the following extract of talk:

P30: ...from a professional perspective, I would be really ashamed I think if you thought, 'Mmm, I could have done something about that and I kept my mouth shut,'...and er now we find ourselves in that horrible position where it's come true...and now we've got a bit of egg on our face...and everyone knows that we've made a mistake or that we have done things that we shouldn't have done and that...your credibility becomes undermined...

It is difficult to discern in this excerpt whether 'we' indicates the organisation, or at times specifically the HR function. It could be argued that 'we' who '*find ourselves in that horrible position*' refers to the organisation in that tribunal claims

are raised against organisations. The practitioner's talk of their '*professional perspective*' and '*credibility*' suggests however that the responsibility for the '*mistake*' is attributed to the HR function and/or the individual practitioner.

The dissensus perspective in this discourse rejects the 'policing' role of HR and posits that line managers should be able to conduct themselves and make appropriate decisions independently of HR:

P36: ... don't see me as the kind of political correctness police or that you, you need to make the right decision because I'm in the room. I, I want you to make the right decision because it is the right decision.

The practitioner's phrasing here suggests that HR are viewed as 'policing' line managers, and that changing this perception is an ongoing aim rather than a point that has been achieved in this organisation. Interestingly the term combines pejorative concepts from both the HR and equality and diversity fields, and is therefore doubly undesirable. Those practitioners speaking within the consensus position of protecting the organisation and line managers do not use the terms of 'political correctness' or 'policing'. The instances in talk where this phrase occurs would suggest that practitioners have appropriated the term from line managers, and that it is a critique sometimes levelled at the HR function.

The next section considers practitioners' claim to knowledge of employment law.

7.5 HR practitioners' claim to employment law knowledge

Gollan (2012) identifies that, whilst HR managers aspire to have a strategic input, their role requires them 'to fulfil their duties as a functional expert'. This functional expertise is demonstrated by HR in respect of their knowledge of employment law.

In their talk of ownership of the legal guardian role, practitioners construct the equality legislation as complex. This reflects the argument that employment rights involve a technical complexity which can pose problems for employers in respect of understanding their obligations (Dobbin & Sutton, 1998; Morris, 2012). Morris argues that equality law is particularly complex, with cases potentially involving 'sensitive factual scenarios' (2012, p. 13). Additionally, a high proportion of employment tribunal cases cover more than one statutory right, for example discrimination and unfair dismissal (ibid). Ironically, the complexity of employment rights legislation in part derives from the efforts of successive governments to make existing laws more 'business friendly' (Dickens, 2012b, p. 210). Edwards et al. (2004, p. 246) note that small firms of less than 50 employees tend to lack personnel specialists 'that provide information on new laws and generate procedures for handling employment rights', emphasising that the HR function plays an important role in larger organisations in implementing employment law in practice.

Changes to the equality legislation are perceived to be ongoing and inevitable (Dobbin & Sutton, 1998). This is despite the introduction in 2004 to a commitment to maximum of two dates annually where new employment legislation takes effect and the availability of 'better guidance' on the legislative changes (Dickens & Hall, 2006). Where the standards required to comply with the law are still evolving, Roehling and Wright (2006, p. 607) argue that this can contribute to 'legal-centric' decision making, that is, where decisions are based on a perception of litigious risk which is disproportionate, and which is not based on 'clear and specific legal requirements' (ibid p. 606). Roehling and Wright's argument is considered further in section 7.6 which focuses on the HR/ employment lawyer relationship and in chapter 9 where I propose that, whilst elements of 'legal-centric' decision making

are relevant to a discussion the legal guardian role performed by HR practitioners, legal guardianship is notably oriented to understanding what is required to ensure technical compliance to the law, rather than characterised by unnecessary risk aversion that ignores other 'organizationally relevant' factors (Roehling & Wright, 2006, p. 607).

The complex norms which develop over time through case law render the law unknowable to 'busy' line managers:

P15: (...) we hold some expertise and some knowledge and our job is to actually impart that. Now, the managers haven't got time to go and study all that when there's a change in legislation or whatever.

The construction of 'unknowing' line managers is examined in more detail in the latter part of this section. The force of the construction of the legislation as complex and changeable is a claim by practitioners to specialist knowledge and 'expertise'. Discussion of the law as requiring 'knowledge', and that 'study' is required in order to keep up to date, feature frequently in the data. In keeping with the principles of Continuing Professional Development, practitioners discuss how they maintain their knowledge of the employment legislation through their attendance of employment law events held by law firms, through employment law bulletins, and through sharing knowledge in their professional networks. These professional networks play an important role in constructing 'rational myths' regarding compliance which, over time, can be seen to have an influence in judicial decision-making (Edelman et al., 1999).

Despite these professional endeavours, practitioners construct mastery of employment law as unachievable:

P25: ...you think, "Oh I think I've covered every angle, I think we're okay" and then something comes from left field and you think, "Blimey, I didn't think about that at all."

This discourse contends the construction in managerialist texts of E and D issues as 'minor hurdles which could easily be overcome if the right steps were taken' (Lorbiecki & Jack, 2000, p. 21) and reflects instead the perspective in sociological law scholarship that equal opportunities legislation is ambiguous and complex (Edelman et al., 1999, p. 407). The mixed messages practitioners receive on the simplicity/complexity of enacting equality and diversity are evident in occasional oscillations in passages of practitioner talk:

P3: ...you know, with equality and diversity, a lot of it is down to common sense (...) You know, you expect to be treated...you treat others how you expect to be treated, but sometimes managers just need to be reminded of certain things, particularly legislation 'cos it changes so frequently.

The claim to expertise is a claim that relates to the intra-organisational context: in talk, practitioners construct a further terrain of knowledge, beyond the organisation, owned by employment lawyers. The construction of employment lawyers as the guides and allies of HR practitioners, and the uncritical approach to this relationship of reliance evident in practitioner talk, is discussed in the section, 7.6.

The claim to expertise is perhaps in part a response by practitioners to the questions in the academic and practitioner literature regarding the contribution of the HR function and on the issue of professional status (Watson, 2007, p. 142). The concentration of talk regarding knowledge of employment law could be constructed as evidence that practitioners' desire for recognition as experts is ongoing, or it could derive from the simple *amount* of legal guardianship required

in the day to day work of the HR generalists interviewed. Logically, the prominence of the claim to employment law knowledge in talk could be a consequence of both these factors.

Despite the importance of legal guardianship in the daily work of the HR generalists interviewed, where personnel specialists previously derived credibility in the late 1960s and 1970s by guiding line managers 'away from misguided (il)legal *faux pas*' (Legge, 1995, p. 13), the HR profession has not achieved, or notably *attempted* to claim similar public credibility for contribution and expertise in respect of legal guardianship following the wave of employment legislation introduced by the Labour governments of 1997-2010. The issue of how HR's legal guardianship may fare given the likelihood that the Conservative government of 2015 onwards will seek to alter the equalities legislation is discussed in Chapter 9.

Practitioners juxtapose their 'knowledge' of employment law with line managers' focus on task. There is a resultant illogic in expecting line managers to 'know' the legislation. The EqA2010 is constructed as particularly complex and 'unknowable' in this context. Practitioner talk presents the application of the EqA2010 as requiring more 'in-depth' knowledge than even 'knowledgeable' line managers can be expected to have:

P10: (...) some managers obviously have more knowledge and skills than others. Erm, but in terms of the Act, I think they probably rely on their HR advisors and, and so on...to advise them. I don't think they would be aware of the implications of the Act unless we advised them. Because I don't think they'd have that in-depth knowledge...

Line managers' lack of awareness exists despite the concerted efforts of HR practitioners to 'raise awareness' through training and ongoing, bespoke

guidance. The ways in which this raising of awareness involves 'tribunal talk' and the threat posed by the threat of legal action are examined in Chapter 8.

In this discourse, a level of naivety and innocence is imputed into the construction of the 'unknowing' and busy line managers:

P7: ...we advise them on what they need to be mindful of. If I take recruitment for example then, when they're erm looking to recruit somebody they might not be aware of all the aspects to, to consider erm, some people don't even understand it when you explain them, they're, they're unsure. Why shouldn't they do that? Why can't they put an age range on an advert because they don't they don't know, they don't understand.

P27: And that sometimes you can unknowingly discriminate if you don't understand the language that you're using, that you may say something that you don't understand and actually is discriminatory but you don't realise that it is.

The notion of line managers 'unknowingly' discriminating places the focus of enacting equality on the technicalities of how discrimination is defined in law and has the effect of obfuscating the question of whether line managers should realise that their actions are potentially unfair from a moral perspective. This focus on adhering to the technicalities of the legislation is identified pejoratively as 'the culture of compliance' (Klarsfeld et al., 2012, p. 2). Implicit in the discourse of compliance culture is the sense that the legislation presents a bare minimum of equality standards, and that the work undertaken to ensure compliance is unworthy from both a moral and business case perspective. Practitioner talk examined in this study problematizes the idea that the legislation represents a bare minimum standard. Further, as argued by Thompson (2011) ethical practice is unrealistic, unless prescribed by regulation.

If the stance towards compliance were to be reappraised to reflect the view that the legislation comprises a 'good' rather than a 'bare minimum' standard, this would reposition the work undertaken by HR practitioners in respect of legal guardianship. The discussion of the findings in this study take this approach whilst acknowledging that this reconstructive approach is not an unproblematic salve for the HR profession's ongoing issues of credibility and role tension.

Whilst practitioner talk is overwhelming couched in the HRM discourse that devolution of HRM to line managers is a good thing, and the object of the HR practitioner, talk of the claim to employment law knowledge suggests that practitioners take the view that the need for HR to undertake a legal guardian role will sustain:

P24: I think you'll never get rid of some level of support because...you know, I spend a lot of my time reading cases and case law and that's because of the way employment law works, you have to look at...you might have the law but then some decision will be made and you need to be aware of that; and I see that very much as my job, that's not their job, it never should be their job, they've got a job to do running the organisation.

Watson (1986), writing at a point when the personnel management paradigm retained mainstream legitimacy within scholarship, suggests that expertise, for example in employment law, could lead to a situation where difficult issues and decisions are pushed to personnel specialists, potentially overloading them. Watson suggests an equally bleak alternative, where the lack of a claim to expertise could lead to managers and employees seeing little value in the function. Practitioner talk suggests that HR practitioners have avoided these two extremes.

Rather than constructing equality and diversity related work as being 'pushed' on them, practitioners' talk indicates that their expertise is used to support line manager decision-making in this area. Additionally, whilst devolution is arguably minimal, *involvement* of line managers in many of the stages of decision making appears to be high and so difficult issues are, at least, shared. This represents a break the 'vicious circle in personnel development' identified by Legge (1995, p. 27) where problem solution is left entirely to the personnel department. Further to the point relating to a reconstructive approach above, a break in the cycle in itself does not necessarily represent a solution for HR in respect of the issues surrounding the function's role and credibility. Further, in a dynamic where HR practitioners and line managers 'work closely' (Currie & Procter, 2001, p. 66), this has implications for employees from both an HR and equality perspective.

The next section examines practitioner talk of the HR practitioner/employment lawyer relationship.

7.6 'Well, the solicitor says this': The HR/employment lawyer relationship

As identified and discussed in the previous section, HR practitioners' claim to employment law knowledge pertains to the intra-organisational context, and there exists an external terrain of expertise, constructed as being owned by employment lawyers. The relationship between HR practitioners and employment lawyers is notable for the almost uniformly uncritical stance evident in practitioners' descriptions. The mainstream HR literature is largely silent on this important relationship, arguably because the existence of the relationship serves to emphasise the significance of a legal/regulatory role for HR which is incommensurate with the dominant HR business partnering discourse. Roehling and Wright (2006) contribute a theoretical discussion which considers the role of employment lawyers from an HR and decision-making context. Roehling and Wright argue that, the greater the uncertainty over a decision, the more likely it is that the input of lawyers, along with 'cognitive limits' and self-interest will lead to 'legal-centric' decision making which is disproportionate to the actual risk of litigation (2006, p. 612).

Practitioners indicate that they will consult with external employment law experts in 'tricky' situations:

P12: ...we've got an external team that if something is a bit tricky and yes sometimes you've got to go to the solicitor, "I've got this situation, what's your advice?" Then go to the manager, "Well the solicitor said this and then it tends to appease them".

Talk of checking with employment law experts tempers the claim to expertise expressed by the HR practitioners. In the excerpt above, the line managers appear not to accept the recommendation of the HR practitioner without the reinforcement of what 'the solicitor' has said. This suggests that the 'trickiness'

could in part be the difficulty of winning the acceptance of line managers, and not simply the complexity of the case in hand. This section now considers how employment lawyers develop relationships with HR practitioners.

Employment lawyers provide HR practitioners with employment law updates, which can be free, can be offered by CIPD branches as part of membership, or involve a charge. The format of these sessions is indicated by practitioner 25:

P25: ...the legal teams that we use, they have what they call HR breakfast so there are certain themes that go on. So funny enough we're just going on about reasonable adjustments, you know and then...So I guess they come at it from an angle so they give you the law and tell you what's happening and then how to kind of how to protect yourself so to speak rather than 'this would be a good thing to do.'

The reference to employment lawyers 'telling' HR practitioners '*what's happening*' in respect of employment law supports the concept that the law is subject to reinterpretation through case law and that what constitutes compliance is not fixed. The employment lawyers seek to guide the HR practitioners to enable them to 'protect' themselves, rather than emphasising the '*good thing to do*' in respect of the employee, in this case, employees with a disability.

'Keeping up to date' with employment law is constructed by HR practitioners as part of good continuing professional development (CPD), which, as indicated by practitioner 8, is '*in the blood*' of those in HR:

P8: ... all of us regularly undertake sort of regular conference with solicitors, we're all kind of very...I'd say we were quite proactive as a team in regards to training and those sorts of things, 'cause you know, if you work in HR it tends to be in the blood doesn't it to kind of [laughter] be like CPD and those sorts of things.

Practitioner 25, also discussing 'keeping up to date' with employment law as part of ongoing CPD constructs herself and her colleagues as '*a bit boring, like train spotters or something*'. This conveys a sense that, like train spotters, HR practitioners who follow employment law changes realise that there is a 'geek' and 'outsider' element to what they do, but that they nonetheless derive a positive and collective sense of ownership. Watson (1977, p. 151) suggests that practitioners interviewed by academic researchers may be inclined to feel *expected* to be engaged in this type of 'professional' reading in order to provide what the researcher would view as an appropriate occupational image and so perhaps it is hard to gauge the researcher's influence in the generation of the '*like train-spotters*' construction.

The orientation of HRM literature to diversity management belies the wealth of information supplied to HR practitioners which relates to compliance. Marchington and Wilkinson (2012) in their key practitioner course text urge readers to consult CIPD factsheets to remain up to date with employment law guidance on the basis that published academic texts are limited in their capacity to reflect the latest laws and related guidance. There is the sense that HR practitioners are inundated with this type of guidance from the CIPD and similar sources:

P18: ...and just you know Personnel Today erm CIPD, expert HR erm so you know we've got all that information coming in on a daily basis...

The amount of guidance on employment law received by practitioners challenges the sense in the contemporary HR and equality and diversity literature that equality has been superseded by diversity management (Oswick, 2011). The purpose of the employment law update sessions is to encourage HR practitioners to engage the services of the employment lawyers (Edelman et al., 2001).

The lawyers' focus in their interactions with HR practitioners on the complexity of the legislation generates a sense that checking with them is the right course of action. The update sessions place individual HR practitioners among a group of their peers from outside their organisations, where shared understanding is similarly generated and where practitioners' dependent relationships with the more knowledgeable employment lawyers are normalised. This 'normative isomorphism' (DiMaggio & Powell, 1983; Edelman et al., 2001; Heery & Frege, 2006; Paauwe & Boselie, 2003) creates a perception that practitioners ought to check with their employment law advisors particularly at the point of dismissal:

P29: ... you can literally phone up and say, "Right I've done that meeting that you told me to do and I've done it and I've got the notes here, what is your advice?" "Yes, you can dismiss," you know, whatever it might be. So I would have gone externally there from a 'can I dismiss?' perspective.

This type of external employment law advice is particularly valued by HR practitioners for its 'practicality':

P4: I find their advice very practical, very pragmatic, you know, erm you could go...and even if you go back and say, "Ah, well, actually we didn't quite follow that", they will still come back and say "Right ok, this is what you need to do now"

Here, the 'practicality' of the advice is arguably in part the non-judgemental approach of the employment law advisor towards the HR practitioner who has not followed the initial guidance given. There is the sense that it is refreshing for the HR practitioner to engage in non-judgemental interaction. It is arguably this refreshing, practical, non-judgement, and not just the 'expert' employment law advice, that the external law specialists are consciously providing as part of their service. It is perhaps also a reflection of the perspective that law, in practice, is

'managerialized'; that understandings of law by legal professionals are different to understandings of the (HR) professionals and line managers who operationalize them (Edelman et al., 2001, p. 1598). In this respect, whilst the lawyers are the experts of law in terms of its conception, HR practitioners are the experts of law in its enactment.

Practitioner discourse therefore contends the HR/employment law relationship as presented by Roehling and Wright (2006, p. 606): rather than the HR practitioner deferring to the employment lawyer's advice without question, the HR practitioner in the above extract appears to have enacted a modified version of the initial advice, arguably taking 'organizationally sensible' factors into account as well as the legal advice provided in her decision making. In their response, the employment lawyers are constructed as adept at accepting and working with this modification. This suggests a more nuanced relationship, where there is still reliance on the employment lawyer for guidance, and deference to their deeper employment law knowledge, but this does not lead the HR practitioner to forego other, perhaps more commercial and/or local considerations in deciding on a right course of action. This reflects Edelman et al.'s (2001, p. 1599) view that the 'managerialization' of law involves the progressive infusing of management values. HR legal guardians therefore appear to have succeeded in operationalising an effective approach to using employment lawyers as defined by Roehling and Wright (2006) in that the role of the lawyers is not overly directive.

Talk of this service highlights that legal guardianship costs for an organisation can often include both the pay of the HR generalists and the fees of the external employment lawyers. None of the practitioners interviewed indicated that this

double payment was questioned by their organisations. This arguably reflects both the complexity of operationalising the equalities legislation, and the value placed on achieving compliance. The complexity of the equalities law in practice is evident in the following example, where practitioner 4 is discussing a case encountered by an HR colleague in another organisation, as discussed in an employment law-focused HR networking event:

P4: I went to a training course a couple of weeks ago on the erm, protected conversations and one of them was saying they had a, a coloured chap on their shop floor who wanted to be called 'Chalky' he was happy to be called 'Chalky'... but they were adamant he couldn't be called 'Chalky' because of the perception of other people in the business if they heard it, I thought, wow, that's a really difficult one because absolutely, yes, you know, I couldn't, if I walked round the factory and I heard people, I'd think, "Oh my God, what are they doing?!" But he was comfortable with that nickname... and it's well, is it, is it, a mark of a lack of respect for him, is it that he doesn't respect himself enough? I felt it was really complex.

The practitioner's reflection on the discussion of his issue is interesting from a number of perspectives. Firstly, the networking event focuses on 'protected conversations', which at the time were one of the new permutations of employment law, designed to reduce regulatory burden and which, by virtue of being a change, generated the opposite to intended effect of generating further complexity and industry for employment lawyers, and hence the rationale for this networking session. The event is therefore not focused on protected characteristics; however these become a salient part of the discussions. This illustrates how equality compliance issues permeate a range of HR contexts.

Secondly, this is an example of the normative isomorphic process by which law is given meaning; whilst the description given by practitioner 4 does not provide the 'answer', it can be reasonably assumed that the issue was raised at the event

in order for HR practitioners to contribute their thoughts and for the employment lawyers present to provide an appropriately compliant course of action which can be taken by the practitioner back to their organisation. The process mirrors legal process in that a 'case' is heard and adjudication is made on that case which is informed by the precedents of relevant cases but where case law as a construction of legal process enables new precedents to be set. The focus of the process in the networking events is prevention rather than redress.

Thirdly the example illustrates how complex the interpretation of the law is in practice. Practitioner 4 identifies that the employee is experiencing a form of discrimination, yet this is less than straightforward to deal with in that the employee is manifesting his own agency in owning the racially-based nickname. The practitioner recognises that the employee's apparently convivial acceptance of the name could be the result of dominant (white) group influence on the perceptions he has of his identity. Rather than having substance in itself, the wording of law is given meaning in complex cases such as this through the interaction of the legitimate social actors.

The final point to note on this example is the ownership of managing the situation demonstrated by the HR practitioners; in this and other similar examples, line managers are conspicuous by their absence. Such issues come to the attention of the HR function for HR practitioners to manage, or may only be picked up, as indicated by practitioner 4, as the HR practitioner walks the floor. This phenomenon is not questioned by the practitioners. This suggests that, where an issue of equality has high visibility among the employee constituent of a workplace, the commitment to devolution to line managers in talk is abandoned and the HR function take an overt ownership of the situation.

The following section considers how HR practitioners, in addition to protecting their organisations from litigation, seek to ‘do the right’ thing for employees by performing an ‘employee champion’ (Ulrich, 1997, p. 29) role by the use of different proxies.

7.7 Doing ‘the right thing’ / performing the ‘employee champion’ role by proxy

HR practitioner talk of ‘the right thing to do’ in the context of the enactment of E and D appears to evoke a rights-based, deontological framework (Winstanley & Woodall, 2000). This framework justifies an ethical position in respect of the consequences of action (ibid). Despite the dominance of the HR business partner template, Keegan and Francis (2010, p. 894) suggest that

‘changes in the wider textscape of HR inevitably create spaces where credibility and support for alternate HR practices, and the discourses within which they are constituted, are driven by social values rather than strict economic criteria’.

As ‘the right thing to do’ from the perspective of the practitioner *includes* protecting their organisation from potential litigation as an outcome, it is often unclear how far the deontological rationale for ‘right’ can be disentangled from ‘right’ as a utilitarian orientation for action. As discussed by practitioner 25, the moral and legal ‘right’ things to do are something of a ‘*mix up*’:

P25: So there’s a mix up of what people think you know that’s, so I think media wise I know a lot of people say, “I know my rights” and all that, you know, and there’s also that legal side of it, isn’t there? And there’s the moral side of it, you know, so it’s not because you’re told but does that feel quite right, would you want somebody treated in that way and all those things.

Practitioners who are faced with the dilemma of ‘doing the right thing’ for both the organisation and the employees create a discourse of ‘wearing two hats’. This

discourse provides insight into the rather clandestine strategies adopted by practitioners in their attempts to fulfil an 'employee champion' role whilst simultaneously maintaining an ostensibly 'hard HRM' approach which fulfils the short-term needs of the organisation.

'Wearing two hats' is a response to the ethical dilemma identified by participant 37:

P37: (...) as an HR person, it's quite difficult. You know what you're doing is right, but it's like, do you understand what I'm telling you, that actually on the 7th we are going to have to cut your hours, because X, X, X. Oh okay. And it's just like, hmm. It's a bit of a dilemma I think sometimes.

The 'wearing two hats' response involves the HR practitioner playing a more overt role in acting for the organisation, with a more covert approach taken to their employee-oriented action. This can, as in the excerpt below, involve indirectly playing an 'employee champion' role by use of a proxy. This proxy can take the form of indicating to the employee that they should take external advice and, specifically, by facilitating this:

P25: (...) they don't bring anybody in to represent them, we don't have a union. So you kind of wear two hats and you go, "Okay, I want to understand." Because you're here for the organisation but of course you need to make, you need to be objective and independent so sometimes you're actually saying to somebody, "This, that and the other" and they don't even believe that when you're saying it trying to sort of say, "You know what? You need to speak to ACAS. Go and have a chat to ACAS, you can use the room, you can do that.

The 'employee champion by proxy' can also take the form of the HR practitioner prompting a trade union rep to make certain points for the employee, which the

HR practitioner cannot overtly be seen to do. This presents trade union reps in some organisations as the puppets of HR.

P28: You know, here, sometimes you have to tell the union it's an issue [laughs]. Say, "Look, it would help me to help you if you went round that way and pushed from your side and I'll push it from my side and we might get some response, mightn't we?" [Smiles].

Further examples of 'employee champion by proxy' indicated by practitioners comprise '*an ethics and compliance line*', discussed by practitioner 20, which the HR team '*do a lot to advertise and promote*', and a similar '*anonymous phone number*' cited by practitioner 13. It is the work undertaken by HR to 'advertise and promote' the availability of such phone lines, union reps and Acas that justify identifying this activity as employee champion by proxy.

These approaches align with the realistic expectations of employees according to Thompson (2011, p. 364), who argues that employees understand not to expect a HR to act as a 'champion' in the context of the capitalist employment relationship, rather they expect fairness, i.e. distributive justice, and transparency, i.e. procedural justice, and 'not to be fed crap'. Practitioners demonstrate belief that procedural justice constitutes fairness and also pride in their role as the owners and managers of the processes which afford this justice to employees.

Again positioned in a unitarist understanding of the employment relationship, the discourse of 'doing the right thing' suggests that *elements* of Wright and Snell's (2005) construction of 'ethical guardianship' constitute legal guardianship. Wright and Snell (2005, p. 180) define ethical guardianship as relating 'to doing what is morally right. Such values place priority on social responsibility, organizational values, and individual integrity'. Whilst the free-standing plausibility of 'morally

right' has been problematized in this section, practitioners identifiably strive to uphold organisational values and demonstrate integrity in the face of what can be challenging relationships with line managers and the personal challenges presented by the lack of recognition for their contribution. This appears to create a need to derive altruistic comfort from the benefits produced for the organisation on the basis that these benefits have little or no visible recognition.

The excerpt below indicates the lack of overt recognition for the contribution of HR, given the private and gently incremental nature of how HR practitioners successfully build line manager competence in 'doing the right thing':

[U12:] (...) it's very hard sometimes to get managers heads around it and also to get them to take responsibility because if we give them advice that you don't like, they will say HR told me today, which, broad shoulders, that happens all the time in this profession. (...) you find it frustrating and I think any human would do, but when you can work on somebody as I have done and slowly slowly, just a little bit at a time and then six months 12 months or even 18 months down the line they get it and they turn around and they may not even give you recognition for the work that you've done, but you know that you've done a good job, and that's heart-warming because the knock-on effect is immense...

Wright identifies that practitioner talk of building a strong level of trust with senior managers involves 'acting as a 'coach', sounding board, or confidant' (2008, p. 1073). Wright further notes that gaining the patronage of senior managers was perceived by practitioners to require 'significant interpersonal skill and investment over time', and 'often subject to the vagaries of organizational politics' (2008, p. 1074). The excerpt above suggests the HR practitioner's acceptance of this lack of recognition as the way things are for HR.

Ulrich et al. (2013) caution against HR professionals continuing to focus on building personal credibility. Ulrich et al. draw on empirical data which suggests that, whilst being a 'credible activist' has the highest impact in respect of being seen as effective by others, it has the lowest impact on business performance. Thus, Ulrich et al. argue, 'the knowledge, skills, and abilities that create the appearance of competence are not what actually create business performance' (2013, p. 468). It is a perspective reflected in the dissensus position of participant 24:

P24: It's very nice to have that relationship building at the start, but after six months I thought this is wasting my time.

This practitioner describes encountering a culture where her input on a wide range of matters was expected by other managers, and which she continually had to resist over a period of a year before she succeeded in changing this 'culture'. The practitioner's perspective was that her opinions were sought in order that HR could be blamed if problems were subsequently encountered. This practitioner's perspective on the long process required to reverse this culture reinforces the normalcy, as in the preceding excerpt, of HR requiring '*broad shoulders*', as being blamed by line managers when issues arise '*happens all the time in this profession*'. In addition to being constituted by hard to disentangle notions of both utilitarian 'right' and ethical 'right', the discourse of the 'right thing to do' further includes the expectation that HR practitioners will endure and absorb unwarranted blame in their pursuit of doing what is 'right'.

7.8 Summary of Chapter 7

This chapter has discussed the rationale for the focus legal guardianship in the data collected for the study. The concentration of data on legal compliance has been identified, and the following discourses examined: the geographic location of the study as discursively constructed by practitioners in talk, HR practitioners' role in protecting line managers and the organisation, practitioners' claim to employment law knowledge, and the phenomenon of HR practitioners playing the 'employee champion' role by proxy.

Remaining with HR practitioners' role as legal guardians, the next chapter examines HR talk of risk and control.

8 Talk of risk and control

This second of the two chapters on the findings of the study examines HR practitioner talk of the terrain and the borders of legally permissible practice, talk of tribunals, awareness, consequences and risk, talk of 'good', 'hand-held' and 'dinosaur' line managers, employees' awareness of rights and finally considers the bedrock of process.

8.1 HR practitioners' control of the 'boundaries' and line managers' 'freedom' within the boundaries

Practitioner talk of controlling the borders constructs employment decisions as a terrain, positioning HR as guardians at the borders of legally permissible practice, and line managers as 'free' to make decisions and 'find their way' *within* the confines of this demarcated area. This discourse in the data reflects, and expands on, Foster and Harris' observation that, whilst line managers complain about excessive rules and bureaucracy in respect of E and D, they are 'ultimately likely to prefer the comfort zone of operating within clearly prescribed boundaries' (2005, p. 70) and Purcell's observation that part of the difficulty for line managers is knowing the limits of their authority (2012). The discourse further reflects the notion in the general HR literature that line managers welcome HR keeping them 'on the right track' (Renwick, 2003, p. 273).

Talk of the '*borders*', '*boundaries*', '*guidelines*', the '*edge*' and the '*tracks*' and '*routes*' within the safe zone create a vivid geo-political image of the HR practitioner's role as legal guardian. In the following extract, the practitioner refers both to 'guiding' line managers, and to having a '*better view*', as would a border guard positioned above a border:

P26: If it's in terms of how do I treat this fairly, consistency and reasonably, well you come and talk to me first...because I've got a better view than you and then I guide them on how to be fair and equal.

Talk of controlling the borders reflects the *principle* of devolution to line managers, and arguably adds to our understanding of how devolution functions on the ground. In terms of normative perspectives of 'devolution to the line' in HRM discourse, for example Cunningham and Hyman (1995, 1999), the levels of devolution evident in practitioner talk in this research study are minimal and a high level of control is ultimately maintained by HR.

'Border control' talk which reflects the principle of devolution is identifiable in the following extract:

P28: You make sure you've got the policies, the procedures, and people are trained up enough to know that they're doing their job properly, fairly, in accordance with employment law and we don't breach anything and we're seen as a good employer that applies good practice. That's my job to see that we do that and where people are not doing it to point them in the right direction, persuade them that they should be doing that.

Here, the practitioner identifies his role in the context of potential 'breach' of the law, which involves reorienting people through persuasion. That practitioners identify their approach as 'persuading', 'advising' and 'guiding' rather than 'telling' is examined further in this section. The foregrounding of policies and procedures as an essential element in maintaining the borders is further considered in section 8.5.

Training is a principle feature of HR practitioners' talk of controlling the borders. Thus, while Purcell (2012) argues that line managers commonly receive little in the way of people management training, the findings of this study highlight that

providing equality and diversity training for line managers and employees is a staple factor in HR practitioners' legal guardianship. Purcell identifies training to develop line manager competency in employment rights as a facet of the 'custodian of rights' role for HR which is aligned to the principles of HRM and contrasts with the reactive 'gatekeeper' role, oriented to avoiding legal risk and cast as lacking in authority and part of less fashionable industrial relations practice. Talk in this study of the training provided problematizes Purcell's demarcation of the two types of rights-focused HR roles: firstly, HR practitioner talk demonstrates that training is a much repeated process rather than being a finite project which can be completed with successful devolution the clear, end result. Secondly, the training delivered is often oriented to raising awareness of behaviours and often particularly speech that could be construed as discrimination:

P12: Yes, we've already got an equality and diversity course which we run, we've got a manager's workshop and an employees workshop and they're like half a day (...) we just try and translate the Equality Act in to how it would relate to the team on a day to day basis, so protective characteristics if you're doing a recruitment ad a manager what could you and couldn't you say and they'd just learn new things and direct and indirect discrimination, they sit there and go, "Oh yeah I never thought that that might be discriminatory towards this group".

The training provided by HR practitioners for line managers therefore incorporates elements of both the 'custodian' and 'gatekeeper' roles and highlights that legal guardianship is a nuanced amalgam of newer and more fashionable discourses of HRM and older, more pejoratively-viewed industrial relations practices.

The terrain within the boundaries controlled by HR is ostensibly constructed as sufficiently 'safe' for line managers to be afforded autonomy. As discussed by practitioner 8, the HR team aim to 'give autonomy' where this is 'required', and 'compliance' when this is 'needed'. The 'requirement' for line managers' autonomy arguably comes from the normative constructions of devolution and HR business partnering in the mainstream HRM literature, whilst the 'need' for compliance derives from the breadth and complexity of the legislation. 'Autonomy' enables 'busy' line managers to seek but subsequently, in all likelihood, to reject HR's advice regarding the 'best practice' 'route' within the prescribed 'legal' terrain:

P7: (...) they'll always be, "what's the quickest way to get somebody out?" or "what's the quickest way to do this?" or, "I don't want to follow that process because we haven't got time" (...) if they take the best practice route, it might take longer or whatever, but they're, they're safe in what they're doing. Normally what we tend to find is we get the middle one, where it's the kind of...the shortened version but...erm still within the guidelines kind of thing.

The autonomy afforded to line managers in the 'safe' zone is arguably a superficial autonomy in that HR practitioners subscribe to the concept of line managers' ownership of decision-making, and very clearly promote this in their talk of practice, but the autonomy is always constrained by HR as legal guardians. Practitioner 36 for example states that '*I kind of always play it out to our line managers so they absolutely own it*' immediately following this with HR's role in establishing '*the basics in terms of what I can legally say and what I can't legally say*'. Similarly, the extract of talk from practitioner 5, discussing a job advert, appears to reflect simultaneously the 'advisory' role advocated in HRM discourse and the 'regulatory' role defined in personnel paradigms:

P5: Worst case scenario you're in a tribunal, I'm not, I'm not sure I could defend you, you know, or defend our actions, so why don't we just have it out for an extra week? And normally they're fine with that.

Here, this is superficially advice; however this 'advice' belies the force implicit in the threat of a tribunal which may not have a defence. This use of 'tribunal talk' is further examined in the next section.

This discourse of controlling the borders represents a hybridisation of old and more recent HR paradigms. Talk reflects the arguments of devolution of HR to line managers in citing line manager autonomy as important. Further, HR provides a service to the line in dispensing advice. However the risks posed by possible legal wrongdoing are such that HR practitioners are empowered to constrain line managers where their actions would breach the legislation, constructed as *'the line manager has the final 'yes', but HR have the final 'no'* by P36. This control is reminiscent of older, personnel management discourses, and of the negative view in the equality and diversity literature towards human resources departments' tendency to 'initiate and control' equality policies in the UK, emphasising the bureaucratic and policing role of HR in respect of equality (Liff & Wajcman, 1996, p. 81).

Participant 12 presents a scenario where she appears to have been subjected to line manager rejection of her attempts to assert 'too much' control *within* the borders, whilst she is still able to demarcate where the borders lie:

P12: I've learnt not to say, "This is the way we're going to do it", because that won't work and that I don't believe that's what HR is. It's about, you're an advisory role, you're there to make sure that within the boundaries of the legislation you're working within it, but really managers are free to find their way through that as they wish, you can only advise them on a route.

Despite the reference in talk to HR's 'advisory role', legal guardianship does not wholly correlate with the 'adviser' role, as constructed by Storey (1992, p. 170). Storey's 'adviser' role is positioned as strategic and non-interventionary and, as such, commensurate with line managers' increased independence in negotiating, for example, changes to job roles (ibid: 171). Legal guardianship is interventionary if the border of legality is in danger of being breached although it is discursively constructed by HR practitioners as 'advising and guiding':

H: And what would you say is your relationship with line managers in, in terms of equality and diversity, do they erm have to run decisions past you or are they competent ...?

P28: Well, we, we we'll advise, we'll advise them and guide. (...) well actually I've had, had a case, had a case only this morning where I've had to erm say to a manager and get his director involved to say, "By taking the attitude and stance that you are you're putting the company at grave risk of a claim for discrimination on the following grounds ... de-dah-de-dah-de-dah, you know, please be aware if this, you know, if you carry on, on this basis and it went to tribunal we would be at grave risk." "What you need to do is that, that and that."

In this extract, the practitioner foregrounds the 'advise and guide' role of the HR function, commensurate with HR business partnering discourse. The focus then shifts to the 'risk' of a claim for discrimination posed to the organisation by the 'attitude and stance' of the line manager. The HR practitioner alerts the line manager to this risk, and in this case the relevant director, in order to alter the actions of the line manager. Therefore, where HR practitioners state that '*HR doesn't make that decision*' [P15], this may technically be the case; however line manager decision-making at the border of legally permissible practice is heavily prescribed/proscribed by HR 'advice'.

Interventionary practice of this kind is more reminiscent of Storey's 'regulator' role. 'Legal guardianship' is however differentiated from Storey's (1992) 'regulator' type, by its unitarist loyalties, and by its enactment in an individualised rather than collective employment context. The original regulators were valued for achieving 'fair' outcomes (Caldwell, 2003). The 'right' outcomes now sought by HR practitioners are heavily informed by statutory provisions rather than collective bargaining (Foster & Williams, 2011). It is more challenging to vaunt the value provided by the HR function in ensuring 'fair' as informed by compliance within confidential processes than it was when 'fair' was a negotiable, public outcome as it was for the original regulators.

Potentially, the legal guardian subject position could pertain only to issues directly relating to equality compliance, with line managers demonstrating more autonomy in other areas of people management. Practitioners, however, do not discursively demarcate their relationships with line managers and their practice in respect of equality and diversity as different to 'other' people management matters. This would suggest either that their talk of equality and diversity is representative of the HR-line relationship more broadly, and/or that most operational matters involve some form of equality consideration.

The next section considers practitioner talk of tribunals, and how 'tribunal talk' is used to influence line manager behaviour.

8.2 Tribunal talk: awareness, consequences, and risk

In the context of legal guardianship, HR practitioners use the spectre of the employment tribunal to inform, persuade, and arguably to scare line managers

into the 'right' courses of action. There is considerable talk of the need to 'raise awareness' of what is and what is not acceptable behaviour:

P41: Erm, so we've worked hard to educate them around 'just be aware of that'...

P18: ...be very mindful of, you know, making jokes in front of colleagues because, you know, people could misinterpret that and although, you know, you may think it's very harmless...

The aim of 'raising awareness' is to prevent behaviour, principally 'inappropriate comments' and 'banter' that could be 'misinterpreted'. In emphasising that those responsible for the inappropriate comments '*may think it's very harmless*', HR practitioners are softening their message to employees and managers in an attempt to gain their buy-in to enacting the right behaviours. As Liff (1999, p. 66) argues, this focus on behaviour can leave 'attitudes and beliefs relatively untouched' and is one of the critiques of the equality regulation and compliance culture.

As indicated by participant 29, employment tribunal statistics such as success rates, awards to claimants, legal costs and length of time before hearings, provide 'clear' metrics that can be given to line managers in an effort to change behaviours. This 'litigious risk' is 'a function of both the likelihood of the threat being realized and the magnitude of the threat' (Roehling & Wright, 2006, p. 607):

P39: (...) I just keep giving them, sort of, bits of information every now and again: 'Here's an interesting case...where a manager failed to do this; these are the consequences'.

P29: (...) that's actually being able to give them some statistics and some clear information to say this is, you know, this is what happens, this is what you need to be aware of.

Edelman et al. (1999, p. 447) propose that ‘the professions’ i.e. the legal and HR professions [as well as managers more generally] filter and disseminate legal decisions more enthusiastically than is warranted. Roehling and Wright (2006, p. 612) argue that HR practitioners and line managers are susceptible to ‘availability bias’, the tendency, despite the likely representativeness of the facts provided on litigation, to remember the ‘salient’ cases, i.e. those where employers have paid large sums. This is arguably not the type of metric intended for use by the HRM discourse of HR’s financial literacy. Nonetheless the discourse of measurement and ‘bottom line’ contribution has the effect of legitimising practitioners’ use of tribunal ‘threat metrics’. This is a further instance where dominant HRM discourse is interpreted into the context of comprehensive legislation and the perceived threat of employment tribunal: a context largely ignored by the proponents of HRM.

The ‘threat’ of tribunal for alleged breaches of the equality legislation is acutely felt by HR practitioners themselves:

P32: You know I think as soon as somebody throws up any kind of equality issue um or discrimination issue, um immediately alarm bells will start ringing.

Here, ‘alarm bells’ again connotes an image of borders at risk of attack. HR practitioners’ approach to line managers in their conveyance of the ‘threat’ posed by potential litigation can therefore be seen to emanate from their own fears, and in some cases, first-hand experiences. On first-hand experiences of tribunals, the participants in the study were notably reticent and, where they did discuss actual cases that they had experienced, this usually occurred after the recording had finished or references were made to tribunal cases in oblique terms.

As indicated in the literature review, experience rather than training is argued by Cunningham and Hyman (1999) to be the best mode of developing people management competence. From the perspective of the HR practitioners, there is a sense that experience of a tribunal provides more useful learning than the study of HR:

P15: ...very early on in my career I went to a business and I was up, you know, at tribunals all the time (...) because they had such a horrendous record and I learnt more in that year than I did ever studying HR, absolutely (...) Today that's why, you know, I'm...they all say to me, "You're too cautious about paperwork." I dot everything, I make them record everything, I will record every phone call, not actually physically record them but I write everything down.

In this respect, HR practitioners' ownership of legal guardianship and insistence that the borders be respected can be seen to be born of first-hand knowledge rather than unfounded fear of litigation. Where individual HR practitioners have not experienced the tribunal system, the coming together of practitioners in employment law sessions and through the 'daily' employment law communications they receive generates a sense of shared professional experience and knowledge.

Elements of practitioner talk create an image of the other side of the border to the 'safe' zone as being a war zone; one that the HR practitioner combatants are reluctant to share their experiences of in detail. Practitioner 11 explains that she and her organisation won a tribunal after 'two and a half years of fighting'. Practitioner 15 discusses 'arming' line managers:

P15: ...when I explain to them about the performance management, and I give them good, clear case studies, a full understanding of what the risks

are of not following that type of procedure... ...then obviously then, they're armed with it.

This poses the question of *what*, discursively, lies beyond the safe zone, what it is that generates talk of fighting and arming. The tribunal process is identifiably something that awaits those who fail to heed advice and guidance and cross the border. Talk is also suggestive that the beast that lurks outside is the HR practitioner's own failure:

P11: ...you need to just make sure that you've checked every scenario, so to speak, to make sure there's nothing coming back to bite you.

This demonstrates HR practitioners' sense that tribunal claims are a consequence of a lack of their own scrupulousness.

The following sections consider HR perspectives of line managers and employees respectively as other organisational actors with key roles in the enactment of operational equality.

8.3 Good line managers know to check

Purcell (2012) argues that the role of line managers in the enactment of workplace rights warrants examination on the basis that this is key to understanding how well or badly rights are implemented in the workplace. Purcell's perspective is founded on the premise that HR operate at 'a higher level' in the organisation and that line managers are principally tasked with the daily, operational aspects of compliance (ibid p.161).

HR practitioners construct line managers as 'good', as 'hand-held', and also as 'dinosaurs'. These different constructions provide insight into the relationship of HR and line management in the enactment of equality and diversity. Whether line managers are constructed as 'Good' or 'Hand-held' arguably depends on the

orientation of the HR practitioner towards line manager dependency on their guidance. Those managers who reject the guiding role of HR are constructed as 'Dinosaurs' who exhibit poor attitudes towards E and D in a context of being poor managers of people more generally.

8.3.1 Good line managers

Good Line Managers know to check with HR; they are receptive, erring on the side of caution. They can be trained and trusted with small elements of people management processes whilst the HR function retains heavy involvement and overall control:

P16: ... So they are responsible for drawing up their own job descriptions and their own criteria for each role that they have, but they've got quite clearly defined guidelines about what they can and what they can't put in there, those all have to be signed off and approved by HR before they can go out publicly to market. And so we will sense check it to make sure there's no oh you know prohibitive kind of criteria that are in there that would disadvantage any particular group unfairly. So we kind of have a sense checking role now...

It is significant that the practitioner above does not perceive the involvement of HR in the process described above as 'control', defining this instead as 'sense-checking', which implies a softer, less interventionary approach. This suggests that devolution has been discursively successful whilst this has not translated into the substantive changes to HR and line manager roles in respect of people management processes advocated by HR business partner discourse.

As legal guardians, HR practitioners underwrite whole processes of people management, including recruitment, discipline, grievance, redundancy and TUPE. The HR function retains ownership of the process as a whole and provides final approval. In the excerpt above, the need to 'sense check' for 'prohibitive kind

of criteria' and similar potential legal pitfalls appears to be a central rationale for the HR function's continued grip on people management processes. Cunningham and Hyman (1999) noted that line managers continued to expect support from HR on operational matters although this was no longer part of the HR function's remit in the normative model of devolved HR practice. Following Lowe (1992), Cunningham and Hyman suggested that line managers' shortcomings could help to ensure a continued role for the then personnel function 'as a discrete, if less than strategic, function.' (1999b, p. 25). Talk of legal guardianship indicates that the expectations of line managers regarding continued support appear to have stabilised, with an ongoing, operational and 'hands-on' approach to guiding line managers through processes evident in HR practitioner talk of enactment-level equality and diversity.

The findings of this study reflect both the equality and diversity and the wider HR literature in suggesting that line managers and HR practitioners agree that line manager workloads are a principal barrier to devolution (Maxwell & Watson, 2006). The equal unwillingness of HR practitioners and line managers to accept devolution (Holt Larsen & Brewster, 2003; Renwick, 2003; Torrington & Hall, 2006) creates a tacit agreement between these two sets of organisational actors:

P3: ...ultimately they're people managers, so, you know, and making sure they're aware if they've got an issue, that they come to HR before it comes a major issue. If they think that there's something that they're not sure about then to address it with us first so that we can try and mitigate those risks before it gets to a, to a more formal, or a bit more of an issue, sort of stage.

Here, being a good people manager is constructed as knowing when to check with HR. This aspect of practitioner discourse indicates that, to an extent, the ongoing repetition of equality and diversity training and development of/for line

managers pays dividends in that 'good' line managers know the appropriate point to raise 'an issue' with HR. As one practitioner explains, '*A little bell would go off*' in the heads of the line managers. This is indicated by practitioners to be at an early stage in the evolution of 'an issue', which will then lead to HR involvement in the further stages of whichever process is enacted to manage the 'issue'.

This is potentially a reasonable situation for both line managers and HR practitioners: line managers can focus predominantly on their core tasks, and the HR function are provided with useful industry in guiding line managers beyond the point of knowing that something is or might be 'an issue'. This serves to protect the ambit of HR practice in the context of a drive to reduce the overhead cost of the function. The reasonableness of the situation for both parties has arguably led to it being a relatively stable arrangement where both HR and line managers 'can act with relative confidence regarding the actions of others' within the regulatory 'space' (MacKenzie & Martínez Lucio, 2014, pp. 192–3). This two-party stability could act as an effective resistance to organisational directors' intentions for line managers to take more of a role in the implementation and ownership of HRM practices Guest and King (2004).

8.3.2 Hand-held line managers

The discourse of 'hand-held' line managers indicates that some HR practitioners subscribe more fully to HR business partner discourse and feel inhibited by the lack of devolution. As practitioner 26 comments: '*at this stage in my career, there's too much hand – I do too much hand holding*'.

Hand-held Line Managers frustrate HR practitioners; these managers are constructed as happy to let the HR function 'do' people management and will blame HR if confronted by an employee:

P12: A lot of our managers, the HR team here is very much a hand holding type team. As soon as they've got a problem they're on the phone straight away (...) The managers very much focus on that, like day job of managing their activity and the people side of things often come second because "that's what HR do".

They are perceived by HR practitioners to demonstrate learned helplessness, being unable to retain HR guidance and apply it at the next occasion of the same issue. Hand-holding forces HR practitioners to undertake tasks attributed the most-maligned of the outmoded personnel types, such as Storey's (1992, p. 172) 'handmaiden': 'a service-provider at the behest of the line'. As discussed in the literature review, Wright (2008, p. 1075) proposes however that activities that were not fashionable, but nonetheless essential were a part of HR business partnering given the increasing demands from 'internal clients'. Wright's observation suggests that servicing line managers by providing legal guardianship is not incommensurate with the operational realities of HR business partnering.

Arguably, 'hand-held' line managers demonstrate very similar, if not the same behaviours as 'good' line managers, and therefore these constructions reflect two different approaches of HR practitioners towards these behaviours: the construction of 'good' line managers infers an ongoing, lead role for HR at an operational and administrative level of equality and diversity; the construction of 'hand-held' line managers reflects discourse in the HR profession which advocates a more strategic role for the function and increased devolution to line managers. These two constructions constitute a 'contrast pair' (Baker, 2004, p. 174) within the categories created for line managers by HR practitioners through which the HR practitioners provide us insight into their contrasting frames of reference and aspirations.

An analysis of talk indicates that practitioners frequently oscillate between these two constructions, at times in their interview advocating their role in guiding line managers and at times disparaging of line managers' learned dependence and lack of ability to make decisions. Practitioners attribute multiple, sometimes contradictory subject positions (Edley, 2001) to themselves and/or to other subjects within talk of legal guardianship. Wood and Kroger (2000, p.100) suggest that social-constructionist perspectives, and discourse-analytic perspectives in particular, emphasize 'the notion of selves as multiple and shifting'. Edley (2001) suggests that such oscillation indicates the existence of competing ideologies impacting on practice: here the dilemma is that of whether devolution of people management processes to line managers is feasible and desirable to HR practitioners.

8.3.3 'Dinosaur' line managers

Dinosaur Line Managers are constructed as cloning themselves at selection interviews, they are negatively institutionalised, react adversely to HR guidance, demonstrate prejudice, low emotional intelligence and '*bulldoze ahead*'. Talk implies that they are unlikely to be moved out of their positions/organisations. Practitioner talk attributes this subject position with a discernible identity: Dinosaur Line Managers are aged 40 plus on the basis that they have been with the organisation a very long time: '*20-30 years*' and they appear to be male, as identified in the '*Gentleman point of view*' discourse below, or as indicated a little more obliquely by the inclusion of male pronouns.

Dinosaur Line Managers are presented as a fixture in their organisation: this contrasts with Foote and Robinson's empirical study of HR practitioners, who the authors argue will '*do their homework*' before deciding to join an organisation, and will choose to leave an organisation in cases where ethical conflicts become

significant (Foote & Robinson, 1999, p. 96). This suggests that Dinosaur Line Managers will encounter a succession of different HR practitioners during their own long tenure:

P11: (...) and if I'm really honest with you it's the same old managers and it's the same old issues. And I think that's again because they won't manage, the top team will not manage these individuals.

An alternative perspective of why managers seek to 'bulldoze ahead' and circumvent HR input is suggested by Renwick (2003): it is an attempt by line managers to try to increase the speed of decision-making. Renwick recommends that this indicates a need for an expanded HR function (ibid). This view is arguably supported by the observation from participant 9 that working with these line managers is 'resource intensive from an HR point of view'.

P11: ...I think the managers do have a...I think they still, I don't know a lot of them are quite old school, dare I say it, kinda dinosaurs back in the dinosaurs you know. You can see some of them probably saying, "Oh I don't want to interview her, she's probably gonna be getting married and going off to have children."...

P19: ...they can have a tendency to make comments of 'we've got too many females' (...) we have senior managers going 'I don't want another female because I don't want someone going off on maternity leave in a couple of years' time', you know it's just those type of comments. It's trying to explain actually the benefits of having different types of employees and it's, it is mainly from a gentleman point of view that you come across it more often.

Practitioner talk indicates that the gender and tenure difference between the (more career mobile, female) HR practitioners and the (long serving, male line managers) are salient factors from the perspective of the HR practitioners. Dinosaur Line Managers appear to be an intersectional construction in that

younger male and long-serving female managers do not feature in the subject position.

Certain practitioners identified themselves as having identities within the equalities frame of reference. The isolated and often brief instances of having an identity other than that of 'HR practitioner' included the identity of 'flexibly working mother'. HR practitioners' constructions of flexibly-working mothers reflect Dickens' (Dickens, 2007) argument that jobs that become part-time through flexible working requests are generally of a higher quality than those jobs created as part-time, practitioner 29 stating *'I think that's the best route in for most people to go part time'*. This highlights the slow course of progress made in respect of the status of part-time work and its desirability in organisations. As practitioner 33 indicates, flexible working requests are liable to *'a grumpy response'* from line managers:

P33: ...if somebody asks for flexible working it's always a slightly grumpy response: "But do we have to consider this?"

This apparently stock response from line managers highlights several interesting facets of the HR/line manager relationship in respect of the equalities legislation. Firstly, this reinforces the norm of line managers 'checking' with HR. In this instance, even where the answer appears rhetorical, line managers will still 'check'. Secondly, the *'slightly grumpy response'* indicates a resigned acceptance rather than vehement resistance, suggesting that the concept of flexible working is understood by line managers to be an established, if not popular, aspect of the working relationship. This highlights that the demarcation between 'Good' and 'Dinosaur' line managers may not always be distinct: line managers may manifest some low-level, rhetorical resistance, but they nonetheless 'know' to check.

Practitioner 33 goes on to suggest that the 'grumpy response' might be caused by line managers' fear that they lack control over flexibly-working employees.

Rather than constructing gender and age/tenure differences as detrimental to them personally, HR practitioners construct the behaviours of Dinosaur Line Managers as impinging on their /the organisation's ability to enact good equality and diversity. As such, HR practitioners appear to de-personalise themselves, and take umbrage on behalf of the body corporate. This approach reflects the language of diversity management, which Lorbiecki and Jack (2000, p. 26) argue 'airbrushes out' managers' own differences.

8.4 'I know my rights': employees' awareness of their rights

Edelman et al. (1999) suggest that the presence of an HR function is one of the factors that will increase employees' awareness of their rights in respect of equality. HR talk of employees includes practitioners' view that employees have developed more of an awareness of their rights over time and are now, as practitioner 26 suggests, '*switched on*'. This is attributed to the internet and the availability of employment guidance:

P10: So you can just Google can't you?

HR practitioners highlight that this has led to an increase in the challenges to decision-making raised by employees. Practitioner 3 suggests that employees have an awareness of their rights '*particularly with things like equality and diversity*'. The increase in employee awareness is something that HR practitioners appear to agree with ideologically, albeit with misgivings for the work that this enfranchisement has generated:

P10: I'm quite happy for people to be aware of their rights but...I think in terms of us managing people, erm, we are now managing, we are now

managing people who are more aware of their rights and therefore we probably get more employment tribunal claims.

In some organisations, the equality and diversity training provided to employees by HR provides employees with awareness:

P12: (...) since we've rolled out the training we've had a lot more people come forward with bullying or just behavioural issues that they've gone, "Actually I do have a problem with that and I would like to sort it out".

Providing employees with an awareness of their rights, which will invariably lead to more challenges from employees regarding their treatment at work, is constructed by practitioner 12 as part of the HR role. Dickens and Hall (2006) suggest that the individualised rights legislation places an importance on employees' awareness of rights. Reflecting Dickens (2012c), employees' awareness of their rights is identified in talk as varying according to a number of factors. Practitioner 33 suggested that employee awareness occurs along a spectrum and '*varies by sector*', whilst practitioner 37 proposed that awareness varies according to position within the workplace hierarchy:

P37: I think some of our staff are very on the ball, erm, and I think some staff really (...), I think because some of our roles are more lower level roles, that they're not, that they don't feel confident to go out and get advice [high tone]. So actually, some people will just accept exactly what you say to them.

Several practitioners identified that awareness varies by geographical area (Edelman et al., 1999), suggesting that employees in the South West are less aware than employees in other parts of the UK, and that employees elsewhere are '*more volatile*' [P40]. Union membership is unsurprisingly linked in talk to a higher awareness of rights (Colling, 2012; Edelman et al., 1999; Purcell, 2012). Although union presence has the propensity to push an agenda for enhanced

workplace equality through *collective* voice (Dickens & Hall, 2006), HR practitioners discuss union presence in individualised processes. This positions unions as the enforcers of the standards set by government (Colling, 2012). Purcell (2012) highlights that there are higher levels of individual disputes in organisations where the workforce is unionised, but that a lower proportion of cases escalate to tribunal. HR practitioners' talk of reps '*linking to*', and '*throwing in*' their members' protected characteristics:

P10: They are obviously quite aware of what the protected characteristics are and if they can link their employee to a protected characteristic, they obviously quite, they, they tell you quite quickly that that is the case (...) they do use it as a kind of a (...), what would you call it? They, they do, they do tend to use them as, erm, a threat I guess in terms of what the outcome might be.

P34: Certainly when we are in situations where somebody has been managed say or is potentially going to get a warning for lack of attendance for whatever reason or. erm the union this is a horrible generalisation of this it's not quite right, but there's one or two of the union reps who will try and throw in some sort of E&D spin onto something.

Whilst the HR practitioners in the above extracts identify that '*some sort of E and D spin*' will be used by trade union reps as '*a threat*', this is something that the HR practitioners demonstrate some hesitancy and reluctance in naming. Practitioner 34 cites this as '*a horrible generalisation of this, it's not quite right*' whilst Practitioner 10 uses phrases which reduce the solidity of the characterisation: '*kind of*', '*what would you call it?*', '*I guess*'. In both cases, the language used places some distance between the allegation and the practitioner's ownership of the allegation. This arguably has the force of implying that HR practitioners recognise the legitimacy of trade union reps acting in their members' interests and that practitioners demonstrate some difficulty in levelling

critique at how this manifests in practice. Curran and Quinn's (2012, p. 471) discussion of union perspectives of equalities legislation in Ireland suggests that HR practitioners are justified in identifying reps' 'use' of protected characteristics: talking of anti-discrimination law, one union interviewee in the study undertaken by Curran and Quinn stated *"It's an extra bit in our armoury but it's really how you go about using it, what leverage you can use"*.

Talk of reps *'linking to'* and *'throwing in'* members' protected characteristics highlights *when* employees are seen by HR practitioners to demonstrate an awareness of their rights: employees, both those who are union members and those who are not, are perceived to manifest protected characteristics *as a reaction* to a process enacted by the employing organisation, principally the HR function:

P3: ... it's in a more formal environment like appraisals, or wanting a regrade, or promotion, those sorts of things are where it's more obvious, I think, because, it's, they are coming to you, wanting to do something quite formal about, whether it be about a regrade or a promotion, so...that would tend to be where I would see it more often.

It is the perspective that employees identify their difference as a defence once placed in an HRM process that arguably constitutes the main flaw of legal guardianship when viewed from diversity scholarship. This is not to say, however, that well-constructed, fair processes are deserving of the dismissal they attract in the literature. The next section examines HR practitioner talk of, and pride in, 'good' process in their enactment of equality.

8.5 The bedrock of process

This section considers how HR's control of the borders and line manager activity is applied *within* specific HRM processes. This discourse problematizes the

construction of line manager 'freedom' within the 'safe' zone by demonstrating that the 'route' that line managers can take within HRM processes is carefully controlled by HR to limit legal risk. Torrington and Hall (1987) propose that HRM, as contrasted with personnel management, involves a greater emphasis on control, rather than problem-solving and mediation. In this respect, whilst a heavy reliance on processes aligns with personnel paradigms, and is eschewed in mainstream constructions of HRM, the controlling presence of HR as legal guardians aligns more with an HR *power* position. HR practitioner's advocacy of fair procedures aligns their practice closely to the liberal conception of EO as defined by Jewson and Mason (1986, p. 312) in that there is an emphasis on 'justice seen to be done', although the 'seen' property of the 'justice' is limited by the private, individualised construction of HRM processes. Sutton et al. (1993, p. 966) found that the adoption of 'due process governance' in organisations is influenced by state regulation of fairness, and by the associated attention of 'employment-relations professions', including HR.

Process control, aimed at avoiding tribunal claims, can be enacted by HR at an administrative level:

P6: We tend to do the sifting process as well and put them through and have a chat about each individual rather than here's the CVs, you pick out the ones you want. Because we control it...That's why we don't get in to that situation.

In Storey's typology, 'doing initial selection screening' (Storey, 1992, p. 174) is an activity consigned to the 'handmaiden' role, the most servile of Storey's HR 'types'. Re-evaluated with an E and D lens, initial screening of applicants can be seen as a potentially powerful process of selecting the 'right' types or range of people. The HR function's ownership of this kind of process is poorly-viewed by

E and D scholars, for example as bureaucratic and policing (Liff & Wajcman, 1996, p. 81).

The importance of consistency appears frequently in practitioner talk. Edwards et al (2004) highlight that consistency is necessary in large organisations and that this requires the establishment of rules to define expected behaviours; in smaller firms of less than 50 employees, line managers are less likely to encounter 'problems of precedent' and have more leeway in making a decision tailored to the individual employee. Practitioner talk supports this perspective:

P5: I think for us, the size of the organisation we are, having a strong policy set of standards, guidance, etc., is crucial to ensure consistency across the organisation, I think that's the underpinning part of our, of our, erm, operation of equality and diversity is that we have that.

The issue of size can additionally relate to business units within a large organisation, depending on the size of the respective units:

P40: ... when we get to the stores that have 1,000, 2,000 employees, you have to go through a more rigorous process than you can in the smaller stores.

As discussed by practitioner 24, acquisitions lead to the need for HR teams to 'harmonise' the terms and conditions of the newly acquired personnel with the existing terms of the acquiring organisation. Consistency is the goal within this process, both from the perspective of fairness and morale, and from the perspective of manageability.

Bowen and Ostroff (2004, pp. 208–9) argue that shared meanings of HRM practices cannot be developed 'unless most or all employees are subjected to and can perceive the same practices'. This allows employees 'opportunities for sense making' (ibid: 208) and requires the relevant desired behaviours to be

specified (ibid: 210). Notably, employers are argued to have more favourable perceptions of procedural compliance than employees (Pollert, 2007).

E and D are presented by HR practitioners as presenting line managers with a particular procedural challenge relating to notions of consistency. Line managers have been argued to require HR practitioner guidance on the consistent application of policies at the level of the line [since personnel management] (Farnham, 1984). Line managers are constructed as struggling to understand 'consistency and fairness' in the context that differences in individual circumstances will sometimes require differential treatment to achieve equality (Barnes & Ashtiany, 2003, p. 277). This is particularly the case with the legal duty of 'reasonable adjustment' for employees and candidates with disabilities. The law requires reactive adjustment(s) for individual employees (Dickens & Hall, 2006), which presents line managers with a contradiction to the received wisdom that blanket 'consistency' will lead to appropriate, i.e. compliant outcomes. This supports Foster and Harris' (2005) finding that line managers are familiar with consistency as a defence against claims of discrimination, and regard a diversity agenda, with its attention to individual differences, as having the potential to lead to an increase in both perceptions and claims of unfair treatment. 'Busy' line managers are argued to demonstrate concern that increasing their discretion and leeway in decision-making with regard to equality and diversity is more time-consuming and runs the risk of generating conflict (Foster & Harris, 2005). This is reflected in talk of line managers' preference for consistency in this study:

P24: (...) they [the managers] still have some very old-fashioned views about, um, 'got to treat everyone exactly the same' whereas I keep now saying to them, "That doesn't – that isn't right." It's about treating that person right, and it's about the consistency comes in the way you do it and

the manner and the...it's not about 'what's going to be right for that person is going to be right for this one'...

Notably this talk of individual difference appears to derive from the legislative duty to consider the individual (e.g. in the disability provisions) rather than from diversity discourses, however there is likely to be some influence from the discourses of diversity that practitioners are exposed to and which construct the recognition of harnessing individual difference for competitive advantage as best practice. Bowen and Ostroff's (2004) argument for consistency as part of the clarity and success of HR practice aligns more straightforwardly with equal opportunities than with diversity discourses. This provides the HR function with a legitimate role as the knowledge holders of how to successfully enact the apparent contradictions in operational E and D.

Gollan (2012, pp. 288–289) questions whether the sharing of responsibility between HR and line managers would lead to increased status for HR specialists, or rather to 'HR specialists losing control over both the process and outcomes in ways that inhibit, rather than help the firm.' The findings of this study suggest that HR has retained a significant level of control of HRM in respect of equality and diversity, but point to this control not necessarily equating to role credibility. This is evidenced in the discussion of line managers perceiving HR to be 'a necessary evil':

P10: [Laughter] That's how, that's the kind of sense I get from managers is that we're a kind of necessary evil. They have to do all these processes and procedures 'cause we've told them to. They, they kind of get the fact that actually if they don't they might be in trouble.

The 'necessary evil' discourse suggests a relationship between HR practitioners and line managers that is both stable and adversarial. There is a clear threat of

'trouble' if line managers do not adhere to rules; a threat which the line managers are constructed as begrudgingly understanding. MacKenzie and Martínez Lucio (2014) suggest that, where the relationship between actors in the regulatory space is deemed ineffective, actors will seek to redefine the relationship, for example, the role of one actor may be appropriated by another (ibid). In the case of the HR/line manager relationship and the enactment of equality legislation, the findings of this study suggest that, despite evident tensions, it is not the intention of either party to seek a redefinition of roles; although practitioner talk inclines towards the 'ideal' of devolution, practitioner talk frequently oscillates from this position to the a discussion of the impracticality of wholly devolved responsibility for equality and diversity.

As '*a necessary evil*', HR practitioners are constructed as having their power base in the necessity of processes designed to avoid tribunal claims, rather than in adding value in other, more business-orientated respects. The next section considers how HR practitioners are seen to *construct* policies and processes from the perspective of legal guardianship.

Practitioners demonstrate pride in constructing processes which reflect 'best practice':

P32: I think where I come from in a lot of processes is that I will, I like to build robust and probably more err on the side of best practice and I like to have all that information, you know.

Practitioner 32 explains that she had developed a robust recruitment process, which had subsequently been changed by the CEO to involve the submission of CVs rather than application forms, which more easily enabled an analysis of who applicants were, because '*he didn't see the value*' in the original process. Line

managers' subsequent input that they preferred the original process had led to a review, with the practitioner predicting in the interview that a return to a process based on best practice would be vindicated.

Talk of building the 'right' processes at times problematizes HR generalists' ability to write meaningful policies. Participant 20, who previously worked as a diversity specialist, identifies that generalists tend to write policies in a particular way:

P20: they are (...) very off-putting; they're very 'white male, middle-class', the way they're written and very, um, paternal in tone and, you know, that...that's just the style of them, let alone when you start looking at the content [spoken laughing] of them. (...) often an HR generalist isn't going to get the expertise to understand that the policy that they're writing has to be written in a certain way so that it's attractive to different sectors of the population.

It is interesting here that the participant identifies the tone of a typical policy not just as white and middle class, but also as 'male'. Given the proportion of female participants in this study, a 'male' tone would appear unrepresentative of the HR practitioners themselves. Atkinson et al. (2014) note that, within medium-sized firms, employer-owners were able to shape policies that ensured compliance whilst maintaining their discretion and suiting their personal preferences. This finding is reflected in P4's talk of the development of an equality and diversity policy. Reflecting a similar questioning of the HR generalist's ability to produce appropriately phrased policies, the managing director in participant 4's organisation tasked her with changing the 'chastising' tone of the policy she had drafted:

P4: He said "You're kind of chastising them, you will do this". We had to change the wording, which is an interesting point because you think you're kind of giving them guidance as to where they can go but it, depending on

how you read it, you could see that it would be, you know ... 'we expect this from you, you must do that'. So he said "You're kind of erm, making them not want to take part because you're being so, almost dictatorial in your approach", which, so I just softened it erm, but then of course again the 'fluffy HR bit'. You can't win.

Here, reducing the 'chastising' and paternalistic tone of the policy and 'softening' it creates a more accessible policy but one that is open to the critique that it is 'fluffy HR'. This practitioner's evident dislike of the 'fluffy HR' critique, which is arguably levelled by 'white, male, middle-class' managers, indicates one of the reasons why HR generalists write policies in a way that is oriented to these managers. The focus in HR practitioners' talk of equality and diversity on their interactions with line managers in this study, as opposed to interactions with other organisational actors, further emphasises the centrality of line managers as the prime consumers of HR policies and procedures. The 'fluffy HR' critique serves to undermine the HR function's credibility and can be seen as a reason for practitioners to adopt the legal guardian subject position with its claim to employment law knowledge and propensity to persuade and scare line managers.

8.6 Summary of Chapter 8

This second of the two chapters on the findings of the study has examined the following discourses: HR practitioner talk of the 'safe' terrain of legally permissible practice and HR's role in controlling the borders of this zone, constructions of 'good', 'hand-held' and 'dinosaur' line managers in the enactment of equality, perceptions of employees' awareness of rights, and talk of the importance of process. Whilst HR practitioners demonstrate a rhetorical commitment to line manager ownership of decision-making, the discourses examined in this chapter

render 'certain ways of thinking and acting possible, and others impossible or costly' (Phillips et al., 2004, p. 638), thereby heavily prescribing line managers' courses of action. The force of the legislation lends to the 'stickiness' of the discourse and its coercive impact (Phillips et al., 2004, p. 643). Phillips et al. (2004, p. 638) suggest that, where the sanctions are sufficiently robust, an 'institution' exists.

The following chapter presents a discussion of the findings of the study, indicating how the HR practitioner talk examined here reflect, modifies and contends existing knowledge of operational HR and the enactment of equality and diversity.

9 Discussion

This chapter discusses the findings of the study, specifically legal guardianship in the contexts of discourses of HRM and personnel management and the 'contribution' of legal guardianship. Further sections consider how legal guardianship informs understanding of the HR/line manager relationship and the function of power and control in this relationship. The chapter concludes with an examination of the study's contribution to understanding of the discourses of equality and diversity and the ways in which the findings of this study contend the perspectives of the equalities legislation as presented in the extant literature.

9.1 Legal guardianship in respect of paradigms/discourses of personnel management and HRM

HR practitioners' legal guardianship is constituted of elements of personnel management practice framed by unitarist HRM discourse which positions HR business partnering as the ideal role for HR. This study of legal guardianship in respect of equality therefore contributes to knowledge of the ways in which HR business partnering succeeds discursively whilst enactment features a strong 'regulatory' and controlling role eschewed by the rhetoric of business partnering.

The findings suggest that consigning personnel management 'to the managerial backwaters' (Torrington & Hall, 2006, p. 82) in mainstream scholarship pre-supposed a shift in practice to devolved HRM enacted by line managers that has not been fully realised. It is not possible to discern from the findings of this study whether a regulatory role for HR quietly survived (Keenoy, 1990) or whether a regulatory role for HR was 'reborn and refuelled' (Caldwell, 2003, p. 998) following the re-introduction of a wealth of employment regulation by the labour governments of 1997-2010. Arguably, UK management scholars have not revisited HR practice and the enactment of equality and diversity to consider the

significance of greatly enhanced equalities regulation, and have under-considered the role of the state as a meta-actor in shaping the employment context (Martínez Lucio & Simpson, 1992;; Martínez Lucio & Stuart, 2011). The state can introduce new actors into a regulatory space and thereby redefine the roles of the respective actors and the balance of power between them (MacKenzie & Martínez Lucio, 2014). The findings of the study suggest that HR practitioners play a significant role in regulatory space.

The orientation of UK-based HR research is heavily influenced by US scholarship (Guest, 1987) however the US context, where 'HR professionals lost any semblance of credibility as a steward of the social contract' (Kochan, 2004, p. 134), presents a very different setting for HR practice when compared to the UK. Writing in 1987, Guest proposed that 'professional' personnel management was a viable alternative to dominant constructions of HRM in many successful UK organisations. Guest located this 'professional personnel management' in 'stable bureaucratic organizations' where the focus was on cost-minimisation and administrative efficiency (1987, p. 518). Legal guardianship reflects this alternative to HRM although it is overtly understood by practitioners to be a unitarist endeavour: the purpose for legal guardians is first and foremost to protect their organisation from the risk posed by potential legal action.

The unitarist orientation of legal guardianship casts the HR practitioner as the servant of the organisation. This is, however, discursively positioned by practitioners from the perspective that the legislation is 'right' in the protection it affords to employees. Practitioners situate their protection of the organisation in the context that this invariably involves following 'fair' and 'consistent' processes which simultaneously protect employees. As such, the legislation is presented in

talk as a significant structure of rights rather than as a minimum in respect of equality.

Whilst line managers are not interested in employee concerns, regarding them as 'peripheral to their immediate work demands' (Brown et al., 2009, p. 289), HR practitioners *are* concerned with the views of employees. It is this attendance to achieving a 'balance' between bottom-line contribution and maintaining a fair approach to the workforce that Kochan (2004) argues is essential to the status and legitimacy of the HR profession. Legal guardianship aligns closely with the New Labour approach to employment legislation as discussed by Dickens and Hall (2006) in that the aim is a synthesis of social fairness and business-oriented outcomes, and where the latter is foregrounded in the case of a conflict.

In this form, legal guardianship is distinct from the 'third party' role of practitioners (Farnham, 1984, p. 100) during the period when the personnel management paradigm dominated scholarship and practitioner discourse. Whilst also based on knowledge of employment law and societal concepts of fairness, the third party role implies an *independency* from an organisation's management in the practitioner's underlying rationale. Farnham notes that the then Institute of Personnel Management took the view that the 'professional' approach saw practitioners more aligned with management than the third party role (1984, p. 101). The strongly unitarist allegiances in practitioner talk in this study render the view that legal guardians act independently from management problematic, suggesting that the more 'professional' management-orientation of personnel management has endured. This emphasises that alignment with management was not a new phenomenon introduced by the advent of HRM. As discussed in this chapter, practitioners' discursive alignment with unitarist HRM discourse

belies description of *action* that is, however, out of kilter with normative concepts of HRM in respect of devolution to line managers. This is discussed in section 9.3.

Practitioners' talk of fair process, the justifiable rights of employees, and talk of playing the 'employee champion' role through various proxies, are currently practicable in that they can exist within practitioners' unitarist understanding of their role, i.e. that protecting the organisation from the threat of litigation is maintained as the primary, unitarist aim. Sheehan et al. (2014, p. 126) suggest that outsourcing the 'employee caring role' is consistent with a focus on strategic HRM and reduces HR role tension.

Although legal guardianship can be seen to exist as a hybridisation of HRM discourse and personnel management practice, HR practitioners demonstrate noticeably few oscillations (Edley, 2001) and tensions in iterating what their practice involves. This is arguably due specifically to the hybrid quality of legal guardianship which enables practitioners to assume both a business-oriented *and* a social justice position, thereby satisfying the often contradictory performance and employee welfare concerns. The juxtaposition of these two, apparently conflicting aims, has challenged the HR profession since its beginnings as the Welfare Workers Association (CIPD, 2015a) through its incarnation as personnel management (Farnham, 1984) and into Ulrich's (1997) conception of HRM. The law enables practitioners to address the 'paradox' of being both management's 'partner' and employees' 'champion' (Ulrich, 1997, p. 45). Marchington (2008) argues for HR to reconsider its origins in people management and recognise that the function's value lies in more pluralistic definitions. In Marchington's argument, the inference is that ethical practice is

dependent on a pluralist understanding of the employment relationship. The legal guardian role demonstrates that *elements* of practice more aligned to older, pluralist, and personnel practice endure beyond that framework and that the clear distinctions made by both mainstream and critical academics between unitarism and pluralism are sharper than the distinction in practice.

The temptation in HRM discourse has been to 'write off the state as a player' in relation to IR and HRM (Martínez Lucio & Stuart, 2011, p. 3664) and the role/force of law has no place in Ulrich's vision for the HR function, which constructs organisations as existing in a context of globalisation and self-determining voluntarism. This has the effect that the significance of national legislation is disregarded in 'mainstream' discussions of HR. The 'curious irony' (Martínez Lucio & Stuart, 2011, p. 3664) of the relationship between HRM, the state and the legislation is that the rise of HRM and the transition from predominantly pluralist to unitarist organisational frameworks created a role for the state as the protector of individual rights. Understood in this context, legal guardians are the unplanned, illegitimate, natural children of HRM. The increase in employment law, its propensity to continually change and to appear ambiguous, factors which contribute to the perception of laws as 'weak', are a source of strength for HR practitioners, in that they generate a requirement for a function that can undertake the necessary translation and implementation of legal complexity in organisations (Dobbin & Sutton, 1998).

Responding to the concerns of Marchington (2008) regarding the future of HR, the cost-reduction purpose of legal guardianship avoids a focus on financial 'short-termism' as it is an ongoing contribution, and further, legal guardianship serves to ensure that the organisation, under the guidance of the HR

practitioner(s), pays due regard to good practice as an employer as the 'steward' of the social contract (Sheehan et al., 2014). The literature suggests that the cost- and employee- orientations are usually discursively placed in opposition in practitioner talk (Keegan & Francis, 2010). 'Doing' legal guardianship therefore allows practitioners to fulfil the 'special professional responsibility' of balancing 'the needs of the firm' with the 'values and standards society expects to be upheld at work' (Kochan, 2004, p. 133). As such, performing the legal guardian role addresses the 'crisis of trust' that Kochan identifies has developed within the HR profession (ibid). Notably, this is from the perspectives of the HR practitioners themselves, and perceptions of other organisational actors, specifically employees, may diverge on this point.

Further, performing the legal guardian role appears to enable HR practitioners to simultaneously enact a form of employee advocacy, functional expertise, and a form of bottom-line contribution: all aspects of the idealised HR roles proposed by Ulrich. Legal guardianship overcomes the role tensions identified in the combination proposed by Ulrich (Sheehan et al., 2014). Practitioners' use of the terms used by Ulrich (1997) highlight the extent to which the work of these authors has been absorbed by the profession and is used by practitioners to make sense of their roles, relationships and contribution. The findings indicate that, whilst not a 'fashionable' element of HR practice, the legal guardianship undertaken by those practitioners who are 'business partners' is essential in that it is responsive to the demands of internal clients (Wright, 2008).

The findings further demonstrate that legal guardianship is common to the different HR job titles of the practitioners involved in the study. This problematizes the literature which seeks to 'categorise' HR roles according to the nature of the

work and relationship with line managers (Pritchard, 2010, p. 175). Further the 'normative isomorphism' inherent in the processes of constituting appropriate practice-level interpretations of the law, which involve networks of practitioners across sectors and geographies and transactions with employment lawyers, serves to minimise the sector differences in legal guardianship. The practice of equality in terms of the interplay between the relevant organisational actors is fairly consistently presented by practitioners in talk, regardless of their sector. This supports the perspective that HR practice is homogenised across organisations through isomorphism (Paauwe & Boselie, 2003) and arguably reflects a development in practice from the literature which previously identified that the public sector was more advanced in its enactment of equality. Notably, this literature is constructed from the perspective that compliance constitutes a minimum level of action in respect of equality and diversity, and seeks to compare sectors not just on the basis of the existence of policies relating to equality and diversity, but also initiatives aimed at monitoring and promoting organisational diversity.

The transferability of operational HR practice in respect of equality across sectors arguably contributes to the career mobility of HR practitioners. As proposed by Paauwe and Boselie (2003), the norms and expectations of professionalism, e.g. that of the HR profession, have the effect of increasing homogeneity of practice in work organisations. The minimal differences found between sectors in legal guardianship can therefore be understood, in part, as a product of the professional standards set by the CIPD (2012). These standards require HR practitioners to:

'maintain professional knowledge and competence (...) advance employment and business practices that promote equality of opportunity,

diversity and inclusion and support human rights and dignity (...) comply with prevailing laws (...) [and] demonstrate and promote fair and reasonable standards in the treatment of people who are operating within their sphere of influence' (CIPD, 2012, p. 2).

In the context of the CIPD's *Code of Professional Conduct*, HR practitioners acting as 'legal guardians' embody many of the requirements of the profession. These standards, in themselves, do not directly translate into the 'contribution' expected from HR as constructed in the literature. This is considered in the next section.

9.2 The 'contribution' of legal guardianship

It is the reconstructive aim of this study to argue for recognition of the 'unique contribution' (Hoque & Noon, 2001, p. 19) made by HR practitioners fulfilling a legal guardian role. This contribution is both to practitioners' respective organisations and has the, perhaps as yet largely unrealised potential to contribute to public perceptions of the law in practice (Edelman et al., 2001). Personnel management scholarship identified practitioners' specialist knowledge of employment law as part of their contribution to their organisations in a way that HRM scholarship does not. This section considers both the contribution of legal guardianship at an organisational level in a reappraisal of the HRM and personnel management literature, and the potential for the legal guardian expertise of HR professionals to be recognised in the public domain. The need for HR to demonstrate contribution is constructed in scholarship in the context of HR's 'vulnerability' in the face of sceptical managers (Hoque & Noon, 2001, p. 19). Notably, whilst there is talk of often daily conflict with line managers, there is an identifiable lack of a sense of vulnerability in practitioner talk: practitioners appear confident in that their role is seen as necessary even if it is not always overtly 'valued'.

Practitioner talk of legal guardianship supports the perspective that, whilst HR practitioners aspire to be strategic, they are required to fulfil duties as functional experts (Gollan, 2012). Talk of legal guardianship aligns closely with personnel managers' 'confidence' as the 'interpreters and implementers' of the protective employment legislation introduced by the labour governments of the 1960s and 70s (Legge, 1995, p. 9). Legge's linkage of this role with 'deviant innovation', suggests that the then personnel specialists could gain recognition for their successful contribution in respect of 'social as well as business values' (1995, p. 12). The findings of this study point to two pertinent issues arising from this 'deviant innovator' aspect of legal guardianship: firstly, the noticeable lack of external and professional recognition of the current legal guardianship performed by HR practitioners, and secondly the difficulty in discerning whether the social/ethical contribution of legal guardianship can be disentangled from the business imperative of avoiding litigation.

The legal guardian role of HR is under-recognised and under-valued despite and because of the 'institution' of equality compliance. Equality compliance demonstrates the properties of a discursively-constructed 'institution' in the definition provided by Phillips et al. (2004, p. 645) in that it is coherent and cuts 'across multiple fields' and in that transgressions are subject to sanctions: sanctions in the form of actual litigation and, much more frequently, prescriptive, sanctioning behaviour derived from the discursively-constructed *potential* of employment tribunal claims. As identified by Phillips et al. (2004, p. 645), whether a discourse gains legitimacy as an 'institution' depends on the degree to which that discourse is supported by 'other, highly legitimate discourses'. The 'production' of an institution is more likely where it is not contested by other discourses (ibid). This study posits that the institution of equality compliance is

cohesive and established and that it is its *recognition* that is disrupted by the dominant HRM discourse, which undermines its legitimacy at an official/rhetorical level rather than preventing its continual enactment in practice.

The lack of recognition for the legal guardian contribution of HR derives in part from the clandestine, individualistic systems which now structure the employment relationship. Therefore, whilst elements of legal guardianship are reborn or enduring aspects of personnel management, they do not now exist in a pluralist culture. Even where practitioners indicate that unionised employees demonstrate an enhanced awareness of their rights, and that reps are more likely to 'link' or 'throw in' members' protected characteristics in order to secure good outcomes for their members, this unfolds in individualised, private processes of people management. Many of these instances will remain at an informal level, and will not be officially recorded (Edelman et al., 1999). There is little that is tangible from this *collectively*, or that is measurable, for either employees or their unions, or for HR practitioners, if a quantitative approach is taken. A qualitative approach is 'well-suited to the complexity and messiness of regulatory effects' (Atkinson et al., 2014, p. 6) as much of the informal practice within organisations is only evidential within talk, and much of the action inscribed in talk does not exist officially or numerically.

Legal guardianship nonetheless constitutes a form of financial guardianship, in that it aims to ensure cost control (Wright & Snell, 2005). The HR function is pressurized to demonstrate its contribution to the organisation and its cost-efficiency and this has implications for how 'legitimate' work is defined (Keegan & Francis, 2010). Legal guardianship is 'legitimate' in its orientation to saving cost. The 'goal' of avoiding legal costs however, does not conform to our usual,

both managerialist and critical understandings of what constitutes an 'organisational goal', in that it does not derive *from* the organisation and is not directly related to competitiveness. Ulrich argues that HR practitioners must 'learn to measure results in terms of business competitiveness' (1997, p. 17). Ulrich goes so far as to define HR's cost-saving role as an 'old myth' that prevents HR from being a profession, juxtaposing cost-saving with the 'new reality' of HR 'creating value' (1997, p. 18). As such, legal guardianship does not have the usual intrinsic value to, or visible status/value within, or outside of the organisation. This lack of visible status and value serves to de-legitimise legal guardianship in an Ulrichian understanding of HR.

Cost minimisation is identified by Guest (1987) as one of the features of 'professional' personnel management, which Guest appears to argue is a legitimate alternative to HRM in certain successful organisations. Competency and expertise, both demonstrated by HR practitioners as legal guardians, are necessary for a claim to professionalism (Farnham, 1984) in the personnel management context. The literature, therefore, would serve to locate HR's legal guardianship as a personnel management 'type'; the construction of the legal guardian role indicates that this segregation of role-types wholly into one paradigm or another obfuscates the more nuanced realities of practice.

Whilst Ulrich distinguishes between measures of 'business competitiveness' and cost-minimisation, Dobbin and Sutton (1998, p. 445) identify that, in practice, 'the preoccupation with the bottom line and the desire to avoid costs associated with legal compliance' blurs with notions of efficiency. Thus, while Greene and Kirton (2011, p. 29) argue that managers 'confuse' the business case for diversity with the need to avoid claims to employment tribunals, from a discursive perspective,

rather than 'confusion', this suggests that, at the level of practice, the interpretation of the business case as the avoidance of legal costs is established.

HR practitioners' understanding and clarity on compliance in this study is different to the US context described by Roehling and Wright, where a fearfulness of unlikely though not impossible litigation generates over-cautious decision-making. By way of example, Roehling and Wright cite not terminating the employment of an employee whose performance falls short of expectation because that employee belongs to a minority group or has threatened litigation as constituting 'legal-centric decision-making' (2006, p. 608). By contrast, the role of the legal guardians in this study is constituted as undertaking *precisely* such a dismissal whilst ensuring that the decision would be considered to have been fairly reached and non-discriminatory.

HRM has a preference for practices that can be easily defined and measured (Francis & Sinclair, 2003) and whilst the *potential* costs of legal action are used extensively by HR practitioners to dissuade line managers from breaching the legislation, the likely cost-savings this interventionary approach achieves are challenging to represent as a 'metric' which demonstrates the contribution of HR. Arguably, constructing measurements which identify the contribution of HR in respect of the avoidance of legal costs would represent a measurement of 'good people management' (Marchington, 2008, p. 10) given that remaining within the boundaries of the law indicates that equality of treatment across employee and candidate groups is likely to have been observed. Given that there is pressure on HR to 'prove its value' (Holt Larsen & Brewster, 2003, p. 231), and an intensified scrutiny of effectiveness since the economic downturn of 2008 (Dobson, 2013), the contribution made by HR practitioners in their legal guardian role would go

some way to demonstrate the 'value' of HR in both economic *and* ethical respects. As discussed by Edelman et al. (1999, p. 413), the development of grievance procedures to enable employees to raise complaints in respect of their equal opportunities rights in the US was seen to be of value from a number of perspectives; in addition to 'insulating' organisations from potential litigation, the use of the procedures was perceived to provide a sense of organisational justice and to therefore contribute to good morale and productivity.

A focus on such legal guardianship would highlight the close relationship of HR practitioners to the legislation, and could be counter-productive, both for protected employees and HR practitioners, in enhancing employer appetite for de-regulation. The continued existence of centralised HR control over decisions concerned with the interpretation and implementation of employment rights is viewed negatively in the literature, firstly as a focus on rights is seen to be to the detriment of the development of more innovative, diversity policies, and secondly it is considered 'expensive' and counter the trend of 'paring down' HR departments (Purcell, 2012, p. 175). This places a different lens on the lack of status and credibility attached to legal guardianship; it could be in HR practitioners' interest that the 'contribution' of the role remains poorly understood, and is known, and perhaps importantly, left alone, as complex work requiring specialist knowledge and entailing close support of line managers. This close 'support' of line managers is the focus of the next section.

9.3 The HR /line manager relationship

The findings of this study support the critical perspective that devolution of HRM to line managers, whilst it is 'received wisdom' is limited in practice (Holt Larsen & Brewster, 2003, p. 240). The perspectives of the HR practitioners interviewed concur with Maxwell and Watson's (2006) finding that line manager involvement in HR activities is hindered by the short term imperatives of their core tasks; their 'too busy' status. Talk of the enactment of equality compliance demonstrates that line managers have some involvement in HRM processes; as argued by Keenoy (1990) and Renwick (2003) such involvement existed before the discourse of HRM positioned devolution of people management processes as a new concept. Devolution of people management to line managers is intended to free managers from controls and restrictions (Holt Larsen & Brewster, 2003), a principle which is reflected in HR practitioner talk of line managers as 'free' to make decisions. Controls and restrictions identifiably remain, encircling the 'free' zone in order to maintain compliance to the legislation. Further controls and restrictions exist in the ostensibly 'free' zone. This is discussed further in section 9.4.

Holt Larsen and Brewster (2003) note that devolution to line managers is something of a 'moveable feast', in that certain aspects of HRM are more likely to be devolved than others, noting that legal matters are likely to involve heavy involvement by HR specialists. Thus the reliance of line managers on HR in respect of the enactment of equality is perhaps not reflective of a reliance overall. However, given that equality is argued by the practitioners in this study to 'touch' all aspects of HR practice, there is an argument that the reliance of line managers on HR guidance pertains to a wide range of HRM practices.

HR practitioners and line managers have a vested interest in maintaining their current roles in respect of people management, and as such are likely to remain

equally unwilling to accept devolution (Holt Larsen & Brewster, 2003; Renwick, 2003; Torrington & Hall, 1996). Whilst there are low-level tensions in the HR/line manager relationship evident in this study, line managers broadly benefit from an ongoing reliance on HR practitioner knowledge of employment law and control over process, as this allows them to focus on the core tasks upon which they are measured. HR practitioners benefit from line managers' ongoing dependency as this provides work for the HR function and a rationale for maintaining the headcount of practitioners. The tensions evident between HR and line managers are sufficient to obfuscate the mutuality of the relationship, lest it be questioned, and to fuel the perspective that people management is challenging, time-consuming, and worthy of a specialist function to manage the ensuing workload and tension. This is supported by the relatively quiet but insistent voice in the mainstream HR literature that HR practices vary in terms of how easy they are for line managers to implement (Sikora & Ferris, 2014). The location of power in the interplay of HR practitioners and line managers is examined in the next section.

9.4 Power and control

Reed (2011, p. 41) proposes that '[c]ontrol relations are fundamental to the organization of work processes within any socio-economic order'. Control, in the industrial relations context, is arguably usually understood in the employer/employee context. The findings of this study highlight the control evident in the HR practitioner/line manager relationship. Whilst practitioners' talk of the threat of litigation is one of the methods of controlling line manager decision-making and behaviour, established processes of people management further ensure control. Therefore, whilst legal guardianship appears reliant on the

continued existence of employment legislation, HR's control of line managers is arguably a more deeply embedded factor of organisational practice. This is evidenced in the findings which demonstrate that, whilst practitioners discursively position themselves as only taking an interventionary approach when there is risk of a breach of the law, HR maintains tight control over the stages of people management processes, only devolving *elements* of the processes and retaining overall control and responsibility. This finding contends the perception of the HR function as an 'easily malleable instrument' within organisations (Marchington, 2008: 3) Nonetheless, the self-constructions of HR practitioners appear heavily informed by discourses of HR providing a service to the line. Thus, whilst practitioner talk at a rhetorical level concurs with the argument of Sheehan et al. (2014, p. 117) that HR sets out to relinquish power whilst retaining responsibility, thereby creating a paradox of 'decoupled' power and responsibility for HR, this paradox is effectively avoided: the actions inferred in practitioner talk within this study indicate that both responsibility and an ultimate, rather covert power are retained by HR. This section examines how this power unfolds in practice, and why it is not discursively claimed by practitioners.

Line managers are not as 'free' as practitioners discursively construct them to be. Line managers are 'free' to contest HR guidance and test practitioners, thereby sustaining the HR function's status as a function whose legitimacy and status can be challenged, but line managers are not at liberty to circumvent process. Whilst the discourse of HRM has marginalized 'procedural justice' (Woodall & Winstanley, 2001, p. 40), the proliferation of talk about the importance of HR's role in maintaining fair processes demonstrates that HRM discourse has not led to diminished focus on process in practice.

Sisson (2010, p.7) identifies that complaints from business regarding the burden of regulation belie the role of management in regulating the employment relationship through HRM 'institutions' such as performance management. Sisson suggests that, as such, state-imposed legislation represents 'the tip of the iceberg' in the context of how employees are regulated. Therefore, whilst legal guardianship may appear tied to the existence of state-imposed legislation, it is underpinned by a much more fundamental HR role; that of the organisation's internal regulator. As the internal regulator, HR practitioners are expected 'to both conform to, and devise rules and procedures' (Lowry, 2006, p. 176). Storey's (1992, p. 178) construction of the 'regulator' role for personnel is positioned as outmoded in the context of HRM's 'impatient dissatisfaction with the proceduralist approach'. The findings of this study suggest that procedures remain an integral part of what HR does; what differentiates both legal guardianship and the underpinning internal regulatory role of contemporary HR practitioners from Storey's 'regulator' role is the unitarist framework in which the procedures are enacted. Whilst the previous regulators may have been beholden to the machinations of trade union stewards, procedural control now lies with the organisation and is, this study argues, principally guided by HR practitioners.

Practitioner talk adheres to the principles of devolution in ascribing decision-making 'authority' to line managers (Hoque & Noon, 2001, p. 13). In this way, the enactment of legislation appears 'consistent with traditional managerial prerogatives' (Edelman et al., 2001, p. 1592), serving to reposition managerial prerogative rather than, as posited by the 'regulation as burden' discourse, to remove it (Atkinson et al., 2014, p. 13). As such, the legislation is 'managerialized', that is, 'infused with managerial values' (Edelman et al., 2001, p. 1592) and employers are held accountable not to the law but to a mediated

form of the law within their organisations (Atkinson et al., 2014, p. 13) as interpreted and enforced by HR practitioners. The contribution of this study to the above perspective is that managerial prerogative is ostensibly maintained whilst being heavily informed if not controlled by HR practitioners, and that this arrangement suits line managers who are too task-focused to wish to take on the challenge of interpreting employment law.

The sway HR practitioners hold over line manager decision-making, despite practitioners' keenness to emphasise that HR 'does not make the decision', constitutes 'power' as defined by Pfeffer (1992: 30): 'power' is 'the potential ability to influence behaviour, to overcome resistance and to get people to do things that they would not otherwise do'. Hardy (1996, p. 7) similarly notes that 'power' in management texts has generally been taken to mean the ability to 'get others to do what you want them to do'. Legal guardianship could also be argued to constitute 'government' as defined by Foucault (1979: 2): 'government' is 'the conduct of conduct: a form of activity aiming to shape, guide or affect the conduct of some person or persons'. The 'subjects' (Townley, 1994, p. 12) of this government are line managers, rather than employees.

From these perspectives, the study contends the notion that HR practitioners face issues of powerlessness and marginality (Caldwell, 2003; Kirton & Greene, 2009). Sheehan et al. (2014) identify that devolution of HRM to line managers posits that the HR function retain the overall responsibility for HRM whilst relinquishing power: the legal guardianship role performed by practitioners demonstrates that the HR function, through its operational functions, maintains both responsibility *and* power. Drawing from the work of Lukes (1974), Hardy (1996) discusses four dimensions of power: power of resources, power of

processes, power of meaning, and power of the system. HR practitioners' talk of legal guardianship indicates that this role operates at each of these four levels of power.

Organisational actors exert power over resources through their control of particular resources upon which others depend: these include information and expertise, and the control of sanctions (Hardy, 1996). As legal guardians, HR practitioners are the employment law knowledge-holders within their organisations, and exhibit interventionary behaviour, which implies the possibility of sanctions, in the form of the external tribunal process, if line managers appear to be at risk of breaching the 'borders' of legally permissible practice. In addition to this resource-based power, HR further exerts power through the 'power of processes' (Hardy, 1996, pp. 7–8). Hardy argues that, in this context, power can be held by organisational actors who are not the 'visible' decision-makers. Processes may be influenced 'behind the scenes' by other actors who are in a position of power (*ibid*). This is evidenced by the elements of HRM processes which are determined by the HR function, for example the selection of candidate long-lists given to line managers prior to the visible 'selection' process; HR practitioners maintain in talk that the successful candidate in this process is the line manager's choice. Hardy (1996) identifies that the critique of process-based power is that it serves to protect the interests of the dominant group whereas, notably, the use of this approach by HR practitioners in their enactment of equality can be intended specifically to reduce dominant group bias and encourage good, ethical equality outcomes.

HR practitioners further enact power at the third dimension of power 'the power of meaning' (Hardy, 1996, p. 8). In this form, power is achieved by presenting the

desired approach 'as legitimate, rational, desirable, or (failing that) unavoidable' (ibid). This discursively-realised power is evident in talk of how practitioners set out their stall for compliance to line managers and other employees through induction and training, and how this is reinforced with the ad-hoc 'guidance' that line managers are seen to require with individual cases. 'Legitimacy' is provided by the legislation, 'rationality' is presented in the discourse of 'the right thing to do', 'desirability' can be either the 'attractiveness' of avoiding legal action or can begin to draw on discourses of diversity which posit the 'attractiveness' of difference in the composition of teams. When these discursive tactics 'fail', practitioners will discursively escalate their approach to the 'unavoidability' of legal action, detailing the worst outcomes that a tribunal could entail. This involves colourful depictions of the unpleasantness of the hearing and the 'threat metrics' of costs and time.

The fourth dimension of power, 'the power of the system' as discussed by Hardy, is the 'backdrop against which all organizational actions and decisions take place', and it is therefore *against* this dimension of power that the other three dimensions must be employed if change is to occur (Hardy, 1996, p. 9). For legal guardianship, the backdrop/ 'power system' is the received wisdom of the HR function's lack of credibility, role tensions, and the dominance of HRM business-partner discourse. Hardy (1996) proposes means by which the three initial forms of power can be utilised in organisations to bring about strategic change. HR practitioner power in the legal guardian role lacks the co-ordination, intent and definition of this design. This perhaps highlights the underlying intent of legal guardianship: the power of HR practitioners in this role is used altruistically to 'protect' the organisation and to 'do the right thing' by employees rather than to augment or give visibility to the status of the HR practitioners themselves.

Practitioners discursively place themselves as holding less power than they can be seen to wield in terms of dissuading and intervening in line manager decision-making. Nonetheless, the HR practitioners interviewed express more assurance in their role when compared to the experiences of diversity specialists: Kirton and Greene (2009, pp. 167, 172) for example identify that diversity specialists can experience isolation, that their credibility is 'fragile and subject to challenge', and that they risk 'burn out' or limiting their careers if they remain in a diversity role for too long. Sinclair (2006, p. 517) notes that diversity specialists in the Australian context operate 'on the edge of managerial legitimacy' whereas HR generalists locates themselves centrally and as acting with an operationally-focused legitimacy within their organisations. HR generalists do not encounter the same professional and personal risks in enacting equality compliance when compared to the challenges faced by diversity specialists. The enactment of equality relates more to the construction of policy and to responses to the actions of employees and managers, and as such does not place the identities of the generalists themselves in the spotlight in quite the same way as the diversity specialists, nor does the enactment of equality require generalists to take a role that as *overtly* challenges management prerogative as diversity initiatives may do. Kirton and Greene (2009) identify that diversity specialists seek to dissociate themselves from the poor image of equal opportunities; the HR generalists in this study do not seek to do this. The *relative* credibility and stability of the generalists in enacting equality may in part be a function of the embeddedness of equality discourses and legislation, and their *relative* acceptance by line managers when compared to diversity discourses. This is examined further in section 9.5.

Greater acceptance by generalist practitioners of the influence they demonstrate in enacting legal guardianship would potentially enable HR to defend the

boundaries of professional expertise and specify the contribution of the function (Caldwell, 2003). It is arguably the dominance of business partner /HRM discourse which de-legitimises the contribution of legal guardianship. In this respect, the mismatch between the, arguably unobtainable rhetoric of business partnering and the realities of practice prevent the HR profession from recognising and promoting the realities of practice and actual contribution. Therefore, whilst the 'business partner' and 'strategic partner' suggest deliverance from the enduring lack of professional status experienced by HR practitioners (Keegan & Francis, 2010), the findings of this study suggest that the promise is false. The interests of the HR profession would be more usefully served by recognising the realities of practice.

9.5 Legal guardianship and the discourses of equality and diversity

The findings demonstrate the dominance of equality over and above diversity and inclusion, in talk of practice. This supports the view that the shift from equality compliance to diversity management has been 'talked up' (Oswick, 2011 p. 34).

Woodall and Winstanley (2001, p. 48), suggest that HR professionals have tended to dismiss the Kantian 'rights-based' ethical framework to which equality of opportunity belongs in favour of 'business case' arguments. This was found to be the case in the rhetoric of the US practitioner literature, where the legislation tended to be portrayed as 'external, imposed, and in general a negative force on the organization', whereas diversity was characterised as good for workforce morale, harmonious employee relations and profit (Edelman et al., 2001, p. 1620). The findings of this study suggest that talk of practice diverges from the dominant HR rhetoric and that equality, specifically equal opportunities, persists as a dominant concept long after its discursive moment in the 'cycle of popularity' (Oswick & Noon, 2014, p. 30).

The findings of this study suggest that scholarship appears to have misleadingly focused on practitioners' 'talking up' of diversity management, and 'talking down' of equal opportunities (Oswick, 2011, p. 34), and in so doing has made the assumption that this transition is irrevocable. There has been a failure to take into account the increase in the scope of the equalities legislation (Kirton & Greene, 2009, p. 159) and the impact of this on practice. It is also arguably naïve to assume that diversity management, which has followed the discursive pattern of a 'management fashion' would succeed in 'replacing' equality as a concept in practice (Oswick & Noon, 2014, p. 35), given that the basis of equality lies within concepts of human rights as codified in national and international declarations.

In the interview questions provided in Appendix 2, E and D are constructed as both as one phenomenon, e.g. *What part do equality and diversity play in your role?* And as separate entities, e.g. *Do you think that E and D is seen as strategic or operational?* This reflects the tendency of the researcher to consciously and unconsciously use 'E and D' in both the singular and plural contexts in the interviews. Additionally, specific questions probed the practitioners' views of the potential differences between the two terms, e.g. *Would you say that your role involves more 'doing' equality or 'doing' diversity?* As such, the interview design and the ways in which the researcher/participant dialogues unfolded reflect the researcher's perspectives and practitioner-derived short-hand use of the E and D terminology.

The analysis of the practitioner talk indicates that equality and compliance were often termed by HR practitioners in this study as 'E and D'. This supports the argument in the critical literature that what is often deemed to be 'diversity' is often more reflective of equality as a set of practices. As Edley (2001, p. 204)

identifies, different interpretive repertoires can be used to discuss the “same’ social object’; the discussion of equality compliance under the term ‘E and D’ is not a spontaneous phenomenon (ibid), rather it is one formed by the pervasiveness of diversity management rhetoric as superior to equal opportunities and legislation which has the force of imposing ‘diversity’ as a term onto the pre-existing equal opportunities practices. Potentially, the expansion of the protectorate (McCrudden, 2008)

to include nine characteristics has additionally played a part in the addition of ‘diversity’ to the descriptor for the practice of ensuring compliance, in which case, reading the high incidence of ‘diversity’ in practitioner talk risks becoming misread as indicative of ‘diversity management’.

Using Jewson and Mason’s (1986) definitions, the HR practitioners in this study are identifiably equal opportunities ‘liberals’ in that their practice is overwhelmingly oriented to ensuring ‘that discriminatory motives are not imputed where none really exists’ (1986, p. 325) and in that the principles embodied in their approach are largely procedural (1986, p. 314). Jewson and Mason argue that a liberal focus on proceduralism is often erroneously believed to lead to the desired outcomes of the radical EO approach: within this study, rather than conflating these two approaches to EO, HR practitioners indicate their role in controlling fair process as a worthy endeavour in itself. Further, the HR practitioners are ‘liberals’ under Jewson and Mason’s definitions in viewing employees as individuals and in their questioning of traditional privilege within the HR processes of their organisations. Their acceptance of the state-imposed anti-discrimination legislation also coheres with Jewson and Mason’s conception of liberalism in EO: with the exception of some disgruntlement at the removal of the

Default Retirement Age, practitioners do not critique the existing equalities legislation, nor do they call for an increase in this legislation. As such, the HR practitioners in this study occupy an ideological mid-point between the business and political discourses of deregulation and the scholarly and radical discourses which call for increased initiatives and 'reflexive law' (Hepple, 2012, p. 64) to further E and D agendas.

9.6 Equality legislation

Edelman et al. (2001, p. 1591) highlight that there 'has been virtually no attention to how managerial rhetorics may inform understandings of law'. Edelman et al. specifically consider how diversity management draws from and affects legal ideals, even in light of diversity management's dissociation from employment rights law. The findings of this study have considered how the rhetorics of HR can be understood through an examination of the enactment of equality law by HR practitioners. This section considers how the examination of HR practitioners' legal guardianship in turn enhances understanding of the legislation. Specifically, the argument of this section is that the equality legislation is undervalued with regard to the fairness effects it produces in work organisations.

As highlighted by Edelman et al. (2001, p. 1600), the management models literature would lead to the conclusion that 'managerialized' law would follow the same trajectory of popularity as management rhetorics, whereas the law and organisations literature would suggest that interpretations of law will remain prevalent and institutionalized regardless of the decline of the associated rhetoric. The findings of this study therefore support the assumption within the law and organisations literature: HR practitioner talk remains focused principally on equality despite the preference for diversity management, and more recently inclusion, in both scholarly and practitioner business management literature.

Arguably, legal guardianship is not underpinned by 'legal-centric' decision-making as defined by Roehling and Wright (2006, p. 608): 'legal-centric' decision-making involves decisions 'not normatively constrained by clear and specific legal requirements' and is fuelled by an over-inflation of the risks posed by potential legal action in the practitioner press and a prescription of which approaches will mitigate against this (Edelman et al., 1999, p. 413). The focus of legal guardianship, and the focus of the industry of employment law advice supporting HR practitioners, is on the technical expertise required to specify the exact point of compliance, to ensure that the organisation does what is necessary to comply. This technical point of compliance is the goal for some HR practitioners while for others it is the benchmark by which 'good organisations' can demonstrate that they go beyond compliance, and begin to enter into discourses of diversity management.

Dickens and Hall (2006, p. 346) state that there are limits to what employment legislation can be expected to achieve, and that the requirements of the law are themselves limited. This perspective is endorsed by Hepple (2012, p. 64) who argues that 'the law cannot succeed in changing behaviour at the workplace through direct command and control'. This scholarly scepticism of the limited ability of the legislation to engender change contrasts with the dominant business rhetoric of regulatory burden and the calls for statutory requirements and access to rights, e.g. to lodge tribunal claims, to be diminished, yet both discourses serve to undermine the value of the extant legislation. As is perhaps often the case with polarised perspectives, the realities of equality legislation in practice arguably fall between these two contrasting views.

The findings of this study suggest that the force of the legislation in ensuring fairness at the level of the organisation is more profound than recognised by critical scholarship, and further, as a counter to the rhetoric of regulatory burden, that the legislation is broadly accepted. This acceptance is based firstly on the now 'institutionalized' (Edelman et al., 2001, p. 1600) nature of equalities legislation, reflecting McCrudden's (2008) argument that equality norms have been 'quasi-constitutionalized', and is based secondly on the way in which equalities laws reflect 'normative patterns' of what is perceived to be socially legitimate in the workplace context (Purcell, 2012, p. 164). Therefore the findings problematize the literature which focuses on diversity management and situates equal opportunities practice as something historic and as contentious within organisations *without* revisiting compliance and its current enactment.

Further augmenting organisational acceptance of the equalities legislation, the HR function plays a crucial role in absorbing, owning and controlling the enactment of equality in such a way that it does not provoke the same levels of 'resistance' from line managers as, for example, that generated by organisational change programmes (Francis & Sinclair, 2003a, p. 697). The HR function, whilst involving line managers in processes relating to equality, also see it as a primary objective to protect line managers and to enable them to concentrate on their primary, measured responsibilities. Therefore, where the small firms surveyed by Blackburn and Hart (2002) expressed concern regarding the administrative workload created by employment legislation, in the medium and large organisations represented in this study experience equalities legislation in a very different way by virtue of having an HR function. This reflects the findings of Atkinson et al. (2014, p. 13) that the owner-managers of medium-sized firms were 'rarely burdened beyond the expense of their legal advisors', arguably

generalising this finding to a much broader range of sectors and sizes of organisation.

Critical scholarship, for example Pollert (2007, p. 111), argues that employment rights in Britain are substantively weak, in respect of 'minimalist interpretation', and procedurally weak in terms of access to support, enforcement and monitoring. Much of the debate of employment rights and tribunals, both in critical scholarship and within the business community oriented to deregulation, draws heavily on the data available on actual tribunal outcomes, i.e. numbers of claims raised, proportion of successful claims and costs awarded. Both parties critique the tribunal system for very different reasons, and claim these figures as evidence for opposing arguments. The findings of this study focus on the daily realities of work organisations enacting and interpreting equalities legislation, thus presenting a more nuanced perspective of the impact of the legislation than discussions which focus on the 'final resort' (Pollert, 2007, p. 100) of the employment tribunal.

The findings suggest that the equalities legislation is not subject to minimal interpretation; rather that considerable resource is devoted to understanding how the legislation should be enacted. This is evidenced in the involved interplay between HR practitioners the employment lawyers they liaise with, and the line managers they work with. Further, the pejorative discourse of 'legal minima' becoming the norm (Purcell, 2012, p. 175) reinforces the notion that compliance is a lowly benchmark: HR practitioner talk in this study emphasises that the existing legislation is comprehensive and meaningful in the protection it provides to employees.

HR practitioner talk highlights that the hard equality law currently in place, which has built on previous, strand-specific legislation, has led to significant change. Whilst the literature takes the approach that the enactment of hard law is unlikely to address underlying issues of inequality, this stance emanates from a focus on the outcomes of employment tribunals. The analysis undertaken in this study indicates that, in the routine enactment of equality, HR practitioners engage in with the line managers that they support. Whilst the findings of the study concur with the perspective that the tribunal experience is adversarial, the daily enactment of equality is more of a pragmatic approach to fair practice and a measured, reasoned response to individual issues as they arise in set pieces of interplay between the respective organisational actors. A focus on tribunals fails to examine the enactment of equality in the operational-level issues that do not reach the tribunal stage.

For the HR practitioners in this study, equality is not an outmoded concept, but an ongoing, worthwhile pursuit requiring technical expertise. In this context, 'recourse to a lawyer', 'a common but costly response' in individualised legal cases relating to employment rights, (Dickens, 2012b, p. 212) is seen as worthwhile expenditure; it would be difficult to argue that organisations would have continued to pay for external law advice *and* a HR function through the economic recession were both not considered necessary in order to achieve compliance.

The volume of practitioner talk detailing the work undertaken in the legal guardian role demonstrates that the perception that the employment legislation requires 'only passive compliance from employers' (Dickens, 2012b, p. 206) does not fully appreciate the role and contribution from HR in implementing the legislation. This

study identifies the reasons for this as being threefold. First, both HR and E and D scholarship foreground diversity management rather than equality, seeking with honourable intent to examine evidence of leading practice in diversity management. Second, HR practitioners, particularly those working at an operational-level, are generally not constructed as principle, credible actors in either the diversity management literature or the IR literature which considers regulatory space. Third, the construction in the diversity, HR and IR literature of equality legislation requiring only 'passive compliance' (Dickens, 2012b, p. 206) is a stance which does a disservice to the legislation and leads to a low level of attention to the industry involved in its implementation.

As Dickens (2012b, p. 208) highlights, the social justice argument for employment rights is currently muted. The close relationship of legal guardianship to the legislation suggests that, were the equalities legislation to be altered, a diminishing 'threat' would force a reappraisal of the necessity and viability of fair process as an 'insulator' against legal action (Edelman et al., 1999, p. 419) and would impact on the employee champion role, currently enacted through proxies. Practitioners continuing to act for 'the Other', as in the a deregulated employment context, would constitute a disruption of what HRM is, and the wider system of which it is part (de Gama et al., 2012, p. 106).

The literature would therefore suggest that a diminishing legally-oriented role for operational HR generalists would see practitioners fall into line with the new order and not to seek to defend employee rights or workplace equality. This assumption takes a view on what HRM is without consideration of what HR practice involves: the findings of this study suggest that robust and fair processes have remained the bedrock of generalist HR practice, as has HR practitioners' overall control of

these processes and their steer on line manager decision-making. Process also arguably underpins 'good' E and D practice: as identified by the findings of Curran and Quinn (2012, p. 475), voluntaristic organisational agendas relating to equality are underpinned by the promotion of 'problem solving policies', such as grievance procedures, as these are taken as the necessary starting point. These aspects of practice are the underpinnings of legal guardianship, and they are also arguably the fabric of operational HR itself which has endured from the period when 'personnel management' was the dominant discourse of the profession. These are aspects of HR practice which have the propensity to ensure were the legislation to diminish.

9.7 Summary of the discussion

This chapter has presented an overview of the construction of legal guardianship as based on the findings of the study. Legal guardianship has been examined in the contexts of discourses of HRM and personnel management, with a view to contributing to knowledge of how and why a hybrid of these discourses is reflected in talk of practice. Legal guardians are neither 'soft' 'welfare types' (Watson, 2011, p. 113) nor 'players' (Ulrich, 1997, p. viii); as such they do not operate at either extreme of the personnel-type/HRM spectrum depicted in scholarship. The chapter considered the 'contribution' of legal guardianship and why an acknowledgement of this contribution may be problematic, even counter-productive for the HR profession. The chapter further examined how legal guardianship informs understanding of the HR/line manager relationship, and suggests that devolution is both far from a current reality and an unlikelihood given its underlying undesirability to both HR practitioners and line managers. The volume of practitioner talk focusing on the enactment of equality in the context of the interplay between the HR function and line managers further

highlights that '[a] great deal of HR activity and energy is directed at managers themselves, rather than shop-floor employees' (Storey, 2001, p. 8).

Despite the dominance of the HR business partner template, the dynamism of the 'wider textscape of HR' creates space for alternative perspectives of HR practice (Keegan & Francis, 2010, p. 894). HR's legal guardian role is to date under-regarded aspect of HR practice which, rather than new, has perhaps quietly endured and augmented with the increase in employment legislation under the Labour governments of 1997-2010. Whilst the succeeding Coalition and Conservative governments have aimed to accelerate the reduction of the regulatory 'burden' on businesses, the level of change this has caused has unintentionally fuelled more legal complexity as organisations, through their HR functions, make sense of each successive change.

Keegan and Francis (2010) suggest that the alternative practices in the textscape of HR should be driven by social values rather than solely economic criteria. Here the legal guardian role appears to demonstrate that the HR practitioner is the unswerving servant of the organisation; even where the course of action advised by the HR practitioner encounters resistance from managers, practitioners will continue to advocate that course, and the findings suggest their direction is ultimately almost always accepted. The immediate economic benefits of this direction are not always apparent, hence the potential initial resistance. Whilst HR practitioners cite 'fairness' in the courses of action they advise line managers to take, this is constructed more in the context of the avoidance of litigation than on social values in themselves.

The overwhelming orientation of legal guardianship to 'do the right thing' in respect of the legislation in order that the organisation is not at risk of legal action

leads to a situation where the economic and social rationales for doing the right thing are rarely articulated independently: they can become entangled or even disappear altogether as distinct concepts within 'right' when it is used as a construction where its self-evident correctness is inferred. It becomes difficult, therefore, to manifest arguments for legal guardianship that would wholly meet the criteria of mainstream research, oriented to evidence of bottom-line contribution, or to critical research's interest in evidence of ethical practice. Whilst the practice of legal guardianship may therefore not have a neatly-fitting scholarly home, it nonetheless constitutes a significant aspect of the reality of HR generalist work.

With regard to equality and discourse, the chapter considered how the findings add to understanding of equality and diversity discourses, reflecting on how and why the discourse of diversity management dominates management scholarship when talk of practice remains heavily oriented to the more 'unfashionable' concept of equality (Oswick & Noon, 2014). The findings of this study identify the strong orientation to equality rather than diversity in HR practitioners' accounts of the enactment of equality and diversity, and the role of practitioners as legal guardians, acting to protect their respective organisations from the 'threat of litigation' (Roehling & Wright, 2006, p. 605). Thus, whilst Barmes and Ashtiany (2003, p. 295) argue that 'a straightforward compliance department covering employment law seems unimaginable', this is one of the core organisational functions of the human resources teams represented in this study.

The chapter concluded with a discussion of the findings in respect of the equalities legislation and argued that the perception of the legislation and compliance as a 'minimum' in terms of workplace standards is misleading.

10 Conclusion

The concluding chapter discusses how the aims and focus of this research have been addressed and presents an overview of how the study contributes to scholarship and to practice.

10.1 Aims and focus of the research

The aim of this research has been to examine how HR practitioners construct the enactment of equality in talk. This section considers how the research has addressed the research questions presented in section 1.3.

The study has examined how the constructions of HR's role in the enactment of equality draw from, modify and/or contend constructions of the HR function and HR roles as presented in the literature. The discursive approach of the study has been oriented to question the clear distinctions largely adhered to in scholarship, for example the 'contrast pairs' (Baker, 2004, p. 174) of personnel management and HRM, and of pluralism and unitarism. Whilst not an immediate 'contrast pair', HRM and regulation are nonetheless presented in such a way that they appear to pertain to different, incommensurate versions of the employment relationship.

The processes and relationships of the enactment of equality identified in talk are the outcomes of HRM concepts and regulation. The coalescence of HRM and regulation in people's experiences of the employment relationship is due to the dominant influence of the HRM paradigm on people management practice (Delbridge & Keenoy, 2010; Hope-Hailey et al., 2005; Keegan & Francis, 2010; Marchington, 2008) and the breadth and ongoing complexity of the often-modified employment law terrain (Caldwell, 2003; Dickens & Hall, 2006; Dickens, 2012b; Morris, 2012). The logic of deregulation constitutes a trap in that any change to the legislation, including a reduction of provision, contributes to increased complexity. It is arguably this complexity rather than the scope of the law which

fuels the rhetoric of regulation as a 'burden' to business. The coalescence of HRM and regulation is a feature of work that has been, thus far, under-considered empirically by both mainstream and critical scholarship. This study has examined how a hybridisation of concepts usually demarcated from one another on ideological grounds is identifiable in talk of HR practice.

Methodologically, this research is unrestrained by either the mainstream agenda of evidencing the bottom-line contribution of HR (Hope-Hailey et al., 2005; Harley & Hardy, 2004; Kirton & Greene, 2010), or the emancipatory agenda of 'Critical' scholarship (Alvesson & Deetz, 2001; McCarthy, 1988). This allowed for a nuanced picture of the realities of practice to emerge. Reflecting Keenoy (1999), through the lens of practitioners working at an operational level, the clear distinctions which mainstream literature, e.g. Ulrich (1997), posits between HRM and 'regulatory' personnel management become more nuanced. The partisan views of scholarship on how people management paradigms 'fit' into either a unitarist or pluralist frame of reference are similarly problematized by the insight that this study provides.

As practitioner talk principally discussed compliance, specifically the interplay of the different social actors in the enactment of compliance, 'legal guardianship' became the *ex post* focus of the research. Similarly, whilst the study arguably presents a 'regulationist' (Heery, 2011, p. 72) approach to the employment relationship, it was not the specific agenda of the researcher to advocate regulation/legislation; rather this emerged as a consequence of the attention in the study to the legal guardian role in practitioner talk.

The research has examined how the relationships between HR practitioners and other organisational actors operating in 'regulatory space' are constructed in talk.

In the study, institutional actors other than the HR practitioners, namely line managers, employment lawyers, employees and trade union representatives, are understood through the lens of the HR practitioners. This approach enables a rich analysis of HR in that practitioner constructions are performative, i.e. the constructions reflect on their originators, thereby providing further insight into the role and systems of HR. This insight has highlighted the significance of the extra-organisational relationship of HR practitioners with employment lawyers; a relationship which the study argues is under-considered in the extant literature given its cross-sectoral omnipresence. Further, the study has provided in-depth findings *vis à vis* the HR/line manager relationship which problematize the easy logic, desirability and feasibility of devolution, highlighting the relative stability of the line/HR relationship in respect of roles. As such, the study disrupts the assumption that devolution is the trajectory of action in organisational HRM. The findings additionally illustrate the, perhaps unique way among professions and organisational functions, that the HR function maintains considerable control whilst taking a lead role at a rhetorical level in downplaying the existence of this power position.

The enquiry has further examined how HR practitioner talk of enactment informs our understanding of equality and the equalities legislation. The role played by operational HR practitioners in the enactment of equality and diversity tends to be overshadowed in 'diversity' research by a preference to consider the perspectives of other actors, for example senior HR 'architects', specialist diversity managers and/or line managers. By failing to analyse the role of HR generalists in the enactment of equality at an operational level, 'diversity' research becomes a self-fulfilling prophecy, providing analyses of diversity management which subsume equality without recognising the enactment of

equality as an enduring and significant element of the employment relationship in its own right. Kirton and Greene (2009, p. 159) for example state that 'doing diversity work in the 2000s is a different experience from doing equality work in the 1980s/1990s', their study based on an analysis of the practices of 'diversity specialists' and 'diversity champions'. This study, by contrast, in focusing on the talk of generalist, operational HR practitioners, presents findings which demonstrate the ongoing importance of compliance and equality suggesting that, in those organisations large and progressive enough to employ diversity specialists and designate champions, the daily issues of compliance are still quietly undertaken by those organisations' HR generalists.

10.2 Contributions of the research to scholarship and practice

The study argues that the HR profession should (re)claim the equality enactment terrain. Whilst the contribution of HR as legal guardians would be problematic from a mainstream or critical perspective in that it does not wholly subscribe to either a bottom-line contribution or a social justice agenda, the aim of balance is core to the profession and is encapsulated in the CIPD's current manifesto to 'champion better work and better working lives' (CIPD, 2015c). This study provides the evidence of how this balance manifests in HR practice to produce organisationally sensible outcomes (Edelman et al., 1999) and makes an original contribution in its analysis of the clandestine micro-engagements of organisational actors at the level of operational people management.

The focus of the study addresses a double blind-spot (Janssens and Steyaert, 2009) in our current understanding of the employment relationship, firstly through its analysis of the micro-engagement of HR with other organisational actors on the ground and secondly in its examination of the enactment of equality compliance. The orientations of HRM scholarship to strategic-level HR

architecture, of diversity research to diversity management, and of critical literature to the outcomes of disadvantage for particular groups of workers has left the processes and actor moves that produce the outcomes of equality in organisations under-researched.

The 'both-and' stance underpinning the design of the study (Jules and Good, 2014) has produced findings that contend the either-or perspectives on the role of HR as presented in the mainstream and critical literature. The study therefore indicates that an orientation to seek evidence for either a mainstream or critical agenda will lead to disingenuous outcomes that do not capture the nuanced realities of what operational HR involves in practice. Whilst an analysis of the perceptions of HR practitioners may be uninteresting to critical IR scholars (Marsden, 1997), the actions, spans of control, and agendas of HR functions are integral to outcomes for workers. Similarly, whilst equality and hard law may be perceived as a distinct part of the employment relationship, they underpin the enactment of people management, informing for example recruitment and selection, promotion, performance management, absence management, discipline and grievance, redundancy, pay and reward, and job design. This study demonstrates that an investigation of equality enactment within workplaces can provide insight into the employment relationship more broadly, specifically the ways in which management prerogative is controlled by regulatory force as interpreted at an operational-level by HR practitioners.

As Dick and Cassell (2002, p. 973) suggest, champions of equality 'need to begin to address some of the more contentious and uncomfortable aspects of workforce diversity'. It is perhaps 'contentious and uncomfortable' in the pervasive diversity climate to highlight the enduring significance of equality and compliance in

organisations. Whilst the ongoing role of the equality compliance in driving organisational 'diversity' agendas is acknowledged (Tatli, 2011, p. 244) this is rarely expanded upon. Related to this, the study problematizes the notion of compliance as constituting a minimum level of treatment for employees and the view that whilst the UK can be seen to have equality legislation that is well-established (Klarsfeld et al., 2012; Roper & Tatli, 2014) the legislation is not necessarily well-enacted (Healy et al., 2011, p. 7). The findings indicate the thorough processes, level of work, and ultimately *care* involved, most particularly for HR practitioners, in achieving fair and compliant practice. Townsend and Wilkinson (2014, p. 204) argue that researchers, regardless whether their allegiances are to unitarist HR or pluralist ER frameworks for the employment relationship, have a role in developing understanding of the ways in which changes to employment imposed by the state impact on individuals, on jobs, organisations, and have broader implications for society and the economy. Evidence-based practice and policy generation depend on this contribution (ibid).

HR practitioners are 'key promulgators' of managerialized understandings of law in their respective organisations (Edelman et al., 2001, p. 1601). Dickens (2012d, p. 2) identifies that the human resource function and line managers play significant roles in the implementation of employment rights: their role being that of influencing the ways in which statutory rights 'are translated into practice and given substance at the workplace'. As the CIPD already provides a wealth of information on equality compliance, rather than a change in practice, the study suggests that what is required is a change in acknowledgement and language; specifically recognition for HR practitioners' legal guardian role.

10.3 Limitations of the research

This section considers the limitations of the research in respect of the temporal and geographic location of the data collection, the limitations of the sample and scope of the research, and additionally indicates the potential for further related enquiry.

10.3.1 The temporal and geographic limitations of the research

This research is located in a particular point in time and in a specific geographic location (Tatli & Özbilgin, 2012b). As the equality legislation is liable to ongoing change (Dobbin & Sutton, 1998), the enactment of equality will shift accordingly, although the interplay of HR practitioners with employment lawyers and line managers is likely to sustain many of the features identified in this study, as it is precisely the level of regulatory change and complexity that fuels their interaction. The geographic location of the study presents a specific context within which the research should be understood: in identifying the geographic and temporal location of the research, this is not to argue that this study is less relevant to wider understandings of HR and equality; rather it serves to highlight that all studies are located in time and place, and that their claims to generalisability should be appropriately scrutinised.

10.3.2 The limitations of the sample

The sample of HR practitioners involved in this study is comprised of practitioners who voluntarily opted to take part in research into operational equality and diversity. Intentionally, this discounts the contributions of those HR professionals whose roles are wholly strategic or administrative: the perspectives of the operational, generalist participants in this study may not be generalizable to their strategic, administrative or specialist colleagues.

A further, unintentional but acknowledged limitation of the research is that the practitioner participants who agreed to contribute are perhaps more interested in equality and diversity, or have more work in this area, than the HR generalist population more broadly. Talk in this study of legal guardianship does not reflect the view that HR practitioners consider employment law as an overly-restrictive influence on the HR profession (Roehling & Wright, 2006); this could perhaps be attributed to the self-selection of practitioners into the sample, i.e. those practitioners who are both operational and willing to discuss their enactment of E and D may, among the HR profession more generally, be more inclined to view the legislation positively.

Very small organisations are not included in this study, as they do not employ HR practitioners, and so the study is limited in that it does not examine the enactment of equality in such organisations.

10.3.3 The limitations of the scope of the study

Whether the issues analysed in respect of the HR/line manager relationship and the HR/employment lawyer relationship are generalizable beyond the context of equality into other areas of HR practice cannot be answered within the scope of this study. Notably, discussions of 'equality' covered a wide range of HR practices, including recruitment and selection, training, discipline and grievance, flexible working arrangements, working time, promotion, pay and reward, redundancy, employee morale, and the role of trade unions. This suggests that, rather than a standalone issue, the findings relating to the HR/line manager relationship in this study could be relevant to a considerable proportion of 'HRM' undertaken in organisations.

10.3.4 Future publication and research

The intended publications from this research are papers which examine the practice and contribution of HR in respect of legal guardianship, the HR function's control of line manager decision-making, the HR/employment lawyer relationship, and a discourse-analytic examination of the use of equality and diversity terminology by HR practitioners. Each of these papers will be written from the standpoint that the privileging of HR perspectives is acknowledged, and will argue that this approach provides original insight into the enactment of people management and equality that is of relevance to both mainstream and critical scholarship, and to practitioners.

The papers will be positioned as reconstructive and, as such, oriented to a 'both-and' rapprochement of mainstream and critical scholarship (Jules and Good, 2014) on the basis that this reflects the nuanced realities of practice for organisational actors on the ground. The purpose of the papers will be to stimulate a 'critically performative' dialogue (Spicer et al., 2009) with the HR profession and academics whose work focuses on employment. This is with a view to recognising the how interactions of social justice and business performance agendas impact on decision-making in the workplace.

Further examination of the relationships examined in this study, for example through ethnographic observation of interactions and through interviews with the respective organisational actors, would generate insight to build on the contribution of this study.

Appendix 1: Participants

Code	Male / Female	Job Title	Sector	Size	Location	Union recognition
P1	F	HR Manager	Agriculture/Manufacturing	450	SW plus other sites in UK	No –some employees are members
P2	F	HR Assistant	Agriculture/Manufacturing	450	SW plus other sites in UK	No –some employees are members
P3	F	HR Advisor	Property Maintenance/Design	90 in SW 1,000 in org.	SW plus other sites in UK	Yes
P4	F	HR Manager	Manufacturing	96	SW plus sites in midlands	No
P5	F	HR Advisor	Higher Education	4,250	Multi-site in SW	Yes
P6	F	HR Manager	Food manufacturing	600	One site, part of group of 14 companies.	No
P7	F	HR Manager	HR consultancy	10 – consultancy for companies of between 3 - 200 employees	SW consultancy	No
P8	F	Recruitment Manager	Public Sector	3,500	SW plus other site in UK	Yes
P9	F	Head of HR	Education	370	SW one site	Yes
P10	F	HR Advisor	Public Sector	750	SW multi-site	Yes
P11	F	HR Business Partner	Public Sector	370	SW multi-site	Yes
P12	F	HR Officer	Charity	500-700	SW one site + 10 employees nationally	No

P13	M	HR Manager	Retail	300 on site, 130,000 nationally	National company	No –some employees are members
P14	F	HR Manager	Professional Services	80	Two sites in SW	No
P15	F	HR and Training Manager	Food manufacturing	150	One site in SW	No
P16	F	Head of HR	Arts	500	Multi-site in SW	Yes
P17	F	HR Business Partner	Public Sector	575	Multi-site in SW	Yes
P18	F	HR Manager	Electronic Manufacturing	160	SW plus one other UK region	Yes
P19	F	HR Business Partner Consultant	Professional Services	400	Sites in SW and London	No
P20	F	HR Manager	Manufacturing	650 on site 10,000+ in group	SW site, part of global group.	
P21	F	HR / E and D consultant	HR / E and D consultancy	1	Consultant working in SW and nationally	No
P22	M	HR Advisor	Public Sector Partnership with Private Sector	14,500	Multi-site in SW	Yes
P23	F	HR Manager	Technology	50 on-site 84 in total globally	Global	No
P24	F	Head of HR	Housing	820	SW multi-site	No –some employees are members
P25	F	HR Business Partner	Charity	275-350	One site in SW	No
P26	M	HR Manager	Waste Management	500 working from this site 1000 in total	SW plus other sites in UK	Yes
P27	F	HR Services Manager	Social Enterprise	365 +400 'self- employed'	SW plus other sites in UK	Yes
P28	M	Head of HR and Training	Manufacturing/Aerospace	400	SW England only	Yes

P29	F	HR Manager	Professional Services	130	SW England only	No
P30	M	Head of HR	Hospitality	300-400	SW England only	
P31	F	HR Advisor	Public Sector	1200	SW England only	Yes
P32	F	HR Manager	Digital Marketing	66	Part of group of companies in EU	No
P33	M	HR Advisor	Property Estate Management	200	SW England + one other UK region	No
P34	F	Personnel Manager	Retail	280 on site 10,000+ nationally	National company	Yes
P35	M	HR Business Partner	Pharmaceutical Manufacturing	500 on site 9,000 internationally	Global company	No
P36	F	People and Organisation BP	Food Manufacturing	550	Located in SW England with US parent company	No
P37	F	Divisional HR Manager	Elder Care/Housing	5,000	Sites across all England	No –some employees are members
P38	F	HR Generalist Manager	Software Supply/ Management	150	SW England only	No
P39	M	Group HR Manager	Agricultural Supplies	120	Sites in other regions of UK	No
P40	F	HR Manager	Fashion Retail	60,000	Sites throughout UK	No
P41	F	Director of HR	Education	400	SW England only	Yes

Appendix 2: Interview questions

1. Can you tell me about your role in HR?
2. What part do equality and diversity play in your role?
3. Which of these would you say is most valued by your organisation?
4. How would you describe the overall perceptions of E and D in your organisation?
5. How would you describe the approach of line managers in your organisation towards E and D?
6. Does HR play a role in supporting line managers with E and D?
7. How would you describe the approach of the top team towards E and D?
8. Do you think that E and D is seen as strategic or operational?
9. What sources of guidance do you draw on to inform your E and D knowledge and practice?
10. Do you have an external legal advisor with whom you discuss matters relating to E and D?
11. Do you discuss E and D matters with trade union reps?
12. Do you capture E and D information on new employees? Do you monitor employees in terms of equality and diversity as they continue working for you?
13. Does any outside body monitor you in terms of E and D?
14. What would you say good E and D practice involves?
15. Would you say that E and D practice in your organisation reflects the policies that you have?
16. Would you say that your employees are a typical workforce for your sector and location?
17. Do you think that E and D in your organisation is perceived to relate more to individuals or to groups of employees?
18. What are employees' perceptions of E and D in your organisation?
19. Would you say that your employees demonstrate an awareness of their rights in respect of equalities regulation?
20. Have you seen any changes in what HR does in terms of E and D during your career?
21. Does your organisation take the view that certain groups of employees can offer competitive advantage?

22. Would you say that there is a type of employee that does especially well in your organisation?
23. Would you say that your role involves more 'doing' equality or 'doing' diversity?
24. What are the challenges for you / for HR in 'doing' equality and diversity?
25. What are the positive aspects?
26. What would make your role easier in terms of E and D?
27. Does who you are ever become part of your discussions with colleagues and/ or part of your thought processes in terms of 'doing' E and D in your organisation?

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