

A critical assessment of factors that are necessary for the effective implementation of equality rights within services provided by Glasgow's housing associations

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Abstract

The key research question with which this thesis is concerned is as follows: what organisational factors are necessary for the effective implementation of equality rights within services provided by Glasgow's housing associations? This question is important as the implementation of equality matters throughout housing practices is a key legal requirement, as well as being an integral component of regulatory standards produced by the Scottish Housing Regulator. The process of integrating equality rights throughout services is often referred to as mainstreaming of equality. The key factors that the thesis identified as being pertinent were cultural values, organisational policy documentation, communications, performance management and specific human resource matters, in particular staff training and staff attitudes.

In order to identify in what ways social landlords can eliminate discrimination and promote equal opportunities, the study assessed, critically, two research questions. Firstly, what is the role of law in achieving equality objectives and the relationship between the legal framework and social landlords? Secondly, what is the nature of discrimination in contemporary British society? In addressing this second question, the study used an appropriate conceptual framework referred to in the thesis as ESIP to identify what aspects of discrimination social landlords can legitimately address. This evaluation drew on the theoretical perspectives of essentialism and systems theory to identify the nature or essence of social landlords and highlight the importance of adopting a holistic or systemic organisational approach if equality rights are to be implemented effectively.

A further important research issue with which the study was concerned involved a desk-based examination of a comprehensive list of Glasgow Housing association equality policies to ascertain how effectively such policies integrate factors that are essential to implementation of organisational equality policy objectives; these factors are noted above and were identified from a theoretical assessment deriving from the literature review. This examination focussed on service matters as opposed to employment issues. This was then followed by a detailed analysis of housing practices within two individual housing associations in order to gain an overview of factors that might inhibit effective rights implementation into practice. Two key findings of the study can be summarised as follows. Firstly, the study of the organisational equality policies has revealed that none of the equality policies assessed have incorporated, either in sufficient depth or accuracy, the relevant factors that are necessary for effective implementation of equality rights. This derives largely from failure by social landlords to adopt a holistic and systemic approach to organisational practice. Secondly, the empirical study of the two social landlords – although limited in scale – suggests that mainstreaming of equality commitments into practice is unlikely to be achieved without applying the theoretical frameworks proposed in this study.

Although there has been much research into a diverse range of equality matters, there has been no comprehensive **theoretical** study in the Scottish context of organisational factors that affect the implementation of equality policies in relation to the broad range of equality issues covered by law. This

study represents, then, innovative fieldwork into a hitherto neglected field. Finally, the theoretical and conceptual framework in this study has been developed for specific application to social housing landlords, but its key elements, arguably, extend across other disciplines. A key practical benefit of this study, then, should be to enable organisations to identify diverse forms of discrimination and to implement organisational strategies based on robust theoretical foundations that serve both to eliminate discrimination and to promote equality.

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List of Statutes

This list provides a summary of the legislation that is referred to in the study; it is not intended to be a list of all relevant equality legislation. The list is in chronological order.

Housing of the Working Classes Act 1890

Rent and Mortgage Interest (War Restrictions) Act 1915

Sex Discrimination (Disqualification) Act 1919

Town and Country Planning etc. (Scotland) Act 1919

Disabled Persons (Employment) Act 1944

National Assistance Act 1948

Housing (Scotland) Act 1949

Disabled Persons (Employment) Act 1958

Sexual Offences Act 1967

Race Relations Act 1968

Chronically Sick and Disabled Persons Act 1970

Equal Pay Act 1970

Sex Discrimination Act 1975

Race Relations Act 1976

Criminal Justice (Scotland) Act 1980

Education Act 1981

Disabled Persons (Services, Consultation and Representation) Act 1986

Local Government Act 1986

Access to Personal Files Act 1987

Housing (Scotland) Act 1987

Local Government Act 1988

National Health Service and Community Care Act 1990.

Criminal Law (Consolidation) (Scotland) Act 1995

Disability Discrimination Act 1995

Asylum and Immigration Act 1996

Protection from Harassment Act 1997

Crime and Disorder Act 1998

Data Protection Act 1998

Human Rights Act 1998

Ethical Standards in Public Life etc. (Scotland) Act 2000

Race Relations (Amendment) Act 2000

Sexual Offences (Amendment) Act 2000

Standards in Scotland's Schools etc. Act 2000

Housing (Scotland) Act 2001

Local Government in Scotland Act 2003

Mental Health (Care and Treatment) (Scotland) Act 2003

Antisocial Behaviour etc. (Scotland) Act 2004

Equality Act 2006

Housing (Scotland) Act 2006

Disabled Persons' Parking Places (Scotland) Act 2009

Offences (Aggravation by Prejudice) (Scotland) Act 2009

Equality Act 2010

Housing (Scotland) Act 2010

List of Statutory Instruments

This list provides a summary of Statutory Instruments that are referred to in the study; it is not intended to be a list of all relevant secondary legislation.

Equality related SIs

Age

Statutory Instrument 2006 No. 1031 The Employment Equality (Age) Regulations 2006

Statutory Instrument 2011 No. 1069 The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011

Belief or religion

SI 2003/1660 The Employment Equality (Religion or Belief) Regulations 2003

Race

SI 2003/1626 The Race Relations (Amendment) Regulations 2003

Sexual orientation

SI 2003/1661 The Employment Equality (Sexual Orientation) Regulations 2003

SSI No. 1263 The Equality Act (Sexual Orientation) Regulations 2007.

Other

SI No. 1852 The Access to Personal Files (Housing) (Scotland) Regulations 1992

Table of cases

Cosgrove v Caesar & Howie (2001 IRLR 653)

Pearce v Governing Body of Mayfield School (2000 IRLR 548)

Chapter 1: Aims and methodology

“Educational research – all research is about getting knowledge. As the first two principles of educational research for social justice state, the two main reasons for doing the research are: to get improvements in social justice, in and from education; and to get knowledge and to learn from it”

(Griffiths, 1998, page 129).

“The political correctness (or ‘PC’) issue has had the unfortunate effect of distracting attention from important issues of power and oppression. It has created a lot of confusion and discouraged open debate about the relationship between language and power, inequality, discrimination and oppression”

(Thompson, 2003, page 72).

1.1. Introduction

The quotations at the beginning of this Chapter provide insight into the rationale that underpins this research study, a study that is intended to be emancipatory in nature. Firstly, and in line with the preceding statements, the research is concerned principally with gathering knowledge, in particular, gathering knowledge about how effectively social housing landlords in Glasgow are meeting their equality policy objectives in practice.

Secondly, it is intended to use research findings to improve organisational practice among social landlords in Scotland in the interests of social justice. This term is explained below.

Thirdly, promoting social justice is not a case simply of political correctness; it is concerned with addressing the myriad forms of discrimination and oppression that are endemic in contemporary capitalist society. “Social justice” is the term that Griffiths prefers to use rather than words such as “equality” and “equal opportunity.” In Griffiths’ view, such terms have weakened in meaning as a result of their linkage to the ‘PC’ agenda. Although all three terms are used in this study, it is emphasised at this juncture that, when the author uses the general term equality, this is intended to embrace social justice, the latter term having a long linguistic lineage whose meaning connotes matters that promote common interests (Griffiths, 1998, page 88). Griffiths, drawing on the Aristotelian definition of the term, suggests that social justice is primarily concerned with policies and practices that promote community welfare and the welfare of individuals comprising community groups (Griffiths, 1998, page 89).

The sections below summarise the aims of the thesis, the research rationale, research methodology, ethical considerations and a summary of how the chapters following are aligned to the theoretical model applied.

1.2. Aims of thesis

The key aims of this research are (a) to identify the range of organisational elements that social landlords must utilise if their policy framework is to enable equality objectives to be implemented into practice and (b) to undertake a detailed study of a range of Glasgow housing association equality policies and practices to evaluate how effectively these meet legal and good practice guidance. This examination is preceded by a theoretical appraisal of the following issues: a summary of the policy and legal framework concerning the implementation of equality rights objectives; the nature of discrimination in contemporary society; and the analysis of organisational criteria that are essential to effective equality rights implementation. This theoretical appraisal is necessary to identify both the context in which social landlords operate and the nature and forms of discrimination that they can address when developing their equality strategies.

1.3. Rationale for the research

The literature review indicates that Scottish based equality research in the public or social housing sector has been restricted, in general, to the examination of types and levels of discrimination that occur. For example, assessments of patterns of discrimination against disabled people, or people from black and minority ethnic communities. Research has not, however,

adequately analysed the range of organisational issues that must be addressed if institutionalised discrimination on a number of equality grounds is to be tackled at the **organisational** level. As noted in 1.2., then, this is the central theme of this research with this study offering innovative research into equality rights implementation traditionally neglected in public sector housing studies. The research is thus both challenging and intended to be change-inducing at a practical organisational level.

1.4. Research methodology

The research methodology comprises three principal elements, namely a literature review, fieldwork and a raft of conclusions derived from the research. The concluding Chapter will also incorporate a set of practical recommendations that can be used by social landlords to facilitate beneficial changes to organisational practice. Before explaining each element, general comment is made on data generation with more detailed information provided in Chapters 6 and 7. Primary and secondary data sources were used to generate information needed to evaluate the focal research issues dealt with in this study. Primary sources, for example, formed an important part of the fieldwork that scrutinised organisational policy documentation and employees/committees' perceptions of organisational practice in respect of equality rights implementation. Secondary data sources were, on the other hand, crucial in assessing the important research issues concerning the role of law and its relationship to social landlords' practices, as well as the nature of discrimination within society.

Literature review

The literature review examined four elements as follows: firstly, an examination of the policy context was carried out to illustrate the importance of equality matters within the United Kingdom, including an assessment of how law has evolved to promote Government policy objectives. Secondly, an assessment of the role of law in implementing equality rights was undertaken to examine the shortfalls of a legalistic approach to effective rights strategies. This included reference to both substantive law, as well as case law. Thirdly, the limitation of eliminating social injustice through law was further highlighted by reference to the nature of discrimination in society, drawing on specific conceptual frameworks that seek to explain the essence of discrimination. One of these frameworks represents an innovative perspective developed by the author. Fourthly, an assessment of key elements that are critical to effective rights implementation within organisations was carried out. This research drew on data sources involving housing management, as well as other relevant fields of enquiry such as management and political theory, socio-legal studies and social policy.

A theoretical framework based on a systemic approach was chosen as this recognised that organisations are “wholes” comprising inter-dependent functional parts, not “wholes” comprising separate constituent elements. Empiricist methodology was, therefore, rejected in favour of an essentialist approach. Essentialism is explained in detail in Chapter 5, the Chapter that is critical in elucidating the theoretical framework that is applied to the empirical

fieldwork (Chapters 6 and 7). This Chapter also includes comment on the strengths and limitations of this research project.

In the context of this study, this meant that those elements that are essential for achieving rights implementation had to be identified and their inter-relationships established. In summary, and elucidated in the thesis proper, this led to the identification of primary organisational factors critical to effective equality rights implementation. These included, inter alia, cultural values, policies and related documentation, human resource matters and performance management.

Fieldwork

In testing the preceding hypothesis that specific factors are essential for effective implementation of equality rights, fieldwork was carried out from 2007 to 2009. This concerned the analysis of fifty two (or 76%) of Glasgow Housing Association equality policies and more detailed assessment of the practices of two specific Glasgow housing associations. The latter are referenced as Association A and Association B within this thesis in the interests of confidentiality (see below).

The fieldwork involved assessment of quantitative and qualitative information. Information sources consulted were organisational policy documentation and qualitative data gleaned through interviews.

(a) Documentation

Equality policies were assessed as part of the initial research to evaluate how effectively such policies integrate matters essential to effective rights

implementation; this including assessment of a select range of criteria as identified through the research.

(b) Interviews

The case study analysis probed information more deeply to analyse whether theoretical gaps identified in policy documentation were addressed in actual practice. This involved carrying out interviews with a select number of housing staff. The total number of interviewees was ten with five interviewees from each organisation. This included staff employed at different levels within the organisation to evaluate the views of policy makers as well as non-policy officers. This figure also includes two committee or Board members who are responsible, in this capacity, for approving policy documentation, including corporate or governance policies such as equality policies. This sample size – at over five per cent for the respective organisational offices examined - also complies with recognised research sample techniques used to test whether samples are representative (Robertson and McLaughlin, 1996).

Conclusions and recommendations

Chapter 8 draws together the previous analysis to provide (a) general conclusions and (b) specific recommendations to improve current organisational practice. This ensures, in turn, that theoretical research is applied in the interests of organisational development in the social housing rented sector.

1.5. Ethical considerations

In carrying out the research, a prime consideration was to ensure that analysis of data ensured the confidentiality of participating social landlords. In

collating the organisational equality policies, for example, organisations were contacted by email, letter and/or by phone to explain the purpose and nature of the research. At this stage, organisations were notified that data would not be disseminated that enabled their identification without their explicit consent. This principle was applied at both policy analysis and fieldwork stages, too, as reflected in the fact that organisational analysis uses a coded system to preserve the confidentiality of data responses. Further information is provided in Chapters 6 and 7.

1.6. Alignment of Chapters to the theoretical model

Chapter 2 evaluates the evolution of equality law and related good practice guidance; this is important to assist in identifying the nature or role of housing authorities in respect to this framework. It will be shown that social housing bodies are a major conduit for implementing equality law into practice.

Chapter 3, however, highlights that law, per se, is not sufficient to translate policy objectives into practice, nor does it address directly many of the forms of discrimination that exist; what is essential is that organisations establish a framework of activities that are necessary if policy objectives are to be actualised. Chapter 4 is concerned primarily with developing understanding of the complexity of discrimination to identify the forms of discrimination that social landlords can address given their particular role. In carrying out this assessment, a new framework of principles is proposed that offers insight into the nature of discrimination in contemporary society; this framework is ESIP that is an acronym for discrimination deriving from economic, superstructure, institutional and personal forms of discrimination. Chapter 4 uses a number of

specific examples to illustrate this process. This framework is itself based on an approach that is used in social policy academic studies to identify the various aspects of discrimination endemic throughout society.

Chapter 5 provides further theoretical insight on the methodology of the thesis in preparation for the empirical analysis that forms the kernel of Chapters 6 and 7. This Chapter examines, firstly, the philosophical and scientific position of essentialism and this is aligned to discussions in Chapters 2 and 3 that have shown that the role of social landlords is to meet law and good practice in respect of equality matters that constitute, in effect, their essence. Implementing that role effectively must, however, be based on a robust theoretical footing if it is to prove to be effective. The thesis, accordingly, turns to systems theory to provide that “footing” by showing how this theoretical model enables the framework of activities to be blended into a holistic organisational action plan that is a necessary, albeit not sufficient method for translating organisational objectives into practice. Critically, systems theory, when aligned to the essentialist model above, elucidates how organisational activities must be inter-linked if legal and good practice guidance standards are to be realised in practice. Systems theory thus provides the “glue” to achieve a holistic organisational framework that is necessary to achieving mainstreaming of equality.

Chapter 2: Developing equal opportunities: the policy context

“Our vision is for a just and inclusive Scotland. A Scotland where everyone has the opportunity to fulfil their potential. But we cannot achieve this while there is prejudice and discrimination, poverty and alienation, and while many people in Scotland’s communities are excluded”

(Baillie, J, MSP, 2000, page 1. Foreword to the Scottish Executive Equality Strategy).

“The white-black dichotomy of the ideology of racism in which the two races occupied polar extremes and represented opposite values, qualities and characteristics (whose origins go back to the Bible) became even more entrenched in every day discourse and imagery from Elizabethan times onwards”

(Yeboah, 1997, page 61).

2.1. Background

The above quotations – one a general comment on Scottish society and one a reference to the historical roots of racism – suggest that inequality and discrimination is an integral feature of modern British society. But there are major differences in the ideological perspectives that inform these positions. Baillie does not, for instance, apportion responsibility for discriminatory attitudes and behaviours to state actions or problems inherent within capitalism; while Yeboah implies that racism is inextricably linked to the growth of imperialism, in particular the rise of British capitalism. In Yeboah's view, for example, racism is an "ideology" that serves to justify the oppression of black and minority ethnic groups. This issue will be examined in more detail in Chapter 4.

This Chapter is developed from the theoretical basis that racism and other discriminatory practices are inherent within British society. This perspective is confirmed by a range of empirical studies (Freyer, 1988; Yeboah, 1997; Bulmer and Solomos, 1999;). Indeed, the recent proliferation of equality laws to address a diverse range of discriminatory practices gives further support to this contention.

This section now examines the following issues:

- equality law before 1998;
- Government commitments to social justice; and
- recent legal developments in the equality field.

This overview will then lead directly to the analysis of the role of law and its efficacy in promoting equality that forms the kernel of Chapter 3.

2.2. Equality law before 1998

The year 1998 marks an important stage in the development of equality law with the new definition of equality encapsulated in the Scotland Act 1998.¹

This definition that is replicated below in full illustrates equality issues with which the Government is concerned in respect of the equality agenda. The legal definition, for example, covers a diverse range of grounds on which discrimination is prohibited. And subsequent equality law has developed from 1998 to address discrimination on these specific grounds (see below).

“Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

Before 1998, it is emphasised, equality law – and its corresponding lexicon under the general term “equal opportunities” – was, broadly speaking, limited to addressing discrimination on the grounds of race, sex and disability. This is not to belie, of course, the major development of law in these areas and its evolving nature through amendments to primary legislation, in particular “since the big thrust of the 1960s” (Banton, 1994, page 8). At this point, though, it is critical to note that equality legal developments do not occur in a vacuum, but in response to a diverse range of economic, political and social factors. In 1968, for example, the Race Relations Act 1968 was enacted to address the racism affecting the migrant workers coming into Britain as a relatively cheap source of labour power for the labour markets of an expansionist capitalist market. And, to quote Solomos and Back, 1996, with

¹ The Scotland Act 1998, Schedule 5, section L2.

regard to the attitudes towards incoming workers espoused by certain sections of British society:

“Despite the need for their labour, their presence aroused widespread hostility at all levels ...Employers only reluctantly recruited immigrants where there were no white workers to fill the jobs ...At this time the preference for white workers was seen as quite natural and legitimate –immigrants were seen as an inferior but necessary labour supply.”²
(cited in Sargeant, 2004, page 98).

Inadequacies in this Act to address discrimination against black and minority ethnic groups led to further legislative changes, changes that disbarred discrimination on racial grounds in both employment and service provision.³

Again, and referring now to sex discrimination in employment, discrimination against women was a historical legacy of the industrial revolution when home and workplace were separated, with women marginalised and expected to “stay at home and out of the workplace” (Sargeant, 2004, page 74).

Key legal changes to remove barriers to the equal treatment of women evolved only recently, however, with the passing of the Equal Pay Act 1970 and the Sex Discrimination Act 1975, the primary Act that – like race relations legislation – has also been subject to many amendments and revisions.

The efficacy of this Act to address sex based inequality – usually against women – has of course been challenged. One position is that legal reforms are largely irrelevant if economic and structural matters are not addressed so that the 1975 Act to promote women’s rights was largely ineffective against a

² Such attitudes may permeate all social classes, of course, as witnessed by Chamberlain’s, MP, statement to the effect that: “It is on the unskilled labourer that this immigrant produces the greatest mischief” (Foot, 1999, page 136).

³ Race Relations Act 1976. This Act remained the primary Act albeit subject to many amendments until the Equality Act 2010. (See below).

“background of high unemployment” (International Communist Forum, 1997, page 25), while Banton (2010, pages 60 - 78) shows how institutionalised forms of discrimination sustain continued social oppression against women through, for example, “...clear gendered values and expectations being imparted to children” about types of work suitable for women, or historic patterns of discrimination against women who become pregnant.

Indeed, barriers to female employment include a diverse range of institutional barriers such as paternalism of employers, reactionary attitudes of male-dominated Trade Unions and personal values (held by women concerning their roles as mothers and carers).⁴ And one of the key barriers to female emancipation derives, according to Wirth (2001, page 21), from inequalities within the labour market:

“Labour market inequalities between men and women explain many of the difficulties women face in pushing against the glass ceiling.”

This perspective focuses on structural inequalities that reside within the social relations inherent in the capitalist mode of production. This will be addressed later in this thesis when the nature of discrimination is explored.

Finally, and with regard to disability related issues, social model theory recognises that it is society that disables people, a process that occurs through the various forms of discrimination that serve to marginalise and oppress disabled people. As Finkelstein (2001, page 4) notes:

⁴ Other law in the twentieth century **was** enacted to reduce barriers to employment for women but this often proved to be ineffective. The Sex Discrimination (Disqualification) Act 1919, for example, was passed to enable women to practise law, although the first woman to sit on a High Court bench did not materialise until 1965 (Kennedy, 1992, page 57).

“Our society is built on a competitive market foundation and it is this social system that disables us.”

Law to address discrimination against disabled people was similarly limited until major legislative changes through the Disability Discrimination Act 1995, the Act that **defined** what it means to be a disabled person. The definition is now contained in the Equality Act 2010.⁵ The legal definition, it is emphasised, promotes what can be termed the medical model of disability. This model locates the “problem of disability within the individual” (Oliver, 1996, page 32), disability being perceived as some form of personal defect or deficiency.

As noted, this thesis will be focussing, in general, on equality law in relation to service matters. But it is important to note, in passing, that equality law has also extended its scope in recent years in respect of employment matters. The Age Regulations that followed the enactment of the Equality Act 2006, for instance, were developed to enable employees to apply to work beyond the statutory –and default – retirement age of sixty five.⁶ As with other equality laws, of course, it is essential to consider legal developments in their broader

⁵ The original definition of what it means to be a disabled person was contained in the Disability Discrimination Act 1995, section 1 (1). The Equality Act 2010, section 6, defines a disabled person as: “... a person who has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.”

The main laws that covered disability rights historically were the Disabled Persons (Employment) Act 1944, the Chronically Sick and Disabled Persons Act 1970 and the Disabled Persons (Services, Consultation and Representation) Act 1986. Other law that was relevant included the National Assistance Act 1948 and the National Health Service and Community Care Act 1990. See UPIAS, 1976, for the original definition of the social model. It is also noted, in passing, that certain theorists dispute the adequacy of the social model of disability. For example, see Shakespeare (2006) for a critique of the social model of disability.

⁶ Statutory Instrument 2006 No.1031 The Employment Equality (Age) Regulations 2006. See SI 2011 No1069 that repeals the Default Retirement Age provisions.

economic and political context. Purportedly developed to promote employee rights, for example, the Age Regulations were, arguably, linked to broader Government policies to defer pension costs by enabling workers to apply to work after the statutory retirement age of sixty five; costs that represent a potential drain of profit or surplus value from the economic standpoint of capitalism. This position has now been evidenced, of course, in the decision by Government to abolish the default retirement age of sixty five. (See ACAS, 2011.) Having a pool of workers, it is noted in passing, can also add to the pool of labour-power thus leading to a downward swing on wage levels, again fostering the interests of employers.

To sum up: major legal developments in the equality field took place in Britain from the 1960s and especially the 1970s onwards. These developments were largely restricted to the issues of gender, race and disability. Various studies alluded to in this Chapter have suggested, though, that such law – albeit necessary to improve people’s rights – may not always be effective in removing the variety of forms of oppression that exist, primarily as they do not disturb the existing economic relations from which such inequalities derive. Let us turn now to examine current Government commitments to social justice prior to examining how these are reflected in legal changes in the equality field that have occurred since 1998.

2.3. Government commitments to social justice

The promotion of social justice has, as identified above by reference to equality legislation, been an important part of Central Government policy since 1998. This position has been re-iterated recently by the Home Office

(2010, page 5) that emphasises its commitment to tackle “the causes of inequality as well as using targeted action to deal with its consequences.” Since the Coalition Government came to power in May 2010, however, recent developments indicate that equality commitments within Central Government may be shifting. For example, the Government has decided not to introduce Part 1 of the Equality Act 2010 that was intended to require public bodies to address socio-economic inequalities, nor are enhanced provisions relating to the promotion of positive action in employment being introduced (the Equality Act 2010, section 159). Although this topic is beyond the scope of this study, this is an issue that requires more detailed consideration and careful monitoring.

In Scotland, commitments to the promotion of equality objectives exist within the devolved Scottish Parliament, too, commitments that are expressed in both policy documentation and Scottish legislation. In November 2000, for example, the Scottish Executive published its Equality Strategy that sets a framework for a just and inclusive Scotland. At the heart of this Scottish strategy is a commitment to incorporate equality themes into legislation and policy making processes, a commitment that is intended to address all forms of discrimination highlighted in the Scotland Act 1998. Prima facie, then, the Scottish Parliament’s commitment to promoting social justice and equality may be seen as a moral or ethical concern. And it is the Scotland Act 1998 that sets out how this vision might be achieved through the first legal definition of equal opportunities in substantive law, the Act covering a wide range of equality matters hitherto neglected – its corresponding lexicon being

“diversity.” The term “diversity,” for example, features heavily in Government publications and forms the basis for the regulatory standard that is promoted by the Scottish Housing Regulator (Communities Scotland until 1 April 2008).

The equality standard, for instance, states that social landlords should:

“...embrace diversity, promote equal opportunities for all and eliminate unlawful discrimination in all areas of our work” (Communities Scotland, 2006, page 10).

This use of language is, of course, flawed and represents a reification of concepts. Diversity is not, per se, a thing as the usage of the word suggests; it is a relational term that derives meaning only by reference to other things. A similar conceptual error is common in the educational field where it is common to speak of a child’s potential in vacuo; no-one, of course, has potential “full stop” as potential is related to some form of actualisation. (See Meikle, 1985; and McKeon, 1973, for a fuller discussion of the concepts of potential and actuality that feature heavily in Aristotelian analysis.) At this point, too, it is important to pose the theoretical question as to what influences led to legal change, in short what was the rationale for developments in equality law? The points that follow are intended to offer insight into the variety of influences that induce legislative change, although it is stressed that this review is cursory only as detailed analysis lies beyond the remit of this study.

Two key influences noted are as follows:

- Government strategy; and
- social stability.

(a) Government strategy

Equality legal developments are closely linked to broad strategic policy commitments promoted at Central Government level. Indeed, it is critical to understand that equality commitments are one strand only of a wide-ranging general strategy that includes espoused commitments to such themes as social exclusion, citizenship and human rights. The important notion of social exclusion is now briefly examined.⁷

Addressing social exclusion is a central part of Government social and economic policy, including strategic policy within the Scottish Parliament. And dealing with the effects of social exclusion has been an important driver in respect of the development of other strategic policies, for example, the development of community planning partnerships that involve a wide range of agencies, from both public and private sectors. These policies are themselves promoted through legislation, in particular, local government legislation that promotes community planning partnerships, for example, the Local Government in Scotland Act 2003, section 15.

Social exclusion was first discussed in European policy circles before its emergence within British social policy debates (Leney, 1999; Anderson, 2000). Social exclusion was historically rooted in discussions concerning “les exclus,” people who are economically disadvantaged in the workplace (Spicker, 1998). It is thus inextricably linked with issues concerning poverty and deprivation.

⁷ See Barbalet, 1988; and Cairncross et al, 1997, for an introduction to citizenship; and Davies, 1988, on human rights.

Although social inclusion and social exclusion have an “economic basis” (Jordan, 1996, page 13), particular groups are disproportionately affected by social exclusion such as women and people from black and minority ethnic groups.

There were earlier historical debates concerning exclusion, of course, albeit these were garbed in different terminology. For Marx, in nineteenth century Britain, for example, socially excluded persons comprised the “industrial reserve army” (See Marx, 1887, page 596; Byrne, 2002, page 46).

As Anderson (2000, page 11) notes, the term “social exclusion” is fraught with difficulty from an interpretive perspective. In what ways, for example, does it differ from terms such as “poverty, deprivation, disadvantage etc?” In Anderson’s view, though, the term still possesses relevance and denotes: “separateness from the life experiences common to the majority within society” (page 21).

One theoretical issue that requires detailed scrutiny, however, concerns the use of “majority” in the above definition. For instance, women face many barriers to participation in society on account of income inequalities, although women are not a minority group in Britain in terms of population size. From an equality perspective then, an appropriate definition of social exclusion – as suggested by the author drawing on Anderson – with reference to discrimination on equality grounds might be:

“Separateness from the life experience of others due to economic and institutionalised disadvantage, as well as discriminatory attitudes and actions by others on grounds concerning perceived personal characteristics.”

This definition has **three** main advantages. Firstly, it captures the important

part of the Anderson definition relating to separateness from mainstream societal activities due to economic and institutionalised forms of disadvantage; this allows for social class disadvantage too. Secondly, it acknowledges that exclusion on equality grounds derives, not simply from economic disadvantage, but from others' perceptions, perceptions that can lead to unlawful or unfair treatment being meted out. This can include negative treatment of minority or majority groups, thus addressing the potential criticism raised in respect of the word "majority" as used in the above definition.

Thirdly, using this definition goes beyond the limited – albeit extended definition of the Scotland Act 1998 – as it alludes to institutionalised forms of discrimination and stereotyping that are not covered explicitly in the Scotland Act 1998 definition. This is explained in more detail in Chapter 4.

On a general note, the use of the term "social exclusion" might be regarded as another example of how language is being used as a form of concealment by Government policy makers. Poverty is a more explicit – and direct - term that is clearly aligned historically to debates on social class and theoretical perspectives of social development. The term "social exclusion", on the other hand, appears neutral and thus serves to obfuscate the roots of deprivation, namely its roots in structural conditions of contemporary capitalism. In the words of Baker et al (2004, page 76), economic inequalities which are "embedded in the economic structures of society, include various forms of exclusion, deprivation and exploitation of a material kind." Obfuscation of reality is, arguably, also reflected in the definition of equality as the Scotland

Act 1998 does not mention social class in its list of grounds, although it does refer to the term “social origin” that might be interpreted to connote social class. Social origin is, however, a term that does not take account of social class inequalities; like social exclusion, it is not explicit.

Similarly, the new lexicon that has evolved to reflect the ideology of New Labour is seen in other terms that conceal the underlying class tensions that exist within society. For instance, the term “communities” is now used to refer to societal groups, a term that is suggestive of cohesion and harmony of values. This has replaced the term “class” in political circles and its accompanying ideological discourse. Social class is, on the other hand, suggestive of division and inequality. Interestingly, the term “class” is now omitted from the contemporary statutory lexicon in general, as well as from the good practice guidance and Government documentation that fosters discussions on communities and the interests of individual citizens within those communities.⁸

(b) Social stability

This section provides a brief commentary on the role of law in promoting social stability. Although this is a topic that requires specific analysis, it is essential for understanding that the evolution of equality law should not be conflated with a political agenda concerned with moral values or human rights

⁸ Historically, the term “class” was an integral part of housing law in the public sector, for example, its usage in the first major Scottish Act of Consolidation, namely the Housing of the Working Classes Act 1890 and the removal of the term from statute as a result of the Housing (Scotland) Act 1949; this was due to the influence and vision of Aneurin Bevan who argued that public sector housing should be available for all social classes. See Jones (2011) for an interesting overview of how the term “working class” is described increasingly in negative ways.

despite the rhetoric. As Anleu (2006) notes, law is primarily concerned with dispute resolution and with social control through reformist legal strategies.

To quote Anleu:

“... it is through law that governments articulate or recognise citizenship rights and social movement activists engage with the legal arena (as well as others) to make rights claims for various groups and constituencies” (page 228).

And social control is an important step in assuring broader social stability through the regulation of different group interests, including social class interests. Two examples taken from the housing field will suffice to illustrate how law is used to strengthen social stability. Examples of legal reform in the equality field to thwart potential social unrest have already been noted by reference to race equality, an issue that is also examined below by consideration of race equality law that developed post-2000.

The first example of how law can be used to promote social stability is shown with the enactment of the first Rent Act, namely the Rent and Mortgage Interest (War Restrictions) Act 1915. This Act fixed rents at pre-war levels thus addressing social discord that existed between landlords and tenants, social discord that was reflected in rent strikes by tenants throughout Britain in response to attempts by landlords at profiteering through increased rents (Englander, 1983, page 234). The legislation also intended to address broader issues that threatened the interests of state capitalism, for example, to assuage threats of strike action by munitions workers facing higher housing costs (Melling, 1989). The second example of how law may be used to stabilise social unrest is seen in the Town and Country Planning etc. (Scotland) Act 1919 (the Addison Act). Although eulogised by contemporary

politicians as a legislative reform to meet the needs of “Homes for Heroes” - for veterans of the First World War - the Act was a bulwark to thwart potential revolutionary fervour. In the words of Lloyd George, MP:

“Even if it cost a hundred million pounds (to provide the housing) what was that compared to the stability of the state” and the threat posed by Bolshevism?” (cited in Rodger, 1989, page 238)

And, to quote the Parliamentary Secretary to the Local Government Board:

“...the money we are going to spend on housing is an insurance against Bolshevism and Revolution” (cited in Rodger, 1989, page 238).

And, as ICF (2005, page 8) clarify, the tranche of housing legislation that followed the First World War was also “designed to pre-empt potential unrest.”

2.4. Recent legal developments in the equality field

This section provides a brief review of legal developments in the field of equality law; it offers a general overview as well as reference to specific laws. A summary of good practice guidance that has developed to complement legal developments is also provided.

General overview of legal changes

Law concerning equality matters has evolved in major ways since 1998, in particular since 2000. Four general points are noted from a theoretical perspective. The first point is that legal developments are marked by an **ontological** shift in focus, namely that specific equality laws are increasingly proactive in nature, as opposed to their historical – and more restricted – reactive focus to address discrimination after it occurred. This represents an ideological shift at Central Government level too, with public sector landlords

now charged with a broader regulatory function.⁹ For instance, public authorities were formerly required to act only to address discrimination whenever it occurred on specific grounds such as disability, race and sex. (See Sargeant, 2004, and Connolly, 2006, for a discussion of substantive law and its evolution.) But law now requires public authorities – such as local authority housing services – to adopt a proactive approach that is aimed not merely at eliminating discrimination, but its prevention through implementing a range of promotional or positive action initiatives. This approach is explained in section 2.4.1.

The second point is that equality law has evolved to cover discrimination on most of the grounds covered in the Scotland Act 1998; this includes equality law to address discrimination and harassment in service provision, as well as employment matters.¹⁰

The third point is that other laws passed by the Scottish Government now contain equality commitments, an important part of the broader Government strategy to promote their social inclusion policy objectives. For example, the Housing (Scotland) Act 2001, section 106, states that:

“The Scottish Ministers and local authorities must exercise the functions conferred on them by this Act in a manner which encourages equal

⁹ Cowan (1999, page 512) points out, interestingly, that this regulatory role is also developing into mainstream housing functions, in particular the role of housing managers as agents of “social control.” Cowan’s point alludes to his perspective that: “Housing has now become a key tool in the criminal justice process” as a direct result of changes introduced through the Crime and Disorder Act 1998 that amended grounds for possession to include criminal activities.

¹⁰ The Equality Act 2010, section 149, sets out the key equality duty of public bodies; this is known as the public sector equality duty and comes into effect in April 2011; these will replace the previous duties under specific legislation as detailed over.

opportunities and in particular the observance of the equal opportunity requirements”

Significantly, this Act expressly applies this commitment to housing associations too:

“In providing housing accommodation and related services, registered social landlords must act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.”¹¹

Fourthly, equality commitments are embedded in strategic legislative provisions too - not solely in specialist equality legislation - as in the Local Government in Scotland Act 2003 that requires local authorities to take into account equality opportunity requirements when meeting statutory duties in respect of best value.¹²

Developments in equality law from 2000 to 2010

This section describes briefly key legal developments to illustrate how current law has evolved to become increasingly proactive. This is done by reference to the duties relating to disability, race and gender, as well as reference to other law. The rationale for introducing the Equality Act 2010 will then be noted before summarising its proactive nature by reference to new public duty.

Disability equality

Disability equality legislation was enhanced in 2005 to require public bodies, as explained in the Regulations to meet a “general duty,” as well as specific duties^{13 14} The “general duty” covers proactive elements such as promoting

¹¹ The Housing (Scotland) Act 2001, section 106, (1) and (2).

¹² Local Government in Scotland Act 2003, section 1.

¹³ The Disability Discrimination Act 2005 amended the primary legislation by inserting a new duty at section 49A. “Specific duties” include preparing and

equality of opportunity between disabled people and non-disabled people;

- positive attitudes towards disabled people; and
- encouraging participation by disabled persons in public life.

This duty is being replaced by the new public sector duty under the Equality Act 2010 that is effective from April 2011.

The “general duty” evolved from similar legislation that was first developed in the legal field of race equality (see below), although the new disability legislation included a wider set of provisions.

Race equality

Race equality legislation introduced proactive duties in respect of public authorities as a result of important legislative changes that took place in 2000.¹⁵

The “General Duty” requires local authorities, as public bodies, to eliminate unlawful discrimination on grounds of race, promote equality of opportunity and promote good relations between different racial groups. The amendments introduced in 2000 represent an interesting legal development by the state to address budding social tensions in the interests of ensuring

publishing a Disability Equality Scheme that includes methods to implement the “general duty”, as well as carrying out an impact assessment.

¹⁴ See the Disability Rights Commission (2006). The Regulations relating to the new duty under the Equality Act 2010 will be issued after April 2011; Regulations under this Act relating to equal pay, employment and services and public functions and associations are now published. (See Equality and Human Rights Commission (EHRC) [2011 a, b and c](#))

¹⁵ The Relations Amendment Act 2000, section 2, amended the primary legislation to include the new statutory general duty incumbent on specified bodies (Section 71B provided for a general statutory duty in respect of Scotland and Wales). “Specific duties” were also introduced and included preparing and publishing a Race Equality Scheme that includes methods to implement the “general duty” such as through monitoring and training, as well as carrying out an impact assessment.

stability within contemporary society through improved race relations (Harrison, 2005, page 82). The legislative reforms were, broadly speaking, a response to the Macpherson Report (1999) that focussed on the institutionalised discrimination within the police force against black and minority groups, or to cite Macpherson directly, institutional discrimination involving organisational failure to provide “an appropriate and professional service to people because of their colour, culture, or ethnic origin” (Macpherson, 1999, page 28). Indeed, it has been stated by the former Commission for Racial Equality (2000) that the positive duties were important to give statutory backing to enable institutionalised forms of racism to be addressed.

Disturbances involving black and minority ethnic groups throughout English cities in the 1990s also gave impetus to shifts in policy development. Assessing reasons why disturbances occurred is beyond the scope of this study, but indications are that they were fuelled by racism against the black and ethnic minority groups in question (Ray and Smith, 2002; Scarman, 1981). In response to the social unrest, the Cattle Report (2001) emphasised the importance of community cohesion and how national policies might be used to promote “shared values and a celebration of diversity” (Harrison, 2005, page 83). And further legislative race equality reforms took place in 2003 with the passing of secondary legislation, namely the Race Relations (Amendment) Regulations 2003. (See SI 2003/1626)

Sex equality

Sex equality legislation introduced proactive duties in respect of public authorities as a result of important legislative changes that became effective from April 2007.¹⁶

The “General Duty” requires local authorities - not simply to eliminate unlawful discrimination and harassment on grounds of sex - but to promote equality of opportunity between men and women.

Other legal changes

A number of other important legal changes have taken place since 2006 to address forms of discrimination that have tended to be neglected historically.

The Equality Act 2006, for example, makes it unlawful to discriminate on the grounds of religion or belief in providing goods, facilities and services¹⁷, while Regulations have been introduced that prohibit discrimination in service provision on grounds of sexual orientation.¹⁸

The Equality Act 2006 also created the new Equality and Human Rights Commission that is charged with the following duties:

- promoting understanding of the importance of equality and diversity;
- encouraging good practice in respect of equality;
- promoting equality of opportunity;
- promoting awareness of equality rights;
- enforcing equality law; and

¹⁶ The Equality Act 2006, section 84, amends the primary legislation by inserting a new section 76A into the Sex Discrimination Act 1975. “Specific duties” include preparing and publishing a Gender Equality Scheme that includes methods to implement the “general duty” such as through staff and service user consultation, monitoring and training, as well as carrying out an impact assessment.

¹⁷ The Equality Act 2006, section 44. Discrimination in employment on these grounds was prohibited by SI 2003/1660.

¹⁸ SSI No. 1263 The Equality Act (Sexual Orientation) Regulations 2007. SSI 2003/1661 prohibited discrimination in employment.

- working towards the elimination of unlawful discrimination and harassment.

This Commission replaced the former three separate Commissions, namely the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.

The Equality Act 2006 has also served to promote the rights of disabled people living in the private rented sector by giving them the legal right to apply to have adaptations carried out to create accessible homes.¹⁹ This right is similar to that enjoyed by Scottish secure tenants living in the public or social rented housing sector with the landlord able to refuse consent only if it is reasonable to do so.

Finally, it is emphasised that other law exists to address discrimination on equality grounds. For example, the Crime and Disorder Act 1998 created two new statutory offences in respect of racial aggravation and racially aggravated harassment²⁰; while the Mental Health (Care and Treatment) (Scotland) Act 2003 addresses issues concerning mental health (disability related matters), including appointments of mental health officers.²¹

The Equality Act 2010

The Act has two main purposes, firstly, to harmonise discrimination law by repealing most of the earlier law – including revoking Statutory Instruments –

¹⁹ The Equality Act 2006, section 52.

²⁰ See the Crime and Disorder Act 1998, section 33, that added a new offence of racially-aggravated harassment by inserting a new section 50A into the Criminal Law (Consolidation) (Scotland) Act 1995; and section 96 that created a new offence of racial aggravation.

²¹ See Chapter 2 of the Act that covers local authority functions. There is also much secondary legislation in the form of Statutory Instruments to implement specific legal provisions.

and, secondly, to strengthen the law to support progress on equality. The Act received Royal Assent on the 8th April 2010 with most of its provisions coming into effect on 1st October 2010 and the new public sector equality duty came into effect on 5 April 2011.²²

This duty applies to all listed public bodies and requires such bodies to

- eliminate conduct prohibited in law;
- promote equality of opportunity between people who share a protected characteristic and those who don't; and
- foster good relations between people who share a protected characteristic and those who don't.

Listed public bodies will be required to assess how their policies, procedures and services are likely to affect people with the protected characteristics; this is often referred to as “impact assessment,” an issue that is examined later. Bodies such as housing associations that carry out public functions such as allocation of housing will also be covered under the provisions of the Act relating to the public sector equality duty. This is very important as proactive duties covered above, such as the race equality duty, did not extend to cover housing associations, albeit that promoting race equality was expected of these bodies as part of the regulatory framework and duties to promote equality matters were also introduced through other law, for example, the Housing (Scotland) Act 2001, section 106.

The term “protected characteristic” replaces the word “ground” used in former equality law and the characteristics on which discrimination is prohibited are:

- age;
- disability;

²² The Equality Act 2010, section 149.

- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

A key theoretical point to emphasise, in passing, is that social landlords will – like local authorities before them – act as a major conduit to implement Government policy objectives. Their nature or essence is thus evolving in response to external influences. This point is elaborated in Chapter 5 when the nature of essentialism is analysed: nature may determine what a thing is but nature itself evolves in terms of its form.

The Housing (Scotland) Act 2010

The new Housing (Scotland) Act 2010, section 39, requires social landlords when performing housing services to act in a manner to encourage equal opportunities. This relates to promoting equality in respect of those grounds covered in the Scotland Act 1998, as well as equality legislation. This is critical as it not only requires social landlords to act proactively, but extends obligations to cover all housing services and not simply in respect of the functions contained in each individual Act.

Good practice guidance

Good practice on equality matters derives from various sources including:

- Codes of Practice;
- the Scottish Housing Regulator standards; and
- publications and research produced by Government and organisations active in the equality field.

Codes of Practice have developed within the main areas of disability, race and sex that cover both employment and services, although these have been

updated to reflect the issues covered by the Equality Act 2010. (See footnote 14). The DRC Statutory Code (2006), for instance, covered the duty to promote disability equality; while the DRC Statutory Code (2006A) related to the promotion of disability rights in service provision.²³ In the field of race equality, on the other hand, advice on how to promote race equality in housing was provided by the CRE (2006) Statutory Code of Practice.²⁴

The Codes, it is noted, are not mandatory but – akin to the Code of Guidance (2005) on homelessness - are admissible in court actions raised against public authorities. Actions involving discrimination on grounds of service provision are raised through the sheriff court; while employment related actions are raised through Employment Tribunals.

Finally, the Scottish Housing Regulator – formerly Communities Scotland – has issued equality standards to which housing associations are expected to conform. These standards take various forms, including challenge statements and a general standard that requires social landlords to:

“... embrace diversity, promote equal opportunities for all and eliminate unlawful discrimination in all areas of our work.”²⁵

An important method of assessing if equality commitments are implemented into practice is carried out through equality impact assessments and the Scottish Housing Regulator encourages social landlords to undertake these activities. This point is covered in more detail in 5.4.

²³ DRC (2006): The Duty to Promote Disability Equality: Statutory Code of Practice Scotland.

²⁴ CRE (2006): Statutory Code of Practice on Racial Equality in Housing.

²⁵ COSLA/Communities Scotland/ Scottish Federation of Housing Associations (2006), regulatory standard GS2.1, Performance Standards for social landlords and homelessness functions)

2.5. Summary

This Chapter has examined the Government policy framework to promote equality objectives, in particular through various legislative reforms. Legal developments in recent years have been shown to be proactive in nature, requiring public authorities to adopt a more regulatory and promotional approach to equality rights implementation. It has been suggested that the nature of the role of social landlords is thus linked inextricably to meeting law and good practice regulatory standards. The following Chapter will now consider the important question concerning the role of law in achieving effective transmission of equality policy objectives into practice.

Chapter 3: Law and the implementation of equality rights

“The substance of the law may change but it continues to play a key role in preserving dominant interests. We must conclude that within our society the law functions to protect and promote the interests of capital.”

“The rights of workers, tenants, or the unemployed must be seen in this context. They are not rights to challenge the real processes which rule their lives, but rather pressures to conform and wait for better times.”

(Both quotations are from: Community Development Project, 1977, page 52.)

Central to this Chapter will be an assessment of the law and the implementation of equality rights, an issue that forms a focal part of contemporary socio-legal debates. Lustgarten and Edwards (1992) have pointed out, for instance, that we are “at an hiatus” regarding (*legal*) reform, that law is not sufficient as a method for achieving broader equality objectives. Indeed, they show that law is only one intervention strategy to cure societal ills – and one of limited effectiveness. This section now addresses the effectiveness of law as a potential agent for achieving social reform. This is done by consideration of the following issues.

- law as instrument of social change; and
- the role of administrative agencies in effecting change.

This section will restrict the examination to how effectively the law promotes the rights of disabled people. The rationale for selecting this equality topic is twofold.

Firstly, there is a large number of disabled people in the United Kingdom and research suggests that disabled people experience diverse forms of social injustice (Oliver, 1996). (See Barnes and Mercer, 2004b, for a range of articles on disability related discrimination.) Secondly, this aspect of the research must be restricted in scope given (a) limited time and (b) the focal concerns of this study.

3.1. Law as an instrument of social change

Prima facie, the assertion by Lustgarten and Edwards (1992) is untenable as substantive law has now developed considerably to eliminate discrimination of disabled people; and, more importantly as shown in Chapter 2, to promote the individual rights of disabled people through enhanced legal duties. Thus,

there have been important legal developments since the largely ineffective earlier law.²⁶

As Oliver (1996, page 48) notes, in reference to disabled people and the former legal requirement for employers to provide them with a quota of jobs:

“Where they do have legal rights, as in the Disabled Persons (Employment) Act 1944, which was supposed to give disabled people access to job opportunities, these are not usually enforced. Hence, despite the fact that over 70 per cent of firms do not meet their legal obligations under this Act, there have been only ten prosecutions since 1944.”

And case law developments suggest that court decisions are becoming more positive from the perspective of individual rights. In *Cosgrove v Caesar & Howie* (2001 IRLR 653), for example, the Employment Appeals Tribunal decided that an employer has a duty to consider whether reasonable adjustments should be made even if there is no guarantee that they would have been effective. But the efficacy of law to implement rights effectively has been challenged at the theoretical level on a number of grounds. Lustgarten and Edwards (1992), for example, argue that law can only achieve limited gains in respect of equality rights implementation. The authors, it should be noted in passing, refer mainly to race equality issues, but the points they proffer apply equally to disability equality matters. Let us turn now to consider their position in depth.

²⁶ For many years the regulation of discrimination relied on a mixture of voluntary and self-regulatory measures; indeed, the key legislation prior to 1995 that dealt with employment of disabled people was the Disabled Persons (Employment) Act 1944, an Act that was largely repealed by the Disability Discrimination Act 1995 (Section 61) (DDA 1995). Other laws did, however, address disability matters such as the Chronically Sick and Disabled Persons Act 1970 that requires local authorities to improve services to disabled people; while the Education Act 1981 introduced the framework for integration into mainstream education for children with “special needs”.

Firstly, many of the disadvantages that disabled people experience are, in general, outwith the main focus of legislative reform. Disabled people are discriminated against because of **structural** elements inextricably linked to the capitalist economy. In the expanding capitalism of nineteenth century Britain, for instance, disabled people were regarded as being less productive in the industrial sphere and were, accordingly, rejected or given low status jobs (Oliver, 1996, page 132).²⁷

Law – and reinforcing the point made in the previous Chapter - deals with disputes between individuals, including disputes between organisations and their service users, one of whom has done something for which she/he is responsible. Law does not extend, though, to eradicating economic or social class inequalities that are fundamentally linked to the continuation of oppression against specific target groups such as disabled people.

Secondly, adjudication within the legislative process is based on common law principles that proceed by way of *individuation*. For instance, Lustgarten and Edwards (1992) emphasise the rule that judgements against another individual cannot be used as evidence against a defendant facing a virtually identical claim. Thus, individual persons affected by the same discrimination need to raise fresh actions individually. This is distinct from the legal process

²⁷ In the contemporary period, of course, having a pool of unemployed people and/or people willing to work for low wages is essential to provide a source of cheap labour (Marx, 1887, page 592; Wheen, 1999). Disabled people are often the means of providing such a source given their exclusion from the workplace and the negative stereotyping of disabled people. Courts do, of course, consider judicial precedents, legal principles established through previous case law. Of particular importance is the *ratio decidendi*, the reason for the previous judicial decision (Marshall, 1995, par 3-37).

in the United States where all individuals affected by discrimination may raise action and sue for damages. This is known as a class action. In short: judgements against one individual can act as a judgement that will be applicable to all individuals affected by *that type of discrimination*.

Thirdly, current law on discrimination is complex with various forms of disability discrimination.²⁸ Further, the legal definition of disability is based on the medical model of disability that ignores the myriad forms of institutionalised discrimination that disabled people experience. The current legal definition is limited in scope and this may militate against effective implementation of individual rights. For example, it has been noted that, although it helped over three thousand people to obtain social justice, the DRC was unable to deal with over two thousand cases involving disabled people because they are not covered by the medical definition of disability enshrined in law. In particular, people with hereditary conditions are excluded until the symptoms develop that make it difficult to carry out daily activities. Of major concern, too, is the fact that the most common reason for rejecting a claim by tribunals is that the individual applicant is not a disabled person.

(This information derives from the former Disability Rights Commission website that is now part of the Equality and Human Rights Commission). Fourthly, Lustgarten and Edwards (1992) note that courts in the United States, unlike their British counterparts, promote affirmative action

²⁸ See the Equality Act 2010 that defines the various forms of discrimination such as direct discrimination (section 13), indirect discrimination (section 19), discrimination arising from disability (section 15), and other prohibited conduct such as harassment and victimisation (sections 26 and 27 respectively).

programmes. In the British context, however, courts (including tribunals) play a more passive role, leaving the development of disability equality policy largely to the Government agency, the Equality and Human Rights Commission, as well as public authorities that are responsible for developing equality of opportunity between disabled people and non-disabled people.

With regard to the role of tribunals that “constitute a substantial part of the justice system”, the Leggatt Report (2001) has found that tribunals are often under-resourced and inefficient, not to mention daunting to putative users. Also disturbing is the fact that relatively few cases have been pursued through the courts for discrimination despite data confirming the widespread discrimination against disabled people. Reasons for this stem from costs and disinclination on the part of individuals affected because of the complexity and length of court proceedings

Finally, Lustgarten and Edwards (1992) emphasise that Government has tended to enact law that confers individual rights with limited negative requirements on private employers. Indeed, they suggest that statutory enactments may be intended simply as a means of being viewed as doing something “highly visible,” as opposed to seeking to attain long-term strategic goals that have major economic consequences for the British capitalist economy. For example, state spending on employment initiatives that would address unemployment among disadvantaged groups such as disabled people is limited.

The authors' view has been given support, too, from other theoreticians. Zarb (2004) argues, for example, that merely giving disabled people legal rights faces similar drawbacks associated with citizenship rights. Firstly, disabled people often lack resources to ensure that legal rights are implemented effectively. This may be buttressed by the process of institutionalisation that many disabled people experience "that may effectively disenfranchise whole groups of disabled people" in practice (Zarb, 2004, page 203).

Secondly, a legalistic approach does not address the structural barriers that are the cause of social injustice; this is exacerbated by the fact that current law does not reflect the ethos of the social model of disability that seeks to understand and remove the roots of social oppression.

As Zarb (2004, page 203) adds, it is debatable in any case whether solutions based on individualised rights are compatible with the social model of disability since law – and civil rights strategies – in general focus on "compensating people for the various forms of disadvantage and exclusion they face, rather than structural change aimed at removing the causes of exclusion."

Alcock (1997) points out that many disabled people are excluded from full-time employment. Even when in employment, though, "disabled people are more likely to be in low-paid, low-status employment, for example, 31 per cent are in manual employment compared with 21 per cent of non-disabled workers" (Alcock, 1997, page 184). Exclusion from employment, and subordinated inclusion in employment in low paid or part-time work

(Roulstone, 2004) also serves to exclude disabled people from other employment advantages such as access to pensions and participation in the state insurance scheme.

Many disabled people must, therefore, rely on welfare benefits for subsistence. Yet, as Alcock emphasises, despite a number of new social security benefits for disabled people, benefits have not been sufficient to prevent many disabled people from experiencing poverty. (See Alcock, 2008, for a detailed assessment of broader social policy issues.)

And Barnes (1991, page 122) stresses how claiming benefits is both stigmatising and degrading, how the benefit system forces disabled people to:

“elicit the aid of professionals in order to help them emphasise their individual impairment and beg for the allowances to which they are entitled.”

Finally, there has been critique of the intentions that underpin legislative reform in the disability rights field. Baker et al (2004, page 120) stress, for example, that law is guided by a set of internal protocols, assumptions and self-sustaining values that tend to obscure its complicity in sustaining relations of domination and oppression.” And, referring to Gooding (1996, page 2) regarding the DDA 1995 to exemplify this point :

”The truth is that the Conservative Government produced the DDA purely as a response to political pressure, with the goal of heading off a more radical challenge in the shape of a private Member’s Bill.”

To sum up: what, then, can we make of the above argument that the law fails to address discrimination against disabled people? Undoubtedly, recent legal developments in substantive law are intended to promote the rights of disabled people. But Lustgarten and Edwards’ argument that law by itself

does not address the myriad forms of oppression experienced by disabled people appears to be justified by reference to other studies and statistical data. Before moving to highlight the role of administrative agencies in promoting the law, it is important to mention the role of individuals in exercising their rights. Cotterell (1992, page 248) has suggested, for example, that effective enforcement of law by state agencies is heavily dependent on citizens' "willingness to invoke law." But for individuals to invoke their legal rights, they require the means and personal confidence to exercise their rights, attributes that are commonly lacking among many disabled people who are often living in relative poverty as a result of institutionalised barriers to employment that they experience. In the words of the former Disability Rights Commission (2006a, page 2)²⁹:

"At present disabled people do not have the same opportunities or choices as non-disabled people. Nor do they enjoy equal respect of full inclusion in society on an equal basis. The poverty, disadvantage and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal and environmental barriers. This is known as the 'social model of disability'."

So what, then, is the link between poverty and rights take-up by individuals? As noted in the studies above, lack of income may act as a disincentive for people to exercise their legal rights, the possibility of access to legal aid notwithstanding. But poverty has more insidious effects. To quote Johnson (1999, page 44):

²⁹ See Disability Rights Commission (2005) for an interesting summary of facts concerning disabled people in Scotland. **From a Scottish population of around five million people, it is estimated that over nine hundred thousand of these people are disabled people, that is, almost twenty per cent of the overall population.**

“Being poor means a struggle to get by that must dominate every waking hour.”

Or, as Hurry’s (1921) biblical reference states it succinctly: “The destruction of the poor is their poverty” (Proverbs x, 15).

Personal confidence to exercise legal rights is a topic that is worthy of more detailed research, research that is beyond the scope of this study. But it is important at this stage to highlight the theoretical concept of “collusion in oppression,” a process in which people internalise the ideologies of the dominant societal groups resulting in their continuing oppression. One example is the use of religion in Africa to dominate local cultures (Rodney, 1982); while Oliver (1996, page 12) sums up this approach succinctly when he writes of how disabled people may collude in their negative treatment:

“Precisely because disability in all parts of the world is an isolating experience, most disabled people only experience their disabilities in individual terms. Thus, they may internalise the ideology of personal tragedy, their problems as their own fault.”

At this point, it should also be noted how language is used to reinforce dominant ideologies or perceptions of particular groups. Terms such as “the disabled,” “handicap” and “special needs” serve, for example, to stigmatise disabled people negatively, to create enduring stereotypes that mould general perceptions of disability as a medical condition, that disabled people are separate from “able bodied” people. Language is used to reflect an institutionalised and medical model perception of disability (the model of the dominant health professionals) that serves, in effect, to keep disabled people dependent and to dichotomise disabled people from others (Carson, 1999).

Finally, Banton (1994) argues cogently that legal standards are unlikely to be implemented effectively unless:

- legal standards are clear;
- there is a vigorous enforcement programme;
- the results are objectively measurable; and
- there is lively and organised concern.

Banton (1994, page 65) then asserts that: “In no country are all these conditions satisfied.” This point is confirmed in part by the DRC (2004, page 1) comment to the effect that:

“Many people are still not aware that they have many new rights. And employers and service providers are often unsure how to implement “best practice” to make it easier for disabled people to use their services to gain employment.”

3.2. Role of administrative agencies to effect change

The previous examination has suggested that law – although an important element in addressing discrimination – is unlikely by itself to eliminate social injustice. This follows since law does not seek to change the existing economic system and the social relations that derive from this system. In a nutshell: law is often reformist, a means to preserve and consolidate existing social relations.

This section now outlines some key points regarding the role of administrative agencies to effect change in the social rented sector. This summary will be brief as a detailed analysis of organisational elements that are critical to effective rights implementation is given in Chapter 5. Social landlords, as we have shown, have various legal duties to eliminate unlawful forms of discrimination, as well as positive duties to promote equality. These duties have varied, historically, according to whether landlords are local authorities

or housing associations, although social landlords are increasingly becoming regulated in law.³⁰ Legal developments have, therefore, placed the onus of promoting equality matters onto public bodies such as social rented sector landlords. It is noted in passing, though, that law is not always enforced rigorously; regulatory bodies – and individuals (through court actions) – may be required, therefore, to use their legal powers to make public sector bodies comply with their legal duties. One historical instance of this was the Disabled Persons (Employment) Act 1944 that required employers with more than twenty employees to fill at least three per cent of jobs with disabled people who were registered. As Banton (1994, page 51) notes, though, “Many employers fail(ed) to meet their quota and have to seek exemption.” Further, as Barnes and Mercer (2010, page 115) highlight: “...there were only ten prosecutions of employers, with the last case in 1975, while the maximum fine set at £100 in 1944 was never increased.”

Social landlords will, in consequence of these legal duties, need to develop holistic equality strategies to ensure that their policies and practices incorporate the legal duties, as well as the more detailed regulatory standards published by the Scottish Housing Regulator and the Equality and Human Rights Commission.

A major part of the empirical research of this study involves an assessment of whether housing associations in Glasgow take account of the range of

³⁰ This was discussed above. As stressed, the new Equality Act 2010, s149(2), is extending the public sector equality duty so that non-public authorities that carry out public functions must have regard to this duty.

organisational factors that are critical to ensure effective implementation of equality rights into practice. In order to fulfil this objective, it is critical to ensure that the methodology used to evaluate organisational practice is based on a sound theoretical footing. The method proposed will derive from an admixture of systems theory and essentialism, concepts that are explained in Chapter 5. Essentialism, it is stressed, is not used in the sense of the term as coined by Thompson (2003, page 28), namely as “an ideological legitimisation for inequality.” In Thompson’s usage, essentialism refers to the perspective that links behaviour to fixed natures such as “women being viewed as the weaker sex” or “black people are seen as intellectually inferior” (page 28). Essentialism in this study will derive from modern science and one philosophical strand of Aristotelianism.

3.3. Summary

The law as a method of ensuring the equality rights of individuals is – to use a well-known philosophical distinction – necessary but not sufficient. Recent legal changes have altered the role of social landlords to become, in effect, change agents in the sphere of disability rights, indeed equality rights as per the Equality Act 2010. The “hiatus” in legal reform noted by Lustgarten and Edwards has, it is suggested, been closed in important respects given the various equality duties that now proliferate in the housing field. But the law does not address many of the institutionalised patterns of discrimination that exist, indeed the law does not require “restructuring to prevent such patterns arising time and again” (Baker et al, 2004, page 129). Various studies have shown that social injustice is immanent throughout societal structures,

accompanied generally by a lack of understanding of the reasons for that injustice. There is, then, indeed an “hiatus”, but it is not simply a question of law. There is a need to develop social consciousness of the nature of social injustice. Understanding the nature of social injustice is, thus, the main task of Chapter 4. This will, in turn, and a point noted in Chapter 2, allow us to identify what forms of discrimination fall within the province of social landlord activities.

Chapter 4: The nature of discrimination in society

“It was a mis-education full of gaps and misleading pictures: it sought thereby to indoctrinate me with the colonizers’ ideology; it sought to structure my eyes to see the world in the imperialist way of seeing the world; it sought to internalize in my consciousness the values of the colonizers; it sought to train me to automatically uphold and habitually employ the colonizers’ viewpoint in all matters, in the strange belief that their racist, imperialist, anti-African interest is the universal, humanist interest and in the strange belief that the view defined by their ruthless greed is the rational, civilised view”

(Chinweizu, 1987, page 12).

“...the most important conclusion was that even if employers are discriminating against women or blacks – even if what they are doing is rightly discriminatory – it is still not necessarily wrong”

(Cavanagh, 2002, page 208).

“Occasionally, it is mistakenly held that Europeans enslaved Africans for racist reasons. European planters and miners enslaved Africans for economic reasons, so that their labour-power could be exploited”

(Rodney, 1982, page 88).

4.1.Introduction

This Chapter provides a theoretical assessment of the nature (or types) of discrimination in society. This involves consideration of two relevant conceptual frameworks called SCIP and ESIP respectively that can be used to distinguish aspects of discrimination. SCIP is an acronym that refers to structural, cultural, institutional and personal forms of discrimination (see 4.2. below).The ESIP framework has been developed as an alternative by the author and refers to another method of categorising aspects of discrimination by reference to economic, super-structural, institutional and personal elements.

This is then followed by an assessment of how the framework selected can be applied to enhance our theoretical understanding of the nature of discrimination. This is critical for understanding what role organisations might play in addressing social injustice. The main equality issues selected for this assessment are disability, race and sexual orientation. It is necessary to focus on specific issues given time limitations and the main focus of this research. The rationale for selecting these themes is twofold: firstly, disability and racial discrimination represent two of the major forms of discrimination historically. Secondly, there is evidence of increasing discrimination on grounds of sexual orientation and this topic should receive more prominence on the equality agenda given a dearth of coverage historically. (See LGBT, 2007; and the Stonewall (Scotland) website for information on this matter as well as the “hate crime law,” namely the Offences (Aggravation by Prejudice) (Scotland) Act 2009.)

It is essential to note, too, the important theoretical point that discrimination can be defined to include positive discrimination, a form that is not the focus of this study as it is generally unlawful under British law. For example, Ticktin (1991, page 21) - in the context of assessing discrimination in South Africa – analyses how discrimination can be defined as “embracing the forms of legal and customary protection of one ethnic group from socio-economic competition with another.” This is a specific form of positive discrimination that the state applies to control the working class through dividing it on racial grounds. Racism, the view that certain races are naturally inferior, according to Ticktin, precedes discrimination and serves as an ideological tool for

exploitation, a point alluded to in the quotation that precedes this Chapter. This section of the thesis focuses, instead, on a wider range of discriminatory techniques – often more subtle - that are applied to disadvantage certain groups.

4.2. Frameworks of discrimination

The first framework that is considered is SCIP that – as noted above - is an acronym for understanding the nature of discrimination in society by reference to structural, cultural, institutional and personal factors. These factors are first described before an alternative theoretical model is proposed for adoption following a critique of the SCIP approach. The SCIP approach forms an important part of social justice educational courses; see Hardiman and Jackson, 2007, and Strathclyde University, 2004, for further information on elements of this framework, the latter using information adapted from Hardimann and Jackson, 1997. Thompson, 2003, also uses the elements of PCS in his theoretical analysis of the nature of discrimination that is used to inform social work practices in addressing inequality. The structural elements are described, in SCIP, as the legal, political and physical structures of society. This would include discriminatory barriers such as law restricting immigration of black people to Britain (race), or inaccessible buildings and infrastructure (disabled people) or, for example, a dearth of accessible parking spaces to be addressed legally in Scotland through the enactment of the Disabled Persons' Parking Places (Scotland) Act 2009.

Cultural elements include things such as negative stereotyping of certain groups such as the sexual prowess of black men (race), humour that is

reflected in offensive jokes (gay people) and “science” used to justify unequal treatment of black people (race).

Institutional elements relate to policies and practices of institutions and organisations throughout Britain whose organisational functions often discriminate indirectly due to the rigidity of organisational rules and failure (by organisations) to monitor the effects of policies in practice, in particular how practices impact on specific people, for instance, disabled people. This includes the important theoretical concept of structured omission, a process whereby failure to examine issues that are relevant to social justice serves to promote ignorance of those issues and consequent non-action to address relevant concerns. The use of language as part of this process of concealment was already discussed in a previous Chapter, for example, the replacement of categories such as social class by concepts such as “communities” and “citizenship” that serve to conceal existing social class relations.³¹ Personal elements comprise individual acts of discrimination, harassment and ridicule. Examples of this would include harassment on grounds of disability, race, or sexual orientation.

The SCIP framework is, undoubtedly, important for categorising the diverse ways in which social injustice may arise. The authors, it is emphasised, also note that the elements may inter-relate among the categories and that the

³¹ At the theoretical level, clarity of language is also essential as language is necessary to understand reality. Reification of language can lead, in turn, to the obfuscation of reality, to the creation of non-existent entities. Thus, in Plato’s philosophical quest to understand universals, the non-existent Forms were postulated to explain reality, a position that led to an untenable “Weltanschauung.” Plato, in his later Dialogues came, of course, to criticise this position (See Gosling, 1975, for a commentary on the *Philebus*, 1975).

categories “are not intended to be theoretically watertight and mutually exclusive” (University of Strathclyde, 2004, page 15).

But it is important to note potential concerns with the categorisation process that is inherent in SCIP from a theoretical perspective. This is critical as categorisation of elements affects our understanding of reality, and in the context of this study, an understanding of the nature of discrimination. So what are these concerns? Firstly, although the SCIP framework refers to structure and to class, it is insufficiently clear on the fundamental role played by economics in generating forms of social injustice. Economics and the social class relations that derive from the specific economic system in question should, in the author’s view, be categorised as a separate category as economic systems are conditioned historically and are critical in the development of specific social class relations. For example, the wage labour system characteristic within contemporary capitalism, as distinct from the earlier historical form of feudalism based on service provision by the serf to their feudal lords (Marx, 1887; pages 667 - 670). And, with reference to Ticktin (1991), economic exploitation lies at the heart of discriminatory practices in South Africa.

Social class, it is emphasised, should also be afforded a central role in the examination of social injustice as class oppression is key to understanding social injustice in general. As Gilroy (2002, page 1) notes, citing James:

“The race question is subsidiary to the class question in politics, and to think of imperialism in terms of race is disastrous.”

Secondly, although the SCIP framework includes law, politics and physical factors under the structure elements and such forms are indeed inextricably

linked to specific economic systems, for instance, the systemic links between property law and economic relations based on capital, it is proposed to replace this category by the category “super-structure.” (See Wightman, 2010, for example, who elucidates how elite groups used their power to develop laws that secured their landed interests.) The rationale for this replacement is as follows.

Superstructure – a concept that falls within Marxist social science – recognises that economic and productive relations constitute the “real foundation” from which derive a legal and political superstructure (Marx, 1859; pages 354 - 356).

Super-structural ideological elements such as law should not, therefore, be conflated with the primary economic category, albeit they are systemically linked.

Nor should this relationship be viewed simply “as an epiphenomenon of the economic structure” (Sumner, 1979, page 295). Three key points are noted here by way of clarification. The first point is that ideologies may themselves shift as the economic system develops or as social tensions evolve. Thus, as we saw in the case of the Addison Act, the “law is an instrument of class control, but it must also to some degree be concerned with public safety” (Parenti, 1993, page 228).

The second point is that the superstructure can, and does, influence economic development; in short, ideology is itself a motivating force of

historical change (Marx, 1852, page 315). To cite Yeboah (1997, page 50) in support of this contention::

“... the introduction of a new religion into a society will lead to changes in the values underlying the institution of marriage as well as changes in the ritual practices of marriage.”

While, as Sumner (1979, page 295) expatiates:

“The whole range of ideologies is now important to the movement of capital because of the ideological fragmentation produced by the economic, political and cultural changes of the last one hundred years.”

The third point concerns the meaning of the term “ideology”. Eagleton (1991, page 1) has asserted that there is “no single adequate definition of ideology.”

Ideology has been trumpeted as illusion (of ideas) and distortion of reality, but also as a fundamental method of exercising social control by the dominant social groups. For Yeboah (1997), it is this latter sense of ideology that is applicable to understanding reality, namely that ideology is rooted in social practice and is used as a means to justify social practices. Dominant classes, according to Yeboah, are able to exercise control over sub-ordinate groups or classes due mainly to their control and influence of institutions such as education, law enforcement and the media. The latter is particular relevant as a method of control, or to use Chomsky’s phrase, for “manufacturing consent,” often achieved through historical engineering (Chomsky, 2002, page 49; see also Chomsky, 1989 and Chomsky and Herman, 1994).

Examples of such engineering - in addition to the media - is the expurgation from historical texts of the profound role played by African societies in

determining Western philosophical values and beliefs (James, 2001) and the suppression of historical facts such as the arrival of Africans in America long before Columbus (Sertima, 2003).

The SCIP framework specifies cultural aspects as its second limb and there is useful reference to specific elements such as assumptions, language use, music, religion and stereotyping. SCIP suggests that cultural aspects denote:

“shared dominant assumptions about ‘normality’ and commonly available ideas which, in the main, remain unquestioned: these aspects are often characterised as ‘common-sense.’” (Strathclyde University, 2004, page 13)

Prima facie, it appears to be prudent to establish this as a separate category.

But further examination of the term “culture” sheds doubt on this approach.

The word “culture” itself derives etymologically from the Latin ‘cultura,’ a term that meant cultivation. Yet the term “culture” has now developed three different meanings, all of which co-exist in contemporary debates. Culture as developed by Herder, the German philosopher, connotes the life-blood of a nation, its common practices and belief systems, while culture – following Humboldt (another German) – meant cultivation in the academic sense, a question of cultivated learning (Scruton, 2000). And the historical debates about culture have now spawned a new concept of “popular culture”, namely the culture of the common people “through which they affirmed their solidarity in the face of oppression and through which they expressed their social identity and their sense of belonging” (Scruton, 2000, Page 3).

In contemporary society, then, culture is used to refer to societal customs and practices, in particular values that are transmitted through generations by institutions such as churches, schools and Universities. At the organisational

level, on the other hand, the term “culture” is, arguably, rather vague. Mullins (1996, page 711) has defined culture to mean simply “how things are done around here” while typologies have been developed by other theorists such as Handy (1993) who distinguished four types of organisational culture, namely role, task, power and person cultures. These approaches, it has been suggested by Linstead et al (2004, page 104), are “...necessarily crude and general, but may nevertheless have value in broadly characterising organisations.”

Taking the theme of cultural perspectives further, Martin (2006) points out that two management approaches are currently in vogue, namely convergence and divergence theories of culture. The former holds that globalisation has led to a rapprochement of organisational cultures, that “organisations around the world embrace many of the same values, attitudes and behaviours” (Martin, 2006, page 163). Divergence theorists, on the other hand, suggest that “differences between national cultures and institutions have remained relatively marked and consistent over time” (Martin, 2006, page 165).

Management studies indicate, then, a dearth of agreement concerning how culture should be defined other than a broad consensus that culture concerns value systems and assumptions about such systems. The question that is raised at this stage then is as follows: is it logically necessary to postulate a separate category to denote cultural aspects? It seems reasonable to assert, for example, that cultural aspects can be subsumed into the superstructure category that embraces – under the ESIP framework – ideology and belief systems, including values. Further, culture is shaped in essential ways – as

with legal systems – by the prevailing economic systems that exist. This approach has also the academic virtue of parsimony and recognises that culture is not a “thing” as such, but a term used to describe beliefs and values associated with custom and practice. These values, it is stressed, are incorporated into the various ideologies promoted within society, including religious beliefs that form a major part of the cultural heritage. This also avoids the potential dilemma of considering culture as a thing, the trap examined above of treating linguistic concepts as things with independent existence.³²

Institutionalised discrimination is the third category within the SCIP framework. Institutional discrimination is a term coined by MacPherson (1999), a term possessing a number of key characteristics that include: establishing standard organisational policies and practices that appear fair but have the effect of discriminating on particular grounds; fostering particular ideologies that serve to underpin social injustice and oppressive practices; exploiting particular groups in the interests of the dominant class that, generally, controls the social institutions; and marginalising of particular groups through lack of access to education. Examples of institutional discrimination will be provided in the section following.

It is proposed to retain this category within ESIP for two reasons. Firstly, institutional discrimination is an important concept that provides scope for

³² This approach also has the added value of meeting the principle known as Ockham’s razor, that one should “choose the simplest hypothesis that will fit the facts” (Lacey, 1976, page 147).

identifying a diverse range of discriminatory practices inherent in organisations that would otherwise go undetected. Secondly, institutional discrimination is especially relevant to this study as it focuses on organisational policies and practices of Glasgow Housing Associations. The latter are, in effect, **institutions** of social landlordism.

The final category of the SCIP framework covers personal forms of social injustice that comprise things such as harassment and inappropriate humour often using offensive terminology. As with the institutional discrimination category, it is proposed to retain this category as it relates to personal experiences of individuals in relation to social oppression. This category encapsulates the facets concerning the effects of discrimination rather than the causes of discrimination, the latter being explained by reference to the three preceding categories. For this reason, it seems reasonable to retain it as a separate category.

Summary

Having assessed the SCIP conceptual framework theoretically, a new framework will be used to evaluate discrimination; this is ESIP. (See 4.2. below) As explained above, discrimination will be assessed using this framework on grounds of disability, race and sexual orientation given their standing within the equality framework historically.

It should be noted that the issues for assessment are thus broader in scope than Chapter 2 that focussed, instead, on legal developments relating to

disability, race and sex, the three areas in respect of which statutory duties developed to eliminate discrimination and to promote equality.

4.2. Applying ESIP to illustrate how social injustice operates

This section seeks to illustrate how ESIP can be applied to enhance our theoretical understanding of the nature of discrimination. This sets the context, too, for explaining what role housing organisations might play in addressing social injustice, what issues are of most relevance to them. The examination will now proceed using the four key headings of the ESIP framework, namely economic, superstructure, institutional and personal. Examples in respect of disability, race and sexual orientation are given for each of the categories to illustrate the variation and complexity of discrimination.

Economic barriers to social justice

Concepts of rights and entitlement are irrelevant if there is a lack of power to make them effective. This cogent point made by Kennedy (2004, page 232) is reinforced by her assertion to the effect that: rights “...cannot be seen in isolation from the economic system in which they operate.” The point made by Kennedy indicates that social class and economic clout to exercise rights effectively is a critical part of the social justice agenda; this supplements points noted in Chapter 3 regarding the impact of poverty on effective rights implementation. And economic issues do appear to be a barrier to social

justice in respect of the three equality issues under review. Let us address each of these in turn.

Disability equality

Burchardt (2000) has pointed out that employment rates for disabled people have risen since 1997 faster than for the non-disabled population; this applies to both men and women. Yet disabled people experience higher levels of unemployment than non-disabled people, indeed almost double the unemployment rate that applies to non-disabled people (Roulstone, 2004). There is also strong evidence that disabled people earn less than non-disabled people in respect of the same types of work (Roulstone, 2004). And there are many disabled people who experience considerable difficulty obtaining appropriate paid work due to work related barriers. Barriers to work include things such as inaccessible workplaces, transport facilities, as well as “discriminatory attitudes and practices by employers and discrimination from other employees” (Barnes and Mercer, 2004a, page 10).

With reference to the employment of disabled people in the housing association sector in Scotland, there appears to be a relative lack of disabled employees compared to non-disabled employees (Table 1). The data shown in Table 1 derive from information that is provided voluntarily by disabled employees to their social landlord employers; these data are then supplied, in turn, to the Scottish Housing Regulator for monitoring purposes. These data must be treated with caution, though, and may not wholly reflect the true numbers of disabled employees. Disabled people may be unwilling to disclose that they are disabled people, for example, as such disclosures

could be detrimental – actual or perceived – to their employment opportunities and/or prospects. Although this is an issue that requires more detailed examination, studies indicate that there is “a much higher rejection rate for disabled as compared with non-disabled applicants” (Barnes and Mercer, 2010).

Table 1: Disabled people working in housing associations in Scotland

Area	HAs	Staff	Staff who are disabled people	Percentage
Argyll and Clydeside	23	456	6	1.3
Glasgow	59	5256	46	0.8
Grampian	9	372	2	0.5
Highlands and Islands	11	138	3	2.1
Lothian, Borders and Fife	40	5309	72	1.3
South West Scotland	21	716	8	1.1
Tayside	10	489	5	1.0
Total	173	12736	144	1.09

(Source: Collated and categorised by the author from Communities Scotland Internal Records, 2007)

In interpreting the above table – bearing in mind the note above - the following points are made. Firstly, the statistics suggest that a very small percentage of staff employed by associations comprises disabled people. This percentage does not reflect national proportions within the population in which it is estimated that almost twenty per cent of Scottish people are disabled people. This includes people with physical and mental health impairments. This issue requires more detailed assessment to identify why disabled people are not employed in greater numbers within housing.

Secondly, the above table does not tell us at what grades disabled people are employed, nor whether employment is full-time, part-time or temporary. This type of information is essential if a more meaningful picture of employment patterns is to be obtained. For example, if disabled people are appointed mainly in administrative or clerical posts, this might entail little more than tokenism on the part of the employing agency (see page 53). It is not just finding employment for disabled people that is important; it is essential that disabled people obtain meaningful and stimulating work.

Thirdly, the associations covered represent mainstream housing associations throughout Scotland, but not all housing associations, for example, Abbeyfield Society is excluded.

Finally, associations are categorised in line with Communities Scotland groups (now the Scottish Housing Regulator), although some associations operate in a number of geographical areas. No association, though, is counted in more than one area.

Access to housing is another example of an economic barrier that disabled people experience. Boyes (2005, page 27) has shown, for instance, that access to appropriate housing for disabled people is a major barrier due to “shortages of housing of the right type; or size, suitable for adaptation or in the right location.”

David Orr, the former Director of the Scottish Federation of Housing Associations, has noted that the “lack of accessible housing for disabled people in Scotland is nation-wide and covers the entire housing sector” (SFHA newsletter 2005, Housing Scotland, page 7). Indeed, Orr writes that only around one per cent of homes meet the lowest level of barrier-free housing standard; and that “what is accessible (to disabled people) is a drop in the ocean compared with what is required” (Page 7). Poor housing conditions are experienced by disabled people in England, too, with disabled people more likely to be concentrated in homes that do not meet the Decent Homes Standard (Sharp, 2005).

Race equality

Various studies indicate that people from black and minority ethnic groups experience discrimination and disadvantage at the economic level. This occurs despite the legal framework that is intended – as we saw in Chapter 2 – not simply to eliminate discrimination but also to promote race equality.

Morris and Winn (1990, page 93), in the early 1990s, note that:

“It is difficult to establish the precise extent of racial discrimination in employment but there is ample evidence to suggest that both direct and indirect discrimination continue to be of importance in modern British society.”

This concern has been voiced by more recent studies too. Harrison (2005, page 67), for instance, refers to the fact that black and minority ethnic communities “face considerable socio-economic disadvantage and occupy poor housing.”

Critically, black and minority groups are concentrated disproportionately in areas that experience socio-economic deprivation and poor job opportunities (Harrison, 2005). It is emphasised in passing, though, that terms such as “black and minority ethnic communities” can be misleading from an analytic perspective as the term masks social class differences among households, as well as geographical variations. And it also masks important differences in poverty rates among different ethnic groups. Platt (2007) has shown, for example, that poverty rates vary dependent on ethnic group and are highest for Bangladeshis, Pakistanis and Black Africans, although also above average for Caribbean, Indian and Chinese people. Muslims too face higher poverty risks than other religious groups. Critically, the study identifies the need to improve employment policies and maximise income take up, for example, rights to benefits.

Sexual orientation equality

Discrimination against people on grounds of sexuality in the Western world is rooted in the development and expansion of Christianity as an institutionalised ideology. As Tannahill (1981, page 147) states:

“From the sixth until the early eleventh century, homosexuals were in fact treated no more harshly than couples who practiced conception. But then the climate began to change. The imposition of clerical celibacy may have increased fears that homosexuality would increase among the clergy, who would contaminate the laity”

There is also evidence of disadvantage in the economic sphere, too, by reference to discriminatory practices that lesbian, gay, bi-sexual and transgender people experience (LGBT). The LGBT Hearts and Minds Agenda Group (2008, page 25) has reported, for example, that "... one in three LGB staff conceals their sexual orientation at work, even though "out" employees "in safe environments earn 50% more than their closeted peers." Reasons suggested for this are that "outed" gay employees are more comfortable and secure in their workplace and also more productive (Snyder, 2003; Guasp and Balfour, 2008).

Discrimination in the workplace is also rife, as well as harassment. And this occurs despite law that now regulates such practices in the workplace (LGBT Hearts and Minds Agenda Group, 2008).³³

Superstructure barriers to social justice

Superstructure, as examined above, includes ideological elements such as beliefs, law and value systems; this incorporates, under the ESIP framework, cultural factors too. Studies indicate that social injustice operates in a variety of ways through beliefs concerning disabled people, black and minority ethnic groups and LGBT people. This section now examines examples of these forms of social injustice.

³³ Employees were protected from discrimination and harassment in the workplace by SI 2003/1661 The Employment Equality (Sexual Orientation) Regulations 2003. These Regulations are now revoked and protection on these characteristics is afforded by the Equality Act 2010. Before this law, discrimination on grounds of sexual orientation was not covered under the Sex Discrimination Act 1975. See *Pearce v Governing Body of Mayfield School* (2000) IRLR 548, The Court of Appeal. In this case, homophobic abuse by pupils against a lesbian teacher was deemed not to constitute unlawful sexual discrimination.

Disability equality

As noted in Chapter 3, the dominant ideological model within contemporary British society is the medical model of disability. This serves to camouflage the range of societal factors that disable people. Critical to the medical model is the concept of integration rather than inclusion. Integration is a process that assimilates disabled people into existing societal structures and the belief systems that uphold these structures; integration is based on the perception that people who are different need to be tolerated. The ideology underpinning this approach derives from personal tragedy theory, the view that personal problems are a question of chance and that "...these poor people should not be made to suffer further through rejection and stigmatisation; hence they should be accepted and tolerated" (Oliver, 1996, page 89).

Inclusion, on the other hand, involves participation by all people, including disabled people, in the decision-making processes that affect their lives.

In Chapter 3, for example, we saw that equality law now requires public authorities to involve disabled people in decision-making. This position does, *prima facie*, appear favourable. But this duty will remain tokenistic in nature unless ideologies associated with medical model and personal tragedy perspectives are addressed. We saw, for instance, how few disabled people are employed in housing organisations, an indication that barriers to their employment may be institutionalised. For the moment, it is emphasised that statistics by themselves are not conclusive proof of discrimination; they simply provide insight into issues that require detailed examination. This is an issue that will be examined in Chapters 6 and 7.

But unless ideological perceptions of disabled people are challenged – and overturned – disabilism will remain prominent. Examples of ideological forms of disabilism are many and the following examples are selected to show how they derive from a range of sources, moving forward in time to illustrate how they have been embedded within society in general

The bible that is extremely influential in Western society integrates many negative references to disabled people and disability is often considered as a punishment from the putative deity. This ideology creates negative – and false - perceptions of disabled people that clearly are not aligned to the legal duty to promote positive attitudes to disabled people as explained in Chapter 3. In medieval times, a sign that someone was a witch was whether or not she was a disabled person (or had given birth to a disabled child); this led to the death of substantial numbers of women. This is a good example of how people may face oppression on more than one ground, in this case disability and sex.

Winston Churchill, MP, supported the British Eugenics Society, the science of using controlled breeding to ensure the occurrence of desirable characteristics in progeny. In his letter to Asquith, Churchill stated:

“The unnatural and increasingly rapid growth of the feeble-minded classes, coupled as it is with a steady restriction among all the thrifty, energetic and superior stocks, constitutes a national and race danger which it is impossible to exaggerate. I am convinced that the multiplication of the Feeble-Minded, which is proceeding now at an artificial rate, unchecked by any of the old restraints of nature, and actually fostered by civilised conditions, is a terrible danger to the race” (Asquith Papers, MS 12, folios 224-8).

And, again, feeble-minded persons should be “segregated under proper conditions so that their curse dies with them and was not transmitted to future generations” (Gilbert, 2011, page 45).

This attitude, it should be stressed, and as explained well by Sir Martin Gilbert in his paper, was resonant of the values of contemporary society as reflected, for example, in the report of the Royal Commission that considered how to address this matter. (See Report of the Royal Commission on the Care and Control of the Feeble-Minded, 1908.) Later, the Nazis adopted a far more extreme – indeed genocidal - approach to those deemed as “Untermenschen” by having over two hundred thousand disabled people murdered during the course of the war, adults and children alike (Mandel, 1986, page 91). (See I Cole’s article on the BBC website entitled “The Holocaust and disabled people,” 17th October, 2008.) Finally, mainstream ideological perceptions of disability create a “hegemony of disability”, a view that derives from an ontological basis, namely the “pathological and problem-oriented nature of disability;” the effect of this ideology is that medical perceptions of disability are likely to remain unchallenged (Oliver, 1996, page 129). For this reason, Oliver stresses that effective rights implementation will require a radical revision of societal structures, a revision that also requires collective empowerment of disabled people promoted by bodies such as the international organisation, the British Council of Organisations of Disabled People.

Race equality

Ideological perspectives concerning race serve, in general, to create racist perceptions of black and minority ethnic groups. Race itself is a complex term that requires to be explained in detail to understand the roots of racism. At the biological level, for example, categorisation of people by race is

problematic. For, although there is variation among populations in terms of genetic variation (Cavalli-Sforza, 2000), variations that derive largely from the historical geographical separation of these populations, we have “extenuated the minute differences between ourselves, sometimes with grievous results” (Stringer and McKie, 1996, page 181). The fact that the term “race” lacks clarity is stressed by Dawkins (2005) and it is essential to avoid conflating race with species. Species has a clear biological meaning, namely the possibility of fertile inter-breeding by members of the species in question (Dawkins, 2005). Clearly, people throughout the world, irrespective of superficial differences in skin colour, are capable of inter-breeding; we are, therefore, all members of the same human species.

What then does race mean? Stringer and McKie (1996), citing Brace, highlight that the term “race” is of recent origin.^{34 35} And it is essential to understand the ideology of race as part of evolving capitalism. As Rodney (1982) explains, racism arose during the expansionist years of European and, in particular, British imperialism. Racism was promoted, too, by the slavery system as:

“... no people can enslave another for centuries without coming out with a notion of superiority, and when the colour and other physical traits of those peoples were quite different it was inevitable that the prejudice should take a racist form” (Rodney, 1982, page 88).

³⁴ The Equality Act 2010, section 9, provides a legal definition that denotes “race” to include colour, nationality, ethnic or national origins.

³⁵ Tanya (2005, page 24) writes: “No, Jews are definitely not a race, because human races do not exist. In terms of biology, there is only one human race: the human race. The idea that Jews comprised a separate race was instrumental in the occurrence of the Holocaust.” (Page 24) Substitute the term “species” for race in the first sentence and this statement contains a powerful truth. Failure to understand the distinction between race and species represents another good example of how language moulds the perceptions of people in particular ways.

A number of ideological activities continue to operate that serve to discriminate on grounds of race. Examples from law, religion and science are provided to exemplify this point. Race equality law, as we have shown, has developed to require public bodies to take a pro-active stance to promote race equality, as well as eliminate unlawful forms of racial discrimination and harassment. Indeed, law now covers both direct and indirect discrimination, the latter being a form of institutionalised discrimination. But law, as part of the ideological superstructure, also serves to promote the interests of the state. This is elucidated by reference to asylum law. Asylum law seeks to regulate the admission of asylum seekers to the United Kingdom. As Stevens (2004) notes, though, asylum law has tightened considerably from the 1990s onwards with the passing of several statutes to deter and restrict admissions, although there have been recent developments to promote the concept of “managed migration,” a process aimed at attracting workers and increasing the pool of potential employees. This point, of course, reflects how immigration is controlled by Governments in support of economic needs or priorities, with immigrants encouraged to provide a pool of cheap labour-power in times of economic growth – as witnessed by the encouragement of foreign workers into Britain in the 1950s and 1960s. Specific legal provisions have also been introduced to assist this process such as employer obligations to ensure that only people with the necessary legal rights can be employed.³⁶ Critically, though, discriminatory practice is buttressed by other

³⁶ The Asylum and Immigration Act 1996, section 8, as amended, makes it a criminal offence to employ persons subject to immigration control requiring leave

super-structural elements such as the media. The media, as Stevens (2004, page 262) points out, has been used to create negative stereotypes of asylum seekers by describing them as “ ‘bogus refugees’, ‘scroungers’, ‘economic migrants’, even ‘criminals’ and ‘terrorists’.” Discrimination against migrant workers in this way is often prompted in economic downturns when immigrants are blamed for lack of access to work among the native population.

One perspective of this is seen in Marwick (2003, page 181) who, citing Cottle’s study, refers to one English worker’s comments:

“It is a crime all of it. First they come here where they don’t belong, and they know it. Then they want their relatives and their relatives’ children. And would you believe the Government lets them have anything they wish ...”

Religion, too, is part of the superstructure that involves creating an idealistic or non-materialistic conception of the world; religious belief is non-scientific and metaphysical. But religion can also be used to justify war or enslavement, as well as being an instrument of social control (Rodney, 2002). And Jennings (1976) shows, for example, the importance of religion as justification for the invasion of America and the brutal exploitation of native peoples. Although the prime motivator of conquest was economic in nature, the participants in this onslaught were often motivated, at the level of consciousness, by religion that was “immanent in the total behaviour of its adherents” (Jennings, 1976, page 43). While Fanon (2001, page 130) argues that religion, based on racist colonial ideology, “... establishes in the

to enter or remain. See Panayi (2010) for an in-depth assessment of immigration history to Britain, including the myriad reasons for immigration.

continent a racial philosophy which is extremely harmful for the future of Africa” on account of its influence in creating social division among religious communities, as well creating false perspectives on the oppressive nature of colonialism.

Scientific racism has been a central part of Western ideology for several centuries and has been used to support racist perspectives and the oppression of black people. This doctrine asserts that black people are inherently inferior to white people and was initially formulated through the work of “slave traders and early European travellers” (Yeboah,1997, page 54). Scientific racism was promoted by various writers. Linnaeus, for example, the celebrated botanist responsible for developing taxonomy for animals and plants, separated human races hierarchically into “white, red, yellow and black” (Yeboah,1997, page 54), while Long argued in the “History of Jamaica” that “black people were innately inferior to white people” (Fryer, 1984, page 164). Long, it should be noted, articulated ideas latent in the polygenetic theory of racial origins, according to which Adam and Eve (white people) were the last special creation, black people having evolved from other less perfect prototypes (Yeboah, 1997).

The main point to note here, though, is that scientific racism served the interests of a developing British empire, the capitalist interests of British imperialism. The policy of imperialism was based on colonial expansionism and gross economic exploitation of native peoples; a “science” (albeit pseudo in nature) was, therefore, required as ideological justification for this expansionism. Finally, and a point of note, this assertion should not be

construed as viewing all capitalists as supporters of slavery. Williams (1980, page 197) points out, for example, that there were different attitudes towards slavery among “the British Government, the British capitalists, the absentee British West Indian planters, and the British humanitarians.”

Sexual orientation equality

Ideological barriers against LGBT people have been reflected in numerous ways historically and this is exemplified by reference to law and value systems.

The law has been extremely influential in constructing “homosexuality” as deviance. From 1885 to 1967, for example, all homosexual acts between men were deemed to be illegal (Saraga, 1998, page 175), while the Labouchere Amendment to the criminal law criminalised all forms of homosexuality, whether in public or private, or involving sodomy (anal sex) or not.

The Amendment read:

“ Any male person who, in public or private commits or is party to the commission of, or procures the commission by any male person, of any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted hereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labour” (McKenna, 2003, page 80)

It was not until 1967, in fact with the passing of the Sexual Offences Act 1967 that certain homosexual offences (those involving adults over 21 and carried out in private) were decriminalised; this change did not take place in Scotland until the enactment of the Criminal Justice (Scotland) Act 1980, section 80. But the reduction in the age of consent was not achieved legally until 2000 – after lengthy and ferocious debate – when the Sexual Offences (Amendment) Act 2000₁ received Royal Assent. Discriminatory practice, in law, against

LGBT people was also evidenced in section 28 that was supported primarily by religious bodies and representatives of Right wing political groups.³⁷

Section 28 of the Local Government Act 1988 prohibited local authorities from promoting intentionally:

“...homosexuality or publish material with the intention of promoting homosexuality”; it also prevented homosexuality being seen as a pretended family relationship.

Law has, then, historically clearly been at odds with the promotion of social justice for LGBT people. Recent developments suggest, though, that legal barriers to the promotion of rights for people irrespective of sexuality are now being addressed. The Employment Equality (Sexual Orientation) Regulations 2003³⁸, for example, made it unlawful for employers to discriminate against employees on grounds of sexual orientation. This includes a prohibition of direct and indirect discrimination, as well as prohibiting any form of victimisation or harassment. This law has now been revoked and discrimination on the protected characteristic of sexual orientation is prohibited under the Equality Act 2010. Perhaps Oscar Wilde sums up this purportedly progressive position appositely:

“Yes, we shall win in the end; but the road will be long and red with monstrous martyrdoms”

(This was noted by the Earl of Arran during debates about the Sexual Offences(No 2) Bill: Hansard HL Deb 21 July 1967 vol 285, cols 522-6.)

³⁷ Section 28 amended the Local Government Act 1986. It was finally repealed in Scotland in 2000 by the Ethical Standards in Public Life, etc (Scotland) Act 2000, Schedule 4; and in England in Wales in 2003 by the Local Government Act 2003.

³⁸ SI 2003 No.1661.

As argued above, though, the law is extremely limited in securing rights for classes of persons so the efficacy of the new laws remains to be seen.³⁹ Law, in brief, focuses on “discrete acts of individual injustice” (Baker et al, 2004, page 129). Ideological value systems serve to foster negative perceptions about LGBT people. Tannahill (1981) refers above to conflicting ideologies of religion and freedom of sexual orientation. But other ideologies also serve to buttress a negative and antagonistic perspective of LGTB people. For example, psychiatrists – as supported by the United States Military during the mid-twentieth century – developed a scientific categorisation of homosexuality as being a medical illness. This, in effect, was primarily an ideological construction to enhance the power of both psychiatrists and military personnel, as the latter enhanced their professional status (and concomitant wealth and social status) through their developing role as “experts” in determining what constituted healthy and unhealthy sexual practices. This perspective is examined clearly by Tamagne in Aldrich (2010, page 167) in which the medicalisation of homosexuality led to the perspective that the:

“...”homosexual” who did wrong against society, but was also “sick,” “perverse,” “degenerate,” and as much a case for medical and psychiatric theories as for the law courts.”

³⁹ The Equality Act 2010, section 149, with its general duty becoming effective in April 2011, will require public bodies to promote equality in respect of sexual orientation. For an interesting overview of world history of gay life and culture, refer to Aldrich (2010).

Saraga (1998, page 161) also shows how negative media images against LGBT people are fostered to maintain an ideology supportive of family structures and the protection of prevalent moral codes. The putative sexual licence of LGBT people is perceived as a threat to the stability of capitalist social relations based on family relationships. Thus, ideological positions are developed to establish belief systems that LGBT people are deviant, outwith the “norm”; in short, this strategy seeks to have LGBT people perceived as a threat to social and public welfare.

Institutional barriers to social justice

This section focuses on institutional barriers to social justice with the main emphasis on organisational practice, including organisational policies, as well as organisational failure to have such documentation, a theoretical form of institutional discrimination that was referred to above as structured omission.

Disability equality

Institutional discrimination occurs through the general and routine practices of organisations that fail to consider disabled persons’ access needs. It is arguably one of the most insidious forms of discrimination as it involves covert and thus “hidden” forms of discrimination that are not actually perceived as discrimination.

For example, job advertisements often stipulate, as a matter of course, the requirement that applicants should possess a driving licence. This could constitute unlawful discrimination, however, as it implies that the employer may be failing to consider making reasonable adjustments, a duty enshrined in law. In practice, therefore, the employer should consider whether a licence

is an essential part of the job as the job may entail minimal amounts of travel and taxis could be used; or another employee could do the driving (Disability Rights Commission, 2004b, page 99).

What should be stressed – to re-iterate a point noted earlier – is that much institutionalised discrimination is not intentional. In the example above, for instance, the discrimination may occur due to ignorance of the law, or simple failure to scrutinise employment practices on a regular basis. This might occur if employers fail to review standard job advertisements on a regular basis. Reasons for this are manifold but could include lack of resources, an issue that is addressed in Chapter 5.

Finally, institutionalised discrimination often occurs through what can be termed “structured omission.” Examples of this are reflected in failure by employers to provide adequate staff training programmes, or failure to integrate disability law and good practice matters throughout organisational policies and procedures.

Race equality

Genovese, 1999, page 83, (citing van den Berghe) highlights that race relations (and racism) can only be understood within the “total institutional and cultural context of the society studied.” Although class inequality is considered by Genovese as the main tool for understanding social discord, this does not diminish the force of racism as a driver in societal developments. Three examples of institutionalised racism are now explained to elucidate how racism can operate in subtle and complex ways.

Gillborn (2002, page 1) notes how racism is not a declining phenomenon, but “a powerful presence at the heart of contemporary society.” In the field of education, for instance, research has recorded gaps in educational performance between white people and black and minority ethnic groups, the latter underperforming compared to white people (Brahm et al, 1992), while Gillborn (2002) highlights that black students are often perceived by teachers as less able than their white student peers, assumptions that may well derive from the racist ideological ideas discussed above to the effect that races differ intellectually. Such attitudes, it is emphasised, may be reflected in unfair treatment of black students. It is also important to recognise, in passing, that educational materials may reflect racist ideologies through their focus and language use and these may create “educational disadvantage amongst black children” (The Runnymede Trust, 1980, page 92).

Institutionalised racism was identified by Macpherson as an integral part of the police service too. This was reflected in an organisation that has “yet to become conscious of race issues within its culture or has suffered a serious breakdown in its consciousness” (O’Brien, 2000, page 31). As O’Brien stresses, though, awareness of racist practice is not, per se, sufficient to address it effectively. Rather, awareness is the first stage in the process of transformation to an organisation that promotes race equality. Critically, this will require the establishment of comprehensive training programmes to change consciousness levels of staff. O’Brien also stresses the need to monitor employment practices to encourage take up of employment by

people from black and minority ethnic groups who are often under-represented in certain sections of the public sector.⁴⁰

Institutionalised racism is seen in the housing context too in a range of ways. For instance, Sim (2000, page 93) refers to the fact that “black and minority ethnic communities have long experience of social exclusion in relation to housing.” One key issue is that housing fails to meet the needs of these groups due to size and/or location. But, critically, there is much discrimination and harassment of such households that serves as a barrier to what housing is suitable. Sim also refers to gaps in policy developments that work to disadvantage people from black and minority ethnic groups. Examples of such policy deficiencies are as follows: policies such as allocations and homelessness that may discriminate against these groups (albeit unintentionally) through applying local connection or residency criteria that cannot be satisfied by people from black and minority ethnic groups (Montgomery, 1986); lack of good quality information on the needs of these groups; a dearth of positive action programmes to involve local black and minority ethnic groups in housing matters, in particular local community planning networks so that housing meets the specific needs of individual households. This position is strengthened by Netto et al (2004) whose study shows that incidents of homelessness within black and minority communities is higher than compared to the population as a whole, while common housing problems include barriers posed by lack of information about housing options

⁴⁰ See Paton and Asghar, 2006, for an examination of access to housing services at both national and local levels.

due to factors such as language and literacy issues as well as institutional discrimination.

Sexual orientation equality

Sexual orientation, it is suggested at this stage, is often neglected in the organisational policy arena. The LGBT Centre for Health and Wellbeing (2007, page 19) report suggests that social landlords need to do more to promote sexual orientation equality through developing clear policies and procedures, providing more information on rights and remedies available to address discrimination and harassment and ensuring that housing staff are well trained on relevant matters. The LGBT Centre for Health and Wellbeing (2008, pages 2 to 3) also recommends that it is essential to include LGBT issues in curricular activities within schools and other education institutions. This is an important point since current educational guidance⁴¹ focuses on the inculcation of values so that students:

“ appreciate the value of commitment in relationships and partnerships, including the value placed on marriage by religious groups and others in Scottish society.”

The Circular does state that there is a need to respect diversity and to avoid prejudice and discrimination against people who do not share these values. But the important point here is the emphasis given to traditional values. For example, the Circular stresses the need to establish “awareness of the importance of stable family life and relationships, including the responsibilities of parenthood and marriage” (Page 6). This is far removed, indeed, from viewing LGBT relationships as “normal”. Addressing institutionalised forms of

⁴¹ Circular 2/2001: Standards in Scotland's Schools etc. Act 2000: Conduct of Sex Education in Scottish Schools

discrimination effectively requires the creation of an understanding that is not distorted by favouring traditional perspectives. It should be noted in passing that negative ideological stereotypes of gay men are contained in other sources, too, that greatly influence consciousness levels. In Leviticus, 18:22 and 20:13, the death penalty is demanded “for sexual acts between men” (Deacon, 2000, page 291).

Personal barriers to social justice

Personal barriers that people experience that are tantamount to discrimination and/or harassment include a range of behaviours such as inappropriate humour, and stereotyping. Again, empirical data suggest that personal forms of discrimination apply to all three equality areas under review.

Disability equality

Discrimination and harassment of disabled people due to disability related matters is common practice within society. And the forms of this personal oppression are varied, through violence at one extreme to jokes at the other, jokes that are dependent on their “humour” due to institutionalised stereotyping of disabled people. Humour, while ostensibly innocuous, is used to create or reproduce negative images or perceptions of disabled people. For example, cartoons have been used since 1480 – from the inception of the printing press when the majority of people were unable to read – to make political and moral comments on disabled people. Thus, disabled people have

often been caricatured as morally weak and pitiable, even on occasion personifying wickedness (Barnes and Mercer, 2010). Humour, it is noted in passing, may constitute harassment and be covered in law and thus open the door for persons offended by the humour to raise actions against those concerned. This has important organisational implications for codes of conduct concerning staff practice and use of office systems such as email facilities. This issue will be addressed as part of the organisational policy review (Ainsworth, undated).

Language use, too, represents another method for transmitting negative perspectives of disabled people. Many inappropriate or offensive terms are prevalent in everyday discourse, including the media. For example, referring to “the disabled” or “the handicapped” is wholly inappropriate as there is no such group of people. Similarly, to refer to someone as a “person with a disability” is inappropriate as it associates disability as a personal characteristic rather than a social construct (Carson, 1999). Indeed, such terminology unconsciously perpetuates the medical model of disability, failing to recognise the critical point that, under the social model, it makes no sense to talk of someone “with a disability” since it is society that disables people. It is emphasised here that the use of language is not a question of “political correctness,” but that language is a source of power that can be used to oppress other people. For example, the use of offensive terms to describe disabled people supports their continued oppression. This is quite separate from the way in which political correctness is often discussed, namely a rigid

specification of words that should or should not be used (Thompson, 2003, page 168).

Race equality

Race harassment of black and minority groups on personal grounds takes various forms and is an indelible feature of Britain's historical landscape (Fryer, 1988). Harassment itself ranges from physical violence through to verbal abuse and the use of offensive terms such as "Paki," "Darkie" and "Wog."

Sexual orientation equality

Homophobic attitudes are clearly reflected in contemporary practices concerning LGBT people. Three instances are provided to illustrate this point. One writer describes, for example, how (at school) he was personally taunted with names such as "queer, sissy, little girl, and fag", names that are derogatory and intended to dehumanise individuals (Blumenfeld, 2000, page 267), while homosexuals bore the brunt of unusually cruel treatment in Nazi Germany where there was a relatively high death rate of homosexuals in the camps where between 5000 and 15000 homosexuals "died in terrible conditions" (Tamagne, 2010, page 193). Finally, and in the Scottish context, recent studies have revealed that homophobic practices are common with many people experiencing either verbal or physical abuse, indeed, that "75% of those surveyed (having) experienced verbal abuse within the previous five year period relating to being LGTB, or the assumption that they were LGBT" (LGBT Centre for Health and Wellbeing, 2007, Page 11). The 75% relates to a sample size of 924 respondents. Also of some concern is the fact,

highlighted in the same report, that a local authority review revealed that priority afforded to sexual orientation as an equality matter was ranked lowest. Again, Shelter and Stonewall Housing (2005, page 10) reported that the mental health of young LGBT people is at risk due to “the problems they may have faced as a result of their sexuality.”

4.3. Summary

This Chapter has examined critically two frameworks that can be used to understand the diverse forms of discrimination that serve to oppress people in contemporary society. These frameworks can be referred to as SCIP and ESIP respectively. These are summarised for reference purposes in Figure 1 over that also highlights similarities and dissimilarities between the frameworks. The SCIP framework is used in the field of social policy to elucidate that discrimination is a complex phenomenon that may arise in either overt or covert ways. The author has assessed this framework but has developed it to propose a new conceptual framework that can be used by social landlords to understand the diverse forms of discrimination in society. This framework uses elements from SCIP but amends the structure of this framework, in particular laying more emphasis on the economic basis of much discrimination. The reasons for this re-structuring have been dealt with in detail in the preceding arguments above.

The framework that is proposed offers a practical tool that can be used by organisations to understand the diverse ways in which people, individually and collectively, may experience forms of social injustice and oppression. A key contention within both SCIP and ESIP is that linkages among categories

are systemic in nature and elements are inter-dependent. For example, legal changes - super-structural elements in the ESIP framework - may serve to address economic forms of injustice or promote social harmony. This issue was explored in Chapter 3 when legal developments were evaluated.

Social landlords, too, may be involved in addressing the various forms of discrimination as illustrated in Figure 1 over. For example, social landlords may promote employment of disabled people through revising their employment policies and addressing barriers to employment through positive action programmes such as encouraging people from disadvantaged backgrounds to apply for employment. These are also institutional policy issues that can, at least in part, address employment barriers experienced by disadvantaged groups. But social landlords cannot address the myriad forms of economic oppressions that face many people in general throughout society. Given their key role as public sector **organisations** involved with providing housing services, social landlords can, however, address many of the **institutionalised** forms of discrimination that exist, the forms of discrimination that were identified by Macpherson (1999) above. In short, this translates to focussing on institutional practices to ensure that they are not discriminatory in their effects, that they both transmit and promote equality objectives into practice in line with legal and good practice guidance as examined in Chapter 3. For this reason, the institutional aspects of the ESIP framework will thus be the prominent area for analysis in the remaining Chapters of this thesis. This will be done chiefly through analysis of organisational policy documentation that should cover all elements of the

ESIP framework (see Figure 1), with additional information gleaned through a case study examination. As Figure 1 in tandem with its associated text suggests, the focus of addressing aspects of discrimination on equality grounds is closely aligned to having organisational policies in place to address the various aspects of discrimination. This adds weight to a major contention of this study that organisational policy development at the institutional level is critical to eliminating discrimination and promoting equality within social landlord practices.

Figure 1: SCIP and ESIP frameworks

Figure 1 below illustrates how aspects of discrimination are covered by the SCIP and ESIP frameworks.

SCIP	ESIP
Structural: law; politics; religion.	Economic: unemployment and low wages of certain social classes and disadvantaged groups.
Cultural: stereotypes; humour; language.	Super-structural: legal developments, media and promotion of interests of specific social classes and groups, including cultural values.
Institutional: media; schooling.	Institutional: organisational policies and practices
Personal; harassment; discrimination.	Personal: harassment and discrimination (including use of language and humour).

(Source: produced by the author as part of this research).

Understanding the importance of institutional aspects in addressing all aspects of discrimination

Adopting a systemic perspective enables clear understanding of the importance of **institutional** aspects in addressing all of the ESIP aspects of discrimination. For example, in terms of economic barriers that disadvantage people, social landlords could address this, in part, by having adequate organisational employment policies or positive action programmes in place to stimulate employment of disadvantaged groups. Again, failure to embed law and good practice guidance (the super-structural aspects) into policies is likely to result in this guidance not being implemented effectively into practice. Finally, failure to have comprehensive policies in place that address harassment and discrimination, including how inappropriate language can constitute harassment or discrimination, is also clearly an institutional matter. Chapter 5 following now examines how equality objectives can be mainstreamed into practice.

Chapter 5: Mainstreaming equality into practice: a theoretical appraisal

“How the law is put into effect is clearly as important as its content. The nature of the enforcement agencies used, the degree of commitment of enforcement agents to implementation of law, their morale and – a closely related factor – the amount of resources available to ensure compliance, are all shown to be extremely significant factors”

(Cotterell, 1992, page 56).

“In order to develop emancipatory forms of practice, we need to ensure that the issues and principles are seen as central – they are not an optional extra to be tagged on the end if time and resources permit. Equality and social justice should be central features of all social work theory, policy and practice”

(Thompson, 2006, page 178).

This Chapter explains the rationale for the methodology that is to be applied in the fieldwork; this elaborates on points noted in Chapter One (see pages 13-14) relating to the theoretical models of essentialism and systems theory that, as the study argues, are vital if equality objectives are to be implemented effectively in practice. It is through these models, for example, that the range of organisational activities that are central to achieving organisational objectives will be identified and thus provided with a robust theoretical grounding. The strengths and limitations of the current research study are also identified in this Chapter.

This Chapter covers the following topics:

- methodological model;
- organisational elements for research;
- strengths and limitations of the research project; and
- commentary on links with equality impact assessments.

5.1. Methodological model

The model used in this research derives from two established theoretical frameworks, namely essentialism and systems theory. The model adopted represents an innovative theoretical approach to organisational development,

though, as it involves a synthesis of these approaches. Sections 5.2. and 5.3. below outline both approaches with examples taken from the housing field, the focal area of the research.

Essentialism

Essentialism is the philosophy that recognises that things have natures that can be discovered through empirical investigation (Meikle, 1985, page 177). Thus, creatures such as dogs and cats have distinct natures that make them what they are, for example, puppies and kittens have the potential to become either dogs or cats, nothing else. This latter point is fundamental to understanding that “certain sorts of change belong to the essence” (Meikle, 1985, page 160). In short: things, due to their inherent natures, can only evolve in certain ways.

And, as Ellis (2001, page 177) notes, scientific essentialism is “a theory about the sources of power in the world. If you are a scientific essentialist, then you must believe that the laws of nature are grounded in the properties and structures of things.” And essentialist perspectives may also be applied in the sphere of social science too (Meikle, 1985). Indeed, it is a contention of this thesis that essentialism may be applied also to organisational entities within these societies, that social housing organisations will evolve in specific ways given their nature within broader capitalist society. For example, the activities of housing associations in Glasgow in their early phases were, *prima facie*, essentially developmental in nature, that is, associations were organisations that primarily carried out capital works such as modernisation programmes, as opposed to, say, housing management. The underlying essence of such

organisations was, however, housing management as development activities involved the creation, through time, of a housing stock that required to be managed and maintained.⁴² This essence only became visible when associations evolved into their mature form as housing management organisations; indeed, Meikle (1995, page 96) notes how a thing's nature is often seen by considering it in "its mature form", not in its embryonic form. The actualisation of the underlying organisational potential might be prevented, of course, due to circumstance. In the example above, for instance, early housing associations may have failed to achieve their potential, say, through bankruptcy.

Another important aspect of essentialism involves recognition that individual things – and their essences – cannot be properly understood in isolation. As Meikle notes:

"If something is part of a larger whole, as an eye is of a whole organism, then that is part of its essential nature, and we need to know more than its physical character in order to know what it is, i.e. its essence" (Meikle, 1985, page 158).

And this reasoning applies, too, to social organisations since organisations do not operate in isolation, but as part of a broader economic and social system. Organisational essences can, in consequence, only be understood by reference to the broader system of which they are part. Thus, understanding organisational essence requires understanding of how organisations function within contemporary capitalist society and, critically, how they promote the

⁴² In the early days of housing association development, it was not uncommon for development staff to be regarded as the key staff in association practice; this was a temporary phenomenon, however, as the underlying nature of the organisation was the evolution of a management focussed body.

objectives of social policy fostered by that society. How this relates to housing associations is discussed below, including the point that natures themselves evolve through time. (Consider, for example, how all life forms today have evolved from single cell organisms.)

The essentialist methodology, as this perspective makes clear, thus differs in kind from atomistic and empiricist based approaches. Atomistic approaches propose that the world can be broken down into an ontology of simples, of basic building – blocks lacking complexity, to which everything else is reducible (Meikle, 1985, page 154). Essentialist ontology, on the other hand, stresses that things are complex wholes that cannot simply be reduced to constituent parts, albeit that the whole comprises all of these parts. For instance, in the example above, an eye cannot function apart from the general physiology of which it is part.

Of what relevance, then, is essentialism to the proposed methodology to be applied in this research? Essentialism, it is proposed, should be used as the theoretical means for identifying the nature and role of housing organisations concerning social justice.⁴³ And, in so doing, analysis of housing organisations in respect of social justice illustrates that their essential role is the implementation of law and the promotion of good practice, a reflection in turn of the increasing politicised and juridification of relations since the 1980s between central Government and local authorities/other social landlords (Stewart, 1996; Loveland, 1995). For example, Cotterrell (1992, page 58)

⁴³ This position has, of course, been criticised by other social theorists. Ellis (2001, [page 178](#)), for instance, postulates that social sciences differ from physical sciences insofar as they are not subject to the laws of nature.

notes how legislative strategies for promoting social change is emblematic of social policy in Britain with the law used “to promote change through the creation of new legal duties for existing administrative authorities.” Indeed, this core or essential role of social landlords is clearly enshrined in statute with the Housing (Scotland) Act 2001 (see Chapter 2) requiring social landlords to promote equality on all of the grounds detailed in the Scotland Act 1998. A similar clause is also integrated into other Scottish legislation⁴⁴

Systems theory

Although the identification of organisational nature is critical, it is not sufficient to meet the theoretical aims of this research project as highlighted in Chapter 1, namely to provide practical guidance to social landlords for organisational development. It is also necessary to align the essentialist perspective to an organisational model that enables a holistic approach to assessment of organisational practice. This model is systems theory that, it should be emphasised, has various theoretical versions and cover diverse areas, an issue that is not a central part of this study (see Parsons, 1951; Luhmann, 2004; and Seddon, 2008, for further information). The chief exponent of general system theory was Bertalanffy (1969, page 89) who developed systems theory in riposte to the mechanistic biological procedure that envisaged “living organisms into parts and partial processes.” This is precisely the approach criticised above by Meikle in respect of atomist philosophy. Bertalanffy argued that reality comprises layers of inter-dependent and inter-acting parts, or systems that “are sets of elements

⁴⁴ The Antisocial Behaviour etc. (Scotland) Act 2004, section 140, for example.

standing in interrelation”(page 38). This approach is now referred to as general system theory, a general science of “wholeness” that recognises the interdependence of social phenomena. Systems theory may be applied to a variety of disciplines such as mathematics, psychology and – of particular interest for this study – to social science. In organisational development research, for example, the open systems approach has developed in recent years, an approach that views organisations holistically and as being inextricably linked to the broader environment and society in which they operate. For instance, Burnes (2004) highlights that, common to the systems approach, is the requirement to structure organisational functions so that “business objectives are collectively pursued. The emphasis is on achieving overall synergy, rather than on optimising the performance of any one individual part per se” (Mullins, 1989; cited in Burnes, 2004, page 265). Failure to adhere to a systemic approach may, therefore, lead to organisational failures, including failure to implement change effectively. But, as Martin (2006) highlights, understanding organisations as systems is insufficient to ensure effective change; it is imperative to identify the essential relationships between systems (organisational functions) and omit inessential ones.⁴⁵ In the case of social landlords, as stressed above, this requires not only a clear understanding of law and good practice matters, but also

⁴⁵ An analogy can be drawn here from the realm of science where it is now known that: “About half of human DNA consists of multiple copies of meaningless sequences.” (Dawkins, 2005, page 132) To understand what genes are critical to bodily functions, one has to understand what DNA networks are relevant.

organisational understanding of how this law is to translated effectively throughout organisations into practice. This is examined in section 5.4.

The process also requires, of course, awareness of the forms of discrimination that exist and what forms of discrimination social landlords can legitimately address; this was the subject matter of Chapter 4. On a final note, other management models were considered but rejected in favour of the systems approach. For example, the design school approach to strategic management school utilises an approach known as SWOT that is an acronym for strengths, weaknesses, opportunities and threats. A major flaw of this approach is identified by Linstead et al (2004, pages 502 to 503) in that management judgements pertaining to the elements of SWOT are simply subjective judgements about an organisation, that the putative “objectivity that SWOT holds out in its prescriptions turns out to be a chimera in practice.” This issue is discussed again in Chapter 7 when organisational issues relating to monitoring are evaluated.

Summary of methodological synthesis

The research methodology used in this research is innovative in that it involves a synthesis of essentialism and management systems theory. The former enables us to identify the nature or role of social sector housing organisations: this is primarily the administration of legal duties such as housing and equality law. The latter area will be the chief concern of the study in Chapters 6 and 7. Essentialism is a general philosophical approach that is holistic in nature and, in the field of organisational research, this approach can be buttressed by a management method that imbues essentialist

principles. This method is systems theory. The methodology thus adopted ensures that organisational practices are viewed as a totality thus eschewing defects associated with atomistic approaches to organisational analysis. But what are the essential organisational elements that must be assessed? In the context of this study, this translates to the question: what are the core organisational activities that are essential for subsequent effective implementation of equality law and good practice guidance concerning social justice? To this issue the thesis now turns.

5.2. Organisational elements for research

In assessing the list of elements that are essential to achieving effective social justice strategies within organisations, it is emphasised that there is comparatively little research concerning this topic in the Scottish context. The main study that is used to summarise key elements will derive from innovative doctoral research carried out in 2001 (Montgomery, 2001).⁴⁶ This will then be followed by assessment of the strengths and limitations of this particular research study. The key elements relating to work methods and practices that can affect rights implementation may be identified as follows:

- cultural values;
- policies and documentation;
- communications;
- performance management;
- human resource matters; and
- workload and resources.

⁴⁶ The doctoral work considered a much broader range of elements as it included examination of systemic impacts of the broader economic climate and the role of political ideologies such as the New Public Management. It also examined the role of partnerships. The current research study is restricted, due to time considerations, mainly to internal organisational elements that affect social justice matters.

As stressed in Chapter 4, these issues relate principally to the institutional elements of ESIP. Further, and as will be argued below, these elements constitute a conceptual or explanatory framework of activities that organisations must use as the basis for subsequent impact assessments and action planning (see below).

Linkage to essentialism

The set of variables above provides the conceptual framework – in organisational parlance this is often referred to as action planning – for translating the essential activities of social landlords into practice. This essence, as has been argued, is administration of law and good practice guidance. The rationale for selecting this framework of activities is explained summarily below.

Rationale for selecting core activities

Cultural values and **policies** are the key written statements of organisational intent concerning social justice commitments; it is imperative, then, that these are comprehensive and cover all relevant social justice issues. **Communicating** these values to staff is germane to effective implementation of these values, while **monitoring** of performance is critical to evaluate if policy objectives are being achieved. **Human resource** matters concern issues such as staff training and attitudes of staff; without equipping staff with appropriate knowledge (training) and ensuring that they share the organisational values of social justice (attitudes), organisational policy objectives are likely to fail. Finally, **resources** available to the organisation

and workload of staff are germane, in numerous ways, to effective implementation of organisational commitments, for example, lacking resources to provide regular and ongoing training is likely to run counter to meeting organisational obligations in respect of equality commitments.

The sections below now provide more detailed information concerning how the elements identified above link systemically, a process that is vital if organisational equality objectives are to be achieved; in this case, this means the effective implementation of social justice within social landlord practices. This, in turn, provides the rationale for their incorporation into the empirical analysis of organisational practices (Chapters 6 and 7).

(a) Cultural values

Culture – as described previously – has no specific definition but, in the sphere of management theory, it has been described loosely as “how things are done around here” (Mullins, 1996, page 711). A wide variety of cultures have been proposed by theorists (Handy, 1993; Lawton and Rose, 1994; Cairncross et al, 1997). Critical to the concept of culture from an equality perspective, however, is to embed equality commitments, or values, within strategic documentation such as internal management plans or business plans etc. A social landlord committed to implementation of social justice should, for example, incorporate equality commitments into their specific Mission Statement, as well as individual organisational policies. This confirms organisational commitments at the strategic level, although effective implementation of these commitments would depend as to whether all of the elements covered in this section of the thesis are covered systemically.

(b) Policies and documentation

As Marks (2008, page 103) emphasises: “...existing law is manifestly not “merely” ideological, but impinges on and regulates everyday life at all levels.” This regulatory activity applies to organisational policies of social landlords too. Therefore, failure to establish accurate and coherent policy documentation that reflects the law and good practice guidance accurately is likely to detract from the implementation of rights concerning social justice. Critically, policies must be customised – and made accessible to the needs of tenants and other service users. This may be labeled the customization of strategy. (See Mintzberg et al, 2003, for a general overview of strategic management issues.)

(c) Communications

Unsatisfactory communications are an important barrier to effective rights implementation. For example, organisations may fail to transmit new information about social justice legal developments to staff. This is partly a training issue (see below), but also betrays a gap in communication strategy as information needs to flow across all organisational levels on a continual basis, not simply during more formalised training events. Examples of achieving effective communications include methods such as briefings and written documentation such as advice leaflets (Smith 1994, page 144). Information, it is stressed, should adhere to organisational accessibility standards so that information is accurate and clear⁴⁷; information should also

⁴⁷ How easily misunderstandings occur is summed up pithily by MacKay by reference to a notice allegedly in the Pentagon:

“I know you believe you understand what you think I said, but I am not sure you

be available in a range of formats, as appropriate, to meet legal requirements contained in the Equality Act 2010.

(d) Performance management

Boyne (1998) notes how best value strategy adopted by Labour incorporates performance measurement as a central element⁴⁸, while Jacobs and Manzi (2000, page 90) stress how performance management is intended to reflect “economy, efficiency and effectiveness, with an emphasis on value for money and quality.” These are often – in the housing field – simplistic quantitative indicators such as levels of arrears or void rent loss (rent loss from empty houses). Quantitative monitoring is discussed further below. But criticism of current performance monitoring systems (before Jacobs and Manzi, 2000), for example, criticise the current system for the nature of present performance indicators to:

- focus on specific issues to the detriment of service provision elsewhere, by concentrating staff time on particular areas that “ may subvert other aspects of the organisation’s functions” (Page 97); and
- be viewed as a form of control by staff thus detrimental to their morale and effectiveness of performance.

realize that what you heard is not what I meant”
(MacKay, 1984, Page 7).

⁴⁸ One good example of this that occurs in some housing services involves monitoring of whether staff answer the phone to tenants politely and after x number of rings. But meeting this requirement will not, by itself, result in effective service. For instance, the staff member concerned may provide inaccurate advice about a tenant’s rights and the landlord’s obligations. The **quality** of service is thus not monitored effectively. More recently, current methods of performance setting in the form of targets have been heavily criticised by Seddon (2008, pages 40 to 41) who writes of the repeated failure by organisations to adopt systemic approaches tailored to meeting demand.

Lipski (1980), on the other hand, perceives performance indicators as being prone to falsification, for instance, whether at staff level to thwart managerial reprimand, or at organisational level not to prejudice strategic requirements.

Some cogent criticisms of targets are voiced by Seddon (2008), in particular, as follows: targets do not represent customers' views; targets lead to "cheating" by staff to meet targets as opposed to focussing on improving actual performance; targets do not address systemic performance and focus on specificities rather than considering the organisation as a whole and, critically, performance over time. What is paramount, in Seddon's view, is the need to understand the workplace thoroughly: while "The right thing to do is to find measures that help in understanding and improving the work" (Page 106).

While acknowledging these criticisms, though, the importance of effective qualitative monitoring should not be neglected. And it is essential, in this respect, to distinguish quantitative from qualitative forms of monitoring. Quantitative monitoring involves things such as monitoring numbers of black or disabled people allocated housing by social landlords. This arguably has limited value as it provides little information as to whether policy objectives are being met. What is critical, on the other hand, is to evaluate the qualitative issues related to this process, namely the quality of housing in which people are re-housed; whether tenancies are sustainable and sustained; and what quality of advice applicants for housing receive from staff. These are the types of issues that are explicit or implicit in law and good practice guidance, as opposed to organisational practice that is driven by business needs to

reduce costs. It is imperative to acknowledge, in this connection, that setting indicators to meet the essence of the organisation (namely law and good practice) leads to the development of a more focussed set of indicators than will occur if a merely quantitative approach to indicators is adopted. At this point, it should be clarified that guidance, in law, such as the regulatory standards may focus on quantitative forms of monitoring. It is necessary for effective monitoring, however, to align monitoring systems to a strong theoretical foundation such as ESIP to ensure that they cover relevant areas of organisational practice, for example, monitoring of institutionalised forms of discrimination that may exist. This approach is likely to involve qualitative forms of monitoring such as assessment of types and quality of advice provided to different service users.⁴⁹

(e) Human resource matters

Human resource matters that are critical to effective rights implementation concern training and staff attitudes. Each issue is now examined in turn.

Training

Traditionally, low numbers of housing staff have been professionally qualified in housing and training has, generally, been treated as being of low priority (Kay et al 1986; Loveland, 1995; Keoghan and Scott, 2000). But it is important to recognise, at the theoretical level, that it is not simply a question of training per se. Effective training must itself derive from a holistic and systemic

⁴⁹ An important theoretical point here is that good practice guidance refers not only to published documentation such as statutory codes, but to theoretical literature that is based on an analytical understanding of the nature of discrimination in society, for example, the ESIP framework examined in Chapter 4.

strategy that takes cognisance of a number of related and inter-dependent issues, namely the training cycle.

Critically, the training cycle is based on a coherent approach that comprises five inter-linking elements as follows:

- needs assessment of individual staff members' needs in relation to job and personal requirements;
- planned training;
- provision of learning ("the teaching stage");
- validation (assessment of transference of knowledge/skills to the workplace); and
- evaluation (benefits to the organisation, for instance, improved performance).

Two final points are made before addressing the issue of staff attitudes. The first point is that failure to provide staff training is likely to result in staff remaining ignorant of relevant law and good practice guidance. And an effect of ignorance – in particular if relevant policies and procedures are poorly developed – is likely to involve inaccurate information being given to service users.

The second point concerns methodology of effective training. Organisations, for instance, often use "cascaded" versions of training which involves non-specialist staff "training" their colleagues. Unless such persons have good theoretical understanding of the issues concerned, training is likely to prove ineffective, or adverse to quality service provision.⁵⁰

⁵⁰ Corder (1990) refers to the often cited dictum of Shaw to the effect that:

"Those who can, do; those who cannot teach ..."

As Corder (1990, page ix) notes, though, the implications of this maxim is "...wholly and disastrously wrong." For, as Corder (1990, page ix) asserts, as a teacher: "If I can teach good systems analysis or effective management, then I influence countless systems and many management systems. The logical conclusion of this is that the training department should not be a penal colony for

Staff attitudes

Staff attitudes are often considered to be an influential factor affecting the implementation of tenants' rights (Smith, 1991). Before discussing this topic in more detail, it is important to examine the nature of attitude from a theoretical perspective. Attitude is, at a superficial level, "the way you communicate your mood to others" (Chapman, 1995, page 3). But the forces that serve to create an individual's attitudes are shaped by diverse forces, including:

- cultural perceptions;
- education;
- media;
- personal experience; and
- social class and other barriers relating to disability, sex and race etc.

For example, using an example from the equality field, we saw earlier how perceptions or attitudes concerning disabled people are often negative due to the influence of the medical model of disability that has become institutionalised throughout society. Attitude is, therefore, not a "thing" but a state of mind. Critically, this state of mind may diverge from reality insofar as perceptions are determined by the range of factors above. At the theoretical level, Burns (1986) describes attitudes as comprising three components, namely a belief, an evaluation of that belief (affective component) and a behavioural response to that belief. Chapman (1995) considers that it is important to promote positive attitudes among staff as negative perceptions impact negatively on the quality of service provision. Some studies appear to support this perspective (Cullingworth, 1979; Spicker, 1995; SYNA, 2000).

Yet this position has been challenged. As Loveland (1995) notes in his

failed practitioners but the place where the organisation's brightest talents are deployed."

research study, although housing officers did express bias against a range of applicants, there was nothing to indicate that such bias reflected the legality of decision-making in respect of homeless applicants.

To quote Loveland (1995, page 147):

“It is one thing to observe that an applicant’s status or behaviour may sometimes ‘piss administrators off’, quite another to suggest that such irritation thereafter provokes subversion of legal norms.”

Indeed, in Loveland’s study, despite the fact that unlawful decisions were frequently made by housing officers, these decisions occurred because of ignorance of legal principles, not because of attitudinal perspectives. The role of attitude vis-à-vis rights implementation is, therefore, from an empirical perspective, a matter for more detailed examination. (See Chapter 8)

(f) Workload and resources

Workload pressures feature as a perennial theme in examining elements that can inhibit the quality of service delivery (Lipski, 1980; Legg et al, 1981; Loveland, 1995). Lipski (1981) argues, for instance, that workers in the field (“street-level bureaucrats”) often become immersed in a “cycle of mediocrity,” unable to provide quality services because of excessive pressures of work, while Legg et al (1981) refer to problems connected with work distribution as the main issues such as the growth of decentralised housing services, coupled with increasing work associated with generic work practices, that is, having responsibility for a range of mainstream housing management functions (allocations, estate management, homelessness, and arrears).

For example, Loveland (1995, page 137), with respect to homelessness decision-making, notes that:

“Excessive workloads can also have a readily identifiable effect on an authority’s willingness and capacity to respect even straightforward legal constraints in its decision-making autonomy.”

But this position has been challenged critically by other writers. Malpass and Murie (1994, page 306) suggest, for instance, that “staffing and organisational” matters are **not** the key element in determining the effectiveness of housing management services. Rather, they suggest that landlords’ services tend to be uneven and that variation of quality across functions is the norm. This position is supported by Hudson (1997).

According to Malpass and Murie (1994, page 306) it is arguable that:

“... some critiques start from a fundamentally false position. This is the assumption that the key element determining the nature and effectiveness of housing management relates to staffing and organisational attributes.”

In their opinion, other elements drawn from the broader societal context are more critical in explaining effective implementation of rights, for instance, financial constraints currently facing local authorities within the NPM, or a depleted housing stock. In support of their argument they cite the latter element as being fundamental in explaining increasing inability on the part of local authorities to re-house homeless applicants.

In addition, Malpass and Murie (1994, page 292) stress that:

“It is inappropriate to imply that formal policy-making or setting of objectives is the critical element. Equally the formal organisational arrangements for departmental responsibilities, decentralisation or staffing and training arrangements do not determine the way in which policy is translated into action.”

This is an important critique and it has been shown elsewhere (Loveland, 1995; Montgomery, 2001) that resources (or rather lack of resources) **are** pertinent to how effectively social landlords can implement legal rights. (See

Loveland's example below). But a critical point of this thesis is that the other organisational elements such as policy development and training are extremely relevant to rights implementation. While recognising that such individual organisational attributes do not, per se, determine effectiveness of organisational practices, effective implementation of rights hinges on a co-ordinated integration of all of the relevant elements (as described in this Chapter) into organisational practice. This is the essence of systemic thinking that acknowledges the inter-dependence of a wide range of organisational practices and the importance of context. Thus Loveland (1995) notes, in opposition to the stock deficit (and resources focussed) argument, that resource constraint issues must be considered in context. In his study, for example, failure to meet the needs of homeless applicants stemmed not simply from lack of housing stock; it also derived from lack of strategic planning to consider options, for instance, using nomination arrangements with housing associations to secure housing for statutorily homeless applicants.

5.3. Strengths and limitations of the research project

It is an important methodological consideration to be aware of strengths and limitations of research studies at the outset. This section outlines the proposed strengths of the study, as well as possible limitations that require to be addressed by future research.

Strengths

Four main strengths are identified. Firstly, the methodology utilises a robust conceptual framework that ensures that relevant issues of organisational

practice are identified and analysed. This entails that the innovative research involving evaluation of the housing association equality policies is likely to provide comprehensive and coherent findings. This framework is important as it provides social landlords with a checklist of elements that can be used as part of impact assessment and organisational action planning to implement equality objectives into practice.

Secondly, the research is focussed on practical issues and directed at enhancing theoretical understanding of equality matters at strategic policy levels among social housing landlords, as well as other organisations operating in the public sector; this focus is concerned with consciousness raising that may stimulate important developmental changes at both policy and practice levels. In particular, though, the research seeks to identify the framework of organisational practices that are necessary to ensure effective implementation of equality objectives into practice within social housing.

Thirdly, the desk-based sample is extremely comprehensive with a figure of eighty per cent of all policies being analysed. This comes close to the “ideal” sample that is beyond the scope of much research that uses lower samples.⁵¹ Full information is given in Chapter 6.

Finally, although this research will require further development to address analysis of gaps in practice that might be inferred as a result of the equality policy assessments identified in Chapter 6 (see below), this is tempered by an acknowledgement that quality research identifies new issues for subsequent evaluation. A strength of this research is that it is likely to stimulate critical

⁵¹ As Robertson and McLaughlin (1996, page 76) point out, “In an ideal world, a research project would survey the whole population”.

reflection by organisations of their practice and, significantly, of how to improve that practice to meet their legal and good practice guidance commitments.

Limitations

Three main limitations of the proposed research study are identified. The first limitation concerns the fact that, although the examination of policy documentation will identify if organisations are using a theoretical template that is likely to promote the effective implementation of equality rights, there is no detailed assessment of actual housing practice save for the limited case study fieldwork. This should, therefore, be a topic for further individual research by individual housing associations.

The second limitation is that the case study analysis is restricted to **two** housing associations only, with most analysis devoted – as noted above – to policy assessment. The balance of the research was weighted this way to ensure that the desk-based examination of organisational equality policies was carried out thoroughly. Restricting the case study analysis was thus required by time scale restrictions associated with this particular research study. It is recognised, though, that an examination of two organisations, while providing an overview, will not enable detailed or concrete assessments about actual organisational practice to be made in respect of the organisations under scrutiny. Chapter 7 will explain the rationale for the selection of both associations to maximise the general relevance of the research findings.

The third limitation relates to the fact that organisational policies are continually under review and therefore individual association policies may have altered since their collation by the author.

5.4. Commentary on links with equality impact assessments

Before turning to summarise the main findings of this Chapter, it is important, from the perspective of enhancing theoretical understanding, to explain how the preceding analysis relates to the important activity of equality impact assessment (EIA), an issue that was noted in Chapter 2 in discussing good practice guidance). Whereas this study has focussed on identifying organisational factors that are necessary to achieve effective implementation of rights in practice – the model template – impact assessment is concerned with evaluating the **effects** of equality policies on staff and service users. And, from the perspective of meeting good practice guidance, including regulatory standards, social landlords are expected to carry out EIA to ensure that their policies and related practices (a) do not discriminate unlawfully and (b) promote equality of opportunity in respect of the relevant protected characteristics.

Yet two aspects of the EIA process must be distinguished – a point recognised by the Equality and Human Rights Commission (EHRC, undated) when they state that organisations should evaluate the policy documentation itself, as well as the effects of its operations in practice. And these twin aspects of the EIA process contain both an internal and an external dimension. The internal dimension to EIA is to ensure that policies encompass all relevant factors so that, when implemented, equality issues

are covered comprehensively. This entails, therefore, that effective EIA should have regard to including the elements identified as part of this research. Thus, although EIA development is not the focal part of this thesis, this study has nonetheless revealed core theoretical issues and activities with which an effective EIA process should be concerned.

Secondly, EIA has an external dimension – the aspect of EIA that is the focal point of much official guidance (Equality and Human Rights Commission, undated). This dimension is concerned with monitoring of the impact of policies on services users, for example, to ensure that they do not discriminate on protected characteristics such as disability and race and also promote positive values and attitudes so that the root causes of discrimination are addressed. As discussed above, this is a complex process that requires detailed understanding of ESIP, as well as implementation of a diverse range of activities, to address the diverse forms of discriminatory practice. Key activities that should form part of this external dimension to the EIA process would be:

- data collation to identify the needs of service users so that services can be delivered appropriately; and
- consultation with service users to evaluate if policies are meeting their objectives.

Although EIS assessment is not included in this study, it is clear how the model adopted in this Chapter can be modified with relative ease to satisfy the internal and external dimensions of the EIA process. This issue will be noted again in Chapter 8 when conclusions are drawn.

5.5. Summary

The research methodology selected involves a synthesis of two theoretical methodologies, both with a long-historical pedigree in the field of social science. These methodologies are essentialism and systems theory. This approach represents, therefore, an innovative theoretical model in the field of organisational development within the housing field, the area that is chosen for research. This approach has a practical focus too, though, as it has enabled us to identify the core activities that are critical to the effective implementation of rights within social landlord organisations. This is a conceptual framework whose elements constitute the main area of analysis in Chapters 6 and 7. The various strengths and limitations associated with this particular research study have been identified. The strengths of the work are, however, paramount as the results of the study are intended to raise consciousness levels of policy makers throughout Scotland and ensure practical benefits to actual service users as a result of this research.

This research is thus emancipatory in nature; it is, to refer to Griffiths (1998, page 7), aimed at effecting changes in the housing field, not simply “contributing to a debate for academic reasons.” And, it is ideological in nature too, striving to alter consciousness of how organisational policies and practices may serve, albeit unintentionally, to create barriers to social justice. Finally, the research aims at developing understanding of how changes can be effected to promote anti-discriminatory practices that ensure that housing “is a progressive force for social change and amelioration” (Thompson, 2006, page 181). Indeed, as Thompson (2006, page 178) emphasises, social justice requires to be integrated within all service practices for treating social

justice as something separate “runs the risk of allowing it to become marginalised – a specialist subject for those who are interested, but not a mainstream issue. This is unacceptable, for, as we have seen, good practice must be anti-discriminatory practice.”

Let us now turn to the fieldwork that will evaluate if social landlords have developed organisational frameworks that facilitate the effective implementation of their equality objectives.

Chapter 6: Housing Association Policies: an assessment

“Landlords told us that our assessment framework is one of the top drivers for improvement in equalities, although the overall assessment is that, with some notable exceptions, the sector as a whole has been relatively slow to improve equalities practices”

(The Scottish Housing Regulator, Social Landlords in Scotland: Shaping up for improvement, 2009, page 29).

“When polled, members of the public base their opinions of the standards of public service on factors other than the measurable performance targets carefully crafted by government”

(Flynn, 2007, page 149).

6.1. Introduction

This Chapter examines the equality policies of a wide range of housing association policies that operate within the Glasgow geographical area. The issues that are subject to assessment comprise those theoretical elements that were examined in Chapter 5; these issues serve as sub-topics throughout this Chapter. These are the issues, it is re-iterated, that form the essential framework without which, it is contended, effective implementation of equality objectives are unlikely to be achieved.

These issues are:

- cultural values;
- policies and documentation;
- communications;
- performance management; and
- human resource matters.

Note

It should be noted that issues relating to resources are assessed in Chapter 7 as this Chapter is essentially desk-based in its focus on policy documentation.

Comment is made before each topic to clarify precisely what issues have been examined with a summary after each of the five areas as above. A general summary is provided at the end of this Chapter. It is also emphasised, at this point, that Chapters 6 and 7 will focus mainly on the institutional aspects of the ESIP framework given that these Chapters deal with an evaluation of organisational practices, including how effectively institutional policy documentation incorporates relevant equality law and cultural values (super-structural elements). Assessment of ways in which social landlords address economic or personal forms of discrimination or oppression is outwith the scope of this study. Assessment of how social landlords address economic forms of discrimination would require, for instance, a specific study of employment and recruitment policies and practices; while assessment of how they tackle personal forms of discrimination would require assessments of organisational policies in respect of harassment and dealing with complaints.

6.2. General information

Before carrying out this examination, though, some general information is first provided by reference to:

- data sources;
- number and type of associations examined;
- confidentiality considerations;
- general; and
- issues for further assessment.

Data sources

In order to ensure that data sources were accurate, the list of associations to be examined was gleaned from the data base maintained by the Scottish

Housing Regulator. These sources reveal that there are a total of **sixty eight** associations operating in the Glasgow area; this includes some associations that operate nationally with housing stock spread over another or more Scottish regions. More detailed commentary on data sources is contained in Chapter 1 and Chapter 7 below.

Number and type of associations examined

Number of associations

A total of **fifty six association** equality policies from the **sixty eight** associations operating in Glasgow were collated as part of this research. Of this number, **four policies** were written by the researcher and thus have been omitted from the analysis below. These policies were written as the author carries out equality policy strategic development for local authorities and a restricted number of housing association social landlords within the Glasgow geographical area that was the focal area covered by this study; and it would not have been ethically acceptable to include policies that have been audited from an alternative perspective. This complies with commitments to meeting ethical standards as considered in Chapter 1. The total number of associations operating in Glasgow subjected to examination is, therefore, **fifty two**. This represents a percentage of (76%) that is extremely significant in research methodological terms in satisfying criteria relating to representativeness of data samples (Robertson and McLaughlin, 1996).

Type of associations

The type of associations evaluated included a range of associations and – using the Scottish Housing Regulator typological categories – included mainstream housing associations of varying sizes, as well as specialist associations.

Table 2 below highlights the associations reviewed by reference to scale; this ensures that data include a comprehensive range of associations in terms of scale.

Table 2: Associations assessed by scale

Less than 500 units	500 to 1000 units	More than 1000 units
26	13	13

(Source: statistics provided by the Scottish Housing Regulator, Table A1b: accommodation by Council area profile of RSL stock (grouped by Council area))

Confidentiality considerations

In order to preserve confidentiality of data responses, the information that is presented uses a coding system to preserve anonymity. This is based on a simple coding system that starts from A4 onwards. The numbering is mixed so that the codes do not follow the associations as they appear in the list of Glasgow area associations produced by the Scottish Housing Regulator. Appendix 1 contains a list of the respondent organisations.

General

The main focus of this analysis is qualitative in nature and aims to elicit key themes that identify particular areas that require further organisational development. This is in line with a central tenet of this research as indicated

in 1.2., namely to be “change-inducing at a practical organisational level,” as well as being a robust research thesis per se. In order to promote this objective, the examination will focus on gaps in policy documentation, although elements of good practice will be noted, as appropriate.

This examination centres on housing services, but not employment related equality policies.

Issues for further assessment

This Chapter involves desk-based research and, as such, will not address specialist themes indicated in section 5 that are relevant to effective implementation of rights at the organisational level, for example, the important issue of staff attitudes and work pressures that may serve as barriers to effective rights implementation. These matters will, therefore, be part of Chapter seven that will cover two case studies. Chapter 7 will also serve to evaluate why policy documentation may contain gaps or inaccuracies, for instance, examination of apparent gaps relating to organisational matters such as performance management and training. This is important as Chapter 6 concentrates on the evaluation of equality policies and not other organisational documentation that might contain relevant information.

A final issue that merits further consideration is the method by which national policy may be influenced to further equality objectives through the process of grassroots campaigning. This topic is, of course, beyond the remit of this study but is an issue worthy of more detailed research consideration. Reforms made at national level, of course, can be interpreted in various ways, for example, legal or policy reforms that address social injustice may be a

method of achieving social harmony as examined in Chapter 3 in considering the evolution of law.

6.3. Cultural values

It has been explained that culture is viewed by some management theorists as comprising those values that should govern organisational practice. Embedding cultural values into policy documentation would thus be an important step to combat the forms of cultural discrimination identified during the ESIP examination when it was noted that cultural issues could fit into either the Ideological (super-structural) or Institutional levels of ESIP. Critically, these values should also be made readily understandable to staff and service users alike. For example, organisational equality policies should express commitment to the promotion of social justice which constitutes the fundamental aim of equality policy objectives. The method of attaining this objective will, of course, generally require comprehensive staff training programmes (see below), programmes that incorporate raising staff consciousness of the nature of discrimination. Change, of course, is not assured through heightened consciousness but – without consciousness - addressing discrimination effectively is unlikely to take place. It is also important to state, in passing, the theoretical point that culture as a concept is not neutral with cultural values often serving to buttress the interests of particular groups. As Parenti (2006, page 16) notes:

“Much of what we call “our common culture” is really the selective transmission of elite-dominated values. When thinking over our “common culture” we tend to gloss over both the class divisions and the cultural divisions that exist.”

Implications for policy documentation

Although Parenti is discussing culture at the macro-societal level, the principle of the functionality of culture applies at the organisational level too. This means that organisations apply cultural statements, *prima facie*, to highlight their core commitments which, in the case of equality policies, relates to the promotion of social justice and the elimination of various forms of social oppression. It is important from the perspective of organisational development, then, that cultural values are clearly explained in policy documentation. For, failure to do so is to risk the allegation that espoused policy commitments are simple rhetoric with little practical impact.

Let us now turn, then, to the examination of what the policies under review cover in terms of cultural values, in particular commitments concerning social justice/social inclusion. Before doing so, it is worth noting the important theoretical distinction that can be drawn between equality of opportunity and equality of outcome. The first issue is concerned with providing a “level playing field” as people have varying starting points in life due to social and economic class differences. Equality of outcome, on the other hand, is concerned with a focus on end results of practice, not simply creating opportunities (Lister, 2010).

In terms of the fieldwork undertaken as part of this study, the emphasis is on establishing a policy framework that results in organisational outcomes to ensure that law and good practice guidance are mainstreamed throughout

housing services, that no unlawful discrimination occurs on any of the relevant protected characteristics.

Cultural value statements within policy documentation

Although some policies refer to equality being part of organisational values and mainstreaming of equality objectives (for instance, A13, A20, and A50), very few association policies actually mention social justice or social inclusion, far less describe the relationship between equality policies and the latter. This is an important omission as the *raison d'être* for establishing an equality policy framework is to meet social justice objectives through elimination of discriminatory organisational practices. And failure to draw this link between organisational cultural commitments and social justice is likely to weaken the organisational commitment to equality rights implementation in practice.

This follows given the theoretical process of structured omission since, if ideas are not clearly enunciated, they are unlikely to form part of practical equality action programmes. This point will be expatiated upon below when the equality policy statements are examined.

On considering those policies that do refer to social justice, though, there are grounds of potential criticism relating to clarity of terminology. For example, the A24 equality policy states that:

“Equal opportunities is a standard of performance under Social Inclusion,” but then fails to explain what this means.

The A44 equality policy emphasises that various people experience forms of social oppression such as people from BME groups, disabled people and

women before commenting that discrimination is “...unacceptable in terms of good practice, social justice and legal duty” (Page 1). But social justice is not linked in this policy, though, to the important area of organisational governance or cultural values.

Finally, the A 58 policy – while not referring to social justice – refers to supporting the Government in promoting a “culture of dignity.” Again, though, this assertion is not explained, nor is this commitment aligned to organisational culture or governance practices.

Summary

Cultural values are mentioned rarely in the association policy documentation. This represents a gap at the strategic level that is important as developing cultural values is inextricably linked to shaping the attitudes of employees to deliver services that promote equality objectives.

6.4. Policies and documentation

Policy documentation – including equality policies - is, in principle, ratified by social landlord Board/Committee members based on senior staff recommendations. Equality policies are of particular significance as they fall within the portfolio of governance policies, that is, strategic policies that regulate organisational activities (employment and services) relating to Board/Committee members, employees and tenants or other service users. In developing equality policies, social landlords must take cognisance of a range of self-assessment questions that are issued by the Scottish Housing Regulator (see Chapter 2, 2.4).

These standards do not, though, provide a framework regarding the development of policies against a standard template. As a result, this gives rise to a wide range of styles, including length of policy documentation. One key point with regard to attaining quality policy standards is that policy documents should set out clearly the principles and objectives that an organisation is seeking to achieve in its actual work practices. These should be contained within the policy as a separate policy statement that describes the principles that act as a framework of action. Failure to establish a coherent policy framework has, in turn, important implications for effective mainstreaming of equality as gaps in policy are likely to lead to systems failure in operational practice. As indicated in Chapter 5, for example, essentialist philosophy – coupled with systemic organisational methodology – requires that holistic strategies be developed if effective mainstreaming of equality is to be actualised in practice. Using this model in terms of policy statement development, therefore, entails ensuring that all of the factors that are pertinent to effective rights implementation at organisational level are an integral part of the policy framework. Further, applying the theoretical model developed in Chapter 5, there is a need to consider how policy statement principles are structured as the overriding factor from an organisational perspective is compliance with equality law and regulatory standards of good practice. This section provides a general commentary about the organisational policy statements followed by a detailed examination of their clarity, brevity and overall coherence. Following this initial evaluation, there is also a summary of how effectively policies refer to equality legislation and

good practice guidance. This is critical as, failure to include the relevant law and guidance within the policy framework, may result in this guidance not being implemented throughout services effectively.

Equality policy statements: general commentary

Examination of the **fifty two** equality policies reveals that thirty nine association policies lack a contents page; this represents some seventy five per cent of all policies. One major effect of this omission is that the document is less accessible to service users and staff alike as it is unclear what the policy document covers.

Forty seven (or ninety per cent) of the association policies, on the other hand, contain a statement of policy principles and/or objectives. Analysis of these statements reveals, however, a number of concerns with regard to their clarity, brevity and coherence. This matter is now assessed below.

Clarity of policy documentation

Association A11, for example, includes in its statement the comment that it will “...aim to treat all individuals or groups of individuals equally.” This is to misconstrue the nature of equality policies, though, that are involved with treating people in a way that does not discriminate. In effect, this means that different people will require to be treated differently if discriminatory practices are to be avoided. For example, simply sending out correspondence to tenants in a standard font such as Arial and in type size 14 will comply with recommended good practice and be accessible to most recipients. (See the Royal National Institute for the Blind homepage for further details.) But social landlords must consider reasonable adjustments under equality legislation to

ensure that they do not discriminate in service delivery (Equality Act 2010, section 20). Standard procedures – even those which comply with good practice at one level might still be discriminatory without reasonable adjustments being made, for instance, in this case by not sending visually impaired tenants documentation in a type size larger than type size 14.

Again, Association A14 policy states that:

“All groups within the country will be valued irrespective of class, income, level, age, lifestyle, the type of relationships they form and the types of households they live in.”

This statement is, however, wholly unclear as there is no explanation given to what it means to value groups on these grounds. Indeed, the sentence misses the main point of equality law that seeks to ensure that social landlords provide accessible services that do not discriminate on any of the grounds covered in the Equality Act 2010. Equality law, it should be remembered, should not be conflated with morality; law is, though, the framework on which organisational practice is based.

The Association A18 policy statement, on the other hand, is simply a description of activities rather than a set of clear principles; this policy also contains procedural matters, for instance, how referrals are made to the Association from the local authority even though such minutiae are superfluous within a policy framework.

Finally, in Associations A4, A9 and A10, there is a general statement that:

“Equal outcomes is a natural and integral part of good housing management practice, aimed at developing services to the fullest extent possible for the

good of the association and its users.” Yet this sentence is wholly unclear if not demonstrably false as equality is not about providing “equal outcomes,” but about ensuring consistency in terms of service provision through practices that are not themselves discriminating, either directly or indirectly; nor are equality matters “natural to housing management services” (Morris and Winn, 1990; Mullins and Murie, 2006).⁵² Indeed, as noted above, the issue of “equal outcomes” with reference to social justice is concerned with providing fair and accessible services that are tailored to the needs of individual recipients or service users.

Brevity of policy documentation

Brevity of policy statements is not, per se, a deficiency provided that principles encompass all of the key elements that are necessary to promote effective mainstreaming of equality. Brevity of policy commitments is a flaw, however, if important principles are omitted since – as argued above – this is likely to result in relevant issues being ignored within action plans, that is, the methods of implementing equality strategy commitments. Analysis of the policy statements contained in the Glasgow housing association policies suggests, however, that the brevity of policies is not of the positive ilk but of the type associated with negative connotations. This is now illustrated by reference to two examples.

In Association policy A29, the policy objectives comprise four short paragraphs that are not comprehensive in scope. For example, there is a

⁵² The repetition of certain phrases within several of the policies under assessment is also indicative that policies are being copied among organisations without a critical assessment of the particular text contained in the document.

reference to commitment vis-à-vis complying with anti-discriminatory legislation but law is not simply reactive in nature. For instance, the Housing (Scotland) Act 2001 requires social landlords to encourage equal opportunities, in particular observing equality requirements.⁵³ Again, the policy states that “all staff have been briefed on the policy,” but there is no mention of appropriate training aligned to job requirements.

In Association policy A62, there is no clear reference to meeting legal duties and other principles that are mentioned are covered in insufficient depth. For example, there is reference to monitoring on grounds of ethnicity and gender, but nothing about any other ground such as disability. Given the large number of disabled people in Scotland, this is likely to represent a major gap in monitoring of service provision.

Coherence of policy documentation

Assessment of the policies reveals that there is a dearth of coherence in the way that policy statements are drafted. This deficiency derives, in part, from the fact that policy statements tend to be brief and lacking in clarity. But lack of coherence also derives from failure to include all of the organisational practices explained in Chapter 5 within their policy statements. This is evident in many policies assessed and is now highlighted by reference to two specific policies.

In association policy A8, for example, the policy statement is simply a general commitment to equal opportunities that states that, in providing services, the association will ensure equality of opportunity and treatment. There is also

⁵³ The Housing (Scotland) Act 2001, section 106.

reference to positive action through assisting disadvantaged groups and reference to procurement. The policy omits detailed information, though, on cultural commitments, legal duties, monitoring and training.

In association policy A 55, on the other hand, although the policy statement refers to important elements such as monitoring, training, positive action and procurement, it fails to include reference to the need to comply with law or cultural commitments to social justice. Policy A 55 also provides a good example of how the categories relating to clarity, brevity and coherence are often intertwined. For instance, there is an oblique reference to training being aligned to their (staff) ability, as well as “special training for staff from under-represented groups or disadvantaged areas.” Neither of these assertions is clear, though, as there is no discussion of what “special training” means, nor why people need such training. Lack of clarity thus derives in part from statements that are extremely brief.

Reference to equality law within the equality policy documentation

Examination of the policies indicates that knowledge of the relevant equality legal framework is varied. The fifty two policies were reviewed against the following criteria to adjudge how effectively they reflected key equality legislation:

- citing of the Scotland Act 1998 that defines equal opportunities and the main equality legislative framework concerning the issues of disability, race and sex⁵⁴;
- awareness of other equality law;
- use of the important concepts of direct and indirect discrimination; and
- reference to good practice guidance.

(a) Citing of the Scotland Act 1998 and the main equality

⁵⁴ The assessment preceded the implementation of the Equality Act 2010

legislative framework

Table 3 summarises the findings as evaluated from the empirical data; the numbers refer to the number of associations and the percentage (rounded) relates to the total of **fifty two** association policies.

Table 3: Reference to appropriate legislation

Mention of Scotland Act 1998		Citing main law	
Yes (%)	No (%)	Yes (%)	No (%)
7 (13.5)	45 (86.5)	36 (69.3)	16 (30.7)

(Source: association equality policy documentation)

Two main points are apparent from the above findings.

Firstly, few association policies show awareness of the main Act that defines equal opportunities in Scotland. This finding is concerning as the majority of policies were written after the 1998 legislation came into force. (See Table 4 below) Secondly, a sizeable number of sixteen associations (31%) fail to cite the main equality laws adequately.

But how relevant are these omissions? On the positive side, for instance, although law may not be cited properly, most association policies (forty seven or ninety per cent) note the majority of grounds covered by the Scotland Act 1998. This finding indicates that there is, *prima facie*, awareness of relevant equality themes for incorporation into equality action plans.

But two issues of concern still remain. The first issue is that, despite most grounds being noted, this still entails that some grounds are being ignored given that most policies do not include all of the Scotland Act 1998 grounds.

A notable ground in this respect is social origin or class that is a major source of discrimination in contemporary society (Mullins and Murie, 2006).

The second issue is that the mere noting of grounds does not entail that actions to remedy discrimination on these grounds have been embedded within actual practice.

Table 4 : Date on which equality policies were created

Date of policies	Number of associations	Per cent (to nearest)
Pre-2000	3	6
2000	3	6
2001	1	1
2002	3	6
2003	4	8
2004	4	8
2005	11	6

2006	4	8
2007	4	8
2008	3	6
2009	2	1
N/K	10	5

(Source: association equality policy documentation)

Two points are made in respect of Table 4. The first point is that at least thirty nine policies (75%) were drafted after the Scotland Act 1998 was enacted. Given the findings above, this suggests that there is general ignorance of this piece of legislation. This is not to apportion negligence on the part of policy drafters, of course, as failure to draft comprehensive policy documentation can be explained rationally by reference to practical considerations such as shortage of resources or lack of specialist knowledge.

The second point is that ten policies are undated. From an organisational perspective, this is not good practice as organisations should, in compliance with effective governance strategies, monitor their policy developments, including tracking changes to policies through time. Another issue noted, in passing, that requires further scrutiny is that some policies do not seem to be reviewed in line with the review process timescales noted in the policy documentation. For example, in the case of association A37, the policy is dated November 2000 and there is a commitment to review it “no less than every three years.” This does not appear, though, to have been done. Again, A43 specifies that “The Association will undertake to “monitor and review all aspects of its Equal Opportunities Policy and, where necessary, amend it to

ensure its effective implementation.” Given that this particular policy was drafted in 1998, and that there has been a plethora of important legal changes since then, this policy should have been reviewed to comply with the policy commitment.

(b) Awareness of other equality law

It is difficult to assess how well associations understand the full range of equality law as this is not – nor should it be – evaluated within policy documentation.

Associations do, however, tend to list key legislation – or simply refer to the legal framework – and assessment of this information sheds some light on awareness levels of other relevant law. In A17, for example, there is a list of law but important law is omitted such as the Crime and Disorder Act 1998, the Human Rights Act 1998 and the Protection from Harassment Act 1997. And there is also reference to the Disabled Persons (Employment) Act 1944 and the Disabled Persons (Employment) Act 1958, many sections of which have now been repealed.

In A28, the list of legislation links the Race Relations Act to the 2000 amending legislation by citing: “The Race Relations Act 1975 and 2000. These are two separate Acts, of course, and the primary Act is the 1976 legislation that was amended by the Race Relations (Amendment) Act 2000.

In A16, although law is in general described accurately, the policy states that the Housing (Scotland) Act 2001 places “registered social landlords under an overarching obligation to prevent, eliminate and regulate discrimination.”

This statement is misleading, however, as the Act only requires social landlords to encourage “equal opportunities and in particular the observance of the equal opportunity requirements” in relation to the functions carried out under this Act.

In A19, on the other hand, there is a general statement to the effect that:

“We acknowledge equality legislation and act within this legislation at all times.”

Yet assessment of specific sections of this particular policy casts doubt on this assumption. For example, this policy does not refer to discrimination on grounds of social origin or class – the former being one of the Scotland Act 1998 grounds – nor does it refer to discrimination on grounds of belief (although religious belief is included).

In A32, there is a reference to the Access to Personnel Files Act 1987. This represents a failing on two counts. Firstly, this Act was repealed by the Data Protection Act 1998 that covers the processing of equality data that is deemed, within the legislation, as constituting sensitive data.⁵⁵

Secondly, accessing housing files by individuals was permitted under secondary legislation⁵⁶, not the 1987 Act; and these Regulations have also been revoked. The reference is thus inaccurate.

On a general note, assessment of policies indicates that the above examples are not exceptions, that other policies contain similar deficiencies with respect

⁵⁵ The Data Protection Act 1998, Schedule 16.

⁵⁶ SI No. 1852 The Access to Personal Files (Housing) (Scotland) Regulations 1992.

to accuracy and comprehensiveness. (Examples include associations A7; A18; A21; A22; A25; A28; A31; A37; A47; A51; A54; A56; A57; A61; and A62.)

The specific examples above also suggest some interesting issues that require further analysis. Firstly, listing legislation, either inadequately or inaccurately (A17), is indicative of ignorance of relevant law, or perhaps lifting of lists of law from some other source, for instance, copying of policy information. Secondly, the linking and description of law inaccurately in A28 indicates that the organisation is unaware of how the individual laws are related. This has practical implications as staff, seeking to ascertain particular legal information, require accurate descriptions of law to identify where information is to be obtained. Other implications exist, too, for advice and information services to tenants and other service users.

Thirdly, the bold assertion in policy A 19 that “we act within legislation” at all times is dependent on satisfying the anterior condition that legal principles are embedded throughout organisational practices so that staff comply with legal requirements.

Fourthly, including out of date legislation is indicative that organisations are not keeping abreast of important legislative changes; this has major implications for meeting statutory duties as failure to do may constitute maladministration.

Finally, it should be noted that few association policies include reference to the wide range of secondary legislation (Statutory Instruments) that is highly pertinent to law in practice. Indeed, it is through secondary legislation that much primary legislation is given effect.

(c) Using the concepts of direct and indirect discrimination

Arguments in favour of harmonisation of existing law, an explicit aim of the Equality Act 2010, is supported by examination of the association policies that suggests that overall knowledge of the law concerning the legal terms of direct and indirect discrimination is “patchy.” In association A9, for example, the policy refers to discrimination as being either direct or indirect; the policy then explains indirect discrimination by reference to consisting “of treatment or conditions where their application indirectly exclude a greater proportion of one group than another from a service or benefit.” This putative definition does not, of course, reflect the individual definitions of indirect discrimination inherent in the variety of equality laws, nor does it reflect legal complexity. For example, before the Equality Act 2010 came into force, there were two distinct statutory forms of indirect discrimination on grounds of race.⁵⁷ In association A 28, on the other hand, the terms “direct” and “indirect” discrimination are mentioned in 1.6. but not explained. Given that these are technical terms, this conflicts with another policy principle that is espoused in paragraph 5.8. where it is stated that the association “aims to use plain language.”

Finally, the A 52 policy is interesting insofar as it tries to amalgamate the different strands of law relating to indirect discrimination and harmonises them into one definition. The result of this endeavour, though, is to produce a definition that fails to reflect the law accurately, in particular betrays ignorance

⁵⁷ One form of indirect discrimination was defined in the Race Relations Act 1976, section 1 (b); while the second form was introduced by the SI 2003/1626 The Race Relations (Amendment) Regulations 2003.

of legal complexity, for instance, the fact that there was more than one statutory definition of indirect discrimination as in race equality legislation.

d) Reference to good practice guidance

Good practice guidance concerning equality matters is contained in a diverse range of documents as discussed above. Key standards that are relevant to social landlords include the Scottish Housing Regulator's performance standard, as well as, for example, the relevant statutory Codes. Analysis of the policies reveals, however, some interesting information concerning:

- comprehensiveness of information; and
- levels of accuracy.

On a general note, the comprehensiveness of information provided – and its accuracy – varies considerably throughout the individual policy documents.

In A10, the policy refers to the statutory Code on race but there is no mention of other relevant Codes; whereas in A17, there is neither reference to the Scottish Housing regulatory standards, nor to either of the Codes relating to race or disability. In A24, on the other hand, there is reference to performance standards, but no document is specifically mentioned, for example, the important Scottish Housing Regulator's performance standard to which associations must adhere. In A45, there is a statement to the effect that practice will be guided by "relevant approved Codes of Practice," but no information is provided concerning the latter. In A54, there is no reference to the regulatory standard, nor to Codes of Practice. This is interesting insofar as this is one of the most recent policies developed in 2009 from its predecessor policy in 2006.

An important point that can be inferred from this is simply that updated policies may themselves contain inadequate or inaccurate information dependent on the knowledge levels of the policy drafter. New policies do not necessarily reflect current law, nor good practice guidance, simply by their contemporaneity.⁵⁸

Summary

There is evidence that current policy documentation is deficient in a range of ways. Many of the policies lack clarity – in part due to their brevity and consequent omission of important details – as well as coherence. Lack of clarity is a failing that runs counter to policy commitments to produce documentation that is accessible to service users and staff alike; while lack of coherence has major implications for organisational practice as failure to address issues comprehensively may well result in equality commitments not being mainstreamed into practice. The examination also suggests that policy documentation is often inadequate in terms of failing to cover law and good practice issues, accurately or in sufficient depth.

Reasons for these gaps are not the focal part of this Chapter but are examined as part of Chapter 7. It is tentatively suggested, at this stage, that gaps in policy development derive from two main sources. The first gap stems from a lack of theoretical understanding relating to organisational practice,

⁵⁸ A small sample of housing associations that operate outside the Glasgow geographical boundary was also evaluated to discern any possible differences. These associations were referenced as A1; A3; A11; A20; A35 and A41. Using the same criteria of assessment as above, there were no significant differences from the Glasgow group with these policies containing exactly the same gaps. Although tentative, this suggests that similar gaps identified as part of the main study may be a national Scottish phenomenon and further research into this matter is required.

that is, an essentialist and systemic approach is not applied to policy development.

Examples of this are illustrated throughout the policy statements – as analysed above – insofar as such statements are more a “commentary or wish list” of things that ought to happen, as opposed to being structured around core principles that cover organisational practices systemically and holistically.

The second gap appears to arise through general lack of awareness of the wide range of equality matters that are pertinent to effective rights implementation strategies. For instance, the policies indicate that relevant law and good practice guidance is understood only in part, possibly reflecting the fact that equality – as a body of knowledge – is not a core element of traditional housing study or practice. It is stressed that failure to list such grounds in the policy document is likely to result in their omission from actual practice; this failing can itself be seen to constitute a form of institutionalised discrimination.

6.5. Communications

Communication strategy is an important aspect of effective organisational governance. In terms of equality matters, this requires organisations to develop information that is accurate and, critically, accessible to service users in terms of being readily understandable. This section evaluates, therefore, important issues concerning the accessibility of association policy documentation and, in particular, whether current policies promote the social model of disability as examined above. The latter issue will be assessed

principally through commitments inherent in policy documentation towards the social model, as well as language used as part of this process. The main topics that are assessed in this document are:

- general policy commitment to accessible services;
- plain language; and
- evidence of language used to promote the social model of disability.⁵⁹

General policy commitment to accessible services

A key self-assessment standard contained in the Scottish Housing Regulator's standards requires associations to:

"Do we provide good quality and easily accessible information on the services we deliver and how to access them, in formats, languages and locations which suit the needs of our target population"
(Source: Communities Scotland, 2006, GS 2.1.).

An example of this approach is evident in association policy A40 where there is a commitment on the front page to: "...provide this policy on request at no cost, in large print, in Braille, on tape or in other non-written format, and in a variety of languages." Yet examination of the association equality policies reveals that thirteen policies do not contain a general commitment to

⁵⁹ Time restrictions prevent analysis of language used to promote equality issues on other grounds, for example, on grounds of age, class, sex and sexual orientation. Each association should, however, carry out an assessment of language used in its public documentation to ensure that this does not have discriminatory and/or negative nuances. A specialist equality policy concerning appropriate language use could also be developed exploring the nature of language, including its effects on other people. This is a task far removed from the traditional and justifiably critiqued politically correct agenda.

providing policy information in an accessible format (For example, A5; A18; and A 43).

And, although the majority of associations do comply with this good practice criterion, there are, however, other issues that need to be addressed. For instance, the commitment to make information accessible is often contained, not in a prominent position that is readily apparent to service users (such as the front page), but often located in the body of the text that is not readily apparent (A14; A24; A36; A44; A51; and A57).

A further issue concerns the statements themselves with regard to textual clarity, as well as the appropriateness of language use. In policy A7, for instance, there is a general statement to the effect that published materials will be “accessible to their target audience,” but this is not clarified further. In A47, on the other hand, the commitment to make the policy accessible is limited to making published materials “widely available in whatever language is required.”⁶⁰ Using language that is appropriate is also an important consideration that should form part of general accessibility commitments. And examination of commitments contained in some policies indicates that language may not promote important models of good practice, in particular the social model of disability examined above. For example, the A48 policy commitment states that a copy of the equality policy can be provided in an appropriate form if someone has “difficulty with sight or hearing.” This

⁶⁰ Organisations require to consider the practical implications of such assertions that might not be achievable. For example, Crystal, 2000, points out that there are approximately five thousand languages world-wide, many of which have few speakers and many of which have not been translated.

wording, however, serves to locate the barrier to communications as being a personal physical defect rather than focussing on organisational barriers to communications that people with visual or hearing impairments experience.

Plain language

The Plain English Campaign argue continuously against bureaucratic tendencies to use language as a method of control, that is, a tendency within local state authorities to utilise technical jargon to limit service users' understanding of relevant issues with a view to keeping people "in the dark" and "to stop them claiming what is rightfully theirs" (referring to benefits entitlements) (Plain English Campaign, undated). The demystification of language can be realised, according to the Campaign, through organisations applying a set of key plain language principles to public documentation.

Examples of this approach include:

- using short sentences of between fifteen to twenty five words;
- designing text to avoid long complex paragraphs, for example, incorporating bullets; and
- avoiding (or explaining) technical terms such as legal terms or housing jargon.

Using short sentences, it is emphasised, is not by itself sufficient to meet plain language objectives as is clearly apparent in the sentence below:

"The D-T-L estate has many voids and no-one wants to exchange houses into this area."

The terms “D-T-L,” “voids” and “exchange,” of course, are examples of housing jargon or law (mutual exchange) that would require further explanation to be readily understandable to the layperson.

Assessment of the policy documentation that is used by housing associations, however, highlights that plain language principles are often eschewed. Indeed, the majority of policies fail to meet the above criteria at least in part of the documentation. This is illustrated by reference to the following examples.

In policy A5, for instance, one example of a non-plain language comment is shown by the following statement within the policy:

“...openly publicises its policies and procedures and that the most appropriate form of communication is made available to those who may be experiencing difficulties.”

In policy A16, the language clearly fails to adhere to plain language standards in statements such as:

“For small organisations employing less than ten people, it will be acceptable for the organisation to confirm its willingness to operate in accordance with X’s policy, and any additional requirements which are specific to the nature of the contract.”

In policy A21, there is a statement as follows:

“Discrimination can be direct or indirect, and can take place at personal and institutional levels.”

But neither of these terms is explained in context by aligning the discussion to the important theoretical examination of the nature and forms that discrimination can assume in society. Indeed, while superficially referring to elements of the SCIP (not ESIP) framework examined above, citing technical

terms without explaining them is likely to result in obfuscating policy clarity even more.

Finally, lack of clarity is evident in policy A56 in which it is stated:

“We understand the need to recognise and value individual difference. This allows everyone to contribute to their full potential, and acknowledges the importance of this, to the success of the organisation.”

Quite simply though: what does this mean? And perhaps the comment made by Fisk (2009, page 104) to describe this mode of speaking is apposite: “For we are not using words any more. We are utilising them, speaking for effect rather than meaning, for escape.”

Evidence of language used to promote the social model of disability

Chapter 4 elucidated how language can be used as a method of conveying negative attitudes about disabled people; and how negativity is incorporated into a medicalised perception of disability. This is known theoretically as the individual model of disability that “locates the ‘problem’ of disability within the individual and sees the causes of this problem as stemming from the functional limitations or psychological losses which are assumed to arise from disability” (Oliver, 1996, page 32). As Carson (1999) notes, a wide range of terms have sprouted within the lexicon that comprises the medical model of disability; this lexicon includes phrases such as “someone with a disability.” Adherents of this approach also tend to refer to people as having “special needs” and/or “suffering.” The use of such language in public documentation provides a useful indicator as to whether or not the social model ethos has been embedded throughout organisational practice. This is an important point since the social model is promoted by the Equality and Human Rights

Commission and, therefore, social landlords that profess to adhere to good practice should incorporate appropriate language into their policy documentation.

But analysis of the policy documentation reveals that language use tends to reinforce the dominant medical model of disability. From the total number of fifty two policies under review, for instance, only **two** policies (or 4 percent) actively promote the social model through a stated commitment to this model and application of its principles into actual language used. Policy A23, for example, refers to the need to “promote the use of non-discriminatory language and language based on the social model of disability,” while A24 has established a separate policy on disability matters that refers specifically to the social model ethos and compares it to medical model perspectives.

Another policy, A61, on the other hand, uses appropriate language but does not actively endorse adherence to the social model; while A13 does express adherence to the social model (purportedly having a “positive commitment to the social model of disability) before using terminology that is resonant of medical model language through policy phrases such as:

- “people with a disability”;
- “not the disability itself”; and
- “on basis of his/her disability.”

Policy A36 shares a similar commitment to the social model but, like A13, applies medical model language, for example, in its reference to “special training facilities” and “needs of people with disabilities.” The apparent contradiction between policy objectives and language use is interesting and worthy of some scrutiny in the case study assessment. Tentatively, it is

suggested that adherence to social model ideology is largely rhetorical, that the consciousness required (of staff) to implement social model perspectives effectively into practice has not been developed in sufficient depth.

Throughout the remaining forty seven policies, medical model language is used predominantly with the above types of phrases dominating discourse about disabled people. Policy A28 is, though, worthy of particular note with its reference to:

- “inhabitants with a disability or illness;” and
- “wheelchair property.”

Summary

This section has highlighted the fact that most equality policy documents could be more accessible to service users in terms of accessible language use, as well as giving greater prominence to commitments of making policy information accessible in a range of formats. Scrutiny of the documentation also shows that language used, in general, does not promote the rights of disabled people, a practice that runs counter to good practice guidance.

6.6. Performance management

Performance management, as was highlighted in theoretical discussions in Chapter 5, is an important tool in assessing whether or not policy objectives are being met in practice. As Flynn (2007, page 137) writes:

“Performance information is used for two main purposes: to judge the effectiveness of policy and the performance of organisations and their managers.”

In practice, this translates into using a system of targets – quantitative and qualitative – coupled with surveys to assess service user feedback. But there is no simple correlation between improved performance figures, whether

quantitative and qualitative, and satisfaction levels of service users. For example, Flynn, 2007, notes the important point, as derived from empirical research, that suggests that people – as the quotation that preceded this Chapter highlights – take account of other factors when assessing public sector performance, their perceptions shaped by a nexus of factors such as personal experience, expectations and media reporting. Thus, policy performance may be shown to be improving against performance data, but this does not necessarily translate into increased satisfaction levels of service users. Measuring perspectives of service users is not the focal point of this section, however, simply an assessment of how effectively present systems of equality monitoring are likely to provide data that will enable associations to identify service issues for redress and/or improvement concerning equality matters.

In Chapter 5, limitations associated with quantitative forms of monitoring were examined, while it was emphasised that qualitative assessment of housing practice played an important role in policy evaluation. In order to evaluate the potential effectiveness of the equality policies under review to enable quality assessment of service practice, the following elements are assessed:

- data processing commitments;
- rationale for monitoring;
- type of monitoring; and
- issues being monitored.

Data processing commitments⁶¹

The processing of sensitive personal data (data about equality matters such as ethnicity, belief and sexual orientation etc) is permitted in law provided it is gathered in accordance with the provisions of the Data Protection Act 1998 (O'Carroll, 2000). Other conditions relating to the processing of personal data were added to the nine criteria in the Act through subsequent secondary legislation. (Carey, 2004, *Data Protection: A Practical Guide to UK and EU Law*, Oxford.)

One of the findings to emerge from this study is that many associations do not stipulate their legal duties regarding the processing of sensitive data in their equality policies, although this commitment might be covered in other specialist policy documentation, for instance, their Data Protection Policies. In A14, for instance, there is simply a comment to the effect that equality data are to be gathered as per the Appendix 2. But there is no explicit commitment that data are to be processed, in confidence, and in line with strict legal criteria in order to protect the individual's rights. This gap in referencing is common to other policies too (A29; A46; A49; and A 62). Interestingly, one association policy A26 refers to processing of sensitive data against legal criteria in relation to employment records, but not so in the case of service

⁶¹ Personal data must be processed fairly and lawfully in accordance with the First Principle; Schedule 2 conditions and at least one of the Schedule 3 conditions within the Act must be satisfied, for example, the data subject has given their explicit consent to processing of data, or it is necessary to exercise statutory functions. For the processing of sensitive data, see SI 2000, No.417, *The Data Protection (Processing of sensitive personal data) Order 2000* and SI No. 2905, *The Data Protection (Processing of sensitive personal data) (Elected representatives) Order 2002*.

users. This might indicate that different personnel have drafted different sections, or simply be an oversight on the part of the policy drafter.

Rationale for monitoring

As Stonewall Scotland (2008) highlight, monitoring is useful to clarify at policy level the following issues:

- organisational intentions to monitor;
- why the information is required; and
- what the information is to be used for.

Organisational benefits from this process might then include ensuring that: services are accessible; compliance with legal and good practice requirements to eliminate discriminatory practices and promote equality objectives; and improving services as part of organisational commitments to continuous improvement, a core element in the best value strategic approach. As implied by the examples above, though, most equality policies tend not to provide a coherent rationale for why information is being collated other than for general reasons such as improvement of services and/or reporting information to the regulatory body and committee or tenants' fora. Critically, too, there is little discussion within policies as to how monitoring systems selected will achieve these general objectives. There are exceptions to this general trend, though, as evidenced in A16 that explains clearly why equality data are being collated and, significantly, why some data are not being gathered.

Type of monitoring

Monitoring systems may vary in quality and it is critical that questions asked elicit meaningful information. For instance, simply seeking information about numbers of disabled people is insufficient as an evaluative tool since this question does not elicit information about each individual tenant's accessibility needs. Indeed, it is this ancillary information that is required to ensure that services are tailored to meet the needs of individual tenants in line with legal and good practice requirements.

An important part of these requirements, it should be emphasised, is to mainstream equality commitments throughout housing services, as well as to use monitoring data to assess the impact that policies are having in eliminating unlawful forms of discrimination, as well as promoting equality objectives.⁶²

Yet analysis of the data being gathered suggests that monitoring is limited in scope, with the primary focus on quantitative matters. In A18, for example, there is reference to monitoring of numbers of housing applications, nominations and allocations with regard to ethnic origin and gender. No explanation of why only two categories have been chosen from the range of grounds covered in the Scotland Act 1998 is offered. This is not to attribute illegality to this practice failing, though, as the Scotland Act 1998 does not specify that all grounds should be monitored. Failure to monitor these

⁶² Both quantitative and qualitative equality data are relevant. In the example above, for instance, knowing the number of disabled people might be useful if one is carrying out a statistical equality analysis of numbers and percentages of disabled people and non-disabled people against national patterns; while qualitative data relating to their access needs is also vital to enable social landlords to make reasonable and appropriate adjustments.

grounds only could, however, lead to unawareness that organisational practices are discriminatory in their effects, whether unlawfully or unfairly. This is an integral element of institutional discrimination. In A 20, on the other hand, quantitative data are recorded relating to applicants by age, ethnicity, gender and disability, but this appears to be restricted to questions concerning allocations such as the type and location of houses let to applicants.

Issues being monitored

Analysis of the types of housing data that are being collated – employment data excepted – reveals that monitoring systems are primarily concerned with housing applications and the allocation of housing (A40; A43; A48; A51; and A53). Other specific issues – with examples of associations in brackets – are also monitored such as: accessibility of services (A9; A49); advice services (A14; A49); complaints (A16.); contractor appointments (A18; A30); developments to comply with law (A38); harassment (A13; A26; A29); satisfaction survey data (A38); and tenancy problems (A31).

In considering this range, three key points should be noted. Firstly, evaluating policy commitments to monitoring as incorporated within the equality policy documents suggests that the majority of associations operate a limited range of performance indicators and that these are mainly quantitative in nature. Secondly, even when other issues are covered such as advice services, neither policy A9 or A10 explains what they mean when they intend to monitor advice services. Indeed, scrutiny of these two policies shows that the section on monitoring is – save name changes and other minor textual

amendments– replicated entirely in both policies, an indicator of copying of information. Finally, a comprehensive monitoring system should include a range of qualitative and quantitative techniques throughout housing services; indeed, this is an important part of the mainstreaming process. Such techniques would include things such as an assessment of the quality of advice provided to service users concerning equality matters (remedies available to address harassment, for instance); or evaluation of the quality of written documentation against key accessibility standards discussed above (plain language and appropriate design, for example)

Summary

Assessment of organisational equality policies relating to performance management indicates a number of concerns. Firstly, there is an apparent failure to provide a rationale for the performance management systems in place; while the dominant form of monitoring appears to be quantitative in nature. The range of issues being monitored appears to be limited in scope, too, and performance measures should be extended to all relevant areas of service delivery. Failure to do so runs the risk of failing to implement equality policy objectives effectively, as well as failing to comply with statutory and good practice standards.

6.7. Human resource matters

In Chapter 5, the important role of training in achieving policy objectives was explored. Attitudinal issues were likewise covered as being of some

significance to effective rights implementation, albeit empirical evidence for this is conjectural (Loveland, 1995). Given that this section involves a desk-based assessment, attitudinal matters will not be examined in detail until the case studies in Chapter 7. This section will focus, therefore, on the role afforded to training in the policies under assessment. This assessment will consider two key questions as follows:

Firstly, is organisational training aligned to a robust theoretical model, namely the training cycle that covers distinct elements, including needs assessments? Secondly, do the commitments to training clearly cover the wide range of possible equality training that the training cycle element “provision of learning” stage covers? For example, equality training itself comprises a diverse range of different –albeit inter-related topics – such as legal training; policy and procedures training; consciousness raising; and performance monitoring.⁶³

Training cycle

In view of the pivotal role that training exerts in effective policy implementation (Montgomery, 2001), it is important to recognise that training is part of governance strategy. And this point is acknowledged in the Scottish Housing

⁶³ The purpose of the individual training needs assessments of individual staff – and committee members – is to identify what type of training is appropriate for their job roles. And then to align this to actual training provided. Thus, legal training might be provided to those housing staff involved in advice and information services; while training on how to evaluate performance data and related statistical information would clearly be an issue for committee members whose role is to evaluate policy effectiveness using such data to do so.

Regulator report (2009, page 13) in which it is stated that one of the characteristics that shapes good performance is "...resources, and staff training and development, aligned to improvement activity."

Prima facie, most policies refer to training commitment, although a small number do not, for example, A32 and A37. Yet scrutiny of the policies indicates that no association policy is aligned to the important theoretical model of the training cycle, although there is recognition in a wide range of policies to align training provision to identified job needs and responsibilities, in short, that training should be appropriate. Examples of this commitment are policies A18; A33; A56; A59; and A61. The fact that housing policy drafters do not refer to the training cycle is scarcely surprising since training strategy development is often the remit of human resource officers who may or may not be involved in drafting equality policies concerning service matters. What this illustrates, though, is the need to integrate all major policies so that core training objectives, including meeting the provisions of the training cycle, are threaded through all organisational policy documentation.

Training commitments

Failure to apply training cycle methodology, it is contended, is likely to result in a vague and/or disparate training programme that does not cover the various types of training required to fulfil equality policy objectives. It should be emphasised, too, that training policies of social landlords should include

meeting of staff needs, as appropriate, through attending relevant educational courses at University or College levels. And this is exactly what appears to follow from analysis of the individual equality policies under review. Most policies, for example, refer simply to providing general equality training programmes that use terms like “appropriate training” without clarification of how this is aligned to policy themes or job requirements. Some individual policies, on the other hand, refer specifically to important issues such as the need to have:

- accessible training venues (A4);
- ongoing or regular training (A15; A23); and
- specialist training such as sign language to promote accessible (A 27).

Another theme that is also interesting concerns the variety of commitments as espoused in the individual policies. In A14, for example, active participation by staff and committee members in equality and diversity training “will be compulsory;” while in A53, the Association will ensure that staff undertake equality training but committee members will only be encouraged to attend.

In order to ensure that equality policy objectives are implemented effectively, training should be an organisational requirement, of course, a point that gels with the perspective noted by the Scottish Housing Regulator above.

Summary

This section has highlighted that association equality policies refer, in general, to training issues. There is a dearth of explanation, however, in respect of what issues equality training should cover other than general and rather oblique examples. It is tentatively suggested that this anomaly might be explained due to organisational failure to adhere to a robust theoretical

training methodology based on the training cycle, a model that would encompass all relevant training issues relating to the equality mainstreaming process.

6.8. Organisational policy evaluation: summary of findings

Chapter 6 has analysed a wide range of organisational policy matters through desk-based analysis of equality policy documentation. These policy matters comprise the organisational framework of factors that are necessary to achieve effective implementation of equality policy objectives as identified in Chapter 5.

With respect to each of these matters, key research findings are as follows.

Cultural values are mentioned rarely in the association policy documentation representing a critical gap at the strategic level as cultural values are inextricably linked to shaping organisational commitments to promote equality objectives; this may also be relevant to shaping positive attitudes of employees in support of these objectives. Policy documentation is deficient in a range of ways as many policies lack clarity and coherence. This is in clear opposition to espoused organisational policy commitments relating to mainstreaming of equality objectives into practice, as well as delivering housing services that are accessible to service users and staff alike. Critically, too, documentation fails to incorporate law and good practice guidance, whether accurately or in sufficient depth.

Although performance management systems are in place with respect to equality monitoring, these systems are often rudimentary and require further development to ensure that quantitative and qualitative measures are

included, measures that straddle all areas of housing practice; this, too, is an essential aspect of effective equality mainstreaming. Evaluation of the key human resource area of training indicates that policy commitments are not sufficiently robust due to a failure to align training commitments to the theoretical model known as the training cycle.

Finally, and expanding on this theoretical failing, the main gaps in policy development appears to stem from two sources. Firstly – and critically – there is evidence of a lack of theoretical understanding relating to organisational practice, that is, an essentialist and systemic approach is not applied to policy development. Examples of this are illustrated throughout the policy statements insofar as such statements are more a “commentary or wish list” of things that ought to happen, as opposed to being structured around core principles that cover organisational practices systemically and holistically. Secondly, there is evidence of a general lack of awareness of the wide range of equality matters that are pertinent to effective rights implementation strategies. For instance, the policies indicate that relevant law and good practice guidance is understood only in part, possibly reflecting the fact that equality – as a body of knowledge – is not a core element of traditional housing study or practice. It is stressed that failure to list such grounds in the policy document is likely to result in their omission from actual practice; this failing – as noted above - can be seen as constituting a form of institutionalised discrimination through the theoretical process of structured omission. Finally, and a critical point, the range of issues identified as being pertinent to effective equality policy development, are also those elements

that are kernel to formulating action plans and carrying out impact assessment processes that are essential if mainstreaming of equality objectives is to be achieved in practice (a process already referred to in Chapters 2 and 5). None of the policies under assessment covered all of these issues comprehensively or coherently, although most social landlords dealt with relevant elements in part. Let us now turn to Chapter 7 to evaluate specific work practice themes through qualitative analysis of staff feedback; the purpose of this is to provide added insight concerning the relevance of the models applied in this study, as well as gathering information from actual housing staff about barriers that inhibit equality rights implementation.

Chapter 7: Case studies

“Training and making other people do training and to imagine themselves in other people’s shoes is fundamental”

(Association A interviewee).

“I don’t think it sounds very good. There should be some form of training ...even if it is to keep you up-to-date with law”

(Association B interviewee).

7.1. Context

In this Chapter, two case studies are undertaken that involve two social landlords operating in the Glasgow area. These associations comprise a local community based housing association and a national association whose area of operations cover both England and Scotland. Only the Glasgow office of this association was assessed. In order to preserve confidentiality, the associations will be examined as Association A and Association B respectively. No detailed statistical data are provided about the associations that could be used to identify them.

7.2. Purpose of the fieldwork

The purpose of undertaking the case studies is to evaluate critically what factors influence the effectiveness with which social landlords implement their equality strategies. This evaluation drew mainly on the key factors identified in Chapter 5, but also included general questions to assess what barriers might inhibit effective implementation of equality objectives. The factors that are the subject of detailed assessment are:

- culture;
- policy and procedural documentation;
- training;
- performance monitoring;
- barriers to effective rights implementation*; and
- general observations.**

*This question sought to gauge interviewees' **perceptions** on barriers to effective rights implementation; this included questions on attitudes and resources.

** This question invites the interviewees to add any additional comments.

7.3. Scope of the fieldwork

The fieldwork involved carrying out interviews using a questionnaire based on mainly open questions to elicit evaluative responses from a range of staff, as well as one committee member from each association (Appendix 2). The interviewees selected are shown in Table 5 below. The rationale for this selection was to evaluate the views of people operating at different echelons within the organisational hierarchy. This would ensure that views of committee and staff involved in policy development would be considered alongside views of staff dealing directly with tenants thus providing for a more balanced evaluative process. Quotations are utilised in the Chapter, as

appropriate, to elucidate key points that are relevant to this study, as well as to stimulate critical reflection. There is a general assessment of findings at the end of this Chapter.

Table 5: Interviewees

Association A	Association B
Committee Member	Committee Member
Director	Depute Director
Housing Manager	Housing Manager
Housing Officer	Housing Officer
Trainee	Senior Housing Assistant

Total interviewees: ten

(Source: Primary data collated during the fieldwork.)

7.4. Limitations of the fieldwork

The sample size was restricted in scale given the overall methodological focus, namely the analysis of policy documentation. Findings gleaned from the study are thus tentative in nature, but are intended to illustrate key issues for further detailed examination, an issue that will be addressed in the concluding Chapter. This point, notwithstanding, the information gleaned through the survey highlight interesting patterns that are critical to the question of what organisational barriers might inhibit the effective implementation of equality strategies into practice.

7.5. Methodology

In order to evaluate the staff views coherently, this Chapter will assess the responses for each of the organisational criteria above. Given the limited number of respondents, Association A and Association B will be considered jointly under each theme; this will enhance coherence, as well as

strengthening both confidentiality and anonymity commitments. The systemic perspective adopted as a central theoretical postulate of this study above will be applied to this assessment, though, so that inter-relationships among the different variables are highlighted, as appropriate.

Note

The questions used in the Appendix 2 questionnaire are highlighted in brackets beside each heading to illustrate what specific questions are addressed under these headings. Questions are joined together if this enhances overall coherence and textual flow and avoiding listing all thirty questions separately.

Culture

Description of organisational culture and supporting objectives? (1;2)

The general views of staff from both associations were that cultural values espoused commitments to equality matters. One officer from Association A, for example, explained how culture was “much more robust than anywhere I have worked in such as local authorities;” while an officer from Association B stated that their culture was “very positive ...an honest culture and an inclusive one.”

The method for inculcating positive equality values was similar in both organisations through mission statements, internal management plans and business plans.

In seeking detailed comments about the roots of cultural commitments, one officer from Association B made an interesting point to the effect that their organisation had “kept to the community-based housing ethos” and was “not just a business.” Tenant satisfaction surveys were regarded by an officer from Association A as being critical to this process, too, as tenant views were

sought to monitor if cultural commitments were being met in practice. Finally, despite these positive comments, one senior officer from Association A made the interesting point that the cultural values were “not necessarily drilled down into all aspects of the organisation.” This is an important point as – in line with systems theory – equality mainstreaming is unlikely to occur if individual activities covered in this section are not implemented *in toto*. And a similar comment was made by the Housing Manager in Association B with the pithy statement: “We could do more.”

Policy and procedural documentation

This section of the questionnaire asked a range of questions to elicit interviewees’ views of organisational policy documentation. Association policies were part of the audit of policy documentation carried out in Chapter 6 under A 36 and A 33 respectively. This section does not, therefore, replicate this process, but seeks interviewees’ views on the quality of their own organisational policy, including organisational procedures relating to their development, for example, policy review and consultation procedures.

(a) Responsibility for developing policy and its contents? (3;4)

In both associations, there was general consensus as to how equality policy was developed, including the key players involved in this process. For example, in Association A, it was known that policy-making took place initially through headquarters; while Association B staff clearly recognised that development of policy was undertaken at directorial level.

The staff in Association A and B clearly understood what the equality policy covers in terms of its general commitments, for example, one officer noted

how the equality policy was concerned with “treating people fairly” on grounds covered in law; while another referred to its role in monitoring. More concerning, though, was the statement made by the two committee members to the effect that they did not know what the policy covered. In trying to elucidate this point, both committee members explained that they had received no equality policy training.

(b) Equality action plan? (5)

Association A staff were, in general, aware of the function of the equality action plan, recognising that its key role was to embrace all “areas of the business” so that equality objectives could be achieved in practice. But neither the committee member nor another staff member were sure of its contents. This is indicative, arguably, too of lack of training as neither person had received either policy or action plan training. In the words of one of these interviewees: “I am not sure what the action plan would cover.”

Association B, on the other hand, did not operate an action plan, although two interviewees were unsure of this fact. The two senior staff explained that, in their view, this was not a major omission as equality monitoring was done through the annual performance statistical return and information provided through the internal management plan. But this is a flawed position insofar as action planning is the tool to integrate equality objectives into all organisational services; action planning is not synonymous with performance monitoring, although monitoring is one element within the action planning process.

(c) Reviewing the equality policy and perceptions of the review process? (6;7)

Association A interviewees were clearly aware of the procedure to review policies every three to five years (or sooner if required because of legal changes). This position was replicated in Association B. In both organisations respondents were able to explain how policy review involved a nexus of consultations among staff, tenants and committee before policy was ratified. Although feedback indicates awareness of the process as to **how** the equality policy is reviewed, concerns regarding the effectiveness and comprehensiveness of this process were highlighted in both organisations. In Association A, for example, staff consultation on policy development and review was deemed, by the Director, to be “passive consultation through the intranet and not targeted;” while the Housing Manager emphasised how policy review was “not as robust as it could be in Scotland.” In Association B, on the other hand, responses were varied with all responses positive bar one to the effect that: “Staff could be involved more to discuss the points in the policy,” the same officer commenting that she had not been involved in previous policy reviews despite a substantial period of employment.

(d) Main laws on equality? (8)

The respondents in Association A who were aware of the main equality laws were, unsurprisingly, senior staff. The housing officer, on the other hand, referred accurately to the main law but was unsure if law allows for positive action. Given the important role of positive action in promoting equality objectives, this is a notable gap in knowledge. Association B staff, likewise, could refer to the main laws accurately, but one officer did note that she didn’t “know much about equality law.” There was a tendency also to confuse the

purpose of equality law with comments such as its role is “treat people the same” and “not treating people differently;” a key aspect of equality law, to be precise, is to treat people appropriately to their needs, a process that may well lead to differing treatment. This terminological confusion could, though, be a “slip of the tongue” as staff sometimes used the terms “fair treatment” and “equal treatment” during the same interview and, when probed, this distinction was apparently understood by the staff members concerned. Finally, one officer, who thought that the equality policy was “just to deal with allocations” pinpointed a dearth of training as the main reason for her ignorance of this matter.

(e) Law affecting job practices? (9)

Association A interviewees identified a range of ways in which equality law might affect job practices as follows: to eliminate discrimination on equality grounds; monitoring; and as one interviewee (the Director) highlighted – to foster the specific nature of his organisation – its role being to promote positive action on grounds of race equality. Association B respondents made similar comments focussing on the role of law as eliminating discrimination and promoting an inclusive society. One officer surmised that organisational practice was becoming too professionalised and subject to legal regulation; and that there were “not enough people with passion.” For this officer, the main criterion to acknowledge was to “treat people with dignity.”

(f) Awareness of the Codes of Practice and regulatory standards? (10; 11)

Four of the five interviewees from Association A had not heard of the Codes of Practice. Further detailed questions from the author elicited feedback that the Codes of Practice would doubtless be used to promote good practice and to encourage effective implementation of legal provisions. Ignorance of such documentation again points to inadequate levels of information and, possibly, training – an issue that is examined below in detail. Association B respondents betrayed similar ignorance of what the codes cover. For example, one respondent thought that the codes provide guidance about “treating people the same;” while another thought they might “focus on the statistical side, not the personal side.” The paucity of the answers, overall, suggests that the majority of staff are unaware of the wide range of issues that the codes address.

Three of the five Association A interviewees had heard of the regulatory standards on equality that are produced by the Scottish Housing Regulator. But the standards are not regarded necessarily in a beneficial light. For instance, one senior officer stated that, in his view, “people can’t get their heads around them...they are obscure and lack direction;” while one committee member made the general statement that, although he was aware of the standards, he “really can’t remember how they might affect work practice.”

Perceptions of the regulatory standards from Association B interviewees were of a similar ilk. For example, the Deputy Director emphasised that “some (standards) are OTT and pretty hard to understand what they want you to do.” The other respondents were uncertain of the details contained within the

standards. As with Association A, the committee member had not heard of these standards. This is extremely serious as an important role of committee members, as part of governance, is to approve policies that must take cognisance of the regulatory equality standards.

(g) Equality policy and the law? (12)

Initial comments from the Association A interviewees were positive with several people indicating that policy reflected main legal commitments. Scrutiny of these views, however, suggested some concerns. The senior staff noted, for example, that the policy probably referred generally to about “eighty to eighty five per cent of all relevant law,” although the Scottish legal framework had not been taken into account, for example, the policy did not refer to the Scotland Act 1998. Other interviewees were not sure if the policy reflected the law and responded with general comments such as “I am sure that it would” and “we would have noticed if something was out of place.” But one delegate grasped the key point by acknowledging that “we may not pick up on the issues if we don’t know the law;” while another stressed that the policy “was not used enough to have an opinion.” Finally – and an important point made by the Housing Manager – staff do not require to have detailed legal knowledge provided that organisational procedures that staff adhere to embed the law accurately. But this officer also agreed that the policy did not “take cognisance of the Scottish position” which leaves room for concern.

Association B respondents, on the other hand, were unanimous in stating that their policy reflected law accurately. But these statements were not necessarily based on firm foundations so much as supposition. For example,

when asked in what ways the policy reflected law, one person responded as follows: "...hope that committee members would know if equality policy reflects the law" The committee member, for his part, however, was unsure if the policy did reflect the law. As we shall show below, the general uncertainty of how well policy reflects equality law is largely due to inadequate training programmes; to this issue we now turn.

At this point, it is worth noting that Association B policy was one of the policies that has been reviewed after the assessment of policy documentation took place.

Assessment of this new document highlights gaps that have not been covered since its predecessor. For example, there is still no reference to the important Scotland Act 1998 with the result that social origin (or class) is omitted; nor is law up-to-date with no reference to the Race Regulations 2003 (op cit) or other law.

This confirms the point made in Chapter 6 that new policies will not necessarily enhance gaps in their predecessor unless drafters of policies are abreast of relevant law and good practice guidance.

Training

In view of the central role that training exerts in effective rights implementation as argued in Chapter 6, this section examined in depth an array of training issues using the robust theoretical model of the training cycle as the template of analysis.

(a) Heard of training cycle? (13)

Unsurprisingly, only the two most senior officers from both organisations had heard of the training cycle. It is imperative, then, that organisational procedures through the training strategy embed its principles into practice. The training cycle, to recall, covers a range of distinct but inter-related steps as follows: needs assessment; training planning and provision; and validation and evaluation. These are the activities that are now examined in detail.

**(b) How are equality training needs assessed and staff perceptions?
(14;15)**

It is an important organisational principle to identify equality needs against the nature of the organisation and the role carried out within the organisation. For example, committee members should receive training on monitoring and evaluating equality data produced through reports; while housing staff would be expected to understand legal principles covering accessible services so as not to discriminate on disability-related grounds. How, then, do these organisations assess equality training needs? In Association A, there is a formal staff appraisal system in place of which, interestingly, the committee member was not aware. But, apart from diversity training (see below), there is limited equality training provided to staff or committee. In Association B, on the other hand, staff appraisal is no longer utilised as the basis for assessing needs, with needs being assessed either through a self-identification process, or as recommended by the Depute Director. Although some interviewees expressed their approval of current arrangements, one staff member bemoaned the cessation of the staff appraisal system with the words: “Don’t know why we got rid of it ... it was a good thing;” while another got to the

heart of things by stating: “The system could be improved through staff appraisal ... a planned approach to training.”

One consequence of having no staff appraisal system in place is that training is not developed comprehensively and is reliant on people being aware of their training needs. Lack of awareness of law and guidance illustrated above is, however, likely to result in needs failing to be identified through ignorance of relevant issues.

(c) Types of equality training received and training providers? (16; 17)

A standard template was used as in Table 6 below to cover a diverse range of types of equality training.

Table 6: Types of equality training

Type	Numbers of staff	
	Association A	Association B
Law	2	3
Guidance/ standards	1	1
Policy and Procedures	-	-
Monitoring	-	-
Diversity/ consciousness raising	5	2
Other*	-	-

(Source: primary data derived from interviews)

*One person referred to having “possibly something on disability over five years ago.”

Although Table 6 indicates, *prima facie*, a range of training being provided, analysis of the data suggests several issues of concern. Firstly, only the Director in Association A has recently been on legal training; while housing staff have had limited amounts despite most having been in post for substantial periods of time. One officer in Association B, for example, referred to race equality training about “ten years ago.”

Secondly, neither organisation appears to be providing detailed policy and related procedural training, although diversity training alludes to policy. This is a critical omission as policy training is job focussed training. The words of the Director are interesting in this respect when he confirms that he “doubts if staff get equality training linked to their jobs ...it would be good to look at that.”

Thirdly, although diversity training is provided in Association A on a planned basis to all staff, this is provided, apparently, only every three years (see below) and is a generalist course as opposed to assessing theoretical models of social injustice such as ESIP that analyse critically what types of discrimination exist and what, given the essential nature of social landlords, the policy priorities should be.

Indeed, one interviewee emphasised that “more work should be done looking at individual training needs.”

Finally, monitoring training is not being provided on a structured basis. This is a major gap as organisations should monitor all housing services as part of their requirements, not only to eliminate unlawful forms of discrimination, but

also to promote equality. Further, monitoring is an essential aspect of equality impact assessment discussed in a previous Chapter.

Association A interviewees confirmed that equality training is provided mainly internally by specialist staff from the Development and Learning Team, although external agencies can be used, as appropriate. Association B, on the other hand, use external providers such as SHARE, a local housing association training organisation.

(d) Quality and frequency of training? (18; 19)

Interviewees in Association A commended their internal diversity training provision with one person stressing that it was “thought provoking material;” while another remarked that it “brought things to the forefront of my mind that I hadn’t thought about in depth.”

But it was also highlighted that the internal training programme does not cover the social model of disability, a major omission given the putative commitment by the Equality and Human Rights Commission to this model and their encouragement of public bodies to endorse this model too. The frequency of training provision was, though, the subject of some criticism as it was indicated that diversity training was only provided on a cyclical basis, about “once every three years.” As one senior officer commented: “No... there is not sufficient (training) on offer.”

The dearth of training provision in Association B limited responses to these questions. But there was evidence that staff would relish having more detailed training, that current provision was regarded to some extent as being

“sporadic and erratic.” For example, as one officer - to re-iterate the quotation that precedes this Chapter – states:

“I don’t think it sounds very good. There should be some form of training ...even if it is to keep you up-to-date with law.”

(e) Does training enhance service delivery? (20)

There was a unanimous perception, in both organisations, that training correlates with enhancing service provision, that it is necessary to provide quality services. In particular, it was noted how “training makes you interested in people more ... giving insight into people’s feelings” as well as “training will enhance people’s ability to assess our range of services.” An interesting point was stressed by one senior officer to the effect that “good practical training can help with attitudes,” an issue that is dealt with in detail below when potential barriers to effective policy objectives are examined.

(f) Robustness of monitoring training? (21)

A major gap identified as part of this qualitative assessment of interviewee perceptions relates to the process of monitoring equality training. Neither Association has established a formal equality monitoring system that is embedded throughout all organisational services. To quote one senior officer: “I doubt if there is a formal system of validation of equality training” apart from the self-assessment evaluation form that delegates complete at the end of training courses. This gap has major implications at strategic level for two reasons: firstly, training is an investment and it is important to evaluate if staff perform more effectively following training received. Secondly, training affects, not only the quality of service provision, but also the capacity of

organisations to meet their legal and regulatory commitments. Failure to monitor the impact of training comprehensively entails that information relating to these twin objectives is unlikely to be collated.

Performance monitoring

Performance monitoring, as explained in Chapters 5 and 6, covers two distinct elements, namely quantitative and qualitative elements; it is concerned with measurement of activities and in the social landlord sector, this translates, in particular, to monitoring whether social landlords are implementing equality law and good practice guidance effectively. But a quality system of monitoring is not restricted to simply gathering performance indicators. Effective performance monitoring must embrace a diverse range of activities, including having comprehensive action plans and equality impact assessment processes in place. From a theoretical perspective, as critically examined in the Chapters above, these action plans must themselves be derived from an understanding of ESIP (the nature and forms of discrimination), essentialism (the nature and role of social landlords to meet legal and regulatory standards) and systems theory (the recognition that all organisational activities are inter-dependent and inter-related). The ways in which these perspectives can be used to generate performance management data is now briefly explained before the section evaluates the quality of organisational performance monitoring systems vis-a-vis equality matters within the two case study organisations.

ESIP: Social landlords can use this framework to ensure that performance indicators are developed to cover all aspects of discrimination. For example,

people affected by homelessness are often portrayed negatively in the media (super-structural level) and social landlords can take steps to address this by setting an indicator to develop quality information that explains the causes of homelessness and counteracts negative perceptions of people affected by homelessness; while social landlords can set indicators to monitor personal discrimination in respect of all of the protected characteristics covered in law. Adopting a systemic perspective would entail embedding these performance monitoring systems throughout all relevant organisational policies and practices, that is, the institutional aspect of the ESIP framework.

Essentialism: Social landlords can utilise this approach to focus on their role as administrators of law and good practice to ensure that their policies and practices focus on incorporating all relevant law and guidance. As law changes, of course, the essential nature of social landlords may alter too.

Systems theory: Social landlords can use this approach to recognise that all policies and practices are inter-dependent and that performance management systems, as noted above, must be embedded throughout all services. In practice, this will entail having a system of performance indicators that embrace both quantitative and qualitative measures across all of the protected characteristics explained in Chapter 3, as well as other issues such as social class/social origin as encapsulated in the Scotland Act 1998. Performance indicators are, using this approach, embedded within organisational practice as a whole and related to clear legal duties and relevant guidance, not simply targets that may focus on specific issues

unrelated to the nature of the organisation (see Seddon, 2008, Chapter 7 for a critique of target driven organisational cultures).

It is also emphasised, in passing, that - by adopting a systems approach - other models were not considered as sufficiently robust frameworks on which to develop a robust theoretical framework. For example, one management perspective that could be adopted in monitoring performance is known as SMART, an acronym that refers to targets being specific, measurable, achievable, realistic and time-bound. But, as Seddon (2008, page 105) argues, SMART is insufficiently robust as a method as it does not “determine what to measure,” as well as pre-supposing knowledge of what is achievable and realistic. In the case of social landlords, as identified in Chapter 6 for example, lack of knowledge of law and good practice was evident in many policies under assessment and this is likely to correlate with relevant issues failing to be monitored. Another model that was rejected was the SWOT method of analysis on account of its subjectivity, an issue already examined in Chapter 5. The study now assesses current systems of monitoring within the two case studies.

(a) Issues monitored and systems of monitoring? (22;23)

Association A interviewees provided interesting feedback to the question concerning what was monitored by the organisation. For example, although the senior staff knew that data was gathered for the SCORE returns for allocation practices, as well as monitoring of employment and accessibility data, other staff (including the committee member) were unsure as to what was monitored or why. This can be explained in part by one of the

interviewee's comments to the effect that the "diversity training did not cover performance indicators (or monitoring)."

Association A respondents also confirmed that the system in place was mainly quantitative in nature, although satisfaction surveys collated some relevant data such as quality of service provision. Examples of quantitative data noted were numbers of lets to people from black and minority ethnic groups, or to disabled people.

Association B, on the other hand, limit monitoring to SCORE data collation and also qualitative data that are gathered through tenant satisfaction surveys. Interestingly, though, the fact that there was no formal performance monitoring system in place was not known by most of the interviewees.

(b) Action planning in place and management model? (24; 25)

In the case of Association A, most interviewees expressed their awareness that an action plan was in place that served to implement equality objectives. But several people stated that they were "not sure what is in it;" this included the committee member whose role is fundamentally concerned with monitoring of policy into practice, thus representing a glaring omission. It would appear, too, that the action plan is not based on a robust theoretical framework that is a focal concern of this study, although – as explained by one senior officer - it does take cognisance of equality issues contained in the guidance and regulatory framework. For example, the senior officer himself stated that the plan "is not based on any theoretical model" and was "inherited from something there." The Housing Manager, as an aside,

believed that the action plan had been drafted by the Director highlighting perhaps communication issues worthy of further assessment.

Association B, for their part, confirmed that there is no action plan in place and, when senior staff were questioned further, it was explained that equality commitments are incorporated into practice and also referred to in the internal management plan thus making a separate plan redundant. This perspective is open to challenge, though, given the concerns raised by staff above.

(c) Equality impact assessment in place and implemented? (26;27)

In Association A, three interviewees had heard of the concept of equality impact assessment (EIA) with one interviewee getting to the kernel of the matter by referring to its role as being assessing “the effects of (policy) on services and practice,” although this omits reference to the internal dimension of the EIA process explained in Chapter 5 . But further comments indicate that there is no consensus as to whether an EIA process is in place. Three staff confirm their uncertainty, for example, while one senior officer avers that a system may be in place through the policy team that is located elsewhere. The Housing Manager, on the other hand, thought that the action plan was the EIA, although this is only part of an effective EIA process as actual policy documentation itself must embed key principles (See Chapters 5 and 6) if effective implementation of equality objectives is to be achieved in practice. Further, the action plan, too, should be based on the theoretical models described in this thesis if it is to ensure effective EIA.

Association B does not carry out an EIA as it is deemed to be unnecessary; reasons elicited through questions to evaluate this position were that

information about people's needs is gathered through other means such as satisfaction surveys and that EIA is superfluous. Without adopting a formal impact assessment system, though, it is difficult to see how an organisation can implement policies effectively and/or evidence their compliance with law and good practice guidance, as well as organisational equality objectives. The information gaps in Association B's policy - identified during the Chapter 6 policy audit - lends further support to this contention.

Barriers to effective rights implementation (and their relative significance)? (28; 29)

Although this study is restricted in scope – its focus being to identify robust theoretical organisational methods which are necessary but not sufficient on their own to ensure that equality objectives will be met in practice – it was deemed to be important to elicit interviewees' views on barriers to effective implementation of equality policy objectives. This was for two main reasons as follows: firstly, views would be assessed to compare if the theoretical framework proposed in Chapter 5 was adequate in terms of identifying factors that are necessary to achieve effective implementation of equality objectives. Secondly, eliciting views could assist in identifying what barriers – if any - appear to be prominent thus providing practical guidance on what issues should be prioritised with equality action plans and/or the EIA process.

Table 7: Barriers to effective implementation of equality objectives

Barrier	Numbers of staff	
	Association A	Association B

Attitudes	5	5
Culture	5	5
Training	5	5
Information (law etc	5	5
Resources	5	5
Other (see text below)	-	-

(Source: primary data derived from interviews)

The key findings to emerge from Table 7 are twofold. The first point is that all interviewees concurred that these factors are the critical barriers to effective implementation of policy objectives. The importance of having adequate policy documentation was, of course, covered in the discussions above and is not, accordingly, listed in the factors above. The second point is that, although other factors were identified by interviewees, these were not separate categories but could be subsumed under the headings in Table 7 (See below).

With regard to actual feedback, a number of interesting comments were elicited from both organisational interviewees regarding the relative significance of barriers identified. Attitudinal values were regarded by some staff as paramount. One interviewee suggested, categorically, that: "All begins with attitudes – difficult as deep-rooted;" while another commented: "I think attitudes of staff are most important as these affect people you meet." In addition to the key factors in Table 7, interviewees suggested other potential barriers that could easily be subsumed under the main categories. For

example, lack of resources was recognised as a barrier but, as one senior officer emphasised: “But this is often an excuse ... an abrogation of responsibility as there is no real commitment to it (equality) in the first place.” (This is a de facto attitudinal barrier.) Similarly, professional self-interests could act as barriers to effective implementation of equality objectives⁶⁴, but this, too, is mainly an attitudinal matter. Dealing with such barriers is, of course, beyond the scope of this study, but measures could include training and/or disciplinary measures.

There was little commentary about lack of resources so the Loveland (1995) assertion was not tested during the case study and remains an issue for further evaluative research.

General observations? (30)

Each interview concluded with a general question to enable interviewees to provide any other opinions, including whether or not the list of barriers to rights implementation was sufficiently comprehensive. Comments did not, it is stressed, lead to any major additions being identified, but there was one comment, in particular, (a training issue) that might stimulate critical reflection of other factors that can inhibit equality developments. One interviewee, for example, referred to the importance of dialogue in training, of imparting and sharing information if institutionalised and discriminatory attitudes are to be

⁶⁴ This remark is intended to relate to implementation from an organisational perspective, but one interviewee also commented on external barriers to rights implementation. For example, some people might be opposed to accessible housing developments in the social rented sector as this could be viewed as reducing property values in their area; this is an examples of the perspective labelled as Nimby, or “Not in my backyard.”

challenged effectively. In this connection, it was stressed that ignorance should be recognised, not as a detriment, but to be addressed constructively through open debate even if this involves people using language that is not appropriate. Indeed, the interviewee noted explicitly that it is often “the fear of not being politically correct that inhibits dialogue.” This perspective accords precisely with the theoretical position adopted in this thesis: challenging language use is not the main task but critical evaluation of language use to enhance consciousness to understand the nature of social justice is the principal task. This process demands open dialogue and active discussion of language, in whatever form.

7.6. Interviewee feedback: summary of findings

Chapter 7 has involved a qualitative assessment of factors that are, in line with the theoretical position of this thesis, necessary to ensure effective implementation of equality objectives in practice. These factors should, in turn, be part of the strategic equality policy framework of organisations, including action planning and EIA processes. Evaluation of the two case studies under review indicates that theoretical issues are dealt with in a limited manner, although key factors are covered, at least in part, within organisational policy and practice.

Scrutiny of Association A and B practices – based on interviewees’ feedback – would suggest, tentatively, that implementation of equality policy objectives has been achieved but only partially. Gaps identified apply, in general, to all of the organisational issues selected, but are noticed, in particular, in areas such as training and monitoring in which practices are disparate. It is argued

that this stems from failure to apply a robust theoretical framework to equality rights implementation as examined in this thesis, including the failure to adopt action plans that are systemic and holistic in nature. The thesis now moves to its concluding Chapter.

Chapter 8: Conclusions and recommendations

“Racism, racial discrimination and xenophobia are not natural, instinctive reactions of human beings, but rather are social, cultural and political phenomena born directly of wars, military conquests, slavery and the individual or collective exploitation of the weakest by the most powerful throughout the history of human societies”

(Castro, 2002, page 107: from a world conference in Durban, South Africa on September 1, 2001).

“The philosophers have interpreted the world in various ways; the point is, however, to change it”

(Marx, 1845, in “Theses for Feuerbach,” Thesis X1).

In this concluding Chapter, the key findings of the research are collated to produce general conclusions and a summary of key recommendations that should be addressed by Glasgow social landlords. This is in keeping with a major methodological element of this thesis noted in Chapter 1, namely to produce research that is innovative and instructive in terms of practical changes that social landlords might introduce to improve their services in the interests of social justice. And, as the quotation by Castro elucidates,

discrimination is not a natural phenomenon, that organisations committed to change can address a variety of forms of discrimination by embedding equality objectives effectively throughout housing services.

8.1. Conclusions

Chapter 2 evaluated the legal framework that regulates discrimination in British society and how legislation is used to eliminate discrimination and to promote equality matters. It was shown how equality law developed from a traditional reactive focus to a proactive one, from a focus of addressing a limited range of equality issues to a focus on the diversity agenda. Critically, it was highlighted, through various examples that law does not develop in a vacuum, but is related to the prevailing needs of contemporary capitalist society. In meeting these needs, for example, the law might be used to regulate the needs of different groups such as happened in the case of the Rent and Mortgage Interest (War Restrictions) Act 1915 that was used, *prima facie*, to safeguard the interests of tenants, but also served the broader interests of capitalism by reducing social unrest. With respect to the housing field, it was also highlighted that, historically, many of the recently developed proactive equality duties applied to local authority social landlords, but not to housing association landlords in Scotland, although the latter are required to promote equality objectives through other law such as the Housing (Scotland) Act 2010 and the regulatory standards. This gap will be addressed, though, by the new Equality Act 2010 with its provisions concerning the public duty being applicable to organisations that carry out public functions as part of their work (Equality Act 2010, section 149, (2)). The law – and its associated

good practice guidance framework – was thus identified as a core or essential aspect of organisational practice. This assessment enabled the researcher to identify the essence or nature of social landlords as organisations charged with the administration of law and regulatory standards.

Chapter 3 examined the efficacy of law in promoting social justice and it was argued that, albeit that substantive equality law now promotes social justice on a wide range of grounds (known as protected characteristics), law is limited in scope. For instance, it was shown in the study how law does not address many of the economic and social class inequalities that are the basis for discrimination and/or social oppression such as economic barriers that disabled people, inter alia, experience; while criteria to ensure that law is implemented effectively are often not in force (Banton, 1994). Law, it was emphasised, is necessary to ensuring that equality rights are upheld and promoted, but not sufficient.

The study thus turned to consider the role that social landlords might play in addressing various forms of discrimination given their essence as being administrators of law and good practice guidance. But, in order to address how organisations might meet their duties and comply with standards, it was deemed essential to identify **the nature** of discrimination. This would serve to contextualise, in turn, what forms of discrimination they can legitimately address as certain issues may fall outside their area of operation; and social landlords cannot operate *ultra vires*.

Chapter 4 focussed on analysing the nature of discrimination. This involved a critical examination of two key frameworks, namely SCIP and ESIP. Specific

elements of the SCIP framework are used in the field of social policy and social work. This section of the thesis included innovative research through the postulation of a new framework, ESIP – that was developed by the author - providing for a new methodology that can be used to identify the range of forms that discrimination may take. In developing ESIP, the author drew on specific sociological sources (Marxism) and, as noted above, existing frameworks in the field of social policy, namely SCIP. The four main forms of discrimination that the ESIP framework identifies are: economic; superstructural; institutional; and personal. The study then illustrated, by reference to examples drawn from empirical studies, how these forms could be applied to discrimination on grounds of disability, race and sexual orientation, the first two themes selected due to their importance historically and the latter due to its increasing contemporary significance. This important Chapter established that discrimination takes many forms, forms that often conceal its occurrence such as in institutionalised discrimination. Discrimination may also be legitimised in society, too, as Ticktin (1991) showed in the case of positive discrimination in South Africa, or through law as in the case of legal barriers facing asylum seekers. Following this assessment, it was identified that the main form of discrimination that organisations should address would be institutionalised forms of discrimination.

The main reasons for this were twofold: firstly, social landlords are administrative bodies whose main activities comprise institutional activities, for example, policy development and compliance with law and good practice

guidance. Secondly, many of the economic and super-structural aspects of discrimination within society at large are beyond the control of social landlords whose main focus is institutional practice. It was also stressed, though, that, at local level, social landlords can partly address the four ESIP forms of discrimination, for example, addressing barriers to employment among disabled people by ensuring that institutional policies (recruitment and selection) do not incorporate barriers to employment. The next step was to identify, through critical analysis, how social landlords should address institutionalised forms of discrimination, what theoretical framework they should adopt.

Chapter 5 evaluated this question, in detail, and examined the theoretical framework that social landlords should adopt organisationally if their equality mainstreaming objectives are to be met in practice. This issue is considered further in the recommendations below. In developing this framework, another innovative research technique was adopted that involved blending elements from two established theoretical models, namely essentialism and systems theory. Drawing on relevant theoretical literature, the author revealed how the **essence** of social landlords is connected with the implementation of law and related good practice guidance; and, in the context of this study, this entails embedding social justice objectives throughout organisational policies and practices (equality mainstreaming). Using systems theory, the author then demonstrated that housing organisational practices are inter-dependent and that effective mainstreaming of equality objectives requires the establishment of a **systemic** framework of activities that will deliver services to meet legal

and good practice guidance standards. Drawing on the limited empirical studies available through the literature review enabled the core framework of key activities to be identified.

This framework comprised the following issues: cultural values; policies and documentation; communications; performance management; human resource matters; and workload and resources. This framework was used as a method for evaluating the equality policies carried out as part of the fieldwork (Chapter 6).

Prior to undertaking the fieldwork, the thesis identified a number of strengths and weaknesses, in keeping with academic standards of quality research. Strengths relate to developing and applying robust theoretical frameworks to data analysis, as well as focussing on practical matters that are relevant to organisational practice in contemporary society. The desk-based data sample is also extremely comprehensive and the research identifies further issues for detailed research (See 7.3.). Limitations are as follows: research into actual organisational practice is restricted to policy documentation and a limited range of interviews, a restriction required by the focus of the research and resource constraints; and finally, organisational policies may be re-written by the time research is completed. This is, of course, a standard limitation of all research.

Chapter 6 analysed a large selection of organisational equality policies of Glasgow's housing associations to evaluate if their framework or template for effective implementation of equality objectives covers the core activities or criteria necessary for effective implementation of equality rights that were

identified as part of this research. Key findings suggest that no policies appear to be based on robust theoretical foundations, a deficiency that is reflected by policy documentation, in turn, only partially meeting the range of quality standards as elucidated in Chapter 6.

The key research findings are as follows: cultural commitments to social justice within the policy documentation are sparse, a defect that may inhibit the development of positive equality values including attitudes among staff, albeit that the link between attitudes and rights implementation is largely conjectural; the equality policy documentation is often lacking in clarity and coherence, as well as inadequate referencing of equality law; there is evidence of communication barriers within the documentation due to failure to use clear and positive language, for example, language that supports the social model of disability; performance monitoring is limited in scope, being mainly quantitative in nature and generally lacking in coherence; and, finally, training, a significant human resource matter, is referred to only generally within most policies without being contextualised, that is, an array of equality training should be aligned to individual training needs assessment – this deficiency, it is surmised, may be due to failure by organisations to link their training to the robust theoretical model known as the training cycle. This, however, is a subject that requires more detailed – and separate research.

Chapter 7 involved the case study assessment of two Glasgow social landlords that differed in terms of scale and area of operation. The findings from this study are limited in scope given the relatively small sample size. This point notwithstanding, the case study assessment served to strengthen

the theoretical position adopted in this study by showing that – according to interviewee feedback – there were a diverse range of issues that required detailed scrutiny.

In terms of cultural values, for example, general statements did exist, but gaps elsewhere in organisational practice such as in relation to training and monitoring would be likely to undermine these cultural commitments in practice converting them into mere rhetorical assertions; policy documentation of both associations under review – as covered in Chapter 6 – both contain gaps in law and good practice guidance, while interviewees' feedback regarding other issues raise concern such as lack of detailed consultation in their development, as well as a dearth of training on the nature and role of policies; training appears to be limited in scope and does not cover the array of training issues that are, arguably, necessary if equality objectives are to be implemented effectively – a gap that itself derives from failing to develop training on the systemic and holistic approach to training as per the training cycle; and monitoring of training and equality issues, in general, is extremely limited in scope, whereas mainstreaming of equality would require an array of qualitative and quantitative monitoring systems to be embedded in all organisational services. The general finding is, then, that implementation of equality policy objectives has been achieved only in part, but not comprehensively in either organisation. It is argued tentatively - without further detailed analysis of actual organisational practice - that this stems from failure to apply a robust theoretical framework to equality rights implementation; this includes failure by the associations to adopt action plans

that are systemic and holistic in nature, plans that can address the complex range of barriers as postulated in Chapter 5 in developing the theoretical framework on which this thesis is based.

Recommendations are summarised below for social landlords to consider (See 7.2.). This is to fulfil an espoused and core aim of this study as stressed in Chapter 1, namely that this research will provide practical advice to social landlords to enable them to promote their equality commitments.

To sum up then: as the final quotation by Marx that precedes this Chapter indicates, practical action is paramount, albeit that critical reflection of the nature of things is fundamental to shaping the type of action that should be taken as practice separated from robust theoretical foundations is likely to go awry. Theory and practice are thus inextricably linked and must be developed in tandem.

Unlike Marx who focussed on theoretical and demanding issues relating to societal evolution and development, this study is restricted to micro-analysis of the framework of organisational activities that is necessary if practical implementation of equality objectives is to be actualised. In order to achieve this, essentialist theory was utilised to identify (a) the **essence** of social landlords (that is, meeting law and good practice guidance) and (b) the core activities that housing organisations must take into account to establish a **framework** that is necessary for promoting effective implementation of their equality objectives into practice. This approach was strengthened further by recognition that all organisational activities are inter-dependent and thus practical equality mainstreaming programmes carried out by housing

associations must be implemented as **systemic** “wholes,” not as atomised activities. This analysis derived from systems theory that was blended to the essentialist perspective.

Finally, an innovative framework of evaluating forms of discrimination was developed, namely ESIP that drew on existing studies in the field of social policy to evaluate the main forms of discrimination that social landlords should address. Although not exhaustive, institutionalised forms of discrimination should be their focal concern. So, let us now end this thesis on a note of critical self-reflection that is a facet of quality research. In previous research, the author stated that we should regard policy statements “cum grano salis,” but the point is to change things as the second quotation by Marx that prefaces this Chapter so aptly puts. But this can be refined further in the context of organisational development. The point is to change organisations, not simply reflect on their failings. But this requires a robust theoretical framework if it is to be achieved effectively. Thus, the aphorism might be: “Think actively about the world; to understand it and to use that knowledge to **change** it.”

8.2. Recommendations

A key intention underpinning this research, as noted in Chapter 1, was to produce a range of recommendations for adoption by social landlords to facilitate practical and beneficial change to organisational development. The conceptual framework as developed in this thesis that is based on ESIP and draws on essentialism and systems theories, it is suggested, provides the framework for implementing equality objectives effectively throughout all

social landlord practices. It is also suggested that this framework, based on robust conceptual foundations, can, in principle, be utilised by other social policy organisations, for example, social services. The section below now makes three specific recommendations deriving from the research, as well as noting three issues for further research.

The first recommendation is that social landlords in Glasgow – and throughout Scotland – should adopt essentialism and systems theory as theoretical tools to understand the nature of social landlord practices and the inter-dependence of all service activities. Essentialism entails recognition that social landlords are concerned with implementation of law and good practice; while systems theory provides understanding of the need to embed law and good practice throughout all areas of association policies and practice. Using ESIP as a conceptual framework to identify aspects of discrimination should be incorporated into this approach, an approach that recognises that institutional aspects of discrimination should be the main focus – albeit not sole focus - of social landlord concern.

The second recommendation concerns the framework of issues that should be evaluated if equal opportunity commitments are to be implemented effectively into practice. In order to mainstream equality commitments comprehensively into practice, social landlords should develop a comprehensive action plan that is structured around the key organisational elements identified in this study; this will serve as a holistic framework of actions that are required to mainstream equality throughout organisational services. These factors would include cultural values, policies and

documentation, communications, performance management, human resource matters and workload and resources. Additional issues that would inform the impact assessment process that is also required as part of organisational monitoring commitments would include: collation of data to evaluate specific equality needs of individual service users; embedding the methodological principles of policy assessment throughout individual housing policies and their related procedures; and establishing specialist policies such as accessibility and appropriate language use policies to promote, for example, the social model of disability and providing a rationale as to how language can foster discrimination. The accessibility policy, it is re-iterated, is the vehicle for ensuring that organisational policies are audited against the range of factors identified in this study as being necessary to achieve effective implementation of equality objectives.

The third, and final, recommendation is that this conceptual approach should be publicised to encourage social landlords to adopt the conceptual framework that is postulated in this study. Developing a template that can be used by social landlords to achieve their equality mainstreaming objectives is beyond the remit of this study, but a standard template should be developed as part of equality impact assessments to include both internal and external evaluations of the effects of their policies in practice. For example, the chief reason for developing an accessibility policy is that this garners the range of factors that enable policies to be audited against law and good practice guidance, not simply in respect of equality matters, but also all relevant law and guidance such as housing law, data protection law etc.

8.3. Future research

In addition to the main findings within the body of the study that offers new insight into equalities practice within housing associations in Glasgow, the study has also identified three salient issues that are worthy of future research. Firstly, further research should be developed to examine how the theoretical framework assessed in this study can be applied to organisations that operate in fields other than housing. Secondly, an important issue for detailed consideration from a research perspective is evaluating links between attitudes of staff and staff actions, for instance, is this link correlative or causative. Thirdly, an interesting issue that is worthy of further research consideration is assessing how the legal categories of discrimination such as direct and indirect discrimination are aligned to the innovative framework of ESIP.

Glossary

This section explains how terms are defined by reference to law with comments on good practice guidance, as appropriate. These two issues, it is emphasised, are not synonymous, for example, adherents of the social model of disability would criticise the narrow and medical definition of disability as covered in legislation.

Disability

The Equality Act 2010, section 6, defines a disabled person as follows:

A person (P) has a disability if:

- P has a physical or mental impairment, and
- the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

As noted above, the social model of disability would eschew such terminology as it is society, through a diverse range of barriers, that disables people. Using this model (Carson, 1999), it is not appropriate to describe people as "having a disability." This is a subtle example of how the law, too, may re-inforce or institutionalise discriminatory perspectives.

Discrimination

The Equality Act 2010, Chapter 2, defines various forms of discrimination that are prohibited in law. These definitions cover direct discrimination (section 13), indirect discrimination (section 19), as well as other forms of discrimination such as discrimination arising from disability (section 15) and combined discrimination arising from dual characteristics (section 14). Discrimination is not a moral concept, per se, but a legal one and may differ from usage of the term in normal discourse where "discriminate" may be legitimate as in the sense of "distinguishing one thing from another." Positive discrimination, on the other hand, is generally unlawful in equality law, although positive action is permitted. (See the Equality Act 2010, Chapter 2, section 158; and Johnson and Johnstone, 2005, for a full discussion of these concepts.)

ESIP

This is the model that is promoted in this study as being appropriate to understanding the diverse forms of discrimination that people experience in

society. This is grounded in the robust theoretical tradition of Marxism that recognises that economic relations are the main determinant of social injustice. The acronym stands for “Economic, superstructure, institutional and personal.” The model recognises that inter-relations and inter-dependencies co-exist among these elements in line with the essentialist and systems model adopted in this thesis. See below.

These elements can be linked to legal definitions, too, for example, treating someone less favourably because they are a black person rather than a white person, say, would be a form of direct discrimination, but this could also be regarded, under ESIP, as personal discrimination.

Essentialism

This is the theory that things have nature or essences that exist independently of us. This perspective is highlighted in science through DNA studies that reveal the genome of distinct species, albeit all life forms (on earth) are inter-related (see Meikle, 1985, page 177 for specific examples).

Harassment

The Equality Act 2010, section 26, defines harassment as follows:

A person (A) harasses another (B) if:

- A engages in unwanted conduct related to a relevant protected characteristic; and
- the conduct has the purpose or effect of:
 - violating B’s dignity; or
 - creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Harassment is also defined in other law such as the Protection from Harassment Act 1997.

Racial aggravation

The Crime and Disorder Act 1998, section 96, may be used to address the offence of racial aggravation. Racial aggravation occurs when, at the time of committing the offence (or immediately before or after it), the offender shows:

- malice and ill-will towards the victim based on the person’s membership (or presumed membership) of a particular racial group, or if

- the offence is motivated by malice or ill-will towards members of a racial group based on their membership of that group.

Racial aggravation is a **criminal** offence. The court considers the level of aggravation when deciding the appropriate sentence. For instance, whether it is appropriate to censure, fine and/or imprison the offender.

Criminal Law (Consolidation) (Scotland) Act 1995

The offence of racially aggravated harassment occurs if someone pursues a racially aggravated course of conduct that:

- amounts to harassment of someone else and is intended to cause harassment; or
- would appear to constitute harassment to a reasonable person.

An offence is also committed when someone acts in a racially aggravated manner that causes, or is intended to cause, someone alarm or distress.

Racially aggravated harassment is a **criminal** offence. Anyone guilty of this offence can be fined and/or imprisoned. The level of fine and length of imprisonment depends on whether the person is guilty on summary conviction or conviction on indictment, that is, before a jury.

Note

This offence was introduced by the Crime and Disorder Act 1998, section 33, that amended the Criminal Law (Consolidation) (Scotland) Act 1995 by inserting 50A.

Reasonable adjustments

The Equality Act 2010, section 20, imposes a duty to make reasonable adjustments so as not to discriminate against disabled people, either in employment or service provision. There are various forms of adjustments, including amending policies, certain physical features and providing auxiliary services. This is required if current practice put disabled people at a substantial disadvantage in comparison with non-disabled people.

SCIP

SCIP is an alternative model to ESIP; this is an acronym for “Structural, cultural, institutional and personal.” The rationale for rejecting this format in favour of ESIP is provided in the study.

Sexual orientation

The Equality Act 2010, section 12, defines sexual orientation as referring to someone's sexual orientation towards:

- persons of the same sex;
- persons of the opposite sex; or
- persons of either sex.

As sexual orientation is one of the protected characteristics, it is prohibited to discriminate on this ground.

Social landlords

A relatively recent jargon term in the field of housing that is used to refer to local authority housing services or housing associations. The traditional term to describe these bodies was public sector landlords.

Systems theory

Systems theory has various forms but its central tenet is that, from the perspective of organisational theory, that organisational activities are inter-dependent; failure to recognise this can result in failure to meet objectives (see Seddon, 2008). The open systems theory that is used in this study recognises that organisational control is determined by the "interrelationships among inputs, outputs and activities leading to the outputs" (see Mullins, 1996, pages 594 to 595). Thus, a social landlord is subject to ongoing legal changes and may be required to respond to these changes; in turn, this can require changes to "outputs" as in issues that require to be monitored to ensure compliance with the new legal framework.

Victimisation

The Equality Act 2010, section 2, defines victimisation as follows:

A person (A) victimises another person (B) if A subjects B to a detriment because:

- B does a protected act; or
- A believes that B has done, or may do, a protected act.

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Appendices

Appendix 1: Respondent organisations

Appendix 2: Questionnaire

Appendix 1: Respondent organisations

Bield;
Blairtumnock;
Blochairn;

Cairn;
Calvay;
Cassiltoun;
Cathcart and District;
Cernach;
Charing Cross;
Copperworks;
Craigdale;
Cube;

Glasgow Housing Association;
Glasgow West;
Glen Oaks;
Govanhill;
Govan;

Hanover;

Key;
Kendoon;
Kingsridge Cleddans;

Link;
Linthouse;
Lochfield Park;
Loretto;

Margaret Blackwood;
Maryhill;
Milnbank;
Molendinar;

New Gorbals;
North Glasgow;
North View;

Parkhead;

Partick;
Pineview;
Provanhall;

Queens Cross;

Reidvale;
Ruchazie;

Sanctuary;
Shettleston;
South Side;
Spire View;

Thenew;
Tollcross;
Trafalgar;
Trust;

Wellhouse;
West of Scotland;
Whiteinch and Scotstoun;

Yoker;
Yorkhill.

Appendix 2

Open questionnaire to evaluate factors that might impact on effective implementation on the equality policy

Introductions and reasons for the questions in an accompanying information sheet.

Section 1: Culture

Organisational culture is concerned with value systems and attitudes of staff within the organisation. It is important that organisations promote commitments to equality through their policies and practices.

Q1: How would you describe your “organisational culture?”
(Probe if positive, negative etc depending on responses)

Q2: Do you think that your organisational culture supports equality objectives?

Yes In part No Not sure

Can you explain to me in what ways:

(Probe: Does it do this through its Mission Statement or Internal Management Plan)

Section 2: Policy and procedural development

These questions are about your organisational equality policy and related procedures, for example, your organisational action plan that is used to implement equality objectives. The equality policy is the framework of principles that the organisation is committed to meeting in practice.

Q3 Do you know who is responsible for developing the equality policy in your organisation?

Yes

No

Not sure

If yes, who is this person?

Q4: Do you know what the equality policy covers?

Yes

No

Not sure

If yes, can you tell me what kinds of things it covers?:

If no, is there anything else that you think it doesn't cover?:

Q5: Does your organisation have an equality action plan?

Yes

No

Not sure

Can you explain what this action plan covers?

Q6: Do you know how often the equality policy is reviewed?

Yes

No

Not sure

Can you explain how this process works? (time scales and person(s) responsible for doing it?)

Q7: What do you think about this review process?

Q8: What do you think are the main laws on equality?

Q9: Can you tell me how these laws affect your job role/work in practice?

Q10: Have you heard of the equality Codes of Practice that cover good practice in housing?

Yes

No

Not sure

Can you explain what these Codes cover and how they might affect your work?

Q11: Have you heard of the Scottish Housing Regulator's regulatory equality standards that social landlords are meant to apply to housing services?

Yes

No

Not sure

Can you explain what these standards cover and how they might affect your work?

Q12: Do you think that your organisational equality policy presently reflects current law and good practice?

Yes

No

Not sure

Can you explain your answer in more detail:

Section 3: Training

Training is vital if staff are to implement the equality policy effectively. This section asks you to think about what types of training you receive about equality matters.

The training cycle is a model that covers the various stages of training, for example, needs assessment, delivering training and assessing the extent to which what is learned is put into practice in the workplace.

Q13 Have you heard of this approach to training before?

Yes

No

Q14: How does your organisation assess your equality training needs?

(Probe: staff development or staff appraisal; review of work practice; complaints made about behaviour)

Q15: What do you think of the way in which your equality training needs are assessed?

Equality training can cover various things such as legal training or policy training; this question explores with you the types of training that you receive and how often.

Q16: What types of equality training have you received?

Legal training (equality laws):

Good practice guidance (codes and standards):

Organisational equality policies:

Performance monitoring

Consciousness raising (understanding the nature and causes of discrimination in society on grounds such as age, disability, race, sexual orientation and gender)

Other

Q17: Is this training provided by?:

Another employee:

A consultant internally:

An external agency (Prompt: CIH; PAIH):

Other:

Q18: What do you think about the quality of this training?

Good

Not good

Unsure

Can you explain why you think this?:

Q19: Can you tell me how often you receive equality training?

What do you think about the amount of equality training that you receive?

Q20: Do you think that the training that you receive helps to improve services to tenants and other service users?

Yes

No

Not sure

Q21: How is training provided monitored in practice, for example, how do you know that staff are implementing what is learned?

(Probe: ask for examples of indicators that the organisation is using)

Section 4: Performance monitoring

Monitoring is an important part of the regulatory framework and it should, therefore, be part of the equality policy process. This section asks you about how your organisation presently assesses its services from an equality perspective. For instance, monitoring

allocations to ensure that there is no discrimination on grounds such as age, disability, race, sexual orientation and sex/gender.

Q22: What issues does your organisation monitor with regard to equality matters?

Not sure/don't know: (ask why)

Q23: Does your organisation use a system of performance indicators to monitor whether or not equality training is working in practice?

Yes

No

Not sure

If yes, what are these indicators:

Quantitative:

Qualitative:

If no, do you know why this might be the case?:

Q24: Does your organisation have an action plan to monitor equality actions that are being implemented?

Yes

No

Not sure

If yes, what does this cover (obtain a copy before interview):

If no, do you know why this might be the case?:

Q25: What management model did you use to draft this action plan to ensure comprehensiveness?

Q26: Have you heard of the term “equality impact assessment?”

Yes

No

Not sure

What does this term mean to you?

Q27: Do you know if your organisation carries out an equality impact assessment?

Yes

No

Not sure

If yes, what does this cover:

If no, do you know why this might be the case?:

Section 5: Barriers to effective rights implementation

There can be many barriers that affect the implementation of rights within social landlords. This section seeks to find out what you think are the main barriers to equality rights implementation in your organisation.

Q28: What, from the list below, do you think are barriers to effective implementation of equality objectives?

Attitudes of staff:

Inadequate cultural commitments:

Inadequate performance monitoring:

Inadequate training:

Lack of information about law/guidance:

Lack of resources (staff, money):

Any other:

Q29: What do you think are the most important barriers from the above list and why?

Section 6: General

This section seeks to elicit any further points that the interviewee may wish to note.

Q30: Are there any other issues that you want to note?

Thanks for taking time for the interview and for completing this questionnaire.