

## **A CASE OF INSTITUTIONAL DECOUPLING: EQUALITY AND PUBLIC POLICY IN POST DEVOLUTION WALES**

*Paul Chaney*

This article develops an institutionalist perspective, and draws upon original research<sup>1</sup> and the findings of two evaluation reports in order to critically assess the approach to equalities in Welsh public policy following elected-devolution in 1999. The key aim here is to determine whether the Welsh Assembly Government's stated aim of mainstreaming equality is being realised. Accordingly, attention is focussed on: the legal and institutional context presented by devolution, the political vision for the promotion of equality, and reforms aimed at establishing the institutional prerequisites for mainstreaming equality in public policy. This analysis concludes with a critical evaluation of the progress made to date, one that draws upon selected examples of Assembly Government policy and legislation.

### **CONTEXT: ADMINISTRATIVE DEVOLUTION**

In order to appreciate the opportunities for the promotion of equality presented by constitutional reform in Wales it is necessary to look briefly at the immediate historical context. The Welsh Office, the territorial ministry of the UK government that served Wales between 1964 and 1999, consistently failed to address equality issues in the exercise of its functions. Male

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*Paul Chaney is lecturer in public sector management at Cardiff School of Social Sciences. He is degree scheme co-ordinator of the MSc in Equality and Diversity and his research interests include contemporary governance, public policy, and equality of opportunity. Email: Chaney@Cardiff.ac.uk.*

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domination of Welsh politics was a key factor that restricted the chances for securing public policy to address enduring patterns of discrimination and inequality. In general, the Welsh Office's capacity to develop distinctive policy of any description was limited. As Bogdanor, (1999, p.160) concludes, there were 'very few instances where the Welsh Secretary ... challenged an important [British government] policy presumption or worked out a major policy from basic principles dictated by specifically Welsh patterns of need.' Thus, by 1996, 'the Welsh Office was responsible for ... the great proportion of identifiable general government expenditure in Wales. Yet there was limited territorial autonomy. The standard view is of a [government] department tightly constrained by the British constitutional framework, engaged for the most part in the humdrum business of implementing policies decided elsewhere' (Rawlings 1998 p.466).

Overall, the Welsh Office lacked both the capacity and political will to effectively promote of equality of opportunity. Evidence abounds to illustrate the malaise of the period. For example: in 1998, William Hague, the former Secretary of State for Wales refused to meet the Equal Opportunities Commissioner for Wales stating that: 'there is *nothing* to talk about'; and an official report confirmed that the majority of government employees in the Welsh Office, had 'received no training or awareness raising on equality matters' (WAG 2001a, para. 3.1). This was compounded by an absence of clearly defined departmental responsibilities. Earlier research has revealed how, prior to 1999, enquiries from individuals and NGOs about equality matters were repeatedly bounced back-and-forth between Whitehall and the Welsh Office – with each claiming that it was the other's responsibility (Williams and Chaney 2001, p.83).

### **ELECTED DEVOLUTION: AN ENABLING CONTEXT**

In response to the male domination of Welsh politics and the exclusive practices of the Welsh Office, 'strategic' women activists in concert with elements of the women's movement used the opportunities presented by the post-1987 devolution campaign in Wales to lobby for the inclusion of equality mechanisms in the institutional 'blueprint' of the National Assembly for Wales (see Chaney et al 2006, for a fuller discussion). These ultimately found their way into the Government of Wales Act (1998). Of foremost importance is the principal equality clause in the Act. It is an example of a 'fourth generation' equality duty (see Fredman 2000) and is unique amongst

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the devolution statutes (see Chaney 2004) for it requires government to take a proactive stance and promote equality for all persons and in respect of all Welsh Assembly Government functions. The combination of the Assembly's equality duty (and associated institutional mechanisms) and the election of 40% women Assembly Members in 1999 (rising to 50% in 2003) provided an 'enabling context' (Mackay and Bilton 2000, p.109) for addressing inequality and discrimination via the policy process.

### **THE POLITICAL VISION FOR MAINSTREAMING EQUALITY**

In July 1999, at the first meeting of the Assembly's cross-party Equality Committee, a new basis for promoting equality was set out by the Equalities Minister. Her strategy paper detailed how politics and policy would be different under the new 'devolved' arrangements. It asserted that 'the executive, will need to take equality of opportunity factors into account in every policy decision. This mainstreaming approach is fundamental' (NAW 1999, unpaginated). Importantly, the Assembly's statutory equality duty was cited as a driver for the new agenda. It is worth dwelling on some of the details of the strategy paper in order to appreciate the radical nature of the vision on offer. Equality was now to be the Assembly's 'consistent core message' (NAW 1999). The Assembly Equality Committee has subsequently defined 'equality' as 'treating people equally in status, rights and opportunities through a set of policies and actions, with the aim of securing equality of outcome for all' (NAW 2004, p.7). If the new emphasis on equalities was not evidence enough of a major shift in the position of government when compared to the Welsh Office era, the Assembly Government's subscription to *mainstreaming* equality left no room for doubt. Gender mainstreaming is a radical and proactive concept in public administration (see, for example, Mazey 2001). Within the present context, it has been defined as 'the integration of respect for diversity and equality of opportunity principles, strategies and practices into the every day work of [government ...] and other public bodies. It means that equality issues should be included from the outset as an integral part of the policy-making and service delivery process and the achievement of equality should inform all aspects of the work of every individual within an organisation. The success of mainstreaming should be measured by evaluating whether inequalities have been reduced' (NAW 2004, p.6).

Thus, from the start, the executive's wholesale subscription to the mainstreaming principle was concerned with attempting to apply a transformative approach to policy by using the opportunities presented by the new, more inclusive structures of governance – effectively, these amounted to a 'test-bed for initiatives in gender equality' (Rees 2002, p.62). Yet in order for mainstreaming to be applied in the manner set out in the strategy paper, there was a need to ensure that a 'proper framework [wa]s in place to support the delivery of the Assembly's duty on equal opportunities' (NAW 1999). We now consider aspects of the ensuing reform of government administrative practices and procedures designed to provide such a framework.

### **DEVELOPING THE INSTITUTIONAL PREREQUISITES FOR MAINSTREAMING**

The Civil Service transferred from the Welsh Office to the National Assembly in 1999 represented a powerful continuity with the earlier approach to public administration – as noted, one that had little to say on the topic of equality. Accordingly, it possessed none of the institutional prerequisites or 'building blocks' necessary for the application of gender mainstreaming (Mackay and Bilton 2000). Such prerequisites are broad in scope and include appropriate institutional arrangements, awareness raising, training, expertise, appropriate staffing, reporting mechanisms, incentives to 'build ownership' of the promotion of equality, and securing adequate resources. From a new institutionalist perspective the initial absence of these building blocks presented a major obstacle to realising the goal of mainstreaming. Hall (1986, p.19) offers a conceptual explanation for this. He states: 'the organisation of policy making affects the degree of power that any one set of actors has over policy outcomes ... organisational factors affect both the degree of pressure an actor can bring to bear on policy and the likely direction of that pressure'. In short, when applied to the case of the Assembly, this perspective suggests that, on its own, political will would be insufficient to achieve equality outcomes; rather it needed to be accompanied by effective institutional mechanisms. A full discussion of the progress made in securing the institutional prerequisites necessary for mainstreaming in public policy is beyond the present purposes (see Chaney et al 2006). However, the following examples illustrate the way in which, during the Assembly's first years, measures have been taken to increase Welsh government's capacity to promote equality in public policy.

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Prominent examples of new institutional arrangements are the dedicated Equality Policy Unit (EPU) in the Assembly Government Civil Service (an administrative department with no parallel in the former Welsh Office) and the cross party Standing Committee on Equality of Opportunity. These have been accompanied by mandatory reporting mechanisms to measure progress in relation to the developing equalities agenda. Thus, for example, the Assembly's internal law – or Standing Orders – oblige the Equality Committee to 'submit an annual report to the Assembly on ... arrangements [to promote equality] and their effectiveness'.

The involvement of experts drawn from outside the civil service has fostered another dimension integral to a mainstreaming approach, namely, raising awareness of equality issues. This has been achieved through inter-agency and cross-party working as evidenced by the Assembly Government's successive Close the Pay Gap Campaigns to promote equal pay for women and men in respect of work of equal value. In terms of resources, although difficult to quantify (for equality has not generally been listed as a discrete heading in Assembly Government budget data), it is clear that, when compared to the 'zero base' of administration under the Welsh Office, there has been a significant increase in the capital sum and staffing levels allocated to the promotion of equality in areas such as policymaking, training, and consultation.

Elected devolution has also resulted in initiatives – such as a new Code of Practice for Ministerial Appointments to Public Bodies (NAW 2002) – designed to put in place a more diverse workforce in order to underpin the commitment to mainstreaming. A further reform has seen the introduction of compulsory equality awareness training for all 4,500 Assembly staff.

As the foregoing suggests, a broad range of institutional prerequisites for mainstreaming equality into the work of government has been developed since 1999. This represents a major change in the potential capacity of national government in Wales to promote equality. Attention is now turned to emerging examples of policy outcomes.

### **EXAMPLES OF EQUALITY POLICY AND LAW**

The Assembly Equality Committee's Fifth Annual Equality Report asserts that 'equality considerations have become increasingly embedded in the way we develop policies' (NAW 2004). Whilst serious questions remain about the

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*general* validity of this statement, nevertheless there are selected areas where identifiable progress has been made. Education policy provides some notable examples. From the outset of devolved government, promoting gender and other modes of equality was identified as a core aim in the provision of state education. This can be seen in four areas: strategic leadership, curriculum planning, training, and inspection arrangements. This development stems from equality's place as a central theme in the Assembly Government's 2001-10 education strategy (WAG 2001b, p.40).

Introduced in September 2000, the first Wales-specific National Curriculum was developed with 'explicit attention to the Assembly's key policy priorit[y] of promoting equality of opportunity' (NAW 2001b:25, para. 47). Accordingly, a range of initiatives have been introduced to end gender segregation and promote equality in the school curriculum. One example is the inclusion of equality as part of personal and social education (PSE) and work-related education (WRE) – both upgraded to become statutory elements within the basic Welsh curriculum for children and young people aged 5-19 (ACCAC 2001). Education policy has also been developed to focus on tackling gender stereotyping in the choice of subjects studied at school and in individuals' choices of career (ACCAC 2001a:, pp.3-7).

In respect of regulatory practices, the Inspection Framework of the Welsh schools inspectorate, ESTYN, asserts: 'throughout the inspection ... inspectors must ensure that the full range of age, gender, ability, special educational need, and ethnic and linguistic background are taken into account' (ESTYN 2002, p.5). New measures have also been implemented to ensure that equality of opportunity is addressed in assessing teacher training (ESTYN 2002, p.28). Overall, the Assembly's first years have seen the start of a series of unprecedented measures to engender state education policy in order to promote equality in compulsory-age schooling, in lifelong learning, in careers advice; as well as in respect of the breadth of education functions, in teaching, in education management, in training, and in inspection.

Whilst equality is technically a non-devolved, or 'reserved' matter, examination of the hundreds of pieces of distinct Wales-only legislation passed by the National Assembly each year shows that a significant number are concerned with the promotion of equality (see Chaney et al 2006, op cit). Examples include: the requirement that schools governing bodies and head teachers exercise their respective functions with due regard to the need to eliminate unlawful discrimination on grounds of sex and to promote equal opportunities and good relations between males and females; the inclusion of

the number of domestic violence refuge places amongst the best value indicators of local authorities; and requiring that local authorities make payments to councillors in respect of the care of children or dependants that are necessarily incurred in the carrying out of the councillor's duties.

### **A TRANSFORMATIVE APPROACH TO POLICY?**

Two recent evaluation reports provide further evidence with which to make an interim assessment as to whether devolution is delivering the transformative approach to policy anticipated in the mainstreaming literature (see Beveridge et al 2000). The first report (Chaney and Fevre 2002) found that, between 1999 and 2002, the new legislature's equality duty had directly led to a reprioritisation of equality in the process of government such that equality of opportunity was beginning to be addressed systematically at an all-Wales level of government for the first time. Notwithstanding the positive effect of the new legal equalities framework, the 2002 review also highlighted a number of key failings in the post-devolution equality agenda; in short, these centred on a failure to fully implement a mainstreamed approach to equalities. Amongst the shortcomings identified by the report were:

- That the National Assembly's policy-scrutinising subject committees were generally failing to mainstream equality into their policy-making.
- Policy consultations were under-resourced, lacking in transparency, and often last-minute.
- The majority of policies exhibited a 'declaratory' approach to equalities – meaning that they espoused the need for change but were frequently vague on the means to achieve reform.
- In the bulk of cases, policies lacked specific and measurable equality targets linked to a prescribed timeframe.
- Policies failed to specify the individuals or organizations responsible for implementing reforms.
- Financial and human resource implications were ignored or not addressed comprehensively.

(Chaney and Fevre 2002, p.78).

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In January 2003, a senior civil servant presented to the Equality Committee the Civil Service's response to these points. These were generally vague and non-committal in nature and lent credence to the observation made by a leading opposition Assembly Member when, presciently, she referred to 'the way that cultures within organizations can unconsciously protect themselves against change ... and this has got "unconscious resistance" written through it like a stick of Brighton rock' (cited in Chaney and Fevre 2002, p. The upshot was that few, if any, of the measures, tellingly listed under the title '*Possible Method[s] of Implementation*' (NAW 2003, italics added) were executed.

Competing pressures on the bureaucracy, not least in developing the new legislature, as well as general politicking, meant that it was not until the beginning of the Assembly's second term that the Equality Committee returned to an overall, comprehensive consideration of 'how equality can be mainstreamed into the work of the Assembly and the Assembly Government' (NAW 2004, p.5). Within a UK government context, this marked a pioneering step, for it saw the commencement of a systematic, cross-party review of equality mainstreaming in government. The 2003-04 Mainstreaming Review was organised around four key themes: strategy and leadership; people; practical action, levers, guidance and advice; and, monitoring and evaluation. In respect of 'strategy and leadership', the Review's conclusion was an indictment of the incumbent equalities minister and senior policy officials. Using stark language, it concluded that 'currently the Assembly does not have an overall equality strategy, and in our view there is no doubt that this is hampering the Assembly's efforts in relation to mainstreaming equality'. It continued, '... there is a lot of positive activity going on but with little strategic direction ... there [is] a high level of variation across the organisation' (NAW 2004, pp.31-2).

In response, the Review made a raft of recommendations. These included: that Assembly Government Ministers should ensure that equality is mainstreamed in all the policy areas for which they are responsible; the need for an ongoing programme of equality training that moved beyond the initial equality awareness training given to all Assembly Government staff; improvements in order to address existing shortcomings in the Assembly Civil Service's capacity to offer advice and guidance, both to internal Assembly Government Civil Service divisions and to external public bodies; and the future use of gender needs assessments and gender budgeting to assess the level of equity in financial allocations. At the time of writing, following a commitment from the Equalities minister to 'developing and

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implementing a Mainstreaming Equalities Strategy' (NAW 2005, p.1), discussions were underway between officials and equality practitioners in order to begin to address the recommendations of the Mainstreaming Review.

## **CONCLUSIONS**

Elected devolution in Wales has led to significant advances in the promotion of equality in public policy as evidenced by an increasingly robust legal and institutional framework in this area, cross-party political will, and selected examples of policy outcomes. Notwithstanding this progress, there remains a substantial shortfall in capacity, expertise and resources for mainstreaming; the Assembly's chosen approach to equalities work. This relates both to internal actors such as civil servants, and to civil society groups. The new Welsh legislature does provide multiple points of access and there are enhanced opportunities to be consulted about policy development. Yet there is little evidence to suggest that mainstreaming has become embedded in the everyday work of the devolved institution. This failure to achieve 'joined-up' government is a key weakness. Beyond declaratory statements of commitment to equality, the treatment of equality issues in key policy documents remains very uneven and the setting of measurable targets remains the exception rather than the rule. Furthermore, institutional resistance to mainstreaming should not be underestimated.

It is also clear that a broad equality mainstreaming agenda is being pursued in a manner that moves beyond a sole focus on gender and embraces, for example, race, disability, sexual orientation, age, and language. This has led to concerns that a hierarchy of equalities has emerged and that gender has slipped down the list of competing priorities. Linked to this, there is a disappointing lack of intersectionality, namely, the development of a more nuanced approach to policymaking with the potential to address the intersections between different dimensions of inequality associated with 'multiple identities'. Instead, the more prevalent approach seems to be one of treating equalities as a 'menu' rather than an interconnected 'package'.

To policy actors and observers alike the scale of task is becoming apparent. This relates to generic problems of effecting cultural change, and in trying to promote an integrated and cross-cutting approach to strategy and policy making – as well as to specific issues about setting equality goals. In particular, there have been considerable difficulties in co-ordinating policy across departments within devolved government.

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The current absence of primary law-making powers for the Assembly means that work on equalities takes place in complex legal and structural landscape with piecemeal legislation, and differentially located and funded statutory equality bodies. Moreover, whilst the Assembly's statutory equality duty created the enabling context for many of the subsequent developments discussed in this paper, it presently appears to be a flawed legal mechanism for it lacks an adequate enforcement mechanism (for a discussion see O'Conneide 2003). This is a problem compounded by the absence of an external monitoring and compliance body to oversee the Assembly Government's conformity with its legal equality obligations (see Chaney 2004).

Successive reviews and studies of the promotion of equality in Wales have indicated the difficulty of maintaining momentum over the long term. A range of factors, such as inadequate staffing, limited resources and institutional resistance to reform, has meant that operationalising mainstreaming principles in the Assembly has been far from a straightforward case of applying a new set of principles to the devolved policy making machinery. Rather it has been characterised by gradual progress checked by faltering momentum, drift and setbacks. Whilst some of these challenges are specific to the Welsh context, many are consistent with the international literature (see for example, True 2003; Rubery et al 2004; UN 2005). In short, the first years of the Assembly have been witness to 'decoupling' (Chaney and Mackay 2003).<sup>2</sup> This is the means by which an organisation manages a disjuncture between formal rules, informal practices and actual activities – such that it espouses one thing but practices another (Meyer and Rowan 1991; Dahlström 2004). Thus, the present evidence reveals continuing slippage between the Assembly Government's political vision for equalities and the realities of the policy process.

Notwithstanding this, the fact that a mainstreaming approach has been integral to the institutional design as well as nascent practices and procedures of government bodes well. Whilst not understating the scale of the challenge to fully realise the Assembly Government's mainstreaming vision, it is clear that significant progress has been made following devolution in order to develop the institutional prerequisites necessary for mainstreaming equality in public policy. However, as the National Assembly's own definition of

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<sup>2</sup> *The application of institutional 'decoupling' is developed from the earlier analysis set out in Chaney, P. and Mackay, F. (2003).*

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mainstreaming suggests (NAW 2004, p.6), whether the equality reforms of the Assembly's first years represent a transitional or transformative phase in policy and politics ultimately depends upon whether the reforms reported on here translate into public policy *outcomes* that reduce or eliminate discrimination and inequality in Welsh society.

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