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Research Excellence Framework 2021

Equality briefing for panels

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Department for the Economy, Northern Ireland
Higher Education Funding Council for Wales
Research England
Scottish Funding Council

Research Excellence Framework: Equality briefing for panels

Executive summary

Purpose

1. This document provides a briefing on equality issues for main and sub-panel chairs, members, observers and panel advisers and secretaries of the Research Excellence Framework (REF) 2021 (hereafter, 'REF panels'). It also touches on employment issues as they relate to equality.
2. It deals specifically with equality issues in relation to panels developing their criteria and working methods. We expect to provide an updated equality briefing to panels for the assessment phase of the exercise and to provide updates as necessary on any relevant developments in equalities and employment legislation.

Key points

3. The UK higher education funding bodies require eligible higher education institutions (HEIs) participating in REF 2021 to submit all their staff members with significant responsibility for research.
4. Following the recommendations of the Stern review, outputs will be decoupled from staff, within the boundaries of submitting a minimum of one output per submitted staff member up to a maximum of five. HEIs will be able to include any individuals whose circumstances have significantly constrained their ability to research productively through the period, and who therefore do not have the required minimum of one output during the REF publication period. These circumstances include issues covered by equalities and employment legislation.
5. Within this approach, the funding bodies strongly encourage transparency and fairness in decisions made by HEIs to represent the excellent work of all their staff with significant responsibility for research.
6. The funding bodies' aim is to support equality and diversity in research careers. Through this briefing and through the 'Guidance to panels' (REF 2018/04) on developing the criteria and working methods (available at www.ref.ac.uk, under Publications), the REF team will guide main and sub-panels in the development of assessment criteria and working methods that are aligned with this aim. This briefing document sets out the legislative framework of which REF panels should be aware, and provides guidance on specific equality issues for panels to consider in developing their criteria and working methods.
7. Participating HEIs will be required to develop, document and apply an internal code of practice on the fair and transparent processes for identifying staff with significant responsibility for research (where they are not returning 100% of staff meeting the core eligibility criteria), determining research independence, and on selection of outputs for inclusion in REF submissions. Further details on this are set out the 'Guidance on codes of practice (2018/03), available at www.ref.ac.uk, under Publications.

Action required

8. This document is aimed at REF panels to inform their development of the panel criteria and working methods. Specific guidance for institutions on the REF is available in the 'Draft guidance on submissions' (REF 2018/01) and the 'Draft consultation on the panel criteria and working methods' (2018/02).

The legal framework for the REF

9. Across the UK, equalities legislation encompasses all functions of higher education institutions (HEIs) and of the UK higher education (HE) funding bodies, including REF 2021.

10. At all stages of the planning and implementation of the REF, HEIs and the funding bodies must meet legal requirements. HEIs, funding bodies and panels acting on behalf of the funding bodies may be open to external scrutiny and challenge in respect of their operation of the law.

11. The assessment criteria adopted by panels will need to be consistent with equalities and employment law. The courts have not tested all provisions, so it is not possible to provide definitive comment on the precise legality of actions that the funding bodies might take in the REF 2021 process. However, panels should be aware of the implications of current equalities and employment law. This is essential at this early stage to ensure that panel criteria and procedures are appropriately framed.

12. The REF team, REF panel advisers and secretaries will guide and support panels in adhering to the guiding framework and regulations for REF 2021, including the generic and panel-specific criteria for assessment, which should be framed in the context of this equalities briefing document. In 2020, before the panels convene to conduct the assessments, we expect to provide an updated briefing to panels, incorporating any legislative or relevant case law developments that have come into force in the interim.

13. Panels will need to be aware of the extent and relevance both of the law relating to personal characteristics and of applicable employment provisions by which HEIs will be bound in preparing their submissions.

14. Table 1 summarises the requirements of current equalities legislation. Equalities legislation in Northern Ireland is different to equalities legislation in England, Scotland and Wales, but there is essentially no difference in the standards required.

Table 1: Summary of equalities legislation

<p>Age</p>	<p>All employees within the HE sector are protected from unlawful age discrimination, harassment and victimisation in employment under the Equality Act 2010 and the Employment Equality (Age) Regulations (Northern Ireland) 2006. Individuals are also protected if they are perceived to be or if they are associated with a person of a particular age group.</p> <p>Age discrimination can occur when people of a particular age group are treated less favourably than people in other age groups. An age group could be, for example, people of the same age, the under 30s, or people aged 45 to 50. A person can belong to a number of different age groups. Discrimination can also occur if a person is treated less favourably because of their perceived age or if they are treated less favourably because they are associated with a person of a particular age group.</p> <p>Age discrimination can be justified as long as it can be shown that it is a proportionate means of achieving a legitimate aim. However, in the context of the REF, if a researcher produces excellent research an HEI will not be able to justify not submitting the research because of the researcher's age group.</p> <p>It is important to note that early career researchers are likely to come from a range of age groups. The definition of early career researcher (ECR) used in the REF is not limited to young people.</p> <p>Panels should also note that, given developments in equalities law in the UK and Europe, the default retirement age has been abolished from 1 October 2011 in England, Scotland, Wales and Northern Ireland.</p>
<p>Disability</p>	<p>The Equality Act 2010, the Disability Discrimination Act (1995) (Northern Ireland only) and the Disability Discrimination Order (Northern Ireland) 2006 prevent discrimination, harassment and victimisation because of disability. Staff in HE are also protected if they are perceived to have a disability or if they are associated with a person who is disabled (for example, if they are responsible for caring for a disabled family member).</p> <p>A person is considered to be disabled if they have or have had a physical and/or mental impairment which has 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'. Long-term is defined as meaning an impairment that lasts or is likely to last for at least 12 months.</p>

Cancer, HIV, multiple sclerosis and progressive / degenerative conditions are disabilities too, even if they do not currently have an adverse effect on the carrying out of day-to-day activities. An impairment which is managed by medication or medical treatment, but which would have had a substantial and long term adverse effect if not so managed, is also a disability. The definition of disability is different in Northern Ireland in that a list of day-to-day activities is referred to. There is no list of day-to-day activities for England Scotland and Wales but day-to-day activities are taken to mean activities that people, not individuals, carry out on a daily or frequent basis.

While there is no definitive list of what is considered a disability, it covers a wide range of impairments including:

- sensory impairments
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, depression and epilepsy
- progressive impairments, such as motor neurone disease, muscular dystrophy, HIV and cancer
- organ-specific impairments, including respiratory conditions and cardiovascular diseases
- developmental impairments, such as autistic spectrum disorders and dyslexia
- mental health conditions such as depression and eating disorders
- impairments caused by injury to the body or brain.

Equality law requires HEIs to make reasonable adjustments for disabled people and failure to make a reasonable adjustment constitutes discrimination. Where a disabled researcher's impairment has affected the quantity of their research outputs, this should be taken into account by HEIs in considering how many outputs they are expected to contribute to the submission.

For the purpose of the REF assessment period it is important to note that people who have had a past disability are also protected from discrimination, victimisation and harassment because of disability.

<p>Gender reassignment</p>	<p>The Equality Act 2010 and the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999 protect from discrimination, victimisation and harassment trans people who have proposed, started or completed a process to change their sex. Staff in HE do not have to be under medical supervision to be afforded protection because they are trans and staff are protected if they are perceived to be undergoing or have undergone related procedures. They are also protected if they are associated with someone who has proposed, is undergoing or has undergone related procedures.</p> <p>Trans people who undergo gender reassignment will need to take time off for appointments and in some cases, for medical assistance. The transition process is lengthy, often taking several years and it is likely to be a very difficult period for the trans person as they seek recognition of their new gender from their family, friends, employer and society as a whole.</p> <p>The Gender Recognition Act 2004 gave privacy rights to trans people who undergo gender reassignment. A person acting in an official capacity who acquires information about a person's status as a transsexual is liable to criminal proceedings if they pass the information to a third party without consent. Consequently, panel members must ensure that any information they receive about gender reassignment is kept confidential.</p> <p>Panels should note that the Scottish government recently consulted on, and the UK government is currently consulting on reform of the Gender Recognition Act 2004, which may include streamlining of the procedure to legally change gender.</p> <p>It is easy for people to change their names. While not all people undergoing gender reassignment will choose to change their name, where they do, panels should be aware that this may affect citation data.</p>
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<p>Marriage and civil partnership</p>	<p>Under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 as amended, HEIs as employers are required to eliminate discrimination, harassment and victimisation in employment because of marriage and civil partnership status. The protection from discrimination is to ensure that people who are married or in a civil partnership receive the same benefits and treatment in employment. The protection from discrimination does not apply to single people.</p> <p>If REF panels use citation data it is important that they are aware that people entering a civil partnership or marriage may change their name, and this may affect the citation data associated with their research outputs.</p>
<p>Political opinion</p>	<p>The Fair Employment and Treatment (Northern Ireland) Order 1998 explicitly prevents HEIs from discriminating against and/or harassing staff on the grounds of political opinion.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's political opinion.</p>
<p>Pregnancy and maternity</p>	<p>Under the Equality Act 2010 and the Sex Discrimination Order (Northern Ireland) 1976 women are protected from pregnancy- and maternity-related discrimination, harassment and victimisation in employment.</p> <p>Consequently, if a researcher has taken time out of work because of pregnancy-related illness and/or maternity this should be taken into account by HEIs in considering how many outputs they are expected to contribute to the submission.</p> <p>In addition, researchers who are pregnant or on maternity leave should not be overlooked during an HEI's submission process.</p> <p>For the purposes of this briefing it is important to note that primary adopters have similar entitlements to women on maternity leave.</p>
<p>Race</p>	<p>Under the Equality Act 2010 and the Race Relations Order (Northern Ireland) 1997, HEIs as employers cannot discriminate against, victimise or harass staff because of their race. The definition of race includes colour, ethnic or national origins or nationality. Discrimination, harassment and victimisation because of race can occur because of a person's perceived race or because of their association with a person of a particular race.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's race or assumed race (for example based on their name).</p>

<p>Religion and belief including non-belief</p>	<p>The Equality Act 2010 and the Fair Employment and Treatment (Northern Ireland) Order 1998 prohibit HEIs from discriminating against, harassing or victimising staff because of their religion or belief.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's actual or perceived religion or belief, including non-belief. 'Belief' includes any structured philosophical belief with clear values that has an effect on how its adherents conduct their lives.</p>
<p>Sex (including breastfeeding and additional paternity and adoption leave)</p>	<p>Under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 it is unlawful for HEIs to discriminate, harass or victimise employees because of their sex. Employees are also protected because of their perceived sex or because of their association with someone of a particular sex.</p> <p>The sex discrimination provisions of the Equality Act explicitly protect women from less favourable treatment because they are breastfeeding. Consequently, the impact of breastfeeding on a women's ability to conduct research needs to be considered in the context of the REF.</p> <p>If a mother who meets the continuity of employment test wishes to return to work early or shorten her maternity leave/pay, she will be entitled to shared parental leave with the father or her partner within the first year of the baby's birth. Partners may also be eligible for shared parental leave or pay.</p> <p>Fathers/partners who take additional paternity or adoption leave or who take shared parental leave have similar entitlements to women on maternity leave and barriers that exist to taking the leave, or as a result of having taken it, could constitute unlawful sex discrimination. Consequently in the context of the REF, additional paternity and adoption leave and shared parental leave should be taken into account by HEIs in considering how many outputs fathers or the partners of new mothers are expected to contribute to the submission.</p> <p>Panels should note that there are now requirements under UK and Scottish legislation for public authorities (including HEIs) to report information on the percentage difference amongst employees between men and women's average hourly pay (excluding overtime).</p>

Sexual orientation	<p>The Equality Act 2010 and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 prohibit HEIs from discriminating against, victimising or harassing staff because of their sexual orientation or their perceived sexual orientation. Staff are also protected if they are associated with someone who is of a particular sexual orientation.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's actual or perceived sexual orientation.</p>
Welsh language	<p>The Welsh Language Act 1993 places a duty on public bodies in Wales to treat Welsh and English on an equal basis. This is reinforced by the provisions of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards (No 6) Regulations 2017.</p> <p>Panels should treat submissions made in Welsh equally to those made in English.</p>

Law relating to mode and terms of employment

15. Under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 a fixed-term employee has the right not to be treated by his or her employer less favourably than the employer treats a permanent employee, unless there are objectively justifiable grounds for doing so. In addition, a part-time worker has the right not to be treated less favourably than a comparable full-time worker.

16. There are equalities considerations to mode and terms of employment. For example, analysis carried out by the Equality Challenge Unit¹ for academic year 2015/16 shows that while on average 34.4 per cent of academic staff are on fixed-term contracts, 70.6 per cent of academic staff aged 26 to 30 and 44.5 per cent of academic staff aged 66 and over are on fixed-term contracts. Among both UK and non-UK academic staff, a higher proportion of BME staff were on fixed-term contracts (33.7% and 50.5%, respectively) than white staff (29.1% and 40.1%, respectively). The report also highlights that part-time academic staff are more likely to be female (40.3 per cent of all female academic staff) than male (26.9 per cent of all male academic staff). One reason for this is that, due to childcare commitments, women are more likely than men to reduce their contractual hours after having children.

¹ The Equality Challenge Unit's report 'Equality in higher education: staff statistical report 2017' is available at <https://www.ecu.ac.uk/publications/equality-in-higher-education-statistical-report-2017/>.

Unit and individual staff circumstances

17. This briefing set out developing arrangements for taking into account staff circumstances in REF 2021. The panels were invited to feed into the proposals on circumstances during the criteria development process. Following this process, the proposals are now available for sector consultation. Details of the consultation proposals relating to circumstances are included in the 'Draft guidance on submissions' (2018/01 available at www.ref.ac.uk).

Guidance to panels

18. To support the funding bodies' aim of promoting equality and diversity in research careers in the REF and ensure the assessment process takes account of relevant equality and employment legislation, the panels should give specific consideration to the issues set out below, in developing their criteria and working methods.

The research environment

19. In developing their criteria, panels are invited to describe what forms of evidence institutions should submit within the environment template, including both narrative and supporting quantitative evidence where it is available, and drawing on the advice of the Forum for Responsible Research Metrics (see paragraph 21).

20. Panels are invited to note that the REF Equality and Diversity Advisory Panel (EDAP) will provide advice to the panels in the assessment of the environment templates to help ensure consistent and robust assessment. The assessment, including individual submission scores for the environment, will remain the assessing panels' responsibility.

21. In terms of evidence around equality and diversity in the research environment, panels are invited to consider the menu of suggested Environment 'indicators' produced by the working group of the Forum for Responsible Research Metrics. Indicators are included in relation to both the institutional-level statement, and the 'people' section of the environment template.

22. Panels are invited to note advice from EDAP that institutions should be given sufficient space to describe how equality and diversity is embedded within the research environment in order to encourage fuller consideration and provision of evidence by institutions on this point, at both institutional and unit level.

23. In relation to the institutional-level environment statement, a clear alignment between this and the institutional code of practice (COP) is desirable, and therefore the guidance should invite institutions to build on what they have already provided within the COP.

24. In the development of narrative questions for the institutional-level statement, EDAP encourages panels to consider inviting evidence in the following areas:

- a. how the institution has considered all protected characteristics² within their approach to addressing equality and diversity issues
- b. mentoring, and formal and informal support for early and mid-career researchers, including any specific support for staff groups currently underrepresented at higher levels of academic and research leadership (including evidence on progression and promotion rates for underrepresented staff and part time staff)
- c. training and professional development provision for all staff groups
- d. researcher engagement in their work environments and their views on the support they receive (including any quantitative evidence available through relevant survey data)
- e. how an inclusive environment is created, including dignity at work (bullying and harassment) policy, awareness-raising activity, flexible working arrangements, governance/structures, and support systems in place
- f. how the institution is addressing any gender pay gap issues
- g. how the institution has considered equality and diversity within the composition of research teams and when exploring research development and design.

25. The 'Guidance on submissions' will set out that within the 'people' section of the unit-level environment template institutions should submit evidence of how the unit has promoted equality and diversity across its staff. Panels should consider and describe what specific forms of evidence should be encouraged, taking account of the following points:

- what specific kinds of evidence or examples could be encouraged, and whether these might be verifiable (in relation to the narrative questions being posed)
- how to focus on the activity of the submitted unit specifically, within the context of the general institutional approach as set out in the institutional-level section (noting that this might include activity to implement institutional policy within the unit)
- whether there are specific aspects of equality and diversity across the population of researchers within their discipline that might be addressed in the panel criteria
- whether units can be specifically encouraged to focus on the full range of activity to support equality and diversity across protected characteristics, noting the importance of gender but also the importance of activities supporting other groups, and that the intersection of gender and other identities can create compound barriers, e.g. for female-identifying and trans-academics
- whether units can be encouraged to demonstrate specific support activity for groups where particular underrepresentation is noted.

26. Panels evaluating environment data may find self-reported information about awards and citation indicators presented as esteem or achievement evidence. Panel members should be careful to consider the equality characteristics of research groups

² For a full list of the protected characteristics please see <https://www.legislation.gov.uk/ukpga/2010/15/section/4>

when drawing conclusions from any self-reported citation indicators (e.g. total citations, h-index) and/or career-based awards. This is because research groups with diversity characteristics that reduce their volume of work or the effective length of careers are disadvantaged with regard to career-based awards and citations³. This includes groups with more women than the field average, since women are more likely to take career breaks or periods of part-time work for carer responsibilities⁴. It also includes groups with many researchers with disabilities affecting their research productivity and groups with many early career researchers.

Impact

27. In developing their criteria, panels are encouraged to be sensitive to disciplinary differences, but with consistency of approach on key issues (such as broadening the relationship between underpinning research and impact, and assessing continued case studies) to give increased confidence to institutions to submit the full range of examples of impact. The panels are particularly encouraged to consider the following issues raised by representatives from the sector through consultation in 2016 and wider engagement activity:

- Any potential effect on ECRs arising from the timeframe for underpinning research, and how/whether this might be affected by the inclusion of continued case studies.
- Potential equality and diversity implications around the role of individual researchers in relation to research activities. The panels should consider, therefore, the potential for impact to reinforce broader inequalities where the underpinning research is widened to include research activities. Notes on the discussions with sector representatives at the recent REF impact workshops are available at <http://www.ref.ac.uk/events/>.

Use of citation data

28. We expect some sub-panels to make use of data about the number of times individual outputs have been cited, to inform judgements about the quality of those outputs. Panels making use of such data should:

- develop criteria that are cognisant of the potential biases of citation data, such as bias arising from self-citation and bias against gender and name recognition
- be wary of drawing negative conclusions from a low citation count when a paper is published in a low citation specialism within a field that is associated with an equality characteristic

³ Dias, M. C., Joyce, R., & Parodi, F. (2018). The gender pay gap in the UK: the causal impact of hours of work. Institute for Fiscal Studies. doi:10.1920/BN.IFS.2018.BN0223 <https://www.ifs.org.uk/publications/10358>

⁴ 41% of full-time academic staff are female, and 56% of part-time academic staff are female: HESA (2018). Higher Education Staff Statistics: UK, 2016/17. <https://www.hesa.ac.uk/news/18-01-2018/sfr248-higher-education-staff-statistics>

- consider analysis from the Forum for Responsible Research Metrics in their report 'Metrics in REF2021: advice from the UK Forum for Responsible Research Metrics', and the report from the Independent Review of the Role of Metrics in Research Assessment and Management 'The Metric Tide'⁵.

Further information

29. Further general information on equality can be accessed through Advance HE's website at <https://www.advance-he.ac.uk/>.
30. Panel chairs and members should address queries on this guidance to their REF panel secretary or adviser in the first instance.
31. Other queries relating to the REF should be addressed to the REF team, via e-mail to info@ref.ac.uk.

⁵ <http://www.universitiesuk.ac.uk/policy-and-analysis/Documents/forum-for-responsible-research-metrics-response-to-REFconsultation2017.pdf>

<http://www.hefce.ac.uk/pubs/rereports/year/2015/metrictide/>